IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

CAROLYN W. HAFEMAN *
* April 27, 2022
VS. *
* CIVIL ACTION NO. W-21-CV-696
LG ELECTRONICS INC. ET AL

BEFORE THE HONORABLE DEREK T. GILLILAND
MARKMAN and MOTIONS HEARING (via Zoom)

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08:53

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09:03 (Hearing begins.)

09:03 DEPUTY CLERK: Calling Case No. WA-21-CV-696, styled Carolyn W. Hafeman versus LGE Electronics Incorporated, et al, called for a Markman and motions hearing.

09:03 THE COURT: And could I have announcements, starting with the plaintiffs, please?

09:03 MR. TRIBBLE: Yes, Your Honor. This is Max Tribble. And with me today is Krisina Zuniga, Tom DelRosario, Larry Hadley and Jason Linger and our client, Carrie Hafeman.

09:04 THE COURT: Excellent. Well, welcome to all of the counsel and especially to Ms. Hafeman for appearing today.

09:04 Could I get announcements from the defense, please?

09:04 MR. RAVEL: Your Honor, Steve Ravel for LG Electronics, Inc., the one and only LG entity that's left in the case.

09:04 First and foremost are our three client representatives, Jay Jin, Eden Kim, TG Kong. It's a little after 11:00 tonight where they are, last full measure of devotion.

09:04 My local co-counsel, Mike Jones, needs no introduction. And neither do any of the other four

lawyers who are going to be our primary speakers today, but I'll introduce them anyway. Kirstin Stoll-DeBell, Celine Crowson, Carrie Beyer and Tej Singh may all speak.

So we're here and ready to proceed, Your Honor.

THE COURT: Excellent. Well, welcome, everybody, and especially to the LG clients. I know it's late and likely to be much later -- or earlier in the morning before this concludes. So we really do appreciate your attendance.

And with that, I think from what I was -- from what memory serves, I think it's defendants that would like to address or argue terms. As I understood it, I think the plaintiffs didn't have -- had no terms that they wanted to argue -- or plaintiff.

So with that, why don't we turn to defense counsel. And the first term, which I understand is "computer recovery information" and those related terms. So we'll start with that starting with the defendant.

MR. CROWSON: That's right, Your Honor. Thank you very much. This is Celine Crowson speaking. Good morning to you.

THE COURT: Good morning.

09:05 MR. CROWSON: And, Mr. Singh, if we could start with our slides.

09:06 Now, let's take a look at the first slide where we start to talk about -- we've got a couple issues that we'd like to talk about with respect to the claim term "recovery information" and "return information."

09:06 We did, of course, receive the Court's preliminary construction of that term which is along the lines of plaintiff's, I guess, alternative construction. And we'd like to talk about a couple of things, as I mentioned.

09:06 The first is we have a suggested proposal, really a tweak or a small modification to the Court's preliminary construction. And I can talk about that in a minute.

09:06 And then we'd also like to say a couple things about the printed matter doctrine.

09:06 Next slide, please.

09:06 So first about the proposal for clarification to the Court's preliminary construction. So the construction in this preliminary form is the information, you know, provided by the owner so that the device can be returned to the owner.

09:07 And what we'd like to have clarified is

that the information that's provided should be contact information and that it shouldn't only be a name.

And what concerns us about plaintiff's alternative construction, which has been adopted, is that plaintiff appears, in its briefing, to take the position that the owner's name, such as John Smith, would be enough to satisfy this claim limitation.

And we don't think that should be the -- that should be the case because it really needs to be information that enables return or recovery. And simply the owner's name, John Smith, wouldn't do that.

So, again, we're proposing a clarification to the construction that says that the information provided needs to be contact information, and that it's not only a name of the owner.

Next slide, please.

And I should say too that the patent supports this clarification. Plaintiffs, in its brief, has pointed in support of its construction, for example, to Column 6 at about Lines 55 to 65. And if you look at that portion of the patent, it refers to -- it says, see Figure 2. Plaintiff didn't mention that in its brief, but it says see Figure 2.

And if you look at Figure 2 -- and it's the same for Figure 6 as well -- you can see that not

only the name is required. We've highlighted there on the left side of the slide there in blue, it says required. But also something like a phone number and an e-mail, that's required as well.

So, again, we think that the clarification will help make things clearer to the fact finder and make sure that it's really contact information, which is not just a name that's required by the limitation.

Next slide, please.

And as I mentioned, we also wanted to say a couple things about the printed matter doctrine. In addition to the construction, we think the concept of the printed matter problems also come into play in connection with the invalidity analysis.

And the couple of points are as follows: If you look at the way the claims --

(Clarification by the reporter.)

MR. CROWSON: Yeah. So as I was saying, if we look at the way that the claims of the asserted patents are set up -- we're looking, for example, at Claim 4 here -- we can see that the claim is really directed to an apparatus for displaying information. And that has the computer with a display. And there's a processor and communication with the display. And

09:09 1 that the processor's initiating or changing information
09:10 2 through remote communication done through an
09:10 3 interactive program. That's really the crux of the
09:10 4 structure of the claim.
09:10 5 Now, the claim recites that the
09:10 6 information that's being displayed and changed is
09:10 7 computer recovery information. But really the way the
09:10 8 claim is set up, that particular content, it's not
09:10 9 connected with any other parts of the claim to create a
09:10 10 new functionality.
09:10 11 One could substitute for "recovery
09:10 12 information" advertising information, medical
09:10 13 information. And so that's the problem with giving
09:10 14 that portion "recovery information" or return
09:10 15 information, patentable weight. Is because it really
09:10 16 doesn't, in a classic fashion, when you look at really
09:10 17 how the claim is set up, fall into the printed matter
09:10 18 doctrine that says the content that's merely displayed
09:10 19 and that's not connected to the other portions of the
09:10 20 claim structurally to perform a new function, shouldn't
09:10 21 be given patentable weight.
09:10 22 Next slide, please.
09:10 23 And really I think, you know, one thing
09:11 24 that's interesting to think about in addition to the
09:11 25 fact other type -- any type of information could be

substituted in that claim for recovery information, is that the printed matter doctrine may not apply, for example, if there was a limitation in the claim, an added step or component, that actually required use of the content to activate, for example, return, or to accomplish the return.

That might be an example of a claim where the printed matter doctrine doesn't apply.

But those -- the claims that we're looking at that are asserted in this case are not set up that way. And so we thought that would be helpful to illustrate why LG believes that the printed matter doctrine should apply to the "recovery/return information" term, such that it shouldn't be given patentable weight in the invalidity analysis.

Thank you very much.

THE COURT: Okay. Let me ask you this, Ms. Crowson, real quick. If we go to Slide 6 looking at Claim 4. In addition to the computer recovery information like the second element of the claim, it requires a computer recovery information for returning to the computer -- or returning the computer to the owner.

And I think somewhere I thought I saw another reference to that effect. But the claim

09:12 appears to be directed towards providing information to
09:12 allow the return of the computer to its proper owner.
09:12 So how is that not functionally tying computer recovery
09:12 information to the claim?
09:12 MR. CROWSON: Yeah. And you're correct,
09:12 Your Honor. Some of the other claims in the preamble,
09:12 they talk about that being -- that being an intended
09:12 use. You know, we think with apparatus claims that
09:12 shouldn't be given any weight, you know, in the method
09:12 claim. Although that is describing a method.
09:12 The problem, though, is that the content,
09:13 the way the claim is written, the mere display, it's
09:13 not tied functionally to what happens in the claim.
09:13 Perhaps if the claim said -- even the method claim said
09:13 whereby that content is used, for example, to activate
09:13 or to actually return the computer to the owner, that
09:13 may be something that gives that content some
09:13 connection structurally to the claim.
09:13 But the claim, even the method claim, is
09:13 really missing the piece that would provide patentable
09:13 weight to that portion of the claim regarding the
09:13 recovery/return information.
09:13 THE COURT: Okay. Thank you.
09:13 If I could hear from plaintiffs on this
09:13 term, please.

09:13 MS. ZUNIGA: Good morning, Your Honor. This is Krisina Zuniga from Susman Godfrey. And I'll be providing argument for the plaintiff, Ms. Hafeman. I'm going to go ahead and share my screen now.

09:13 THE COURT: Very good, and welcome.

09:13 MS. ZUNIGA: Thank you. Can you see that okay?

09:13 THE COURT: I can. Thank you.

09:14 MS. ZUNIGA: Great. Thank you.

09:14 So on the terms "computer recovery information," "recovery information" and "return information," we believe the Court's preliminary construction got it right. And that's information provided by the owner so that the device can be returned to the owner.

09:14 LG today wants the Court to add contact information to its construction. But I still don't understand what contact adds. I haven't figured out what that's going to change from the Court's construction, which is information that allows the device to be returned to the owner.

09:14 As for LG's argument about a conventional name, as they say, something like John Smith, again, LG hasn't explained why that's not enough. If a device got lost at a school, for example, where the student

09:14 knows he's the only one with the name John Smith, he could easily put in his device, please return to John Smith. I'm the only John Smith, and they'll know how to get it to me. It's a small school.

There's no reason for the Court to add limitations that don't exist in the claim language and don't exist in the specification.

