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

MYPAQ HOLDINGS LTD \* May 3, 2022  
\*  
VS. \* CIVIL ACTION NOS.  
\*  
SAMSUNG ELECTRONICS ET AL W-21-CV-398  
DELL TECHNOLOGIES ET AL \* W-21-CV-933

BEFORE THE HONORABLE DEREK T. GILLILAND  
MARKMAN HEARING

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20 Proceedings recorded by mechanical stenography,  
21 transcript produced by computer-aided transcription.  
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01:41

01:41 1 (Hearing begins.)

01:47 2 DEPUTY CLERK: Calling Case

01:47 3 No. WA:21-CV-398 and 933, styled MyPAQ Holdings Limited

01:47 4 versus various defendants. Called for a Markman

01:47 5 hearing.

01:47 6 THE COURT: All right. Could I have

01:47 7 announcements from the plaintiff, please?

01:47 8 MR. ELLERMAN: Will Ellerman, Your Honor.

01:47 9 Great to see you.

01:47 10 THE COURT: Great to see you,

01:47 11 Mr. Ellerman.

01:47 12 MR. ELLERMAN: It's great to call you

01:47 13 that. First of all, on behalf of myself and my team, I

01:47 14 want to sincerely congratulate you on your appointment

01:47 15 to the bench.

01:47 16 THE COURT: I appreciate that.

01:47 17 MR. ELLERMAN: Let me introduce some

01:47 18 folks to you. From Shore Chan we have myself and

01:47 19 Alfonso Chan and Mu Lin Hsu.

01:48 20 THE COURT: Good afternoon.

01:48 21 MR. ELLERMAN: From Susman Godfrey we

01:48 22 have Krisina Zuniga.

01:48 23 THE COURT: Hi. In person. All right.

01:48 24 MR. ELLERMAN: Scott Glass.

01:48 25 MR. GLASS: Good afternoon.

01:48 1 MR. ELLERMAN: And Tom DelRosario.

01:48 2 THE COURT: Good afternoon.

01:48 3 MR. ELLERMAN: And we also have on the  
01:48 4 Zoom link a couple of client representatives, Guy  
01:48 5 Proulx and Brad Close.

01:48 6 THE COURT: Excellent.

01:48 7 MR. ELLERMAN: And the arguers today from  
01:48 8 the plaintiff's side will be Ms. Zuniga, Mr. Glass and  
01:48 9 Mr. Hsu.

01:48 10 THE COURT: Very good.

01:48 11 MR. ELLERMAN: Thank you.

01:48 12 THE COURT: And from the defense, could I  
01:48 13 get announcements, please?

01:48 14 MR. SIROTA: Good afternoon, Your Honor.  
01:48 15 Neil Sirota of Baker Botts on behalf of the Samsung  
01:48 16 defendants.

01:48 17 THE COURT: Good to see you, Mr. Sirota.

01:48 18 MR. SIROTA: Good to be here. Thank you.

01:48 19 With me for the Samsung defendants are  
01:48 20 Brett Thompsen of Baker Botts and Travis Underwood from  
01:48 21 Gillam & Smith.

01:48 22 THE COURT: Very good. Good to see both  
01:48 23 of you gentlemen.

01:49 24 MR. SIROTA: There are also several  
01:49 25 Samsung client representatives, Man Joo Sa, Andy

01:49 1 Chiang, Jon Sik Che and Dong Jin Lee have joined via  
01:49 2 Zoom at a late hour for them -- or early hour,  
01:49 3 depending on how you look at it.

01:49 4 THE COURT: Depending on how long we go,  
01:49 5 I suppose, too. But thank you all for joining.

01:49 6 MR. SIROTA: And then there's the Dell  
01:49 7 defendants.

01:49 8 THE COURT: Correct. Could I have  
01:49 9 announcements from Dell, please?

01:49 10 MS. HEYMAN: Yes, Your Honor. I'm Paula  
01:49 11 Heyman, also from Baker Botts representing Dell. And I  
01:49 12 have with me Mr. Kevin Meek, Mr. Mark Speegle,  
01:49 13 Mr. Boyang Zhang and Mr. Barry Shelton from Winston &  
01:49 14 Strawn.

01:49 15 The speakers today for Dell will be  
01:49 16 myself, Mr. Zhang and Mr. Thompsen.

01:49 17 THE COURT: Very good. Well, good to see  
01:49 18 you all. And also appears, I think, there's some  
01:49 19 client representatives from Dell by Zoom. So I'm  
01:49 20 glad --

01:50 21 MS. HEYMAN: I apologize.

01:50 22 THE COURT: That's all right.

01:50 23 MS. HEYMAN: Thank you very much. For  
01:50 24 the client representatives we have Anthony Peterman has  
01:50 25 joined on Zoom. And Tom Brown may also join on Zoom a

01:50 1 little bit later.

01:50 2 THE COURT: Okay. Thank you very much.

01:50 3 Thank you all for being here.

01:50 4 Mr. Shelton?

01:50 5 MR. SHELTON: I just wanted to make some  
01:50 6 preparatory remarks, Your Honor, on behalf of Dell.

01:50 7 And I think going to the late referral to Your Honor  
01:50 8 from Judge Albright, there's actually two pending

01:50 9 motions on behalf of the Dell defendants. There's a

01:50 10 motion to transfer case to the Austin Division that's

01:50 11 been pending and fully briefed. And there's also a

01:50 12 motion to stay that's fully briefed as well.

01:50 13 And I know that as of the latest version

01:50 14 of the order governing proceedings, Version 4.1, any

01:50 15 case that's filed on or after March 7 has its transfer

01:50 16 motion, if any, heard before the Markman hearing. But

01:50 17 it's been my observation that Judge Albright lately in

01:50 18 the last few months has been ruling on transfer motions

01:51 19 even to the Austin Division before the Markman hearing.

01:51 20 So I just wanted to note for Your Honor,

01:51 21 in case you didn't know, that this case is a bit

01:51 22 unusual in that there's a pending motion to transfer to

01:51 23 Austin on behalf of the Dell defendants.

01:51 24 And so I would make the request, Your

01:51 25 Honor, that -- and I'm not sure, because this is the

01:51 1 first time I've had the pleasure of being in a Markman  
 01:51 2 hearing before Your Honor -- that if Your Honor were to  
 01:51 3 issue a report and recommendation or a memorandum  
 01:51 4 pending an order for this hearing, that you not issue  
 01:51 5 that for the Dell defendants specifically.

01:51 6 And I speak only on behalf of Dell, not  
 01:51 7 Samsung.

01:51 8 THE COURT: Understood.

01:51 9 MR. SHELTON: And that Your Honor not  
 01:51 10 issue those until either Your Honor or Judge Albright  
 01:51 11 has heard and ruled on the transfer motion.

01:51 12 THE COURT: Okay. And I understand.  
 01:51 13 I'll take that under advisement. Obviously we won't be  
 01:51 14 getting out an order on these terms immediately after  
 01:51 15 the hearing. And I also understand that both of those  
 01:52 16 motions are under consideration by Judge Albright and  
 01:52 17 will be ruled on in due time.

01:52 18 MR. SHELTON: Very well, Your Honor.  
 01:52 19 That's all I had. Thank you.

01:52 20 THE COURT: And we'll proceed with the  
 01:52 21 hearing today accordingly.

01:52 22 MR. SHELTON: I appreciate it.

01:52 23 THE COURT: Thank you, Mr. Shelton.

01:52 24 Mr. Chan?

01:52 25 MR. CHAN: Alfonso Chan for the

01:52 1 plaintiff. I just wanted to just make sure on the  
01:52 2 record that we would object to that type of  
01:52 3 procedural -- procedure for the claim construction  
01:52 4 hearing, and would just proceed accordingly.

01:52 5 THE COURT: Absolutely. And we  
01:52 6 definitely will proceed with the hearing accordingly.  
01:52 7 We'll take the request under advisement, and it'll be  
01:52 8 addressed in the --

01:52 9 MR. CHAN: Okay. I just wanted to make  
01:52 10 sure our objection will be on the record.

01:52 11 THE COURT: And your objection's noted.  
01:52 12 So thank you.

01:52 13 Yes, sir, Mr. Sirota?

01:52 14 MR. SIROTA: Thank you, Your Honor. Just  
01:52 15 for the Samsung defendants, we would make the same  
01:52 16 request. We have an intra-district transfer motion  
01:52 17 pending as well.

01:52 18 THE COURT: Okay. And, again, we'll take  
01:53 19 your request under advisement. We'll note Mr. Chan or  
01:53 20 the plaintiff's objection to it and we'll proceed with  
01:53 21 the hearing today.

01:53 22 MR. SIROTA: Thank you.

01:53 23 THE COURT: And I just realized that Zoom  
01:53 24 is a little easier because everybody has a name tag.  
01:53 25 So now I've got to actually remember names. But



01:53 1 anyway, most everybody's familiar, so it's easy enough.

01:53 2 All right. So we have given the parties  
01:53 3 the Court's preliminary constructions. And let me see.  
01:53 4 Do the parties -- I know we got the e-mail back about  
01:53 5 the terms. I think there were five, six terms that you  
01:53 6 wanted to argue. Have you reached an agreement on  
01:53 7 how -- the order you want to address those and who's  
01:53 8 going to go first?

01:53 9 MR. SIROTA: We have, Your Honor.

01:53 10 (Clarification by the reporter.)

01:53 11 THE COURT: I'm sorry. That was  
01:53 12 Mr. Sirota, Ms. Davis.

01:53 13 So with that, according to the agreement,  
01:53 14 whoever wants to go first, step to the microphone and  
01:53 15 introduce themselves.

01:54 16 MR. SIROTA: Thank you, Your Honor. Neil  
01:54 17 Sirota. And I will be arguing the first term that's in  
01:54 18 dispute here.

01:54 19 Share that. Okay. Here we go. Thank  
01:55 20 you for your patience.

01:55 21 THE COURT: Certainly.

01:55 22 MR. SIROTA: So the first term to be  
01:55 23 argued is -- it's in the '399 patent. And the term is  
01:55 24 "the primary-sided switch...and the additional  
01:55 25 components...are integrated in at least one additional

01:55 1 semiconductor chip."

01:55 2 And, Your Honor, Samsung's position on  
01:55 3 this one is that it is indefinite. And the Court has  
01:55 4 found it is not indefinite and gone with plain and  
01:55 5 ordinary meaning.

01:55 6 Your Honor, respectfully, this term is  
01:55 7 indefinite because the claim language invokes two  
01:55 8 contradicting irreconcilable concepts.

01:55 9 On the one hand it requires that the  
01:55 10 components are integrated. What does that mean? To  
01:55 11 one of skill in the art that means they're made into a  
01:55 12 whole by uniting the component parts. And in this  
01:56 13 context that means combined onto a semiconductor chip.  
01:56 14 That's what integration means.

01:56 15 The claim language also says that it's  
01:56 16 integrated in at least one additional semiconductor  
01:56 17 chip. So in at least one, that's the antithesis of  
01:56 18 integration. It's the opposite. Spread across  
01:56 19 multiple semiconductor chips is not integrated, and  
01:56 20 that's why it is indefinite.

01:56 21 Now, MyPAQ says the specification shows  
01:56 22 Samsung's wrong about that, that it's all explained in  
01:56 23 the specification. One of skill in the art would know  
01:56 24 that. So we look at the specification and let's see if  
01:56 25 it's explained. Respectfully, it's not explained. And

01:56 1 it actually confirms the indefiniteness.

01:56 2           So if we look at the '399 patent, for  
01:56 3 example, at Column 4, Lines 59 to 64, there's a  
01:56 4 discussion of the embodiment shown in Figure 2. And  
01:56 5 what does it say? It says there's the switching  
01:57 6 transistor, and that's shown there in the peach color.  
01:57 7 And that corresponds in the claim language to the  
01:57 8 primary-sided switch.

01:57 9           And then you've got the additional  
01:57 10 components, the additional active components. Active  
01:57 11 components is actually the antecedent basis here, and  
01:57 12 that is somewhat important a little bit later. But the  
01:57 13 claim language here is the additional components. It's  
01:57 14 referring back to some active components.

01:57 15           And in this example, in this embodiment,  
01:57 16 you have a snubber diode, these four diodes for the  
01:57 17 bridge rectifier and the diode for the auxiliary power  
01:57 18 supply. Those are the additional components.

01:57 19           And what does the specification say about  
01:57 20 that? They're each on separate semiconductor chips.  
01:57 21 That's the opposite of integrated. There's no  
01:57 22 discussion of how they're integrated or brought  
01:57 23 together into a whole or on a single semiconductor  
01:57 24 chip. So that's not helpful at all. It proves that  
01:57 25 the claim language is, in fact, indefinite.

01:57 1 Now, MyPAQ says the word "integrate" in  
01:58 2 this patent is used differently than what Samsung says.  
01:58 3 It's not to put various components together on a single  
01:58 4 semiconductor chip. Well, let's see what the patent  
01:58 5 says about that, how it uses the word "integrate."

01:58 6 If we look at the patent, Column 5, Lines  
01:58 7 35 to 40, we see a discussion of Figure 3. And this  
01:58 8 one's a little different than Figure 2, because in this  
01:58 9 one those four diodes we saw before are now an  
01:58 10 integrated bridge rectifier circuit.

01:58 11 If we look back, we see -- on the prior  
01:58 12 slide we see, in Figure 2, there's four separate  
01:58 13 diodes. The patent says in Figure 3 they're now  
01:58 14 integrated, in place of the four diodes or the bridge  
01:58 15 rectifier.

01:58 16 And now, instead of the four individual  
01:58 17 diode chips shown in Figure 2, the specification says  
01:58 18 all four diodes are integrated in one die -- on one  
01:58 19 die. Which means semiconductor chip. That's exactly  
01:59 20 what Samsung says the meaning of integrated is. So the  
01:59 21 specification is not using integrated in any special  
01:59 22 way. It means to put them all on one chip.

01:59 23 So again, the specification does not help  
01:59 24 MyPAQ here. Yet you still have this inconsistency in  
01:59 25 the language itself, that you have to have the

01:59 1 integrated components, but that it can be spread across  
01:59 2 multiple chips.