LG again points to Figure 2 from the '287 patent. Initially, in its initial proposed construction, LG wanted certain of this information to be options that could be return or recovery information, such as the owner's address.

But this figure makes clear that that information is not required. And information that is required in this one embodiment, which our position is the invention should not be limited to, is not part of LG's proposed construction anymore.

Because what the patent language makes clear and what the specification makes clear is that the return and recovery information is not limited to the examples that Ms. Hafeman included in the specification. These were just that, examples. A name, a telephone number, an e-mail, even an international website recovery site.

This specification explained the types of

information that could be used for a device to be returned to the owner. And, in fact, there are things that exist now that were not contemplated at that time that would certainly be recovery information.

Hafeman gave the example in her briefing, and still LG has not responded to it in reply or today, of social media information. A LinkedIn profile, why that couldn't be used to return a device to its owner, LG doesn't explain. And that could be included in the return recovery information that would satisfy the Court's preliminary construction.

Briefly, Your Honor, on the printed matter doctrine, we believe that this recovery information should be given patentable weight. And that's under the test that's been well established by the Federal Circuit. And that's whether the information interacts with the other elements of the claim to create a new functionality in a claimed device or to cause a specific action in a claimed process.

Here, like in the cases cited in Hafeman's briefing, Gulack and Miller, there is printed matter, the return recovery information. There is structure, the display screen. And there's new functionality initiating the return or recovery information which can be initiated or changed remotely.

This is in the claim language. And specifically from the claim language, before or with a security prompt.

This was not addressed by LG either, and it was a key part of the invention.

Ms. Hafeman said so in her specification repeatedly, saying that this is an important feature, that it strategically provided because it's a unique and different method to help protect owner information. It's important. It's the point of the program.

Ms. Hafeman wanted to make clear that it was very important that return recovery information is displayed before or with a security prompt. Because otherwise, somebody who has the device who shouldn't have the device could access the owner's personal information, information on the device to which they shouldn't have access.

In this way, the return and recovery information, the printed matter, interacts with the functionality. It intersects with the substrate, the display screen, so that it creates new functionality. So that the information is protected that's on the device unless they have the appropriate login information way to access the device.

LG ignores all this language from the specification and says that return recovery information

09:18 shouldn't be given patentable weight. But, in fact, it's the part -- the main part of the invention.

If you look at the claim language, again, it says initiating or changing return information, initiating or changing of the display screen. The return information is what makes the display screen the display screen. Without the return recovery information, the invention would not have the same purpose that it was contemplated to have.

And, Your Honor, I'm happy to answer any questions.

THE COURT: I don't think I have any questions at this point.

Let me ask Ms. Crowson, would you agree that a, say, Facebook, Twitter, et cetera, ID or username would be sufficient to satisfy the contact information or recovery information?

MR. CROWSON: I think that something like an address on a social media account, that would be something, you know, in addition to just an owner name. And so we would agree that that would satisfy the proposal that we're making. That it's got to be something in addition to a mere username -- a mere owner name like John Smith. And if it -- and if it was a social media URL type link, I think that would meet

09:19 1 that in addition.
09:19 2 THE COURT: Give me just a second.
09:19 3 (Pause in proceedings.)
09:21 4 THE COURT: Okay. After considering the
09:21 5 arguments, the Court is going to stay with its
09:21 6 preliminary construction on this one. I think adding
09:21 7 anything more to it's going to just be improperly
09:21 8 importing some class of limitation into the claims. So
09:21 9 we're going to stay with the preliminary construction
09:21 10 which is the information provided by the owner so that
09:21 11 the device can be returned to the owner.
09:21 12 With that --
09:21 13 MR. CROWSON: Thank you, Your Honor.
09:21 14 THE COURT: Thank you, Ms. Crowson.
09:21 15 I believe the next term I have on my
09:22 16 notes here is the "display recovery/recovery return
09:22 17 limitations." If that's correct, whoever wants to
09:22 18 argue that, would you let me know? Otherwise, let me
09:22 19 know if I've got the wrong term.
09:22 20 MS. STOLL-DeBELL: Yes, Your Honor. I'm
09:22 21 Kirstin Stoll-DeBell and I represent LG Korea. And I
09:22 22 will be addressing this term.
09:22 23 THE COURT: Okay. Very good. Thank you,
09:22 24 Ms. Stoll-DeBell.
09:22 25 MS. STOLL-DeBELL: With that, I'm going

to share, hopefully, my slides.

So is that working for everyone?

THE COURT: I see it.

MS. STOLL-DeBELL: Perfect. So thank you, Your Honor.

We understand that the Court has tentatively found against us on the construction of these terms, but we wanted to address it briefly because this patent is highly unusual. Because it's so -- it's so full of clear disclaimers about what the present invention includes that I'd like to briefly address this issue.

THE COURT: Very good. Go ahead.

MS. STOLL-DeBELL: So first, claims cannot be broader -- of broader scope than the invention that is set forth in the specification. And a court should depart from plain and ordinary meaning when a patentee disavows the full scope of the claim by using the phrase, "the present invention."

And the Federal Circuit has repeatedly held that when an inventor uses this phrase, "the present invention," to describe a feature, that the claim should be limited to that feature as described. And this is really important to serve the public notice function of patents.

09:23 And so I have here on this slide, Your Honor, just one example of one Federal Circuit case. But I think it's really a good example, because you can see that the district court and the Federal Circuit imported a limitation from the specification into the claim in this case.

09:24 What they added was that the retrofitting of the shotgun had to happen after the original manufacture. And you can see from the claim language that's not in the claim language. But in the specification it said the present invention includes these things. It includes retrofitting and it includes, you know, the idea that it's designed to be implemented with existing shotguns.

09:24 And based upon this present invention language, the Court did depart from the plain and ordinary meaning and did add a limitation into the claim. And there are many -- we cited many Federal Circuit opinions that use this present invention language to limit the claim scope.

09:25 So I show here, Your Honor, why I say this patent is super unusual. And so we said that it used the present invention language in our brief 13 times. But when I actually went and highlighted it, it's actually 14 times. And so you can see that I

09:25 highlighted each example and put a number to count the
09:25 14 times that it says, the present invention includes
09:25 automatically displaying return recovery information
09:25 during or after boot-up.
09:25 This here are just because it was kind of
09:25 small so you probably couldn't read what it said. I
09:25 have four examples for you that I just wanted to show
09:25 you.
09:25 So the Disclaimer 3, for example, so I'm
09:25 going to go at top left. It says, "The present
09:25 invention uses a layered program in the boot-up process
09:26 to provide a display of... return information."
09:26 Disclaimer 6 says, "The present invention
09:26 pertains to a computer return apparatus...[that]
09:26 comprises a return screen that the processor
09:26 automatically causes to appear during or after
09:26 boot-up..."
09:26 Disclaimer 8 says, "The present invention
09:26 pertains to a computer readable
09:26 medium...performing...steps [including]...displaying
09:26 automatically a return screen on a display...during or
09:26 after boot-up..."
09:26 Disclaimer 10 says, "The present
09:26 invention pertains to a method...[with a] step
09:26 of...displaying automatically a return screen on a

09:26 display...during or after boot-up..." And it says this
09:26 14 times.
09:26 This slide is -- just cites to the slides
09:26 so that you can look at them later, Your Honor.
09:26 But this patent is -- it's not only
09:26 unusual in the number of times that it makes this same
09:27 exact disclaimer, but it's also unusual in how
09:27 consistent the rest of the specification is with this
09:27 disclaimer. And so I wanted to talk about this here.
09:27 Plaintiff argues that it's inconsistent
09:27 with the screen-saver embodiment. And so I want to go
09:27 through that and explain why it's not inconsistent with
09:27 the screen-saver embodiment.
09:27 Plaintiff -- so LG Korea, you know -- LG
09:27 Korea's construction is based upon the present
09:27 invention and the specification -- present invention
09:27 displaying this return recovery information during
09:27 boot-up.
09:27 But the specification talks about
09:27 actually three times that return/recovery information
09:27 can be displayed. And that's in my little drawing I
09:27 have here on the left. Left and right are sort of
09:28 elusive concepts for me, Your Honor. So sometimes if I
09:28 say left, I mean right, just go with me because I think
09:28 you probably understand what I'm saying. And then on

09:28 the right I have the snippets from the patent that
09:28 support the drawing I have on the left.
09:28 And so you can see that on the very left
09:28 we have display of return recovery information which
09:28 always happens automatically during or after every
09:28 boot-up. And there's lots of support, I just showed
09:28 you some of it. But also the top snippet at -- that I
09:28 have here talks about always displaying. So that's
09:28 something that always has to happen.
09:28 But the spec also says, as you can see in
09:28 the bottom snippet, that the -- this retrieve or return
09:28 recovery display not only appears during initial
09:28 boot-up. So, again, that supports this concept that it
09:28 has to happen during initial boot-up.
09:28 But it says it can also -- it "can also
09:29 be" displayed when it's manually initiated by a user.
09:29 So that is the middle blue box. And it can also be
09:29 displayed automatically by the screen-saver timer.
09:29 So these are optional features. They
09:29 don't take away from the fact that it must be displayed
09:29 during boot-up, but it can also be displayed at other
09:29 times.
09:29 The fact that plaintiff's disclaimer
09:29 throughout the specification and LG's proposed
09:29 construction require display of this return recovery

information at every boot-up doesn't mean that it can't also be displayed at other times. And our construction doesn't say that. It says it has to happen at boot-up, but it doesn't say it only happens at boot-up. And it doesn't say it can't happen at other times. It just doesn't even mention those.

And so it doesn't prohibit the display of the screen-saver timer. It doesn't prohibit automatic initiation by the user. It simply says that it has to happen during boot-up. And for these reasons, the screen saver embodiment and the manually-initiated embodiment, frankly, are in addition to, but absolutely consistent with, LG's proposed construction.

And with that, I'd ask if you have any questions for me.

THE COURT: Yeah. I do have one quick question. I know in plaintiff's brief they had pointed out at least, I guess, it's Figure 1 shows that the return screen or return information is displayed before an operating screen and cited to Figure 1 of the patent.

How does LG's proposed construction square with the patent, at least in one instance describing display of the return information before you get to an operating screen?

09:31 MS. STOLL-DeBELL: Well, I think -- I think I'll go to a different slide to answer that, Your Honor. And I think this one is super helpful. So the patent talks about sort of what boot-up means.

And actually I'll go to this one first. So this is Figure 3. And it shows kind of a flow of when you turn the computer on, when it boots up and then when you get to the operating system which is the operating screen that I think plaintiff is referring to.

And the patent defines the boot-up process. I have it quoted here as a process that "includes a series of steps the computer is taking...in order to move the user to gaining access to the main operating system."

And so I've colored that boot-up process in -- I say red. Everyone else says it's pink. I don't know what color you see. But red, pink --

THE COURT: I see dark red. I'll go with you on that one.

MS. STOLL-DeBELL: Okay. So I'm going to say red, and I'm going to also just tell my team I was right, it is red.

The highlighting of -- I say teal. Might be blue. But in any event, that is the return recovery

information. And so you can see that's happening during the boot-up process and before the user enters operating system.

And so the boot-up process can be a bunch of different screens depending on what kind of computer, if you've got a phone or whatever.

And so let me show you this next slide which I think is also really helpful in understanding this. This comes from the specification and it talks about three different examples of boot-up processes. It talks about a Dell computer, how it boots up. It talks about an AT&T cell phone boot-up and it talks about a Gateway computer boot-up process.

And, again, I tried to be consistent, so the blue talks about display and return/recovery information. The red is boot-up, the different boot-up screens. And orange is operating system.

And what you'll see is that the patent says there are ideal spots for displaying return/recovery information. And really, those are sort of anywhere in -- anywhere sort of before or after those red boxes or in between one of those red boxes, actually. Just so long as -- and you can see here I underlined it -- it says "At a minimum [it] needs to display before [the] operating system" which is orange.

09:33 So you can see here -- I'm going to be super technical with my laser pointer. You can see I put a red box here. So basically you could display here which would be kind of before boot-up. You could display here which is during boot-up. You could display after boot-up. Just as long as it needs to display before the operating system.

09:34 And so that is what the patent is talking about. It's talking about a boot-up screen. Does that answer your question, Your Honor?

09:34 THE COURT: That does. That does.

09:34 MS. STOLL-DeBELL: Okay.

09:34 THE COURT: Now, could I hear from plaintiffs on this one?

09:34 MS. STOLL-DeBELL: Yeah. And I need to unshare. So hold on. Stop share. There we go.

09:34 MR. LINGER: Thank you, Your Honor. This is Jason Linger. I'll share my screen.

09:34 THE COURT: All right. And good morning, Mr. Linger.

09:34 MR. LINGER: Can everyone see that all right? Slide 5.

09:34 THE COURT: I can. Thank you.

09:34 MR. LINGER: Okay. So we think the Court got it right in going with the plain and ordinary

meaning for this claim term. And we see several issues with LG's construction.

The first issue is that we believe it's inconsistent with the screen-saver embodiments. LG's construction states automatically displaying return/recovery information during or after every boot-up. But the screen-saver embodiment has nothing to do with the boot-up process. It could initiate long after the computer has been turned on and booted up.

A second issue with LG's construction is that it contradicts the specification. Their construction requires that this information be displayed during or after every boot-up. And I would direct the Court's attention to the word "every." But the specification never uses the phrase "every boot-up." It says during or after boot-up, but it doesn't say every boot-up.

And sure enough, the specification actually refutes this requirement, because it teaches that a user may customize return/recovery information, as well as not display certain information as well. So we think that "every" portion of the construction is also unsupported.

So in its opening brief, LG pointed to the prosecution history and argued that there was a

09:36 disclaimer by the patentee. But LG's leading piece of
09:36 evidence said that the retriever product displays
09:36 before or during boot-up, but the construction says
09:36 during or after every boot-up. So these statements
09:36 clearly don't match up. One says during or after, one
09:36 says before or during. This cannot be squared.
09:37 So then in reply, LG says that this
09:37 statement was a mistake by the patentee. This a new
09:37 argument that they made in their reply. But the
09:37 screen-saver embodiment shows that this statement
09:37 during prosecution was not a mistake.
09:37 LG's construction also creates a lot of
09:37 confusion. There's a host of unanswered questions that
09:37 its construction would raise.
09:37 For example, how long after boot-up would
09:37 satisfy the construction? If the user boots up their
09:37 computer, works for several hours and then steps away
09:37 for a lunch break and the screen-saver feature is
09:37 enabled, would that satisfy LG's construction? We
09:37 raised this scenario in our responsive brief and they
09:37 did not answer that.
09:37 There's also the question of, is it
09:37 during or after or before or during, as we mentioned on
09:37 previous slide.
09:38 Another question is, how can displaying

return/recovery information be required during or after every boot-up -- keyword "every," if the owner can disable return/recovery information remotely?

We think that these many questions counsel in favor of a plain and ordinary meaning.

So we heard from LG that return/recovery information can be displayed at other times as well. This was something that they put forth in their reply brief.

But that contradicts the position they took originally. They said the "invention requires automatically displaying return/recovery information during or after every boot-up of the computer." Now they're saying the proposed construction does not require that and it could be displayed at other times as well.

We think this is inconsistent and contradictory.

And sure enough, the Federal Circuit rejects inconsistent and contradictory claim construction positions. We cited these cases in our briefing. And yep, sure enough, the Federal Circuit in Atlantic Research said "[A]sserting claim construction arguments...undermine[s the] claim construction argument."

09:39 And the last point I'll say is defendant pointed to statements referring to the field of invention. This is a common practice in patent drafting. But that doesn't mean it's always a disclaimer. We pointed to the Continental Circuits case in our briefing. And in that case the Court found that just because you describe one way to carry out the invention, that doesn't mean that the patentee has made a disclaimer.

09:39 So we think the Court got it right in going with the plain and ordinary construction, and I'd be happy to answer any questions.

09:40 THE COURT: Yeah. I would like you to address the point that Ms. Stoll-DeBell made regarding the reference to "the" invention throughout the patent. Can you point me to any examples within the patent where the patentee makes it clear that there are multiple embodiments?

09:40 MR. LINGER: Yeah. We think the screen-saver embodiment is an embodiment that's not consistent with their construction. It's -- it has nothing to do with the boot-up process.

09:40 So I would go to Slide 5. This is the portion of the specification in which the screen-saver embodiment is discussed. And it says "The Retriever

display not only appears during the initial boot-up or with a manual activation by the computer user."

And then it says if the computer is sitting idle for a certain amount of time, then the recovery screen will be displayed. So we think this embodiment is inconsistent with their construction.

THE COURT: What about -- let me ask you, at the -- I guess at the conclusion of the patent I think it has a standard catch-all kind of that says that while the patent's been described in certain embodiments, it shouldn't be limited to those embodiments. What weight do you think I should give that clause at the end of the patent?

MR. LINGER: I think it deserves some weight. But you also have the screen-saver embodiment that is inconsistent. And yes, there's also that catch-all phrase, as you described, that says it's not limited to the embodiments here.

THE COURT: Okay. Ms. Stoll-DeBell -- or, Mr. Linger, is there anything more than on this term?

MR. LINGER: Nothing further from plaintiff on this term.

THE COURT: And Ms. Stoll-DeBell, can you address how LG's construction would be consistent with

09:42 the screen-saver embodiment? And then also what weight
09:42 do you think I should give to that clause at the end of
09:42 the specification?
09:42 MS. STOLL-DeBELL: Sure. Can Mr. Linger
09:42 stop sharing?
09:42 THE COURT: I bet he can.
09:42 MR. LINGER: Absolutely.
09:42 MS. STOLL-DeBELL: Would he please stop
09:42 sharing?
09:42 (Laughter.)
09:42 THE COURT: There we go.
09:42 MS. STOLL-DeBELL: Thank you. I
09:42 appreciate it.
09:42 So first the screen-saver embodiment.
09:42 Yes.
09:42 And I'm going to share now, and I'm going
09:42 to share this. Okay. Is that working for everyone?
09:42 THE COURT: It is.
09:42 MS. STOLL-DeBELL: Okay. Perfect.
09:42 So, you know, I think it's sort of --
09:42 it's not inconsistent. The screen-saver is not
09:43 inconsistent, it's just in addition to. So just
09:43 because it must happen during boot-up doesn't mean it
09:43 can't also happen at other times.
09:43 And that's what this quote right here --

09:43 I'm going to laser pointer you again, Your Honor -- right here. And this is actually what Mr. -- what plaintiff's counsel relied on, is this exact quote. And it says that it not only appears during initial boot-up.