01:59 3 Well, MyPAQ has another argument. They  
01:59 4 point to another definition. And that's another  
01:59 5 definition from dictionaries, and that integrate means  
01:59 6 to incorporate into a larger unit. Well, that is a  
01:59 7 dictionary definition, but it doesn't make sense here.

01:59 8 And MyPAQ's argument, when you look at it  
01:59 9 and understand what they're saying, they're not  
01:59 10 saying -- what they're saying is each component is  
01:59 11 integrated with itself. And that's the integration  
02:00 12 that's being claimed in the claim language. Because  
02:00 13 these components remain separate, so they're saying,  
02:00 14 well, it's integrated with itself. That doesn't make  
02:00 15 any sense. It's illogical. That's not how one of  
02:00 16 skill in the art would understand integrate in this  
02:00 17 context.

02:00 18 And there's a quote there or cite to  
02:00 19 MyPAQ's surreply where what they're saying becomes  
02:00 20 clear. Because it's not always clear in their  
02:00 21 briefing. They're saying the individual component is  
02:00 22 incorporated along with other items such as  
02:00 23 semiconducting material. Silicon, for example.  
02:00 24 Internal wiring, et cetera.

02:00 25 But the semiconducting material is the

02:00 1 additional component. It's -- each of those additional  
02:00 2 components are semiconducting material. As I mentioned  
02:00 3 earlier, the antecedent basis for additional components  
02:00 4 is active components. So what MyPAQ is arguing is that  
02:00 5 the integration is with itself.

02:00 6 And that doesn't make sense for a number  
02:00 7 of reasons, one of which is that the claim -- the  
02:01 8 proposed language here, the proposed definition is to  
02:01 9 incorporate into a larger unit. And so MyPAQ's  
02:01 10 argument is you take the single component, you  
02:01 11 integrate it or put it into a larger unit.

02:01 12 That's not what this patent is about.  
02:01 13 This patent isn't about taking separate components,  
02:01 14 somehow making them larger, into a semiconductor chip  
02:01 15 which doesn't make sense. Because that would make the  
02:01 16 overall switch mode power supply larger.

02:01 17 The whole object is that you're going to  
02:01 18 make it in a miniaturized form. You want to make it  
02:01 19 smaller. And the way you do that is put all these  
02:01 20 components onto one chip. But that's not what the  
02:01 21 claim language says. And what the claim language says,  
02:01 22 again, is indefinite.

02:01 23 Finally, I want to take a look at MyPAQ's  
02:01 24 expert declaration. Because it doesn't support their  
02:01 25 argument. In the declaration, Mr. Sandler, he says he

02:02 1 understands what integrated means, and that one of  
02:02 2 skill in the art would understand it. But let's look  
02:02 3 at what he's talking about there.

02:02 4 He says integrated, in Paragraph 38 of  
02:02 5 his declaration, integrated can instead refer to the  
02:02 6 recited components being incorporated into separate  
02:02 7 chips. And for some reason that's bolded. I'm not  
02:02 8 sure why, because when he's talking about integration,  
02:02 9 he's saying that means all of which are arranged on a  
02:02 10 common circuit carrier shared with the control circuit.

02:02 11 He's saying that that use of integrate,  
02:02 12 that would be familiar to a person of ordinary skill in  
02:02 13 the art. That when you take a bunch of components and  
02:02 14 put them on a common circuit carrier, they'd understand  
02:02 15 that as integration.

02:02 16 That's neither here nor there, Your  
02:02 17 Honor, because that's not the integration that's being  
02:02 18 claimed. The claim language is integrating on a  
02:02 19 semiconductor chip or semiconductor chips. It's not  
02:02 20 about arranging on a circuit carrier.

02:02 21 And we know that in the context of the  
02:03 22 claim, because this language from Mr. Sandler's  
02:03 23 declaration, that there are common circuit carriers  
02:03 24 shared with a control circuit is actually different  
02:03 25 language from the same claim.

02:03 1           You see in blue there, the language that  
02:03 2           is "the primary-side switch and the additional  
02:03 3           components are integrated in at least one additional  
02:03 4           semiconductor chip." That's what we're talking about.

02:03 5           What Mr. Sandler's talking about  
02:03 6           apparently is this next part of the claim, this next  
02:03 7           phrase, "said semiconductor chip being separate from  
02:03 8           the control circuit." So that's the integrated  
02:03 9           circuit, is separate from the control circuit which is  
02:03 10          a different circuit.

02:03 11          "And arranged on circuit carrier shared  
02:03 12          with the control circuit." So the second phrase in  
02:03 13          yellow here on the slide is about taking various  
02:03 14          components and putting them on a shared circuit  
02:03 15          carrier.

02:03 16          But that's not the claim language we're  
02:03 17          talking about yet. It's what Mr. Sandler is talking  
02:03 18          about in his declaration. So it's two ships passing in  
02:04 19          the night.

02:04 20          MyPAQ's definition, MyPAQ's position, has  
02:04 21          no support. Has no support in the claim, no support in  
02:04 22          the specification, no support in any dictionaries and  
02:04 23          no support in its expert's declaration.

02:04 24          THE COURT: All right. Thank you,  
02:04 25          Mr. Sirota.



02:04 1                   Could I get a response from MyPAQ,  
02:04 2 please?

02:04 3                   MR. GLASS: Good afternoon, Your Honor.  
02:05 4 My name is Scott Glass. I'm with the law firm Susman  
02:05 5 Godfrey. I'm here on behalf of plaintiff MyPAQ  
02:05 6 Holdings.

02:05 7                   Now, I'm here to talk to you about the  
02:05 8 term "the primary-sided switch...and the additional  
02:05 9 components...are integrated in at least one additional  
02:05 10 semiconductor chip." You're going to hear from my  
02:05 11 colleagues on the other terms.

02:05 12                   Now, the Court's already found that this  
02:05 13 term's not indefinite. And MyPAQ wholeheartedly agrees  
02:05 14 with that, wholeheartedly agrees with affording this  
02:05 15 term its plain and ordinary meaning.

02:05 16                   And before I address Mr. Sirota's  
02:05 17 arguments in detail, I think it's very helpful, Your  
02:05 18 Honor, if we take a step back and we think about what  
02:05 19 the relevant standard is here. And what the relevant  
02:05 20 standard is, is that because patents are presumed to be  
02:05 21 valid, indefiniteness must be proven by clear and  
02:05 22 convincing evidence.

02:05 23                   And that's a really high burden, Your  
02:05 24 Honor. And what that requires essentially is evidence  
02:06 25 that's so compelling that you're able to come to a

02:06 1 clear conviction that Samsung's position is right  
02:06 2 without hesitancy, without hesitating.

02:06 3 So if you're not able to accept Samsung's  
02:06 4 position without hesitancy, then Samsung hasn't met its  
02:06 5 burden. And respectfully, Your Honor, MyPAQ  
02:06 6 respectfully submits that Your Honor's preliminary  
02:06 7 construction shows that you were not able to accept  
02:06 8 Samsung's position without hesitancy.

02:06 9 And that says Samsung hasn't met its  
02:06 10 burden and this term should be given its plain and  
02:06 11 ordinary meaning.

02:06 12 Now, Your Honor, a few quick points in  
02:06 13 rebuttal to some of the things Mr. Sirota said here.

02:06 14 First Mr. Sirota talked a little bit  
02:06 15 about how the word "integrated" was used at other  
02:06 16 points in the specification of the patent. And he  
02:06 17 suggests that those other uses support Samsung's  
02:06 18 understanding of the term "integrated" as it's used in  
02:06 19 the claims, not the specification.

02:06 20 And that's wrong for a couple reasons.

02:07 21 First, the specification doesn't change  
02:07 22 the contextual language that actually appears in the  
02:07 23 claims. And the key -- sorry, Your Honor. And the key  
02:07 24 contextual language that appears in the claims is  
02:07 25 "integrated in at least one additional." In at least

02:07 1 one additional context is very important to  
02:07 2 understanding how the term "integrated" should be  
02:07 3 interpreted here. Samsung's interpretation essentially  
02:07 4 ignores that language.

02:07 5 And second, even if the specification may  
02:07 6 occasionally use integrated in a different -- and  
02:07 7 afford it a different meaning than the meaning that it  
02:07 8 has in these claims, there's nothing wrong with that  
02:07 9 inherently. The Federal Circuit has recognized in  
02:07 10 several cases that the same term can have different  
02:07 11 meanings depending on the context and how the term is  
02:07 12 used.

02:07 13 And for example, Your Honor, that's the  
02:07 14 Aventis Pharmaceuticals case, 715 F.3d 1363. And  
02:08 15 another case that stands for that proposition, Your  
02:08 16 Honor, is the Haemonetics versus Baxter Healthcare  
02:08 17 case, 607 F.3d 776.

02:08 18 Next, Samsung suggests that MyPAQ is  
02:08 19 illogically arguing that the individual active  
02:08 20 components are integrated in semiconductor chips. And  
02:08 21 really what they're -- what we're -- he's saying what  
02:08 22 we're arguing is that the only thing that's integrated  
02:08 23 with those components is the components themselves.

02:08 24 And that's a mischaracterization of  
02:08 25 MyPAQ's position, Your Honor. What we're really saying

02:08 1 here is a common sense thing. These active  
02:08 2 primary-sided components are incorporated into a  
02:08 3 semiconductor chip that also includes other materials  
02:08 4 besides the components themselves.

02:08 5 That could include conducting material,  
02:08 6 internal wiring. It could also include passive  
02:08 7 components of the circuit. Which Figure 1 of the  
02:08 8 patent shows not only the eight active components, but  
02:09 9 also 16 passive components, including inductors,  
02:09 10 capacitors, et cetera.

02:09 11 There's nothing in the claim language  
02:09 12 that prevents those passive components from being  
02:09 13 integrated on chips with the active components as well.

02:09 14 In other words, the semiconducting chips  
02:09 15 here are the larger units into which the active --  
02:09 16 these active components are incorporated. And there's  
02:09 17 nothing terribly controversial about that.

02:09 18 Third, Mr. Sirota referenced MyPAQ's  
02:09 19 expert's declaration. And suggests that Mr. Sandler's  
02:09 20 declaration doesn't support our position. Samsung's  
02:09 21 argument there is based on a misreading of  
02:09 22 Mr. Sandler's declaration.

02:09 23 Mr. Sandler simply stated that  
02:09 24 "Integrated can instead refer to the recited components  
02:09 25 being incorporated into separate chips." He then

02:10 1 remarked that, as disclosed in the '399 patent, those  
02:10 2 individual chips themselves are then placed onto a  
02:10 3 shared circuit carrier. Which is the second part of  
02:10 4 the language that Mr. Sirota was referring to.

02:10 5 But that doesn't change the fact that  
02:10 6 when he mentioned integrated, what he was really  
02:10 7 talking about was the chips and the components being  
02:10 8 integrated into the chips themselves.

02:10 9 Finally, Samsung comes with sort of an  
02:10 10 odd argument that incorporating these individual active  
02:10 11 components into semiconductor chips somehow undermines  
02:10 12 the purpose of the invention. Or, you know, kind of  
02:10 13 undermines the miniaturization part of what the patent  
02:10 14 accomplishes.

02:10 15 And, respectfully, that, I think, misses  
02:10 16 the point. The miniaturization that's being discussed  
02:10 17 here is the miniaturization of the prior art circuits,  
02:10 18 which is what's shown in Figure 1 where the  
02:10 19 active-sided components and the passive components are  
02:11 20 all discrete components within a larger circuit.

02:11 21 And the embodiments of the invention that  
02:11 22 are disclosed in the figure -- Figures 2 and 3 where  
02:11 23 those active components and other passive components,  
02:11 24 et cetera, are incorporated onto semiconductor chips.

02:11 25 And there's a very clear part of the

02:11 1 specification that shows this. The specification shows  
02:11 2 that basically prior art, just circuit arrangements,  
02:11 3 where there are discrete constructions as shown in  
02:11 4 Figure 1, they require about 100-millimeters squared of  
02:11 5 space to accomplish.

02:11 6 Whereas the arrangement disclosed by the  
02:11 7 '399 patent in the integrating the active-sided  
02:11 8 components into semiconductor chips allows for the  
02:11 9 implementation of the invention in 25 -- in only 25  
02:11 10 millimeters squared, or even less.

02:11 11 So we're talking about a 75 percent  
02:11 12 reduction here, Your Honor, in terms of space. And  
02:11 13 that's really what the miniaturization here that's  
02:11 14 being captured and why that matters.

02:12 15 Now, in essence, Your Honor, Samsung  
02:12 16 can't meet its burden here, and it's a very high  
02:12 17 burden, recall, because there's two serious fundamental  
02:12 18 problems with this argument. First, Samsung insists  
02:12 19 that integrate must mean "make into a whole by uniting  
02:12 20 all component parts."

02:12 21 What that does, however, is that it  
02:12 22 ignores important contextual claim language. And most  
02:12 23 notably it ignores the "in at least one additional"  
02:12 24 language.

02:12 25 The Federal Circuit's made clear time and

02:12 1 time again that the context of surrounding words in a  
02:12 2 claim must be considered when determining the ordinary  
02:12 3 and customary meaning of terms. And that's the Wasica  
02:12 4 financial case that we cited in our briefs, Your Honor.

02:12 5 What Samsung does is essentially the  
02:12 6 opposite. Rather than allow the surrounding words to  
02:12 7 inform what integrated means, they've essentially  
02:13 8 selected their preferred definition of integrated in a  
02:13 9 vacuum.

02:13 10 And where did they select that definition  
02:13 11 from? Not from the specification, Your Honor. The  
02:13 12 specification doesn't provide a specific definition.  
02:13 13 They selected it essentially from a dictionary. And  
02:13 14 there's nothing inherently wrong with that.

02:13 15 But the important thing here is that  
02:13 16 dictionaries often have multiple definitions for the  
02:13 17 same word. And there's a simple reason for that. It's  
02:13 18 that there's often context different -- differences in  
02:13 19 context often results in different usages for the same  
02:13 20 word.

02:13 21 What MyPAQ's done in suggesting that  
02:13 22 integrated should be understood as being combined into  
02:13 23 a larger unit, MyPAQ has taken a look at the claim  
02:13 24 language in a whole and allowed the "in at least one  
02:13 25 additional" language to inform which of the dictionary

02:13 1 definitions is most appropriate for what we're  
02:13 2 confronting here. Samsung hasn't done that.