So to me that says it must appear during initial boot-up. But it says it can also appear during -- if it's manually initiated. And it not only appears during initial boot-up -- says it again. So it must appear during initial boot-up. But it can also be part of the screen-saver timer.

And so certainly -- I just don't think those are inconsistent. They're just other things that can happen. So our construction is not inconsistent. We have always said that display during boot-up is required. We're just saying it's not required only during boot-up, right? It can also be -- it can also appear at other times too.

So our construction doesn't say only during boot-up, it just says it must happen during boot-up. And therefore that's entirely consistent -- our construction has always been consistent. And our construction is absolutely consistent with what the specification talks about too.

So it's sort of a -- you know, sort of

09:44 1 additive versus exclusionary, if that makes sense to
09:44 2 Your Honor.
09:44 3 THE COURT: Okay. And I guess you would
09:44 4 probably agree that's within the comprising language of
09:44 5 the claim preambles?
09:44 6 MS. STOLL-DeBELL: Yes. I would. Well,
09:44 7 I'm not sure I understand your question.
09:44 8 THE COURT: Sure. Well, I was saying
09:44 9 your definition and the claim elements, since it's a
09:45 10 comprising claim, if it does things in addition to
09:45 11 those elements, that doesn't contradict the claim?
09:45 12 MS. STOLL-DeBELL: It wouldn't
09:45 13 preclude -- it wouldn't preclude infringement if -- so
09:45 14 long as it also is displayed during boot-up. So during
09:45 15 boot-up display is required, but if it's displayed at
09:45 16 other times, that's not going to preclude infringement.
09:45 17 That's what comprising means, right? You
09:45 18 can have other things too. You just need to meet the
09:45 19 limitations. So that's right, yes. That's absolutely
09:45 20 right.
09:45 21 THE COURT: Okay. And it's your position
09:45 22 that your construction would not preclude that
09:45 23 additional display at another time?
09:45 24 MS. STOLL-DeBELL: That's absolutely
09:45 25 right, Your Honor. And I would also point to the fact

09:45 1 that plaintiff's counsel said something that I agree
09:45 2 with, which, you know, is sometimes unusual. But he
09:45 3 said that the screen-saver embodiment has nothing to do
09:45 4 with boot-up. And I agree.
09:45 5 I mean, it's just something extra. It's
09:46 6 additional. It can happen. It doesn't have to happen.
09:46 7 Doesn't preclude infringement. It's just something
09:46 8 extra that the spec talks about you could do too.
09:46 9 But it does not take away from or
09:46 10 minimize the fact that 14 times this patentee said it
09:46 11 has to happen automatically during boot-up.
09:46 12 THE COURT: Okay. What about that
09:46 13 clause, then, at the end of the specification that says
09:46 14 obviously it's not limited to the described
09:46 15 embodiments?
09:46 16 MS. STOLL-DeBELL: So I would say, Your
09:46 17 Honor, that I've seen cases from the Federal Circuit
09:46 18 that -- well, first of all, every single patent has
09:46 19 that catch-all phrase, right? I mean, every patent --
09:46 20 THE COURT: Every's a strong word but...
09:46 21 MS. STOLL-DeBELL: 99 percent of them. I
09:46 22 mean, I've been doing this longer than I want to say,
09:46 23 because that will age me. But I've looked at thousands
09:46 24 of patents and they all say that. But I have case law
09:46 25 that I can get to you, Your Honor, after this hearing,

09:46 1 if it's okay with you, that says that catch-all
09:47 2 language does not take away from a disclaimer that
09:47 3 comes from using the present invention to limit the
09:47 4 claims.
09:47 5 And the fact that that disclaimer's in
09:47 6 there doesn't matter. It just is not going to -- it is
09:47 7 not going to allow you to get around the disclaimer
09:47 8 that was clearly made in this case.
09:47 9 THE COURT: Okay. Let's go off the
09:47 10 record for just a minute.
09:47 11 (Pause in proceedings.)
09:47 12 MS. STOLL-DeBELL: Okay. I just had one
09:47 13 other thing I wanted to address, but if you don't want
09:47 14 me to --
09:47 15 THE COURT: I'm sorry. We were real
09:47 16 quick on the trigger there, and I think we cut off most
09:47 17 of what you just said, Ms. Stoll-DeBell. But go ahead.
09:47 18 What did you want to add?
09:47 19 MS. STOLL-DeBELL: I just wanted to make
09:47 20 one other point, but if you don't want me to.
09:47 21 THE COURT: No. Go ahead.
09:47 22 MS. STOLL-DeBELL: Okay. I think the
09:47 23 other thing that plaintiff said that I think is just
09:48 24 flat wrong is they said that it's inconsistent because
09:48 25 the owner can remotely disable the display

return/recovery information.

And that's just not true. And I can show you that. I need to undo my laser pointer. I can show you that in the spec too, because I think that's important.

So here's -- it's from their surreply. And they point to some specification sites for this idea that the plaintiff could just turn off the display of return/recovery information. And that's just not true.

So they -- these are the quotes from the spec they rely on. And they're really just talking about how the owner can remotely economize the return information so they can change it. They can initiate it. And they can do that at any time.

But you still need to display something. You need to display return/recovery information. It may be a name, an address, it may be an e-mail. But something needs to be displayed, and that's what these quotes show here. And they need to be displayed before the operating system.

And then also here, the other cite they point for that is just here. And it's talking about, you know, like I think it's a CIA agent or something, and he may only want to display his name and his phone

09:49 number but not the fact that he works for the CIA. I
09:49 can't remember. Maybe it's -- oh, Secret Service,
09:49 sorry, not CIA. But you get the idea, right?
09:49 And so there's no -- the patent
09:49 absolutely does not allow you to turn this off. It
09:49 does not say that. It does not support that. It must
09:49 display return/recovery -- some kind of return/recovery
09:49 information at every boot-up.
09:49 And so -- and so with that I'll be done,
09:49 Your Honor. Unless you have other questions.
09:49 THE COURT: I do not. Thank you.
09:49 MS. STOLL-DeBELL: Okay.
09:49 MR. LINGER: Your Honor, if I may.
09:49 THE COURT: Yeah. Let me ask Mr. Linger
09:49 to respond to that point especially.
09:50 MR. LINGER: Yeah. So we think in Column
09:50 14 that the owner of the device can eliminate or
09:50 disable information that has been entered by a
09:50 disgruntled employee. If an employee puts in erroneous
09:50 information and then returns it to the owner, the owner
09:50 needs an ability to get back into that computer.
09:50 So they -- in Column 14 it discusses how
09:50 they can eliminate certain information that's been
09:50 entered by the user. So I think that does support our
09:50 contention.

09:50 THE COURT: Okay. Can you point me to the specific lines in Column 14 you're talking about?

09:50 MR. LINGER: Sure. One second, please.

09:50 Starting at Line 16 it says, "This allows the owner to eliminate erroneous or misleading assigned-to recovery information that may have been created by rogue assigned-to individual."

09:51 THE COURT: I see it. Okay.

09:51 MS. STOLL-DeBELL: Your Honor, may I briefly respond to that?

09:51 THE COURT: Sure.

09:51 MS. STOLL-DeBELL: Yes. They can take out the bad guy's information, but they need to put in their own, right? So it's still displaying return/recovery information. They're going to say bad guy information out, I'm going to put in my own so it's still return -- and, in fact, they really want to do that because they want, you know -- they want to alert anybody who sees that computer that it's not bad guy's computer anymore. It's the company's computer.

09:51 And so it's not -- it's not saying you don't display return/recovery information. It's just saying you can change it, which is totally consistent with the spec. And kind of irrelevant to the term we're talking about, frankly. That's the changing

element.

THE COURT: Okay. All right. With that, I'm going to go off the record just for a second.

MS. STOLL-DeBELL: Thank you.

MR. LINGER: Thank you, Your Honor.

THE COURT: Thank y'all.

(Pause in proceedings.)

THE COURT: All right. We're back on the record.

And the Court is going to maintain its preliminary construction of plain and ordinary meaning. We'll provide, of course, more detail in the -- in an order to follow, but essentially I believe the proposed construction by LG just adds complication to the patent, imports limitations into it that are unnecessary.

And then I also note that at least in the description of the figures in Column 4, the patentee made a point of describing those as a preferred embodiment. And an embodiment where we've got between three or four we've got a second embodiment. So I think those are enough to take it beyond the references to the present invention and not limit it to a single embodiment.

And so we'll stick with the preliminary

construction on that one.

Let me get back to my notes here. I'm sorry. Yeah. For displaying recovery information or -- yeah.

And then I believe we've got one more term to argue on the "user."