02:14 3 At base, Your Honor, the fact that  
02:14 4 Samsung supposedly can't reconcile its definition of  
02:14 5 integrated with the rest of the claim language tells us  
02:14 6 one thing: It tells us that Samsung has the wrong  
02:14 7 definition, not that these claims are indefinite.

02:14 8 Now, the second major problem with  
02:14 9 Samsung's position -- proposed definition of  
02:14 10 integrated, Your Honor, is that it's inconsistent with,  
02:14 11 and indeed would exclude not one but two different  
02:14 12 embodiments of the invention.

02:14 13 The Federal Circuit's made clear, again,  
02:14 14 in numerous cases that a claim construction that  
02:14 15 excludes a preferred embodiment is rarely, if ever,  
02:14 16 correct, and would require highly persuasive  
02:14 17 evidentiary support. An example of that is the SynQor  
02:14 18 case that we cited in our brief, Your Honor.

02:14 19 Now, one of the embodiments that  
02:14 20 Samsung's proposed understanding of integrate would  
02:14 21 exclude is the embodiment shown here in Figure 2. And  
02:14 22 as the specification makes clear, the embodiments shown  
02:15 23 in Figure 2 shows the various primary-sided active  
02:15 24 components integrated into separate chips. It just  
02:15 25 does.



02:15 1 The fact that the -- this understood --  
02:15 2 these figures, this figure here supports the  
02:15 3 understanding that integrated does not require all of  
02:15 4 these components to be combined onto a single chip.  
02:15 5 Samsung's definition is plainly inconsistent with this  
02:15 6 figure and indeed would exclude this embodiment of the  
02:15 7 invention.

02:15 8 And like I said, Your Honor, Figure 2 --  
02:15 9 the embodiment shown in Figure 2 isn't the only one  
02:15 10 that it would exclude. The embodiment in Figure 3  
02:15 11 would also be excluded by Samsung's proposed  
02:15 12 definition. As you can see here, Your Honor, Figure 3  
02:15 13 also shows the primary-sided active components  
02:15 14 integrated into multiple chips.

02:16 15 Now, the primary difference between  
02:16 16 Figure 3 and Figure 2 deals with the diodes for the  
02:16 17 bridge rectifier. Figure 3 shows them all  
02:16 18 monolithically integrated into a single chip. The  
02:16 19 specification confirms that those -- that the diodes  
02:16 20 for the bridge rectifier are monolithically integrated,  
02:16 21 not just integrated, monolithically integrated at  
02:16 22 Column 5, Rows 48 to 49.

02:16 23 If Samsung's proposed definition of  
02:16 24 integrated were correct, there's absolutely no need to  
02:16 25 have monolithically in that sentence. Samsung's

02:16 1 definition would already cover it.

02:16 2           Instead, what the specification confirms  
02:16 3 is that the integration talked about, with these diodes  
02:16 4 for this bridge rectifier, is a different concept than  
02:16 5 that we're talking about in the claim language where  
02:16 6 integration is accomplished in more than one chip.

02:16 7           At base, Your Honor, for the reasons we  
02:17 8 just stated and for the reasons that we stated in our  
02:17 9 brief, MyPAQ submits that Samsung's indefiniteness  
02:17 10 argument cannot be correct, and respectfully requests  
02:17 11 that the Court adhere to its preliminary construction.

02:17 12           I'm happy to answer any questions.

02:17 13           THE COURT: I do not have any questions  
02:17 14 at this time. Thank you, Mr. Glass.

02:17 15           MR. GLASS: Thank you, Your Honor.

02:17 16           THE COURT: Mr. Sirota?

02:17 17           And while you're getting the screen  
02:17 18 switched over and set up, let me ask you, one, to make  
02:17 19 sure I understand your position, are you saying that  
02:17 20 integrated requires those components to be on a single  
02:17 21 piece of silicon?

02:17 22           MR. SIROTA: Yes, Your Honor. That's  
02:17 23 what the term "integrated" means to one of skill in the  
02:17 24 art. It's what the specification, whenever it refers  
02:17 25 to "integrated," that term, it's always on a single

02:17 1 piece of silicon. A single chip, a single  
02:17 2 semiconductor chip --

02:17 3 THE COURT: Okay.

02:17 4 MR. SIROTA: -- that's made of silicon.

02:18 5 THE COURT: That's what I thought. I  
02:18 6 just wanted to make sure.

02:18 7 And the other thing is, and you're  
02:18 8 probably already prepared to do this, but if you could  
02:18 9 address how your proposed definition or your proposal  
02:18 10 would not read those two embodiments out of the spec --

02:18 11 MR. SIROTA: Sure, Your Honor.

02:18 12 THE COURT: -- that Mr. Glass just  
02:18 13 raised.

02:18 14 MR. SIROTA: Yes. And I can start with  
02:18 15 that. I don't think it's reading them out of the spec.  
02:18 16 I mean, the embodiments -- and we can take a look. The  
02:18 17 embodiments as they're explained don't -- the claim  
02:18 18 language does not read on the embodiments. I mean,  
02:18 19 that's the best way to say. We're not reading the  
02:18 20 embodiments out.

02:18 21 If you look at the claim language and  
02:18 22 look at what's called an embodiment, it doesn't make  
02:18 23 sense. There's a huge disconnect there.

02:18 24 So that's our point that the  
02:18 25 specification is confirming the indefiniteness. It's

02:18 1 talking about what's supposedly an embodiment. But  
02:18 2 integration is nowhere to be found. Integration, even  
02:19 3 under MyPAQ's own definition of "incorporate into a  
02:19 4 larger unit," Mr. Glass talked about incorporating each  
02:19 5 of these components into a -- into separate chips.

02:19 6 The claim language is that they're  
02:19 7 integrated in, not into other chips. They're all  
02:19 8 integrated in semiconductor -- a semiconductor -- a  
02:19 9 semiconductor chip. The claim language says at least  
02:19 10 one additional semiconductor chip. But that's where we  
02:19 11 get this disconnect between being integrated in and the  
02:19 12 additional semiconductor chips. They just don't match.

02:19 13 There's no way to read what are called  
02:19 14 embodiments. There's no way to read the claim language  
02:19 15 onto the -- what are those embodiments. There's no  
02:19 16 integration. That's the problem with the embodiments,  
02:19 17 Your Honor.

02:19 18 THE COURT: Okay.

02:19 19 MR. SIROTA: And just to return to a few  
02:19 20 of the points he's raised, Mr. Glass talks about  
02:19 21 Samsung's definition. But it's not just Samsung's  
02:20 22 definition. It's the way the term "integrated" is used  
02:20 23 in the specification, which is the point I wanted to  
02:20 24 reiterate.

02:20 25 The term "integration" is not used when

02:20 1 describing the embodiments. It talks about separate  
02:20 2 semiconductor chips. So what -- wherever you find the  
02:20 3 term "integrated" it's always in the single  
02:20 4 semiconductor chip context. So Samsung's definition is  
02:20 5 not Samsung's definition. It's the specification's  
02:20 6 definition.

02:20 7 And one overall theme I just want to hit  
02:20 8 on that Mr. Glass keeps coming back to is, we're not  
02:20 9 taking into account the claim language. That's a  
02:20 10 circular argument. The claim language is  
02:20 11 irreconcilable.

02:20 12 But MyPAQ's argument is, well, you can't  
02:20 13 ignore that. You must make it definite. So it's a  
02:20 14 circular argument. When you look at the claim language  
02:20 15 as one of skill in the art would, it doesn't make any  
02:20 16 sense. It's irreconcilable.

02:20 17 One other point. On Figure 1, Mr. Glass  
02:21 18 was talking about how Figure 1 shows a larger --  
02:21 19 somehow it shows a larger device. Figure 1 is a  
02:21 20 schematic. It's different. It's not a chip layout.

02:21 21 So the fact that Figure 1 is larger and  
02:21 22 it shows all these different components, that's not  
02:21 23 showing that figure -- the prior art was larger but the  
02:21 24 current claimed invention is smaller. That's --  
02:21 25 there're two different types of representations.

02:21 1 And then the last point that I'll make,  
02:21 2 Your Honor, is this idea that the integration of what  
02:21 3 we say and what we believe MyPAQ's position is, that  
02:21 4 each component is integrated with itself, Mr. Glass  
02:21 5 said, well, it can be integrated with passive  
02:21 6 components.

02:21 7 But that's not what's in the claim  
02:21 8 language. The claim language is talking about the  
02:21 9 additional active components being integrated. So the  
02:21 10 passive components are not part of the claim language.

02:21 11 THE COURT: Okay. And one quick question  
02:21 12 too, is how is your reading of the term "integrated,"  
02:22 13 how is that different or distinguished from monolithic  
02:22 14 integration or monolithically integrated, as Mr. Glass  
02:22 15 referred to, and as is referenced in the spec?

02:22 16 MR. SIROTA: It's --

02:22 17 THE COURT: Is it the same thing or...

02:22 18 MR. SIROTA: I think when looking at  
02:22 19 what's being discussed in the specification in the  
02:22 20 claims, they're talking about the same thing. Even  
02:22 21 like in the example we looked at, Figure 3. That's  
02:22 22 monolithically integrated. Sometimes the specification  
02:22 23 uses monolithically integrated, sometimes integrated,  
02:22 24 as we see here in Column 5. If you look at the bridge  
02:22 25 rectifier circuit, that's monolithically integrated.

02:22 1 So it's a similar concept.

02:22 2 THE COURT: Okay. But monolithic or  
02:22 3 monolithically is not incorporated into Claim 1. Do  
02:22 4 you agree with that?

02:22 5 MR. SIROTA: I would agree the word is  
02:22 6 not there. But because the specification is using them  
02:23 7 the same way, again, for example, in Figure 3, and all  
02:23 8 four of those diodes are integrated, it's the same  
02:23 9 concept, Your Honor.

02:23 10 THE COURT: Got it. Got it. Okay.  
02:23 11 Thank you. Thank you.

02:23 12 Let me go off the record just briefly.

02:23 13 (Pause in proceedings.)

02:23 14 THE COURT: Okay. The Court's going to  
02:23 15 maintain its preliminary construction that it is not  
02:23 16 indefinite, and give the term its plain and ordinary  
02:23 17 meaning.

02:24 18 And let's see. My next note I have here  
02:24 19 is the preamble. I understand the plaintiff wants to  
02:24 20 argue that one.

02:24 21 MS. ZUNIGA: Yes, Your Honor.

02:24 22 THE COURT: So Ms. Zuniga?

02:24 23 MS. ZUNIGA: Good afternoon, Your Honor.  
02:24 24 It's nice to see you again.

02:24 25 THE COURT: You as well.

02:24 1 MS. ZUNIGA: Krisina Zuniga from Susman  
02:24 2 Godfrey for plaintiff MyPAQ Holdings Limited.

02:24 3 Your Honor, MyPAQ agrees with the Court's  
02:24 4 preliminary construction that the preambles at issue  
02:24 5 are not limiting, but asks that the Court slightly  
02:24 6 revise its preliminary construction to further hold  
02:24 7 that "a signal indicating a system operational state"  
02:24 8 which comes from the load also not be limiting. And  
02:24 9 this is because, like the load itself, the signal that  
02:24 10 comes from it is also not structure claimed by the  
02:24 11 patented inventions.

02:24 12 Instead, a signal indicating a system  
02:25 13 operational state is purpose language, as evidenced by  
02:25 14 the phrase immediately preceding it which is  
02:25 15 "configured to receive." The power system controller  
02:25 16 is the claimed structure. Its purpose or use is that  
02:25 17 it is configured to receive a signal indicating a  
02:25 18 system operational state of a separate structure, a  
02:25 19 load.

02:25 20 This is true in the body of the claim as  
02:25 21 well which refers back to the signal indicating a  
02:25 22 system operational state of a load only in describing  
02:25 23 the controller which is "configured to receive a  
02:25 24 command" that's "a function of said signal indicating  
02:25 25 said system operational state."



02:25 1 But this language relies on the preamble  
02:25 2 for the antecedent basis of "a signal indicating a  
02:25 3 system operational state" does not change the purpose  
02:25 4 nature of this phrase or require that the Court find  
02:25 5 the phrase to be limiting, as established by the many  
02:25 6 cases by the Federal Circuit cited in Footnote 6 on  
02:25 7 Page 9 of MyPAQ's responsive brief.

02:26 8 And what those cases stand for, Your  
02:26 9 Honor, and as the Court found with respect to the load,  
02:26 10 is that if it's purpose language, the Court should  
02:26 11 carve out that language from the preamble, and only  
02:26 12 structure should be included as limiting, because the  
02:26 13 structure's what defines the invention.

02:26 14 Indeed, in Translogic which was cited by  
02:26 15 both sides, the Federal Circuit held, as the arguing  
02:26 16 party admitted, that signals are not part of the  
02:26 17 claimed invention. The Federal Circuit agreed and said  
02:26 18 it is proper for a structural circuit, that the input  
02:26 19 variables, i.e., signals, are not part of the claimed  
02:26 20 invention.

02:26 21 The Board of Patent Appeals further said  
02:26 22 the control signal itself is not part of the claimed  
02:26 23 structure. Your Honor, MyPAQ respectfully submits that  
02:26 24 the signal here too is not part of the claimed  
02:26 25 structure and should not be viewed as limiting.

02:26 1 Thank you.

02:26 2 THE COURT: Okay. Thank you, Ms. Zuniga.

02:26 3 And who is responding? Ms. Heyman?

02:27 4 MS. HEYMAN: Good afternoon, Your Honor.

02:27 5 Paula Heyman for defendant Dell. And today I will also

02:27 6 be speaking on behalf of Samsung. The term is a joint

02:27 7 term.

02:27 8 THE COURT: Perfect. Thank you.

02:27 9 MS. HEYMAN: Technical difficulties.

02:27 10 So defendants agree with the Court's

02:27 11 preliminary construction that the parts of the preamble

02:28 12 noted by the Court, we agree that those are limiting.

02:28 13 But we would respectfully ask the Court to add the

02:28 14 remaining terms in the preamble.

02:28 15 In looking at Claim 1 of the '759 patent,

02:28 16 that is the term that is -- or the claim that is the

02:28 17 most different preamble. We have "a power converter,"

02:28 18 "power system controller" and the "signal indicating a

02:28 19 system operational state." All of those terms derive

02:28 20 the antecedent basis from the preamble.

02:28 21 And in -- on Page 7 and 8 of MyPAQ's

02:28 22 responsive claim construction brief, MyPAQ agrees that

02:28 23 these terms do get their antecedent basis from the

02:28 24 preamble. And they also state that controlling a power

02:29 25 converter which is -- excuse me -- controlling a power

02:29 1 converter based on a signal indicating a system  
02:29 2 operational state, they admit that that's a key part of  
02:29 3 the invention.

02:29 4 But what I heard Ms. Zuniga just say is  
02:29 5 they would like the Court to read out the key part of  
02:29 6 the invention.

02:29 7 I want to just walk through the other  
02:29 8 claims because they're a little bit different.

02:29 9 Here we have "a load" is derived -- "said  
02:29 10 load" is derived -- derives its antecedent basis from  
02:29 11 the preamble. Again, "said load" in Claim 16. The  
02:29 12 previous one was Claim 6 of the '759 patent. And  
02:29 13 finally moving on to Claim 1 of the '514 patent, again,  
02:29 14 "load" derives its antecedent basis.

02:29 15 Now, the law tells us the C.W. Zumbiel  
02:30 16 case cited in the briefing that the preamble  
02:30 17 constitutes a limitation when the claims depend on it  
02:30 18 for antecedent basis. All of the terms that we've just  
02:30 19 walked through have terms in the body. They get their  
02:30 20 antecedent basis from the preamble.

02:30 21 Now, what I hear from Ms. Zuniga is with  
02:30 22 respect to this -- this refers to Claim 1. And I'll go  
02:30 23 back to that claim.

02:30 24 Claim 1 of the '759 patent, Ms. Zuniga's  
02:30 25 asking the Court to not say that "the signal indicating

02:30 1 a system operational state of a load." That is not  
02:30 2 limiting because it's a purpose statement. Well, if  
02:30 3 that's not part of the claim, what do we have left in  
02:30 4 this claim?

02:30 5 If we read out anything that is a purpose  
02:30 6 statement, starts with "configured to," we have a power  
02:31 7 switch. Then we have a controller, and that is about  
02:31 8 it. A power switch and a controller aren't new. So  
02:31 9 we'd be reading out key parts of the invention.

02:31 10 When looking at all four preambles  
02:31 11 together -- this is putting them on one slide -- we  
02:31 12 have different versions. So we have "A load coupled  
02:31 13 thereto." That is in Claim 1 of the '759 patent. And  
02:31 14 then "coupled to a load." That's in the other three  
02:31 15 patents.

02:31 16 The preambles also have either a "power  
02:31 17 converter" or a "power system." And those power --  
02:32 18 that power converter and that power system is coupled  
02:32 19 to a load.

02:32 20 MyPAQ says that this is an intended use.  
02:32 21 Not true. The phrases "coupled thereto," "coupled to,"  
02:32 22 that's not -- it's not for coupling. Functional  
02:32 23 language, configured to couple.

02:32 24 And in the Translogic case that is cited  
02:32 25 repeatedly in the briefs, the Federal Circuit found

02:32 1 that the phrase "coupled to" defines a connection  
02:32 2 between the components and thus the structure.

02:32 3 Now, MyPAQ in its briefing related on the  
02:32 4 Translogic case, because Translogic also had a term  
02:32 5 "coupled to receive." And in the Translogic case the  
02:32 6 "coupled to receive" language was not demonstrated  
02:33 7 anywhere. So the inputs that they said were coupled to  
02:33 8 receive something that was in the claims, that was not  
02:33 9 illustrated in any figure anywhere in the patent.

02:33 10 Here the facts are different. We have an  
02:33 11 illustration of a power converter or a power system  
02:33 12 coupled to a load. And that's shown in Figure 11.

02:33 13 And we see the power converters are on  
02:33 14 the left-hand side. The loads are on the right-hand  
02:33 15 side. And what the specification then tells us is that  
02:33 16 a power bus connects the power converters with the  
02:33 17 loads, or couples them to the loads.

02:33 18 Thus, we respectfully request that the  
02:33 19 Court add the "coupled to" language that is in each one  
02:33 20 of the preambles that are at issue today.

02:33 21 Thank you. Do you have any questions?

02:34 22 THE COURT: Not at this point, I don't  
02:34 23 believe. Thank you.

02:34 24 MS. ZUNIGA: Your Honor, may I respond?

02:34 25 THE COURT: Yes, Ms. Zuniga.

02:34 1 MS. ZUNIGA: The question here is one of  
02:34 2 structure versus purpose. The law is well established  
02:34 3 that a preamble is not limiting where the claim body  
02:34 4 defines a structurally complete invention and that to  
02:34 5 the extent a preamble contains statements of purpose,  
02:34 6 those statements should be carved out.

02:34 7 Here defendants have already admitted  
02:34 8 that the load is not a part of the power converter. It  
02:34 9 is therefore not claimed structure. This was in a  
02:34 10 different part of their brief, of course, not in the  
02:34 11 part of the brief that addressed the preambles. But  
02:34 12 it's an admission nonetheless that a load is not part  
02:34 13 of the power converter.

02:35 14 If the load is not a part of the  
02:35 15 converter, Your Honor, then the signal that comes from  
02:35 16 the load should also not be part of the structure of  
02:35 17 the power converter. What's important is what the  
02:35 18 power converter is capable of doing, if it's capable of  
02:35 19 receiving a signal from the load. Not that the signal  
02:35 20 needs to actually be a part of the structure for it to  
02:35 21 infringe.

02:35 22 In this slide, Your Honor, we're trying  
02:35 23 to further illustrate that point, that the load is  
02:35 24 something separate. It's not defined in the  
02:35 25 specification to be a particular type of device.

02:35 1 Defendants haven't said what particular type of device  
02:35 2 would be necessary to infringe, because it could be a  
02:35 3 number of things. It could be a cell phone, it could  
02:35 4 be a laptop, it could be a tablet.

02:35 5 So adding the load as a limitation from  
02:35 6 the preamble, which is generally not viewed as a  
02:35 7 limitation, would be wrong because that would make  
02:35 8 infringement turn on what the charger does, its  
02:35 9 purpose, instead of what it physically is.

02:35 10 And defendants try and contrast the  
02:36 11 Translogic case by saying "coupled to" is different  
02:36 12 from "coupled to receive." Which were two different  
02:36 13 phrases at issue in Translogic.

02:36 14 But the "couple to" phrases here are all  
02:36 15 coupled with "to receive" or "receiving." To receive a  
02:36 16 signal of a load coupled thereto. Coupled to a load to  
02:36 17 receive a signal. You see it throughout each of the  
02:36 18 claims at issue where they're trying to import the  
02:36 19 preamble's alleged limitation of "coupled to a load"  
02:36 20 into the body of the claim.

02:36 21 And that would be improper here, Your  
02:36 22 Honor, because the load is not required structure, and  
02:36 23 it's therefore not limiting.

02:36 24 And I'm happy to answer any questions,  
02:36 25 Your Honor.

02:36 1 THE COURT: Okay. How about -- and this  
02:36 2 may have already addressed it, but what about the load  
02:36 3 receiving its antecedent basis from the preamble, at  
02:36 4 least on Claim 6, 16 and then Claim 1 of the '514  
02:36 5 patent? How do you distinguish that?

02:37 6 MS. ZUNIGA: Your Honor, we would point  
02:37 7 the Court to the cases cited in our responsive brief,  
02:37 8 specifically the string set of cases that's in Footnote  
02:37 9 6 on Page 9 of the responsive brief.

02:37 10 But the Federal Circuit has advised that  
02:37 11 even if the claim -- the body of the claim language  
02:37 12 relies on the preamble for antecedent basis, if it's  
02:37 13 purpose language, then it's not limiting, just as it's  
02:37 14 not in the body of the claim.

02:37 15 THE COURT: Okay. That's all the  
02:37 16 questions I have.

02:37 17 MS. ZUNIGA: Thank you very much.

02:37 18 THE COURT: Let me go off the record real  
02:37 19 quick.

02:38 20 (Pause in proceedings.)

02:39 21 THE COURT: All right. We are -- the  
02:39 22 Court's going to stick with its preliminary  
02:39 23 construction on this one. There's some compelling  
02:39 24 arguments both ways and compelling legal authority both  
02:39 25 ways. So we're going to stay with our preliminary



02:39 1 construction.

02:39 2 And we're going to move to the next term.

02:39 3 Let's see. I've got "system operational  
02:39 4 state of [a/said] load" and that the defendants want to  
02:39 5 argue it. So will it be you, Ms. Heyman?

02:39 6 MS. HEYMAN: That would be me.

02:39 7 (Inaudible).

02:39 8 So this is Paula Heyman again for Dell  
02:39 9 and speaking for also Samsung on this term.

02:40 10 THE COURT: Okay.

02:40 11 MS. HEYMAN: System operational state of  
02:40 12 a load is found in Claims 1, 6 and 16 of the '759  
02:40 13 patent and Claim 1 of the '514 patent.

02:40 14 Now, the parties' constructions are  
02:40 15 pretty close here and they differ by only three words.  
02:40 16 And that's shown in red here on the slide. And that's  
02:40 17 "just the present."

02:40 18 But the addition of these three words is  
02:40 19 improper for at least two reasons.

02:40 20 First, these words recapture scope that  
02:40 21 was disclaimed during prosecution of the '514 patent.  
02:40 22 These words also allow the system operational state to  
02:40 23 encompass a condition that is defined as a different  
02:40 24 term in the '759 patent and '514 patents.

02:40 25 Going to the prosecution history of the

02:41 1 '514 patent, the applicants distinguished Claim 1 of  
02:41 2 the '514 patent from prior art. And in distinguishing  
02:41 3 that prior art, the applicants argued that the "system  
02:41 4 operational state of the load is more than just an  
02:41 5 output voltage of the power converter."

02:41 6 If we look at defendants' construction,  
02:41 7 it is almost verbatim from the prosecution history.  
02:41 8 Now, I understand that MyPAQ may take issue with the  
02:41 9 missing word "just." I think defendants would be happy  
02:41 10 to add that word there to their construction if that is  
02:41 11 one of the issues that MyPAQ has. So that would be --  
02:41 12 then defendants' construction would be verbatim from  
02:41 13 the prosecution history.

02:41 14 And looking at this statement, what does  
02:41 15 the statement mean? What does the statement tell the  
02:42 16 public? Well, it tells the public that the system  
02:42 17 operational state of a load can be based on output  
02:42 18 voltage of the power converter but must be based on at  
02:42 19 least one other parameter.

02:42 20 In other words, it has to be more than  
02:42 21 the output voltage. Has to be more than just the  
02:42 22 output voltage of the converter -- of the power  
02:42 23 converter.

02:42 24 And if we look at it another way, what  
02:42 25 has been disclaimed? The use of the words "more than

02:42 1 just output voltage of a power converter" disclaims  
02:42 2 anything for a system operational state that is based  
02:42 3 only on the output voltage of the power converter. And  
02:42 4 this would include past, present and future output  
02:42 5 voltages.

02:42 6 Now, Federal Circuit law states that a  
02:43 7 patentee must be held to what he declares during  
02:43 8 prosecution of the patent, because a contrary rule  
02:43 9 would undermine the notice function of a patent.

02:43 10 And, Your Honor, this is the Ajinomoto  
02:43 11 case that is cited in our brief. Well, again, what was  
02:43 12 the public told here? The public was told that the  
02:43 13 system operational state is more than just an output  
02:43 14 voltage.

02:43 15 If we look at MyPAQ's construction, MyPAQ  
02:43 16 changed its construction in its surreply. And it  
02:43 17 adopted defendants' construction but added the three  
02:43 18 words here: "Just the present."

02:43 19 So really I think what we're arguing  
02:43 20 about today is "the present." That's the dispute  
02:43 21 between the parties.

02:43 22 Now, what is -- so if we add these words,  
02:44 23 "just the present," or if we add "the present" to this  
02:44 24 phrase, what does this mean? This now means that the  
02:44 25 system operational state cannot be based only on the

02:44 1 present output voltage. I think the parties agree on  
02:44 2 that. But -- and then, again, it allows the present  
02:44 3 output voltage to be a part of the system operational  
02:44 4 state, but you need something else to determine that  
02:44 5 system operational state, another condition.

02:44 6 Now, where I think the parties disagree  
02:44 7 is that the -- what this would -- what MyPAQ's  
02:44 8 construction would allow is that the system operational  
02:44 9 state would be based only on the past or future output  
02:44 10 voltage.

02:44 11 Now, MyPAQ argued in its reply that  
02:44 12 the -- or excuse me -- in its surreply that its  
02:44 13 construction would allow a future output voltage to be  
02:45 14 the system operational state. But, again, that's what  
02:45 15 was disclaimed. Any output voltage was disclaimed,  
02:45 16 past and future.

02:45 17 But as shown on the slide, this  
02:45 18 construction would recapture that scope. It would  
02:45 19 recapture allowing the system operational state to be  
02:45 20 based only on a voltage. Here the future voltage of  
02:45 21 the output. And this is the Storage Tech case. It's  
02:45 22 Storage Tech versus Cisco, 329 F.3d 823.

02:45 23 Now, and again, what we know, as the  
02:45 24 applicant's told the public, that the system  
02:45 25 operational state must be more than just an output

02:45 1 voltage.

02:45 2 To make its argument about the future  
02:46 3 output voltage, MyPAQ points to language that is in the  
02:46 4 specification. And this language is "a request for a  
02:46 5 particular load voltage." But if we look at the  
02:46 6 specification, this is not a system operational state.

02:46 7 So in Column 7 of the '759 patent -- and  
02:46 8 there is corresponding text at Column 9 in the '514  
02:46 9 patent, because the patents have similar  
02:46 10 specifications -- we see in purple here that there are  
02:46 11 numerous examples of a system operational state.  
02:46 12 Nowhere in these examples is there a request for a  
02:46 13 particular load voltage.