MS. BEYER: Yes, Your Honor. Good morning. Carrie Beyer on behalf of LG Korea. And I will address the "user" term for LG Korea.

THE COURT: All right. Good morning, Ms. Beyer.

MS. BEYER: Let me share my screen.

Okay. Are you seeing my screen okay?

THE COURT: I am. Thank you.

MS. BEYER: Great. Thank you. Okay.

So I'm just going to briefly address the "user" term. And here the issue between the Court's preliminary construction and our proposed construction is centered on the issue of whether the user can be the owner or the owner has to be somebody different than the user.

So I think -- as we've discussed the patent so far this morning, you know, it's really key that the plaintiff's patents are directed toward an owner being able to remotely initiate or change the

return or recovery information without assistance by a user with the computer to assist with returning the computer to its owner.

In this context, the plaintiff's proposal that the owner and user can be the same person really doesn't make sense and is contrary to the claims.

Now, as I've shown on my slide here, we're looking at kind of the owner who is remotely initiating or changing the return/recovery information that is in the possession -- on the computer in possession of somebody else. This is something that was highlighted as an important feature that helps to create an environment where the individual who happens to find the computer or is stolen is able to return it, you know, while the computer is not in the owner's possession.

So here, you know, the claims really require that only the owner or someone who is authorized by the owner can remotely access the computer to initiate or change the recovery information.

The claims also require that the user who is in possession of the computer cannot assist with a remote initiating or changing of the recovery information. Thus the owner must be a different person

from the claimed user.

And here I think, you know, while I show this on my slide with respect to Claim 7, you know, the color coding showing what the owner is doing versus the user, you know, the preambles of Claim 4 of the patents also make this even more clear. Where the preambles state that the computer of the claims is a computer owned by an owner which can be used by an owner or a user. So the owner and user are not the same people.

So plaintiff argues in their surreply the phrase "with the computer" cannot modify user because the parties agree that the user must be in possession of the computer. But that phrase is exactly why the parties agreed that the user must be in possession of the computer.

The plaintiff's attempt to rewrite her claims now should be rejected. If the computer was intended to modify without assistance, the user would be superfluous and she would have used the word "through" or "at" rather than "with."

In addition, the plaintiff's reliance on the specification's discussion of the assigned-to user is misplaced. First, the term does not appear in the claims. So this specification statement really is irrelevant.

09:58 But let's talk about the potential roles
09:58 that have been assigned to a user anyway. The owner
09:58 may be the same person as the assigned-to user. If --
09:58 of the claim -- you know, the owner of the claims may
09:58 be the same person as the assigned-to user if the
09:58 assigned-to user is authorized by the owner to enable
09:58 the initiating or changing of recovery information.
09:58 Or the user may be the same person as an
09:58 assigned-to user. But the claims do not allow for
09:58 both, A -- 2(a) on my slide and 2(b), because the
09:58 person who's remotely initiating or changing must be
09:58 different than the person with possession of the
09:58 computer.
09:58 So importantly, the claims require that
09:58 only the owner or someone authorized by the owner can
09:58 remotely access the computer to initiate or change the
09:59 recovery information. But because the claims also
09:59 require the user in possession of the computer cannot
09:59 assist, the owner and the claimed user must be
09:59 different people.
09:59 The prosecution history also shows that
09:59 the user and owner are different. The defendant's
09:59 construction, unlike the plaintiff's, is supported by
09:59 the prosecution history. The plaintiff unambiguously
09:59 stated that the owner is not even physically present at

09:59 the computer in the claimed invention.

09:59 Well, the plaintiff now tries to take back that statement through attorney argument. The public was entitled to take the plaintiff at her original word. If the owner is not physically present at the computer, the owner cannot be the claimed user who has physical possession of the computer.

09:59 For all of these reasons, the Court should interpret the user limitations is a person other than the owner who has physical possession of the computer -- of the device.

09:59 Thank you. I'm happy to answer any questions, Your Honor.

10:00 THE COURT: Just one quick question and -- to make sure I follow. But I think the only real dispute between the parties, then, is whether or not the clause "other than the owner" should be included in the definition of user; is that correct?

10:00 MS. BEYER: That is correct, Your Honor.

10:00 THE COURT: Okay.

10:00 All right. Let me hear from the plaintiff on this term.

10:00 MS. ZUNIGA: This is Ms. Zuniga again, Your Honor. And I'll be responding to LG's arguments on this term.

10:00 THE COURT: All right. Go ahead when you're ready.

10:00 MS. ZUNIGA: Thank you, Your Honor.

10:00 Your Honor's exactly right that the only dispute here is whether the owner should be excluded as a person who can be the user. And there's no reason to add that limitation to the term "user."

10:00 In fact, the specification expressly says that the owner and the user can be the same. They can be the same people.

10:00 We just heard from LG that they're trying to distinguish an assigned-to user from a user. But an assigned-to user is still a user. They haven't explained why an assigned-to user is not also a user. The specification makes clear that a user and an owner can be the same person.

10:01 LG relies on two pieces of information for its limitation that it tries to import into the term "user." One is the claim language. It says that the claim language requires that the user be someone other than the owner because the claim language says a user does not assist with the computer in initiating or changing return information.

10:01 But, Your Honor, what's clear in the claim language and in the prosecution history is that

"without assistance by a user with the computer" means that the user, which can be the owner, is not involved in the initiating or changing of the return/recovery information. That doesn't mean that they can't have the computer in their possession. It just means that they can't use the computer to change the recovery or return information.

And that's clear if you read "without assistance" as modifying "with the computer." Or instead "with the computer" modifying "without assistance." The assistance is not done with the computer.

We heard from LG that interpreting "user" as somebody who could be the owner would render "with the computer" superfluous.

That's not true. If you insert LG's proposed construction into the claim language "without assistance by a person other than the owner who has physical possession of the device with the computer," then "with the computer" is what's superfluous. "With the computer" is modifying without assistance, not user.

As for the prosecution history, Your Honor, it makes clear that, again, what Ms. Hafeman's invention was doing, which is different from the prior

art, was the user, the person who has the computer, is not required to initiate or change the return/recovery information. They don't need to be involved in the process at all.

And Ms. Hafeman said that in the prosecution history. It says "Broyles requires that the user depress a suitable key to generate a keyboard interrupt at the proper time." In Hafeman's invention you don't have to press any keys. You can have the computer, but you don't have to be involved in the initiating or changing return/recovery information.

In fact, Ms. Hafeman said that it was her intention that the user not be involved in the process at all. And that's in the prosecution history too.

Again, they're confusing possession of the computer with activity on the computer, depressing a suitable key, doing some sort of activity with the computer in order to initiate or change the return/recovery information.

And LG continues to ignore the screen-saver embodiment which you've heard a lot about this morning. In the screen-saver embodiment the owner is the user. The owner has the computer, the physical possession of the computer. But the recovery/return information is initiated when the computer is idle.

So walk away from the computer, it's still in your possession. Maybe you're on a phone call, you do other things. The return/recovery information is initiated. The owner still has the computer, so the owner is also the user.

There's no reason for the Court to limit the term "user" to somebody other than the owner. It's not supported. It's not stated in the specification. In fact, the specification states the opposite. The owner and the user can be the same person.

Thank you, Your Honor.

THE COURT: Okay. Ms. Zuniga, let me ask you real quick if you'll address Ms. Beyer's argument regarding the preamble of Claim 4 where it says "which can be used by an owner or user." How does that not support their position that it needs to be someone other than the owner needs to be the user?

MS. ZUNIGA: Your Honor, I'm not sure I'm following the language that Ms. Beyer's pointing to. I can pull up the patent, or if she could point me to it, that would be helpful.

THE COURT: It's the preamble of Claim 4 on the '287 patent. I'd share my screen with you, but I'm afraid, one, I've had enough technical problems. But the preamble just -- have you found it?

10:05 MS. ZUNIGA: I'm pulling it up right now.
10:05 THE COURT: Okay. And it says -- I'll read it while you're pulling it up, "an apparatus" --
10:05 MS. ZUNIGA: Oh, I see it. Yes, Your Honor.
10:05 "For displaying information at a computer owned by an owner which can be used by an owner or user." I don't view these as mutually exclusive, Your Honor, that an owner cannot be the user. They can obviously be different people.
10:05 You can have an owner and a user who are two different people. If the device is misplaced, it's picked up -- as you saw in the caricatures that LG used in their slides -- by somebody else. And then it needs to be returned to the owner. Then of course they're different people in that situation.
10:06 But what we're arguing is that they should not be limited to only being different people. An owner can also be in possession of their own device and therefore be the user.
10:06 THE COURT: Okay. Ms. Beyer, do you have any response you'd like to make?
10:06 MS. BEYER: Yes. I'd like to respond briefly, Your Honor.
10:06 I think the language of Claim 4 in the

10:06 preamble really makes it clear that the owner may use
10:06 the computer, but the owner is not a user -- you know,
10:06 a claimed user of the computer. These are clearly
10:06 different people.
10:06 Plaintiff's counsel argued, you know,
10:06 with respect to the prosecution history that the
10:06 plaintiff was trying to make clear that the user was
10:06 not involved at all in the process.
10:06 And I don't see how that fits with the
10:06 owner and the user being the same person, when the
10:06 owner is the one who is changing information, for the
10:06 user not to be involved at all.
10:06 And, finally, I'll just touch briefly on
10:06 the screen-saver embodiments. I think, as
10:07 Ms. Stoll-DeBell pointed out earlier, that's really
10:07 something that's in addition to the initiating or
10:07 changing limitation of the claim. There's nothing
10:07 about the screen-saver embodiment that would make it so
10:07 that the owner, you know, could be the same person as
10:07 the claimed user.
10:07 This, you know -- it doesn't -- the fact
10:07 that the screen-saver will automatically display when
10:07 the owner, using the computer, walks away does not turn
10:07 the owner into the claimed user.
10:07 I'm happy to answer any other questions

Your Honor has.