02:46 14 We do see that if you go up a few lines  
02:46 15 from the system operational state language, we see that  
02:46 16 here in green. And that is a request for "a particular  
02:46 17 load voltage." The patent defines this as an  
02:46 18 environmental parameter, not a system operational  
02:47 19 state.

02:47 20 And I think this makes sense. If you  
02:47 21 look at what a system operational state does, it is  
02:47 22 informing the power converter. The load is informing  
02:47 23 the power converter of its operational state. It's not  
02:47 24 giving -- it's not requesting anything from the power  
02:47 25 converter. It is giving information to the power

02:47 1 converter.

02:47 2 MyPAQ actually may rely on the language  
02:47 3 here in purple. It's the very beginning there. It  
02:47 4 says, "further examples indicating."

02:47 5 This sounds like maybe it's a further  
02:47 6 example of an environmental parameter, but that's not  
02:47 7 what the language says. "Further examples indicating a  
02:47 8 system operational state." This is a different term.

02:47 9 And actually this difference is  
02:47 10 illustrated in Figure 3. So if we look at the -- it's  
02:48 11 the bottom there, controller 311. Has a number of  
02:48 12 inputs -- and going into it. It's on the right-hand  
02:48 13 side and the left-hand side of the figure.

02:48 14 Highlighted in green we have  $V_{ext}$ . It's  
02:48 15 kind of at the bottom of the right-hand side of the  
02:48 16 controller. The text tells us that  $V_{ext}$  is an  
02:48 17 environmental parameter. So that is a request for a  
02:48 18 particular load voltage.

02:48 19 Now, there's another input, and that's on  
02:48 20 the left-hand side towards the bottom of the  
02:48 21 controller. That says  $S_{op\_state}$ . That's a system  
02:48 22 operational state. As we know from the text  
02:48 23 previously, system operational state is different than  
02:48 24 an environmental parameter. So that a request for a  
02:48 25 load, a particular load voltage, is not a system

02:49 1 operational state, it's an environmental parameter.

02:49 2 Thus, we request that the Court remove

02:49 3 the words "the present" and adopt defendants'

02:49 4 construction, because it is both consistent with the

02:49 5 scope of the disclaimer that was made during the

02:49 6 prosecution and properly separates the terms "system

02:49 7 operational state" and "environmental parameter."

02:49 8 Thank you.

02:49 9 THE COURT: Okay. And just to make sure,

02:49 10 too, you're fine with the word "just." It's "the

02:49 11 present" that's the issue?

02:49 12 MS. HEYMAN: That is correct.

02:49 13 THE COURT: Okay. Could I hear a

02:49 14 response? I think it's Mr. Hsu.

02:49 15 MR. HSU: Yes, Your Honor.

02:49 16 Good afternoon, Your Honor. This is Mu

02:50 17 Lin Hsu speaking on behalf of plaintiff MyPAQ.

02:50 18 THE COURT: Very good.

02:50 19 MR. HSU: So MyPAQ agrees with the

02:50 20 Court's preliminary construction which reflects the

02:50 21 understanding of, number one, system operational state

02:50 22 of the load can be only a request for a particular load

02:50 23 voltage. And, two, reflects that a request for a

02:50 24 particular load voltage is different than an output

02:50 25 voltage. Whether it be a future output voltage,

02:50 1 present output voltage, those are two different  
02:50 2 signals.

02:50 3 So first addressing the defendants'  
02:50 4 argument that the Court's preliminary construction  
02:50 5 would allow only a future output voltage at the power  
02:51 6 converter to be a power operational state. So the  
02:51 7 defendants argue that the applicants in this case  
02:51 8 disclaim output voltage, so we shouldn't include future  
02:51 9 output voltage.

02:51 10 But that is actually incorrect and also  
02:51 11 physically impossible, this statement. It's physically  
02:51 12 impossible. It's because a future output voltage  
02:51 13 cannot exist in a power converter, in the present power  
02:51 14 converter. The only way for that to exist is if this  
02:51 15 future output voltage travels using a time machine from  
02:51 16 the future to the present output voltage, a power  
02:51 17 converter.

02:51 18 So what the Court's preliminary  
02:51 19 construction allows for is, instead, a signal  
02:51 20 requesting a future output voltage. And that is a  
02:51 21 completely different signal, a different characteristic  
02:51 22 than just an output voltage or a future output voltage  
02:51 23 which doesn't exist.

02:51 24 So, again, as reflected in the briefs, a  
02:52 25 request, a signal requesting a future output voltage is



02:52 1 different than an output voltage, regardless if it's a  
02:52 2 previous output present voltage, present output voltage  
02:52 3 or future output voltage.

02:52 4 The second arguments that the defendants  
02:52 5 argued is that they argued -- the Court's preliminary  
02:52 6 construction conflates the term "environmental  
02:52 7 parameter" and "system operational state of a load."

02:52 8 However, the specification is clear and  
02:52 9 it describes that a environmental parameter of the load  
02:52 10 as a general -- sorry. The environmental parameter is  
02:52 11 a general term that encompasses external signals.  
02:52 12 Basically any characteristics that stems from an  
02:52 13 external signal, external source, and includes a system  
02:52 14 operational state of the load. Which it's because it's  
02:52 15 an operational state of a load as a signal from an  
02:53 16 external source. And it also includes a request for a  
02:53 17 particular load voltage.

02:53 18 Now, the defendants mention that in the  
02:53 19 highlighted portion -- in the excerpts on the left side  
02:53 20 of this PowerPoint that a request for a particular load  
02:53 21 voltage is located under environmental parameter and  
02:53 22 not under system operational state. It's because for  
02:53 23 the simple reason that it's not pertaining to the load.

02:53 24 When the specification talks about the  
02:53 25 load, when the operational state is regarding the load,

02:53 1 it's a classified request for a particular load voltage  
02:53 2 as a system operational state of a load on the right  
02:53 3 side, on the right excerpts.

02:53 4           And then these two excerpts are the only  
02:53 5 places where the specification talks about what a  
02:53 6 request for a particular load voltage is. In the first  
02:53 7 excerpt on the left side it describes it as an  
02:53 8 environmental parameter because it stems from an  
02:54 9 external source. On the right side it says that it's a  
02:54 10 operational level of the load which is system operation  
02:54 11 of the load.

02:54 12           And it's also important to note that this  
02:54 13 language on the right side, the excerpts on the right  
02:54 14 side, is not in the parent patent, the '758 patent. In  
02:54 15 the parent patent, '758 patent, they only use the term  
02:54 16 "environmental parameter." Nowhere in the patent talks  
02:54 17 about a system operational state of the load.

02:54 18           The inventors in this case specifically  
02:54 19 added this paragraph in this -- in the '759 patent  
02:54 20 stating that, yes, that a request for a particular load  
02:54 21 voltage is part of environmental parameter because it  
02:54 22 comes from an external source. But in particular it is  
02:54 23 part of a system operational level of the load.

02:54 24           The defendants also brought up the term  
02:55 25 " $V_{\text{ext}}$ " which the patent describes as "an" environmental

02:55 1 parameter, not "all" environmental parameter.  
02:55 2 Furthermore, nowhere in the patents in the  
02:55 3 specification describes the request for a particular  
02:55 4 load as a  $V_{ext}$ . It doesn't say that in the past  
02:55 5 specification. It states instead that a request for a  
02:55 6 particular load as a system operational state of the  
02:55 7 load.

02:55 8 And, again, this is showing a picture of  
02:55 9 the '758 patent, which is the parent patent on the left  
02:55 10 side. And the right side is the current patent, the  
02:55 11 asserted patent, the '754 -- '759 patent which are  
02:55 12 the -- which are the -- which is the continuation in  
02:55 13 part of the parent patent.

02:55 14 Now, by laying the claims side by side,  
02:55 15 it is clear that the terms "environmental parameter"  
02:56 16 and "a system operational state of a load," they are  
02:56 17 distinct terms, yes. But they are not mutually  
02:56 18 exclusive. A system operational state of a load is an  
02:56 19 environmental parameter, because it's coming from an  
02:56 20 external source.

02:56 21 However, it's more narrow in the sense  
02:56 22 that, one, it's a system operational state; and, two,  
02:56 23 it's related to the load.

02:56 24 So it is MyPAQ's position that the Court  
02:56 25 got it right the first time. That the correct

02:56 1 understanding that a request for a future -- or a  
02:56 2 request for particular load voltage is different from  
02:56 3 the output voltage for the voltage or any voltage.  
02:56 4 And, second, the request for a particular load voltage  
02:56 5 is part of the system operational state of the load.

02:56 6 Any questions for the Court?

02:56 7 THE COURT: I don't have any questions.  
02:56 8 Thank you, Mr. Hsu.

02:56 9 MR. HSU: Thank you, sir.

02:56 10 THE COURT: Ms. Heyman?

02:57 11 MS. HEYMAN: Your Honor, just a couple of  
02:57 12 points.

02:57 13 With respect to the word "present" that  
02:57 14 is in the -- that is in MyPAQ's construction, that was  
02:57 15 not in the prosecution history. Again, the prosecution  
02:57 16 history states that a system operational state is more  
02:57 17 than just an output voltage of the power converter.  
02:57 18 Nowhere does "present" show up in that statement.

02:57 19 Also I think the -- what MyPAQ has  
02:57 20 pointed out is that the '758 patent, which is the  
02:57 21 parent patent to the '759 patent, it disclosed  
02:57 22 environmental parameters. It doesn't disclose system  
02:57 23 operational state. There's no system operational state  
02:57 24 in that patent.

02:57 25 Thus, looking in -- and I don't have the

02:57 1 law. I don't have a cite for you right now, and I can  
02:57 2 get that to Your Honor if you would like it, but use of  
02:58 3 different terms in claims means different things.

02:58 4 THE COURT: I don't need law on that,  
02:58 5 because I'll agree with you. Okay.

02:58 6 MS. HEYMAN: And that is it.

02:58 7 THE COURT: Okay. Thank you.

02:58 8 MS. HEYMAN: Thank you.

02:58 9 THE COURT: Let's go off the record just  
02:58 10 briefly.

03:00 11 (Pause in proceedings.)

03:00 12 THE COURT: Okay. We're back on the  
03:01 13 record. Because we've -- the Court thinks that it  
03:01 14 conforms the definition more to the way output voltage  
03:01 15 is used in the --

03:01 16 (Clarification by the reporter.)

03:01 17 THE COURT: The Court's going to maintain  
03:01 18 its preliminary construction because we think the use  
03:01 19 of -- and this will be explained in more detail,  
03:01 20 obviously, in the order to follow. But we think the  
03:01 21 use of "the present" more clearly conforms the  
03:01 22 definition to the way the output voltage is used  
03:01 23 throughout the specification. And hopefully makes the  
03:01 24 issue a little more clear for discovery and expert  
03:01 25 reports.

03:01 1 Let's see. Is everybody ready to keep  
03:01 2 going or do we need a quick break?

03:01 3 All right. We're going to keep plowing  
03:01 4 on since nobody hollered.

03:01 5 All right. We are on the "internal  
03:02 6 operating characteristic." Is that where we are?

03:02 7 MR. THOMPSEN: Yes, Your Honor.

03:02 8 THE COURT: That was Mr. Thompson, right?

03:02 9 MR. THOMPSEN: Yes. Brett Thompson of  
03:02 10 Baker Botts on behalf of Samsung. And I'll be speaking  
03:02 11 to "internal operating characteristic" as well as  
03:02 12 another term, "internal direct current bus voltage" on  
03:02 13 behalf of both defendants.

03:02 14 THE COURT: Okay. And the first term is  
03:02 15 only at issue against the Samsung parties. Is that...

03:02 16 MR. THOMPSEN: "Internal operating  
03:02 17 characteristic" is a term in both the '759 and '514  
03:02 18 patents against both Dell and Samsung. And "internal  
03:02 19 direct current bus voltage" is a term in the '514  
03:02 20 patent that's also against both parties.

03:02 21 THE COURT: Okay.

03:02 22 MR. THOMPSEN: Both Dell and Samsung.

03:02 23 THE COURT: Very good.

03:02 24 MR. THOMPSEN: So, Your Honor, if it's  
03:02 25 okay with you, we'd like to go ahead and address both

03:02 1 "internal operating characteristic" and "internal  
03:02 2 direct current bus voltage" kind of together  
03:02 3 simultaneously. So defendants will speak on both and  
03:02 4 then plaintiffs will speak on both. We've talked  
03:03 5 amongst the parties and agreed that that's okay.

03:03 6 We think that makes sense because these  
03:03 7 two terms kind of go together. And internal direct  
03:03 8 current bus voltage is an example of an internal  
03:03 9 operating characteristic. So we think, if it's okay  
03:03 10 with you, we'd like to go ahead and go through both at  
03:03 11 the same time.

03:03 12 THE COURT: That'd be great. Especially  
03:03 13 if y'all have already worked it out. So that sounds  
03:03 14 good.

03:03 15 MR. THOMPSEN: Great. Okay. Thank you,  
03:03 16 Your Honor.

03:03 17 (Clarification by the reporter.)

03:03 18 MR. THOMPSEN: Okay. So I will start  
03:03 19 with "internal operating characteristic" which is  
03:03 20 recited in both the '759 patent and the '514 patent.  
03:03 21 And, in fact, it's recited in each of the independent  
03:03 22 claims of those patents.

03:03 23 Okay. Defendants propose that the plain  
03:04 24 and ordinary meaning should apply, which is simply an  
03:04 25 operating characteristic internal to the power

03:04 1 converter. We think this is plain and there's not  
03:04 2 necessarily a need for an additional note, whether or  
03:04 3 not it goes to the jury, that an internal operating  
03:04 4 characteristic and an output characteristic are not  
03:04 5 necessarily mutually exclusive.

03:04 6 We're going to step through the claims  
03:04 7 and the patent specifications to show that these two  
03:04 8 different terms, "internal operating characteristic"  
03:04 9 and "output characteristic" actually are mutually  
03:04 10 exclusive of each other.

03:04 11 So let's start with Claim 1 of the '514  
03:04 12 patent. You see here highlighted in red there's a  
03:04 13 provision of an output characteristic. In a different  
03:04 14 part of the claim there is control of an internal  
03:04 15 operating characteristic highlighted in blue. So what  
03:04 16 this tells us is that we have two different terms that  
03:05 17 are used for two different purposes in different parts  
03:05 18 of the claim.

03:05 19 But what MyPAQ wants to do by conflating  
03:05 20 these terms in claim construction, MyPAQ wants to point  
03:05 21 to one output voltage in the accused products and read  
03:05 22 that on, first, an output characteristic. And then go  
03:05 23 back to the well again and read that same output  
03:05 24 voltage on control of an internal operating  
03:05 25 characteristic.



03:05 1 But that dual use is not proper because  
03:05 2 long-standing Federal Circuit case law tells us that  
03:05 3 when a claim lists elements separately, there is a  
03:05 4 presumption that those claims are distinct.

03:05 5 And we see here in the '759 patent,  
03:05 6 again, the two terms are used separately. There's a  
03:05 7 regulation of an output characteristic shown in red.  
03:05 8 And in a different part of the claim there's regulating  
03:05 9 an internal operating characteristic shown in blue.

03:06 10 So, again, the long-standing Federal  
03:06 11 Circuit case law applies where because these two terms  
03:06 12 are recited separately, there is a presumption that  
03:06 13 those elements are distinct from each other.

03:06 14 So then what do you do with the  
03:06 15 presumption? You have to go look at the specification.  
03:06 16 The presumption is either confirmed or it's overturned  
03:06 17 by the specification. As we'll step through, that  
03:06 18 specification here actually confirms the presumption.

03:06 19 It does so in two ways: The first way  
03:06 20 the specification confirms the presumption is by  
03:06 21 actually disparaging the mere control of an output  
03:06 22 characteristic in the prior art.

03:06 23 The specification says, "It is well-known  
03:06 24 in the art to couple an input control signal to a power  
03:06 25 converter to control the setpoint of an output

03:06 1 characteristic thereof."

03:06 2 Now, in other parts of the specification  
03:06 3 it purports to claim that the inventive part of the  
03:06 4 patent is controlling an internal operating  
03:07 5 characteristic. So if you conflate both internal  
03:07 6 operating characteristic and output characteristic, you  
03:07 7 create an untenable position.

03:07 8 On one hand you have the purported  
03:07 9 invention. On the other hand, using the same reading,  
03:07 10 you're reading on the well-known -- what's well known  
03:07 11 in the art according to the background of the patent  
03:07 12 itself. Thus, that tells us it confirms the  
03:07 13 presumption that these two things must actually be  
03:07 14 different.

03:07 15 The second way that we know the  
03:07 16 presumption is confirmed is because every place in the  
03:07 17 patent specification that describes internal operating  
03:07 18 characteristics or output characteristics actually  
03:07 19 include those things in two separate buckets.

03:07 20 For example, looking at Column 3 of the  
03:07 21 '514 patent, highlighted here in blue, we have examples  
03:07 22 of an internal operating characteristic. This can  
03:07 23 include "temperature of a component part, an internal  
03:07 24 bus voltage, the voltage level of a drive signal for a  
03:07 25 power switch, the number of parallel power switches

03:08 1 selectively enabled..., the number of phases enabled on  
03:08 2 a power converter or...the basic switching frequency of  
03:08 3 the power converter."

03:08 4 Separate from that on a different line,  
03:08 5 highlighted here in red, you see examples of an output  
03:08 6 characteristic. This can include things at the output  
03:08 7 of the power converter, "a load current drawn from the  
03:08 8 power converter or an output voltage."

03:08 9 What you notice is that none of the  
03:08 10 characteristics here overlap. All of the  
03:08 11 characteristics highlighted in blue are internal to the  
03:08 12 power converter versus all the characteristics  
03:08 13 highlighted in red are at the output of the power  
03:08 14 converter.

03:08 15 So the patent itself, when describing  
03:08 16 these two different terms, considers these things  
03:08 17 different. There's one bucket of characteristics that  
03:08 18 are output characteristics and another bucket that are  
03:08 19 internal operating characteristics. And they're  
03:08 20 separate from each other.

03:08 21 Other places in the specification follow  
03:08 22 the same form. For example, at Column 2 of the '514  
03:08 23 patent, you see, again, "internal operating  
03:09 24 characteristic (e.g., an internal bus voltage)."

03:09 25 Note the word "or" on the very next line

03:09 1 after the blue. "Or an output characteristic (e.g., an  
03:09 2 output voltage or an output current)." So, again, the  
03:09 3 specification keeping these two different types of  
03:09 4 characteristics in different buckets.

03:09 5 Same thing at Column 9 of the '514  
03:09 6 patent. Highlighted in blue here, "an internal  
03:09 7 operating characteristic (such as a gate drive voltage  
03:09 8 level, a switching frequency [or] an internal voltage  
03:09 9 or current...) or an output characteristic (such as a  
03:09 10 regulated voltage setpoint of the power converter)."

03:09 11 So, again, every place where you see  
03:09 12 these different types of characteristics described,  
03:09 13 they're just -- they're put in different buckets and  
03:09 14 described separately from each other. There's no  
03:09 15 overlap.

03:09 16 Now, MyPAQ is going to want to point to  
03:09 17 Figure 3 of the -- it's Figure 3 in both the '759  
03:09 18 patent and the '514 patent. And what MyPAQ wants to do  
03:10 19 is look at those dotted lines and say that's some sort  
03:10 20 of demarcation between what's internal and external to  
03:10 21 the power converter.

03:10 22 And the reason it does that is because  
03:10 23 you see  $V_{out}$  in the top right corner. And that's the  
03:10 24 output voltage. And they say  $V_{out}$  starts inside of the  
03:10 25 dashed line and then goes out.

03:10 1 But what we know is that those dashed  
03:10 2 lines cannot be any sort of demarcation of what's  
03:10 3 internal versus external to the power converter. And  
03:10 4 the reason we know that is because the claims also  
03:10 5 recite a controller, the power converter controller, as  
03:10 6 part of the power converter.

03:10 7 And look at where the controller is in  
03:10 8 Figure 3. It's outside the dashed lines. So if those  
03:10 9 dashed lines were used as a demarcation between  
03:10 10 internal and external as proposed by MyPAQ, that would  
03:10 11 actually blow up the entire structure of the claims.  
03:10 12 Because it would make the power converter controller be  
03:10 13 external to the power converter itself. And we know  
03:10 14 that's not true based on the claim structure.

03:11 15 Thus MyPAQ's reliance on the dashed lines  
03:11 16 in Figure 3 is neither here nor there. What we have to  
03:11 17 do is look to the words of the patent. Look where the  
03:11 18 patent describes internal operating characteristics and  
03:11 19 you'll see it's different than output characteristics.

03:11 20 What I want to do too is compare this  
03:11 21 case to one of the presumption cases cited in our  
03:11 22 briefing. And that's the Kyocera case. It's a Federal  
03:11 23 Circuit case just from January of this year. In that  
03:11 24 case there were two terms at issue, a "safety contact  
03:11 25 element" and the "exit end of a mechanism."

03:11 1 Now, what's interesting is that in the  
03:11 2 specification there were actually different embodiments  
03:11 3 that used both of these things to perform a similar  
03:11 4 initiating function. But because the two terms were  
03:11 5 described separately in the claims and described  
03:11 6 separately in the specification, the Federal Circuit  
03:11 7 found that they were mutually exclusive to each other  
03:11 8 despite the overlapping function that could take place.

03:11 9 So compare the facts here. Just like in  
03:12 10 Kyocera, we have two separately recited claim terms.  
03:12 11 But even stronger than Kyocera, there's no overlap  
03:12 12 anywhere in the specification between what it calls  
03:12 13 "internal operating characteristics" and "output  
03:12 14 characteristics."

03:12 15 So with that, what I'd like to do is then  
03:12 16 move to "internal direct current bus voltage."

03:12 17 THE COURT: Let me ask you just real  
03:12 18 quick before we go to that, I know you've given us  
03:12 19 several examples of where the terms are used  
03:12 20 separately.

03:12 21 MR. THOMPSEN: Yes.

03:12 22 THE COURT: Is there anywhere in the  
03:12 23 patents where it expressly says, you know, the internal  
03:12 24 operating characteristics are not the output  
03:12 25 characteristics or anything that's really that

03:12 1 specific?

03:12 2 MR. THOMPSEN: It doesn't try to prove a  
03:12 3 negative, right? The patent is written to try to prove  
03:12 4 positives, to try to explain what things are, not what  
03:12 5 they're not.

03:12 6 And so what we see is, you know, we start  
03:12 7 with the presumption, right? We start with the Federal  
03:12 8 Circuit case law, the presumption. And then we go look  
03:13 9 to see if anything overturns that presumption. And  
03:13 10 there's nothing in the patent specification that tells  
03:13 11 you, for example, an output voltage could be both.

03:13 12 An output voltage is only described as an  
03:13 13 output characteristic. There's not one place in the  
03:13 14 specification where the term output -- or "internal  
03:13 15 operating characteristic" is used to describe an output  
03:13 16 voltage.

03:13 17 Now, MyPAQ might point to places where  
03:13 18 the specification uses words "internal," "output,"  
03:13 19 "external," that kind of thing. But when you're  
03:13 20 looking at the claim terms that are at issue, those are  
03:13 21 always described in the two separate buckets.

03:13 22 THE COURT: Okay. On to the bus voltage.

03:13 23 MR. THOMPSEN: All right. On to  
03:13 24 "internal direct current bus voltage."

03:13 25 Now, this is in Dependent Claims 5, 10,

03:13 1 15 and 20 of the '514 patent. And as we mentioned,  
03:13 2 this is a example of an internal operating  
03:13 3 characteristic. So defendants think that the words  
03:13 4 "originating internally" that was proposed by MyPAQ and  
03:14 5 adopted in the preliminary construction, we think those  
03:14 6 are unnecessary.

03:14 7 And what that is actually trying to do,  
03:14 8 what the defendants are -- excuse me. What plaintiffs  
03:14 9 are actually trying to do with that "originating  
03:14 10 internally" language is they're trying to point to an  
03:14 11 output voltage that they say originates internally and  
03:14 12 then goes outside the -- outside the power converter.  
03:14 13 And that somehow is a -- lets them read the output  
03:14 14 voltage on an internal direct current bus voltage.

03:14 15 So it really brings up -- despite the  
03:14 16 separate language, it really brings up the same issue.  
03:14 17 So defendants' goal with its construction is merely to  
03:14 18 clarify that "internal" means internal to the power  
03:14 19 converter.

03:14 20 On the other hand, MyPAQ's goal is to  
03:14 21 separately, you know -- is to encompass the  
03:14 22 separately-recited output characteristic, i.e., an  
03:14 23 output voltage into the word "internal direct current  
03:14 24 bus voltage."

03:14 25 And, again, that's going to let them do,



03:14 1 you know -- read, you know, in the accused products one  
03:15 2 output voltage as two terms. Both an output  
03:15 3 characteristic, and then they're going to try to read  
03:15 4 that not only on an internal operating characteristic,  
03:15 5 but also on an internal direct current bus voltage.  
03:15 6 And we think that's improper.

03:15 7           Again, looking at the claims, these claim  
03:15 8 terms are used differently for different purposes in --  
03:15 9 throughout the claims. So we have here Claim 1,  
03:15 10 Independent Claim 1 and Dependent Claim 5.

03:15 11           Again, we see "output characteristic"  
03:15 12 highlighted in red. And then the term "internal  
03:15 13 operating characteristic" highlighted in blue. And  
03:15 14 then down in Dependent Claim 5 you see "an internal  
03:15 15 direct current bus voltage" provided as an example of  
03:15 16 an internal operating characteristic.

03:15 17           So, again, the same presumption applies.  
03:15 18 The same Kyocera presumption applies. When a claim  
03:15 19 lists elements separately, there is a presumption that  
03:15 20 those elements are distinct.

03:15 21           Looking at the specification again, here  
03:15 22 we have highlighted in blue examples of an internal  
03:16 23 operating characteristic. They can include internal --  
03:16 24 "an internal bus voltage." On the other hand, an  
03:16 25 output characteristic can include things at the output

03:16 1 of the power converter such as the output voltage.

03:16 2 Typically the controller -- excuse me.

03:16 3 Looking, again, to the '514 patent in Column 2, we see

03:16 4 that -- a passage that says "Typically the controller

03:16 5 measures an internal operating characteristic ([such

03:16 6 as] an internal bus voltage) or [separately] an output

03:16 7 characteristic ([such as] an output voltage."

03:16 8 So, again, the specification places

03:16 9 internal operating characteristics such as the internal

03:16 10 direct current bus voltage in a different bucket as

03:16 11 output characteristics such as the output voltage.

03:16 12 Now MyPAQ might point to Claim 7 to try

03:16 13 to support its construction. But what we see -- or not

03:16 14 Claim 7. Excuse me. Figure 7 of the patent to support

03:16 15 its construction. But what we see in Figure 7 -- and

03:17 16 you see on the bottom left there MyPAQ's annotation,

03:17 17 that comes from their brief. And they point to a

03:17 18 400-volt bus.

03:17 19 But what you'll notice about that bus

03:17 20 voltage is that it's actually external to the DC-to-DC

03:17 21 converter. And that is separate from the 12-volt

03:17 22 signal way over to the right at the output of the power

03:17 23 converter.

03:17 24 So even MyPAQ's own evidence does not

03:17 25 support the notion that an internal direct current bus

03:17 1 voltage can be conflated with an output characteristic  
03:17 2 such as the output voltage.

03:17 3 MyPAQ's other evidence, they point to the  
03:17 4 '759 patent. The '792 patent is cited on the face of  
03:17 5 the '514 patent. But it's important to note it's not  
03:17 6 actually related to the '514 patent. It's not related  
03:17 7 to the family. It's a different patent. It's  
03:17 8 extrinsic evidence. It's different disclosures using  
03:17 9 different terms to describe different things. So the  
03:17 10 use of the word "output bus voltage" in the '792 patent  
03:17 11 is neither here nor there with regard to the terms of  
03:18 12 the '514 patent itself.