THE COURT: Yeah. I don't think I have any other questions.

MS. ZUNIGA: Your Honor, may I very briefly respond?

THE COURT: Sure.

MS. ZUNIGA: Thank you.

Just quickly on the preamble of Claim 4, as Your Honor knows, preambles are generally not limiting. And I think that should be the case here.

In addition, I believe this is a new argument that was not raised in LG's briefing and is therefore not one that should be considered by the Court.

And then final point is, on the screen-saver embodiment, the key point, Your Honor, is that LG's proposed construction would exclude this embodiment. And, again, as Your Honor knows, a construction generally should not exclude an embodiment from the specification.

Thank you.

THE COURT: Okay. Okay. Thank you. We're going to go off the record real quick.

(Pause in proceedings.)

THE COURT: Okay. We're back on the

record.

I will want to give you a couple just thoughts of mine, is, one, I do not fault anybody for making an argument during the hearing that's not in the briefing. Frankly, I see the purpose of oral argument is to supplement the briefing and illuminate it, as opposed to reargue the briefing.

And I had -- the last patent trial I had there was a last-minute claim construction whether "or" was disjunctive or conjunctive. And at least in that scenario it was considered conjunctive.

And so from what I've heard so far, I think we're going to stick with the Court's preliminary construction.

I see, at least in the context of computer programs and computer apparatus, I see "user" and "owner" as roles, as opposed to physical people. And I think the same physical person can obtain or perform dual roles when it comes to software programs such as this. So we're going to stay with the Court's preliminary construction on "user."

I believe that's all of the terms that parties wanted to argue this morning?

Okay. With that, why don't we then turn to defendant's motion to dismiss? And we'll start with

10:10 the defendant, obviously.

10:10 Would that be you, Mr. Singh? Because I see your video.

10:10 MR. CROWSON: It will be me, Your Honor, Celine Crowson.

10:10 THE COURT: Okay. Ms. Crowson, there you go. You weren't in the frame, so I was guessing.

10:10 MR. CROWSON: Although Mr. Singh's going to help me, I think, with the slides.

10:10 We can pull those up. And let's really go to Slide 3 which starts with the unique procedural history of the case. There we go.

10:11 Yeah. So, you know, this case has a unique procedural history that really underpins LG Korea's motion to dismiss under 12(b)(6), especially, frankly, with respect to the issue of direct infringement.

10:11 And just as a refresh, you know, what happened was plaintiffs filed their original complaint in July of 2021 and included both LG Korea and a U.S. entity, LG Mobilecomm.

10:11 And then in September they substituted, plaintiff did, LG Mobilecomm, the U.S. entity, for LG U.S. But we still had the LG Korea and a LG U.S. entity.

10:11 And then in November of 2021 defendants
10:11 filed a motion to dismiss, to transfer, for improper
10:12 venue. And in response to that motion, plaintiff's
10:12 draft dropped LG U.S. from the case and attempted to
10:12 proceed against LG Korea alone in an amended complaint
10:12 filed in November of 2021.
10:12 And it's really the dropping of the U.S.
10:12 entity and the Korean entity, LG Korea being the only
10:12 one left in the case. Again, that's prompted the
10:12 motion to dismiss under Rule 12(b)(6), especially with
10:12 respect to direct infringement. And I'll explain why.
10:12 A couple more issues about the -- sort of
10:12 where we're left with this procedural history, if we
10:12 could go to the next slide.
10:12 In the original complaint, plaintiffs
10:12 stated, they essentially admitted, that LG U.S. is the
10:12 one who is distributing the accused communication
10:12 devices to customers in the U.S. And that an LG U.S.
10:12 entity, it was LG Mobilecomm, actually does the
10:12 importing of the accused products.
10:13 And then in the original complaint,
10:13 though, to the contrary, plaintiff stated, you know,
10:13 admitting that with respect to LG Korea, in South Korea
10:13 the accused products are designed and made. So Korea's
10:13 not doing the importing or the distribution in the U.S.

10:13 The plaintiffs stated that LG Korea was making and
10:13 designing products in Korea.
10:13 The next slide, please.
10:13 And that was confirmed. What plaintiffs
10:13 had admitted and acknowledged in their complaint was
10:13 also confirmed by LG U.S. when it submitted its
10:13 declaration in support of its motion to transfer or
10:13 dismiss in view of improper venue, where a Mr. Yoon, in
10:13 support of that motion, again confirmed that the LG
10:13 U.S. is the one who's responsible for importing,
10:13 marketing, offering for sale and selling the accused
10:14 products in the U.S.
10:14 He also confirmed that LG Korea and LG
10:14 U.S. maintain corporate formalities with respect to
10:14 their separateness, they're separate companies.
10:14 And I'll get to, in a minute, that
10:14 declaration confirmed that it was never disputed. And
10:14 it's -- that LG U.S. is the one who operates the
10:14 website that the plaintiff has relied on in its
10:14 complaint.
10:14 Next slide, please.
10:14 So on the issue of direct infringement,
10:14 again, LG Korea's position here stems from the fact
10:14 that plaintiffs chose to drop LG U.S. from the case
10:14 because they acknowledged tacitly that there was

improper venue there.

So the amended complaint that was filed in November of 2021, again, dropped LG U.S., attempted to proceed only against LG Korea, but it didn't include any factual allegations that contradict plaintiff's statements in its original complaint. Namely, that it's the LG U.S. entities that import and sell, distribute products.

All that plaintiffs could say in their amended complaint was that LG Korea makes and sells many products throughout the world. That's not a specific statement under Twombly. And plaintiffs stated that LG Korea infringes allegedly either by itself, through intermediaries, or in conjunction with joint ventures or customers.

But there were no facts other than that really naked statement to attempt to support how LG Korea was purportedly infringing directly. You know, who are the referred-to intermediaries or joint ventures? And so we think the -- again, such vague conclusory statements in the amended complaint with respect to LG Korea activities fail to meet the Twombly Iqbal pleading standard.

Next slide, please.

So in the opposition to LG Korea's motion

10:16 to dismiss under Rule 12(b), the plaintiff argues that
10:16 the amended complaint pleads direct infringement either
10:16 under a single actor theory or an infringement or a
10:16 theory of joint infringement.
10:16 So first, with respect to this single
10:16 actor theory, the amended complaint doesn't provide any
10:16 factual support suggesting that LG Korea makes, uses,
10:16 offers for sale or sells within or imports into the
10:16 U.S. any of the accused products. And also the amended
10:16 complaint doesn't make any factual allegations
10:16 suggesting that LG Korea and LG U.S. do not maintain
10:16 corporate separateness.
10:16 Sometimes one sees an allegation that
10:16 there is a lack of corporate separateness in a
10:16 complaint, and that is always really, typically,
10:17 supported by some sort of factual allegations as to why
10:17 there is allegedly not separateness. And there was
10:17 nothing like that in plaintiff's complaint.
10:17 Next slide, please.
10:17 With respect to the plaintiff's joint
10:17 infringement theory of direct infringement, the
10:17 amendment complaint -- the amended complaint also fails
10:17 to state a plausible claim for a direct infringement
10:17 under a joint infringement theory. There are no
10:17 factual allegations in the amended complaint that

10:17 support direction or control of others for any
10:17 infringing activity. There are no factual allegations
10:17 suggesting that there's some sort of a joint enterprise
10:17 with any entity for allegedly infringing activity.
10:17 And, again, because plaintiff fails to
10:17 plausibly allege direct infringement, either under a
10:17 sing actor or a joint infringement theory, the amended
10:17 complaint fails to state a claim for direct
10:17 infringement.
10:17 Next slide, please.
10:17 Now, in their opposition, plaintiff also
10:18 points to an allegation -- also points to the amended
10:18 complaint's allegations of indirect infringement as
10:18 somehow basis for the joint infringement theory of
10:18 direct infringement. And this is based on
10:18 instructions, alleged instructions, in a web page. And
10:18 this is referenced in the amended complaint so the
10:18 Court can consider it.
10:18 But according, however, to plaintiff's
10:18 own allegations in the amended complaint, the remote
10:18 access required to perform the claimed steps, they
10:18 require the use of a Google or Microsoft account login.
10:18 So LG can't be said to have any control of the matter
10:18 or timing of the performance of the steps by the end
10:18 users or the third parties.

So that's out of LG's control, really, by the -- as shown in the document that plaintiff included in its amended complaint, namely, the web page.

Next slide, please.