03:18 13 So going back to the evidence that we do  
03:18 14 have, the evidence in the patent consistently puts  
03:18 15 internal operating characteristics, such as the  
03:18 16 internal direct current bus voltage, in one bucket and  
03:18 17 places output characteristics, such as the output  
03:18 18 voltage, in another bucket. There's no description in  
03:18 19 the patent that can overcome the presumption that these  
03:18 20 two things are distinct from each other, because  
03:18 21 there's no description of those two things overlapping.

03:18 22 Accordingly, these things are mutually  
03:18 23 exclusive from each other. And the constructions, we  
03:18 24 respectfully submit, should reflect that.

03:18 25 Thank you.

03:18 1 THE COURT: Thank you.

03:18 2 Let me take -- we're going to go off the  
03:18 3 record and take a real quick break.

03:18 4 (Pause in proceedings.)

03:24 5 THE COURT: Be seated.

03:24 6 All right. Could I hear from MyPAQ with  
03:24 7 regard to the internal operating characteristics and  
03:24 8 internal direct current bus voltage?

03:24 9 All right. Mr. Hsu, whenever you're  
03:24 10 ready.

03:24 11 MR. HSU: Yes, Your Honor.

03:24 12 Now, once again, MyPAQ agrees with the  
03:25 13 Court's preliminary construction that internal  
03:25 14 operating characteristic and output characteristics,  
03:25 15 yes, they are distinct terms. However, they are not  
03:25 16 mutually exclusive. This understanding is supported by  
03:25 17 the specification, the prosecution history and also  
03:25 18 everyday usage of the term "internal" and "output."

03:25 19 (Clarification by the reporter.)

03:25 20 MR. HSU: So going to the specification  
03:25 21 first, as the Court correctly construed, that an output  
03:25 22 characteristic is an operating condition of the power  
03:25 23 converter which is internal to the power converter.  
03:26 24 Everyday usage of the words "internal" and "output"  
03:26 25 also supports this understanding that, yes, "internal"

03:26 1 and "output" they are distinct terms. We don't  
03:26 2 disagree with that. But they are not mutually  
03:26 3 exclusive.

03:26 4 For example, the body temperature of a  
03:26 5 human body is internal to the human body. However, it  
03:26 6 can also be an output characteristic of the body,  
03:26 7 because it can be measured on the outside with a  
03:26 8 thermometer.

03:26 9 Now, I want to also take this chance to  
03:26 10 address several of the opposing counsel's points. So  
03:26 11 first, the opposing counsel cited the case, Kyocera,  
03:26 12 stating that distinct terms have distinct meanings,  
03:26 13 which, again, we agree with that.

03:26 14 However, this case, the Curry (phonetic)  
03:26 15 case, is distinguished from that case. It's not  
03:26 16 applicable in the sense that in Kyocera the terms that  
03:26 17 are being construed are physical -- distinct physical  
03:26 18 components of an apparatus. Those are, yes, mutually  
03:26 19 exclusive. They are physical components of a  
03:27 20 apparatus.

03:27 21 For example, my right hand, my left  
03:27 22 hand -- left hand, they are physical components of my  
03:27 23 body. They are different, they're mutually exclusive.  
03:27 24 So yes.

03:27 25 However, internal operating

03:27 1 characteristic and output characteristics are not  
03:27 2 individual -- are not distinct physical components.  
03:27 3 They are terms of -- terms that describe groups of  
03:27 4 characteristics which are, yes, they are distinct, but  
03:27 5 they are not mutually exclusive with each other.

03:27 6           Going back to the example of the physical  
03:27 7 body part, my left hand and my right hand, they are,  
03:27 8 yes, distinct and they're exclusively mutual to each  
03:27 9 other. However, both of them are hands and both of  
03:27 10 them are limbs. Hands and limbs are not mutually  
03:27 11 exclusive of each other, but they -- means distinct  
03:27 12 terms.

03:27 13           Also I want to point the Court to the  
03:28 14 prosecution history of this case. So the prosecution  
03:28 15 history, the examiner cited one of the prior arts which  
03:28 16 states output voltage which is output characteristic  
03:28 17 are examples of internal operating characteristics.

03:28 18           So that's known in the prior art. It's  
03:28 19 known in the -- it's the conventional understanding of  
03:28 20 what internal operating characteristic is. It's  
03:28 21 acknowledged by the examiner, by the prior art, the  
03:28 22 applicants.

03:28 23           The applicants never disagree or disclaim  
03:28 24 this conventional understanding. What the applicants  
03:28 25 disagree on is that the examiner's belief that the

03:28 1 prior art discloses all the limitations of Independent  
03:28 2 Claim 1.

03:28 3 So according to prosecution history,  
03:28 4 which is intrinsic evidence, that this is known in the  
03:28 5 art and this is the understanding known in the art,  
03:28 6 that output voltage, output characteristics, are  
03:29 7 examples of internal operating characteristics.

03:29 8 Another helpful description that the  
03:29 9 specification gives to describe what an internal  
03:29 10 operating characteristic is, is that internal operating  
03:29 11 characteristics are characteristics that "can [be]  
03:29 12 control, alter[ed], relax or constrain[ed]" by the  
03:29 13 power converter internally.

03:29 14 They, like external sources, cannot be  
03:29 15 controlled by the power converter. Thus they are  
03:29 16 external. But if it's a characteristic that can be  
03:29 17 controlled or relaxed like an output voltage, it's an  
03:29 18 internal operating characteristic.

03:29 19 Figure 3 is a good illustration of what  
03:29 20 are internal operating characteristics. Here,  
03:29 21 highlighted in red, are all the characteristics that  
03:29 22 are internal operating characteristics, such as  $V_{out}$   
03:29 23 which is the output voltage, and  $I_{load}$ , the output  
03:30 24 current.

03:30 25 Now, again, they are internal

03:30 1 characteristics not just because they are in this  
03:30 2 schematic. It's an illustration. But they are  
03:30 3 internal because they're internal to the power  
03:30 4 converter, available in the power converter.

03:30 5 Furthermore, they are -- they are  
03:30 6 characteristics. All of these characteristics can be  
03:30 7 altered, changed or constrained by the power converter.  
03:30 8 Thus, they are internal operating characteristics.

03:30 9 This concludes my argument. I'll take  
03:30 10 any questions from the Court.

03:30 11 THE COURT: I do not have any questions.  
03:30 12 Thank you, Mr. Hsu.

03:30 13 MR. HSU: Thank you, Your Honor.

03:30 14 Oh -- oh.

03:30 15 THE COURT: Oh, yeah. We forgot the bus.

03:30 16 MR. HSU: I'm so sorry, Your Honor. Yes.  
03:30 17 I forgot that we had to argue the other term.

03:30 18 So moving on to the next term, which is  
03:31 19 like the defendant stated, closely related to our  
03:31 20 previous term, "internal operating characteristic."

03:31 21 Now, we're clear that what we're arguing  
03:31 22 here is that -- both parties are clear that MyPAQ  
03:31 23 position and the Court's preliminary construction is  
03:31 24 that an internal direct bus voltage does not exclude  
03:31 25 output voltage.



03:31 1 Now, initially the defendants argued that  
03:31 2 internal direct bus voltage is limited to an  
03:31 3 intermediate stage of the power converter. But when  
03:31 4 confronted with the specification, which that's the  
03:31 5 reason why we cited them, they backtracked that and  
03:31 6 said, okay, it's not an output voltage.

03:31 7 So this is the reason why we cited this  
03:31 8 figure in our brief, is to rebut their argument that an  
03:32 9 internal bus voltage is located exclusively at an  
03:32 10 intermediate point, which is not true. It can be  
03:32 11 located exclusively at a second power stage.

03:32 12 Now, regarding the point about -- their  
03:32 13 point about internal DC bus voltage cannot be an output  
03:32 14 voltage. That's in direct contradiction with the  
03:32 15 intrinsic evidence. U.S. Patent No. 6,084,792 which is  
03:32 16 cited by the patents that were asserted by MyPAQ. And  
03:32 17 there's many case laws, one of which states that -- one  
03:32 18 of which is -- sorry.

03:32 19 Many case laws states that if a patent or  
03:32 20 a reference is referenced by a patent, that that is  
03:32 21 intrinsic evidence, for example, U.S. Powell versus  
03:33 22 Home Depot versus USA. It's a Federal Circuit case in  
03:33 23 2011 which is also cited in our surreply brief.

03:33 24 So this intrinsic evidence is Patent --  
03:33 25 U.S. Patent No. 6,084,792 describes an output bus

03:33 1 voltage which is coupled to gates Q3 and Q4. Now, this  
03:33 2 is an internal bus voltage. It's internal to the power  
03:33 3 converter because it's coupled to internal components  
03:33 4 of a power converter, gates Q3 and Q4. And it's DC  
03:33 5 because the specification states that it's a DC power  
03:33 6 converter.

03:33 7 So the defendants' construction is in  
03:33 8 direct contradiction of intrinsic evidence, the  
03:33 9 understanding in the prior art and the understanding in  
03:33 10 the normal usage of the term "internal" and "output"  
03:33 11 and should be rejected.

03:33 12 Thank you, Your Honor.

03:33 13 THE COURT: Thank you, Mr. Hsu.

03:33 14 Mr. Thompsen?

03:34 15 MR. THOMPSEN: Yes. Thank you, Your  
03:34 16 Honor. Just a few points I'd like to make.

03:34 17 First of all, what you'll notice is --  
03:34 18 here. Let me pull up my slides real quick before I  
03:34 19 talk. What you'll notice, both in MyPAQ's briefing and  
03:34 20 today, they're using analogies outside the four corners  
03:34 21 of the patents to try to conflate internal versus  
03:34 22 output, right? They're using examples in the briefing  
03:34 23 such as the printer paper coming out of a printer. Or  
03:34 24 today they're using the body temperature being measured  
03:34 25 outside of somebody's body.

03:34 1 But what they're not doing is they're not  
03:34 2 looking at the specification. The specification, when  
03:34 3 that uses the terms "internal operating characteristic"  
03:34 4 or the term "output characteristic," they use those  
03:35 5 terms separately.

03:35 6 So with the Kyocera presumption you have  
03:35 7 to look first at the specification to either decide  
03:35 8 whether to overturn the presumption or to confirm it.  
03:35 9 And nowhere within the four corners of the patent  
03:35 10 specifications for the '759 or the '514 patent is there  
03:35 11 anything that overturns that presumption.

03:35 12 In fact, everything like this example  
03:35 13 here on Column 3 of the '514 patent, we see highlighted  
03:35 14 in blue a whole set of examples of internal operating  
03:35 15 characteristics. Nowhere in that set of examples is  
03:35 16 there the output voltage or an output characteristic.

03:35 17 Instead, the patent separately describes  
03:35 18 output characteristics separately. It uses different  
03:35 19 terms to mean different things. And nowhere within the  
03:35 20 four corners of the document does it actually conflate  
03:35 21 those terms or show any example that can be on the  
03:35 22 inside of a Venn diagram.

03:35 23 This is not a Venn diagram as you saw in  
03:35 24 their slides. There's not one example. You noticed  
03:36 25 their Venn diagram, they didn't have anything in the

03:36 1 middle. They can't point to anything in the middle.  
03:36 2 There's nothing in the specification that they can  
03:36 3 populate in the middle there if they're sticking to  
03:36 4 quotes from the specification.

03:36 5 The next thing I want to address is the  
03:36 6 Kyocera case. They say Kyocera's different because it  
03:36 7 was describing physical characteristics, in other  
03:36 8 words, physical components. But the internal operating  
03:36 9 characteristic here in output characteristics, they're  
03:36 10 still nouns, right? These are still actual real  
03:36 11 things. These are actual characteristics. This is not  
03:36 12 like a motorcycle and a car that can both be fast,  
03:36 13 right? These are actual things. They're used as  
03:36 14 nouns.

03:36 15 There're internal operating  
03:36 16 characteristics in one bucket, output characteristics  
03:36 17 in the other bucket. So the long-standing Federal  
03:36 18 Circuit case law dating back to the Becton case, most  
03:36 19 recently in the Kyocera case, it very much applies  
03:36 20 here.

03:36 21 The next thing I want to touch on is  
03:37 22 MyPAQ's pointing to what the examiner said. Now, the  
03:37 23 examiner said that the output voltage could be an  
03:37 24 example of an internal operating characteristic.

03:37 25 What the examiner said doesn't matter

03:37 1 here. What matters is what the applicant said. And  
03:37 2 the applicant said on the very next line, the  
03:37 3 applicants respectfully disagree.

03:37 4 And as we noted in our briefing, if you  
03:37 5 look to the later pages of the prosecution history,  
03:37 6 they actually disagreed with multiple parts having to  
03:37 7 do with both the system operational state as well as  
03:37 8 the control of the internal operating characteristic.  
03:37 9 And that's all in our reply brief, Your Honor.

03:37 10 The last thing MyPAQ does is, again, they  
03:37 11 try to point to the '792 patent as an example of what  
03:37 12 they call intrinsic evidence. But they do not deny the  
03:37 13 fact that it is -- it's actually extrinsic evidence.  
03:37 14 But what they do, they don't deny the fact that it's  
03:37 15 actually a different patent. It's not related to the  
03:37 16 '514 patent family. It's not described in the same  
03:38 17 type of circuitry. It's a different patent using  
03:38 18 different words to describe different circuitry. It's  
03:38 19 neither here nor there with how we should look to the  
03:38 20 '514 patent and the '759 patent for the terms at issue  
03:38 21 here.

03:38 22 That's all I have, Your Honor. Thank  
03:38 23 you.

03:38 24 THE COURT: Quick question, though, at  
03:38 25 least with regard to the examiner's statement.

03:38 1 MR. THOMPSEN: Yes.

03:38 2 THE COURT: Can that be an indication of  
03:38 3 what a person of skill in the art would understand from  
03:38 4 reviewing the specification?

03:38 5 MR. THOMPSEN: I don't think so. Because  
03:38 6 the examiner -- we don't know where the examiner got  
03:38 7 that from. And, you know, most importantly, the  
03:38 8 applicants disagreed, right? The applicants disagreed.

03:38 9 So when the applicants were speaking  
03:38 10 about the patent, they disagreed that an internal  
03:38 11 operating characteristic could be an output voltage.