And plaintiff's theory regarding the indirect infringement somehow supporting its direct infringement, you know, it's further, you know, contradicted by the LG support page which is the web page, you know, referenced in the complaint, because the -- it's --

Let's go to the next slide, really.

The point is that not only is the web page referenced optional steps which are not controlled by LG Korea, but again, as I stated, the web page as a whole, it's undisputed that LG U.S. controls the website. So any indirect infringement allegations related to the website can't support allegations that LG Korea is somehow directly infringing, whether it be under a single actor or a joint, you know, infringement theory.

And so for all of these reasons, we think that the plaintiffs fail to state a claim under Rule 12(b) with respect to direct infringement.

We do mention in our briefings that to the extent that the Court were to think that this

10:20 isn't, you know, a 12(b) issue alone, we think
10:20 especially given plaintiff's admissions in its original
10:20 complaint about the roles of LG U.S. and LG Korea, that
10:20 brief or limited, you know, discovery would easily
10:20 resolve this issue.
10:20 And this is the kind of issue that, as is
10:20 reflected in the Court's standing orders, may be
10:20 resolved early such as with a bifurcated discovery
10:20 approach where there's a period, you know, a 30- or
10:20 45-day period of initial discovery with respect to the
10:20 roles of LG U.S. and LG Korea. And that's a way to get
10:20 this resolved efficiently and early, because we think,
10:20 really, that these facts are not disputed. But even if
10:20 there is some dispute, that it's something that can be
10:20 resolved very efficiently and effectively before
10:21 getting into full-blown discovery in the case.
10:21 So turning to the issue of inducement of
10:21 infringement.
10:21 If we could go forward to the next slide.
10:21 The amended complaint also fails to state
10:21 a claim under 12(b)(6) with respect to the inducement
10:21 allegations. Again, the complaint points to a web page
10:21 that it refers to as an LG support page as evidence of
10:21 inducement.
10:21 Next slide, please.

10:21 The problem, however, with this is, first, as I stated, the website's controlled by LG U.S. It's confirmed by the indicia on the website, as well as confirmed in LG U.S.'s declaration.

Second, however, and interestingly, the web page doesn't instruct users to display any information, missing a key limitation in the asserted claims. The page merely mentions, for example, that the note and the phone number which would be the return information is optional. It doesn't indicate whether the phone number will be displayed.

And so this optional approach, this option to potentially implement the aspect of the claim that allegedly infringes, that's not the active encouragement that's required for an inducement allegation under cases like Parallel Networks. So the fact that this website that's relied on only makes the allegedly infringing activity optional, that dooms plaintiff's allegations of inducement to infringe.

Similarly, if we go to contributory infringement.

The next slide, please.

You know, the amended complaint alleges that the accused products that they always infringe when they're configured to infringe. That doesn't meet

10:23 the Twombly standard.

Next slide.

And the reason why that's a problem also in part has to do with the fact that the website that's relied on, it instructs the user only to lock the phone and states that the note and the phone number are optional.

And so the fact that it's optional, namely, you can use the feature without the alleged claim return information, right? The fact that that's optional, you can use it without that information, that's a substantial noninfringing use. And plaintiff hasn't alleged in its complaint other than broadly saying that it's configured to infringe, that there is no insubstantial noninfringing use.

And so the fact that the web page on which plaintiff itself relies on makes the use of the alleged claimed, you know, return information optional, again, that dooms the contributory infringement aspect of the amended complaint because it provides a substantial noninfringing use.

Next slide, please.

There's no obligation that -- there's no allegation by plaintiffs that the substantial noninfringing use, you know, isn't substantial. The

allegations in the amended complaint are -- you know, essentially admit that there is a substantial noninfringing use when the complaint says that the -- that the devices -- you know, the device allows for remote access to either lock the device to prevent future access or display a custom message.

So the complaint itself points out that the -- that there's an optional aspect to this. And because one doesn't have to display the return information, that's -- provides a substantial noninfringing use. And, again, for that reason, the complaint fails to state a claim with respect to contributory infringement as well.

Next slide.

So just in -- one last point on the issue of contributory infringement is that plaintiff alleges that the accused products themselves are the purported component. But the plaintiff has the burden of pleading that the component is separable from the entire device. And since plaintiff alleges that the entire product infringes and doesn't identify a separable component, for that reason as well there's a failure to allege sufficiently operable contributory infringement.

And for all of these reasons we think

10:25 that the amended complaint should be dismissed with
10:25 prejudice. The deficiencies are not curable, and the
10:26 plaintiff has already amended its complaint once to
10:26 avoid improper venue, you know, by dropping the entity,
10:26 namely, LG U.S., that she believed was responsible for
10:26 importing and distributing in the U.S.
10:26 And, again, that's where all these
10:26 problems are arising with respect to the amended
10:26 complaint, was the fact that LG Korea isn't doing any
10:26 of the activities that would constitute making, using,
10:26 selling, offering to sell or importing into the United
10:26 States.
10:26 Thank you.
10:26 THE COURT: Let me ask you one question,
10:26 kind of on a different line than the argument so far.
10:26 But to what extent can I consider the current stage of
10:26 the case when deciding the motion to dismiss?
10:26 Because here we're post-preliminary
10:26 infringement contentions. We've just had the Markman
10:26 hearing on the eve of fact discovery. So how can that
10:26 be considered by the Court, if at all, in determining
10:26 the motion to dismiss?
10:26 MR. CROWSON: Well, given that we haven't
10:27 started, you know, fact discovery and the -- you know,
10:27 the intense resources that are involved in that, we

still think it would be appropriate and efficient, you know, for the Court to consider the motion to dismiss at this juncture.

As I also mentioned, though, Your Honor, this is the kind of issue that may -- you know, that appears to fall under the standing orders that propose that perhaps if there are issues, that could really cut to the chase and efficiently resolve the case. This is -- this is one of them.

And so another way to go about it would be to hold off on the substantive fact discovery. And if there were disputed facts -- we think -- we don't think there are any, but if there were on this issue of whether or not LG Korea is committing any alleged acts of infringement in the U.S., that we could have a short period of limited, you know, discovery directed to that issue. But basically with the -- with the fact discovery and the burden of that not having occurred yet, we think that it's appropriate for the Court to take up this issue at this time.

THE COURT: And if I did allow limited discovery, if there are parties engaged in discovery related to, you know, the infringement by LG Korea, then would I need to convert this from a motion to dismiss to a motion for summary judgment if I were to

consider that evidence outside the record?

MR. CROWSON: You could certainly do that, Your Honor. I don't think on this record that you -- that it needs to be converted to a summary judgment. But if you thought that -- that that was more appropriate, that would be another way to go about this and take the limited discovery.

THE COURT: Okay.

And can I hear from plaintiffs on this? Will you be addressing it, Ms. Zuniga?

MS. ZUNIGA: Yes, Your Honor. That would be me.

THE COURT: Okay. Proceed when you're ready.

MS. ZUNIGA: I'll start briefly, Your Honor, with the question you just asked Ms. Crowson.

As you mentioned, discovery opens tomorrow. And the questions that LG presents with its motion to dismiss go to substantive merits discovery. They're saying that LG does not make, sell, et cetera, the infringing products. Who does, and what they do do, that's all going to come out in discovery. And we think it would be inefficient to bifurcate discovery in any way, and that this case can proceed in the normal course.

10:29 I'll address now the motion itself.

10:29 Your Honor, LG's motion is based on fact disputes. As this Court knows, a motion to dismiss is not the proper vehicle for resolving fact disputes. But that's exactly how LG uses it. Filing a motion to dismiss because it says that it does not commit infringing acts and it does not maintain the websites that induced infringement. You even heard Ms. Crowson say today the word "fact" over and over again.

10:29 LG's arguments are based on evidence, not Hafeman's well-pleaded complaint. And they're not properly addressed through a motion to dismiss.

10:30 Here on this slide, Your Honor, are a few of the arguments LG makes in its motion. They say they don't make the products, they don't maintain the website. These are fact questions, not an issue with the well-pleaded complaint.

10:30 LG argues that there are no factual disputes. But that's wrong because it's both claiming -- both based on the evidence not before the Court and its own argument. But it does not commit any infringing acts within the United States.

10:30 And has also admitted -- and this is shown here in the answer on the screen -- that it designs, makes and sells wireless communication devices

like the accused products throughout the world, which of course includes the U.S.

And it's helpful that LG shared the procedural history, because LG relies heavily on what Ms. Hafeman said in her original complaint. Our position is that her allegations in the original complaint are not inconsistent with what's in the amended complaint, because both entities can make, sell, use the infringing products.

But also that's not the operative pleading, the original complaint. It's the amended complaint.

And after Ms. Hafeman filed her original complaint is when LG filed this answer that's shown on the screen, where they both say that LG designs, makes and sells the products. And also that LG U.S., the entity that LG is now pointing the finger at because it's been dropped from the case, that they in the past distributed wireless mobile communication devices, and that they used to import wireless communication devices, not that they do so currently.

And it was appropriate for Ms. Hafeman to amend her complaint -- she had every right to do so -- and focused on LG, the entity that they admitted designs, makes and sells many different products

throughout the world for consumer use, including wireless mobile communication devices.

LG today also raised a declaration that was attached to its original motion. And, again, that's outside the pleadings. That's evidence that's not properly before the Court today.

And just to note, on that declaration it did not mention specifically the accused products. There's no admission in that declaration that LG U.S. is the one who does the relevant acts related to the accused products in this case.

What's relevant today is a very narrow inquiry, and that's whether Ms. Hafeman's complaint provides notice to LG of plausible claims against it. It is not Ms. Hafeman's burden to prove her case today when discovery hasn't even opened yet. It is just to provide notice to LG of the plausible claims against it. And Hafeman's complaint more than clears this bar.

And I'll go briefly through the claims at issue, Your Honor. First is the direct infringement claim.

The case law proves that Ms. Hafeman had adequately pled a claim for indirect infringement. And there are two cases that we cite as examples but there are plenty others. These are the Raytheon and Canon

cases, both out of the Eastern District of Texas from the past few years, one from 2017 and one from 2020.

In these cases the Court held that even more basic allegations than what's at issue here were sufficient to state a claim of direct infringement against the defendants. LG makes a lot of noise about Ms. Hafeman's joint infringement allegations but misses the point that Ms. Hafeman's complaint more than sufficiently states a claim of direct infringement against LG as a single actor.

Ms. Hafeman pled that defendant LG has infringed and is continuing to infringe the '287 patent, that's one of the three patents, either literally or under the Doctrine of Equivalents by, inter alia, making, selling or otherwise offering to sell in the United States products, including the accused products, for commercial sale which incorporate the methods and components of the asserted claims of the '287 patent.

This is alleging infringement by LG directly in the United States.

Whether LG does these acts is a fact question, Your Honor. It's not an issue with the claim.

And Ms. Crowson mentioned this morning

some issues about whether LG does these acts in the United States. I've highlighted here from the amended complaint Paragraphs 28 and 30 where Ms. Hafeman alleges that defendant LG commits infringing acts within the United States.

As for the induced infringement claim, here are two other cases cited as examples, but there are others in our briefing. These two are also from the Eastern District of Texas from 2017 and 2018, the Huawei and CyWee cases.

And these, along with the others that we cited, show why Ms. Hafeman has also adequately pleaded indirect infringement. She's alleged that LG has actively induced infringement through documents and instructions not limited to the website that they focused so much attention on, explaining how to use the accused products and by offering service, support and assistance to its customers related to the accused products with the intent to induce infringement.

This is enough to state a claim. The website was not necessary. Yes, it was also cited in the amended complaint. But what the website says is outside the complaint.

And it's interesting. They're arguing that you can look at the whole website, any page that's

10:35 linked to LG's website is now imported into the
10:35 complaint.
10:35 Your Honor, there's no support for this.
10:35 But even if the Court were to look at the website as
10:35 opposed to just a web page, it's inconclusive as to who
10:35 owns and operates the website. There are many
10:35 references to LG Korea just as there are to LG U.S.
10:35 And evidence outside the pleadings, such as the
10:35 declaration that LG submits, is not properly before the
10:35 Court on a motion to dismiss to decide who operates the
10:35 website.
10:35 But that's a side show, because there are
10:35 other allegations in the amended complaint that state
10:35 that LG actively induced infringement of the asserted
10:36 patents. And that's enough to state a claim for
10:36 induced infringement.
10:36 I made a note here, Your Honor, before I
10:36 move on, that Ms. Crowson said it is undisputed that LG
10:36 U.S. owns the website. Again, this is a fact question,
10:36 a fact dispute. And it is, in fact, disputed.
10:36 As to this contributory infringement
10:36 claim, because of the nature of the patented technology
10:36 here, which is the security system, Ms. Hafeman has
10:36 also adequately alleged contributory infringement. She
10:36 has alleged that use of the Find My Device feature will

10:36 always, during normal use, infringe the method claims. Not as Ms. Crowson said, when configured to infringe, but that it always, as configured, infringes the method claim. Like in Achates and Script Security which are also Eastern District of Texas from the last ten years. These allegations are sufficient to state a claim for contributory infringement.

And if the Court has any question about a substantial noninfringing use, like in Global Sessions, a case out of this district, the Court should hold that this is a question better reserved for determination at the summary judgment stage based on an evidentiary record or at trial.

The record is not before this Court today as to whether a substantial noninfringing use exists. The allegation that LG highlights from the complaint does not establish that there's a substantial noninfringing use.

Also as to the contributory infringement claim, Your Honor, LG continues to argue that Ms. Hafeman has not sufficiently identified the infringing component. That's wrong. Ms. Hafeman has clearly identified it as the Find My Device feature. And here are some highlighted snippets from the complaint, and that's Paragraphs 44 and 50 -- or I

10:37 think on this slide it's 49 and 50 -- that show that
10:38 the Find My Device feature is what Ms. Hafeman has
10:38 accused as the infringing component.
10:38 LG has notice in the amended complaint of
10:38 the claims against it. It also has additional notice
10:38 because over five months ago Ms. Hafeman served her
10:38 preliminary infringement contentions, which detail how
10:38 Ms. Hafeman alleges LG has infringed her patent.
10:38 There's no notice issue here, Your Honor.
10:38 We ask that the Court deny LG's motion to dismiss.
10:38 If the Court is inclined to grant it, we
10:38 ask that it do so -- it grant instead leave to amend to
10:38 Ms. Hafeman to address any alleged deficiencies in the
10:38 complaint.
10:38 Ms. Hafeman has only amended her
10:38 complaint once. This is unlike the cases cited by LG
10:38 with multiple amendments. Ms. Hafeman has amended
10:38 once, and we would ask that she be allowed to do so
10:38 again if the Court is inclined to grant the motion.
10:38 And I'm happy to answer any questions
10:38 that Your Honor might have.
10:38 THE COURT: All right. I do not have any
10:39 questions. I appreciate that, Ms. Zuniga, the
10:39 arguments.
10:39 And, Ms. Crowson, do you want to make any

10:39 1 final response?
10:39 2 MR. CROWSON: Yes. Thank you, Your
10:39 3 Honor. Just a few brief points.
10:39 4 You know, on this record where plaintiffs
10:39 5 have made statements as to, you know, who the entity
10:39 6 importing and selling the products in the U.S. is,
10:39 7 namely, LG U.S., and that Korea -- LG Korea's making
10:39 8 products outside of the U.S. on this record, we don't
10:39 9 think that a sort of a bald statement in the amended
10:39 10 complaint that LG Korea has infringed by making, using,
10:39 11 selling or offering to sell is sufficient under
10:39 12 Twombly, again, on this record.
10:39 13 Even Slide 6 of plaintiff's presentation
10:39 14 now, in referencing activities of LG, I think was
10:39 15 referred to generally. Highlighted statements related
10:39 16 to LG U.S. And we think that's the problem.
10:39 17 And lastly on the timing of the case, I
10:40 18 mean, the case is where it is. And it's how far along
10:40 19 it is because of the amendment to the complaint. You
10:40 20 know, plaintiffs filed initially against LG, you know,
10:40 21 U.S. entities and, you know, should have known that
10:40 22 there was a venue problem with LG U.S.
10:40 23 And then, you know, took really a number
10:40 24 of months to, you know, to decide to drop LG U.S. after
10:40 25 defendants filed their -- you know, their venue motion

to, you know, to dismiss.

So it's really the belated amendment of the complaint that has caused the case to, you know, to get far along and be where it is.

Thank you, Your Honor.

THE COURT: Okay. On this one I believe that I need to do a report and recommendation as opposed to just an order. So that's what I'm going to do. I will take it under advisement and endeavor to get that out within the next seven days, if not sooner.

I will point out, as I think Ms. Crowson and maybe even Ms. Zuniga referenced, fact discovery opens tomorrow. I'm not going to enter an order staying that, but LG is obviously within its rights to make early discovery or produce early discovery and file a summary judgment motion well in advance of any deadline that's in the scheduling order, if it so chooses.

So with that, I'll take the motion to dismiss under advisement.

And is there anything else -- I'll start with you, Ms. Crowson, because you're top left in my screen. Anything else from the defendants today?

MR. CROWSON: No, Your Honor, and thank you.

10:41 THE COURT: All right. Thank you.

10:41 Mr. Ravel, is there anything else that you need to address?

10:41 MR. RAVEL: No, Judge, not for the -- not for LG on any issue right now.

10:41 THE COURT: Okay. Thank you.

10:41 And, Ms. Zuniga, is there anything else from the plaintiffs that we need to address today?

10:41 MS. ZUNIGA: No, Your Honor. Thank you very much for your time and attention this morning. We appreciate it.

10:42 THE COURT: All right. And thank you all again. It was very good arguments, very well done. I sure appreciate it. All of the counsel -- or all the clients that are watching should be pleased with the representation they've been given. And I do really appreciate the clients carving out time to attend, especially the gentlemen in Korea who are spending the wee hours of the night with us.

10:42 So we will be adjourned.

10:42 (Hearing adjourned at 10:42.)

UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, Kristie M. Davis, Official Court Reporter for the United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

Certified to by me this 27th day of April 2022.

/s/ Kristie M. Davis

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10:45