03:38 12 THE COURT: Okay. And I'll tell you, I  
03:38 13 guess, my reading of that passage, at least, was that  
03:38 14 the applicant was disagreeing with the interpretation  
03:38 15 of the prior art, the referenced patent, and not  
03:39 16 necessarily the exact statement from the examiner. But  
03:39 17 I guess it would seem to me that at least the examiner  
03:39 18 comment may be circumstantial evidence, so to speak, of  
03:39 19 what a person of skill in the art might understand.

03:39 20 Let me ask you if -- I'm not sure how we  
03:39 21 can pull it up, but I would like to get your thoughts  
03:39 22 on, I think it's Slide 28. It's Figure 3, and I've  
03:39 23 lost which patent it's from. It's either the '514  
03:39 24 patent or '759, where it's the schematic.

03:39 25 MR. THOMPSEN: Figure 3. I should be

03:39 1 able to pull up a version of Figure 3 in my slides.

03:39 2 THE COURT: There we go. That's it.

03:39 3 And I believe the -- I believe MyPAQ's  
03:39 4 position was that this is an example of how you can  
03:39 5 have internal operating characteristics but they can  
03:39 6 also, if I remember right or understood right, feed  
03:39 7 into external sources that are feeding in, or be  
03:40 8 related to external -- or output characteristics.

03:40 9 And so would you explain to me whether  
03:40 10 you disagree with their reading of that or...

03:40 11 MR. THOMPSEN: I disagree that this --  
03:40 12 what I think MyPAQ is doing is it wants to point to,  
03:40 13 for example,  $V_{out}$  here. And they want to show, well,  
03:40 14 that starts inside the dashed line and then it goes  
03:40 15 outside to the load. And so they want to say that  
03:40 16 something that is an output can actually originate  
03:40 17 internally and thus it's an internal operating  
03:40 18 characteristic.

03:40 19 We believe that logic is circular, right?  
03:40 20 These lines, these dashed lines, again, as I noted,  
03:40 21 they're not a demarcation of what's internal versus an  
03:40 22 output, right?

03:40 23 If that was -- if that was the case, the  
03:40 24 fact that the controller 311 is outside of the dashed  
03:40 25 lines would mean that the controller is an external --

03:40 1 is an external piece. But we know from the claims that  
03:40 2 the controller, the power converter controller, is, in  
03:40 3 fact, a part of the -- is, in fact, a part of the power  
03:41 4 converter.

03:41 5 And so, again, I don't think these dashed  
03:41 6 lines represent anything of a demarcation between  
03:41 7 what's, you know, an output or, you know, external  
03:41 8 versus internal, right? I think it's a false dichotomy  
03:41 9 to put internal on one hand and external on the other  
03:41 10 hand based on these dashed lines. They simply do not  
03:41 11 describe the circuitry.

03:41 12 And by the way, what I'll note is that  
03:41 13 node, that  $V_{out}$  node, that's all one node. Electrically  
03:41 14 that's all one thing, right? And it's described -- the  
03:41 15 words of the patent describe it as an output  
03:41 16 characteristic. The words of the patent never describe  
03:41 17 it as an internal operating characteristic.

03:41 18 MyPAQ is just pointing to this figure to  
03:41 19 try to use circular logic to say, see, look, it must be  
03:41 20 certainly internal. They say, well, we can control the  
03:41 21 output voltage so it must be internal.

03:41 22 The fact that you can control an output  
03:41 23 voltage is actually, like we said, disparaged in the  
03:41 24 background section as well-known in the prior art.

03:42 25 Which is much different than the purported novelty of



03:42 1 controlling an internal operating characteristic.

03:42 2 THE COURT: Okay. I don't have any other  
03:42 3 questions at this point.

03:42 4 MR. THOMPSEN: Thank you, Your Honor.

03:42 5 THE COURT: Thank you, Mr. Thompsen.

03:42 6 And I think at this point the Court's  
03:42 7 just going to stay with its preliminary construction of  
03:42 8 both of those terms. I think I had it in the original  
03:42 9 chart as Term 6, "internal operating characteristics,"  
03:42 10 and Term 11, "the bus voltage." Where did it go?

03:42 11 And so I believe for purposes of today,  
03:42 12 that leaves us with one last issue to be argued. And  
03:42 13 that's whether or not the steps of method Claim 16 have  
03:42 14 any priority of order to them.

03:42 15 And so I see Ms. Zuniga approaching. So  
03:42 16 we'll turn it over to you for argument.

03:43 17 MS. ZUNIGA: Thank you very much, Your  
03:43 18 Honor. Krisina Zuniga from Susman Godfrey for  
03:43 19 plaintiff MyPAQ Holdings.

03:43 20 On the method steps of Claim 16, MyPAQ  
03:43 21 asks that the Court reconsider its preliminary ordering  
03:43 22 that Step 3 cannot begin until Step 2 is completed.  
03:43 23 And that is for two primary reasons: One, the step of  
03:43 24 providing may not be completed by the time sensing  
03:43 25 begins. And two, sensing can begin before something is

03:43 1 sensed.

03:43 2 First, the specification states that --  
03:43 3 see if I can get the slides to work.

03:43 4 The specification states that time scales  
03:43 5 can be substantially different. And this is true for  
03:43 6 "providing a signal to identify operation of said  
03:43 7 processor system in said state of power drain 2." In  
03:43 8 other words, a signal can be a long signal. But once  
03:43 9 sent, a power level may be able to be sensed even while  
03:44 10 the signal is continuing.

03:44 11 I think by analogy, Your Honor, if I were  
03:44 12 to yell "fire," the signal could be sensed even before  
03:44 13 I completed providing the signal, yelling "fire." The  
03:44 14 signal would be understood even before it's completed.

03:44 15 Second, the act of sensing can begin even  
03:44 16 before something is sensed. As stated again in the  
03:44 17 specification, to sense could "require a period of  
03:44 18 time." That's at the top part of the clip on the  
03:44 19 slide.

03:44 20 Thus, Step 3 can begin before Step 2 is  
03:44 21 completed. This caricature is meant by analogy that  
03:44 22 one can begin sensing -- in this caricature,  
03:44 23 smelling -- even before something is sensed, before an  
03:44 24 odor is smelled. The same is true here.

03:44 25 At bottom, Your Honor, the claims don't

03:44 1 require a particular order. None is stated in the  
03:44 2 claim language. And it is therefore defendants' burden  
03:44 3 to show that it should be imposed. They have not met  
03:45 4 that burden.

03:45 5 And MyPAQ therefore respectfully requests  
03:45 6 the Court not require that Step 2 be completed before  
03:45 7 Step 3 of Claim 16 can begin.

03:45 8 Thank you.

03:45 9 THE COURT: All right. Thank you.

03:45 10 All right. Mr. Zhang, yeah, please go  
03:45 11 ahead.

03:45 12 MR. ZHANG: Good afternoon, Your Honor.  
03:46 13 My name is Boyang Zhang and I'm a first-year associate  
03:46 14 at Baker Botts.

03:46 15 THE COURT: Very good. Mr. Zhang, I'm  
03:46 16 going to ask you to try and speak just a little slower,  
03:46 17 because I notice right out of the gate you were talking  
03:46 18 kind of fast. And so it'll make Ms. Davis' job a  
03:46 19 little easier.

03:46 20 MR. ZHANG: Yes, Your Honor. I'll relax.

03:46 21 So I'll be speaking about the order with  
03:46 22 the method steps. And the method steps are from Column  
03:46 23 16 of the '514 patent.

03:46 24 The Court's preliminary construction is  
03:46 25 that no ordering except Step 2 cannot begin until after

03:46 1 the stay of the power drain is established in Step 1.  
03:46 2 In Step 3 you cannot begin until Step 2 completes.  
03:46 3 MyPAQ is not disputing the first ruling of the  
03:46 4 preliminary construction, and they are only disputing  
03:46 5 the second one.

03:46 6 So here are the four steps of the Column  
03:46 7 16 of the '514 patent. So if we -- the case law is  
03:47 8 clear that a claim requires an ordering steps when the  
03:47 9 claim language, as a matter of logic or grammar,  
03:47 10 requires that the steps be performed in the order  
03:47 11 written. And this is exactly the case here. So this  
03:47 12 is true for both Step 1 and Step 2, and also for an  
03:47 13 order of Step 2 and 3.

03:47 14 The claim language here requires that you  
03:47 15 need to have a signal provided first in Step 2 and then  
03:47 16 you have the power level to be sensed in Step 3. And  
03:47 17 I'd like to point to the language of the claim here  
03:47 18 which is "in response to." So this language is plain  
03:47 19 and it's clearly stating that the signal has to be  
03:47 20 provided in Step 2.

03:47 21 And then MyPAQ used this fire analogy,  
03:47 22 but that's also extrinsic evidence. It's not really  
03:47 23 the plain language. And the claim -- the plain  
03:48 24 language of the claim dictates that ordering must be --  
03:48 25 the Step 3 must be -- cannot begin before Step 2

03:48 1 completes.

03:48 2 And also the specification also supports  
03:48 3 the construction that the signal must be provided  
03:48 4 before the -- before the power level can be sensed. So  
03:48 5 it's our position that we agree with the Court's  
03:48 6 preliminary construction.

03:48 7 Thank you, Your Honor.

03:48 8 THE COURT: Okay. Thank you.

03:48 9 Ms. Zuniga?

03:48 10 MS. ZUNIGA: Just a couple quick points.  
03:48 11 Thank you, Your Honor.

03:48 12 First, the steps do not recite an order.  
03:49 13 So, again, the presumption under well-established  
03:49 14 Federal Circuit law is that they don't require one.

03:49 15 Defendants rely on the fact that certain  
03:49 16 steps refer to items in earlier steps. But the Federal  
03:49 17 Circuit has held, as it did in *Respironics*, and that's  
03:49 18 303, Federal Appendix 865, the pincite is 870, that  
03:49 19 such references are not determinative. This is a quote  
03:49 20 from the opinion. "In the method claim a step that  
03:49 21 recites 'said' or 'the' referring to an earlier object  
03:49 22 does not always have to be performed after the step  
03:49 23 that first introduces the object."

03:49 24 Second, no evidence compels a different  
03:49 25 result. In fact, the specification explains that the

03:49 1 processes are performed in a feedback loop  
03:49 2 configuration. What that means is the steps are  
03:49 3 performed as a cycle, and sometimes cycles overlap.  
03:50 4 They're not discrete steps the same way that there were  
03:50 5 not discrete steps in the Ancora opinion.

03:50 6 There the Court held that there was no  
03:50 7 evidence to support a construction requiring the  
03:50 8 discrete steps or an order as to when they began.  
03:50 9 Defendants, like the parties in Ancora, have failed to  
03:50 10 overcome the presumption that no order is required  
03:50 11 where none is recited.

03:50 12 And for that reason, Your Honor, we again  
03:50 13 respectfully submit that the Court not require that  
03:50 14 Step 3 be completed before -- excuse me -- that Step 2  
03:50 15 be completed before Step 3 can begin.

03:50 16 THE COURT: Okay. Let me go off the  
03:50 17 record just briefly.

03:50 18 (Pause in proceedings.)

03:52 19 THE COURT: Okay. We'll go back on the  
03:52 20 record.

03:52 21 And we're going to -- the Court's going  
03:52 22 to stay with the preliminary construction as well on  
03:52 23 the method steps and the ordering of at least, you  
03:52 24 know, the Steps 2 and 3 as stated in the preliminary  
03:52 25 constructions that were provided.

03:52 1 And I think that's the last term that we  
03:52 2 were going to take up today. So is there anything else  
03:52 3 I need to address from the plaintiff?

03:52 4 Mr. Chan?

03:52 5 He's approaching.

03:52 6 MR. CHAN: This is Alfonso Chan. I don't  
03:52 7 believe so. But there was one point that Mr. Sirota  
03:52 8 wanted to address.

03:53 9 Perhaps you want to come up.

03:53 10 THE COURT: Go ahead, Mr. Sirota.

03:53 11 MR. SIROTA: That was just a matter for  
03:53 12 the record.

03:53 13 One of the terms not argued today, "the  
03:53 14 connector receptacle" was found indefinite. In our  
03:53 15 briefing we noted that there were several other terms  
03:53 16 exactly like it. In the lead-up to the briefing here  
03:53 17 defendants were limited in the number of terms that  
03:53 18 they could brief, so we left them out, and there's a  
03:53 19 footnote in our brief explaining that.

03:53 20 It's really at this point, I think, just  
03:53 21 a matter for the record that we believe that those  
03:53 22 terms are the same and should be decided the same. But  
03:53 23 of course we haven't yet briefed it, but I did just  
03:53 24 want to make a record of it.

03:53 25 THE COURT: Okay. And that would be --

03:53 1 that would be cited at least in a footnote during  
03:53 2 the --

03:53 3 MR. SIROTA: It is. It's in our opening  
03:53 4 brief at Page 20, Note 4. And in particular they  
03:53 5 relate to Claims 39, 42 and 63 of the '489 patent.

03:53 6 THE COURT: Okay. And we'll look at  
03:53 7 that, and if we decide briefing's in order, we'll let  
03:53 8 the parties know and obtain briefing on it if need be.

03:54 9 MR. SIROTA: Thank you, Your Honor.  
03:54 10 Appreciate it.

03:54 11 THE COURT: And wait, Mr. Chan.

03:54 12 Mr. Shelton, we'll let him address the  
03:54 13 Court because I suspect you'll probably need to respond  
03:54 14 to Mr. Shelton as well. So I'll let you do it all at  
03:54 15 once.

03:54 16 MR. SHELTON: Thank you, Your Honor.

03:54 17 I just wanted to confirm two things: The  
03:54 18 first is that any term that was not argued by a party  
03:54 19 today would be preserved for appeal.

03:54 20 THE COURT: Absolutely.

03:54 21 MR. SHELTON: Thank you.

03:54 22 And the second item, Your Honor, is that  
03:54 23 Judge Albright has what he calls the mini Markman  
03:54 24 process. And there's going to be a couple of ifs in  
03:54 25 this question. The first is if any of the defendants



03:54 1 are not transferred out of this Court, and if for a  
03:54 2 term that was construed with its plain and ordinary  
03:54 3 meaning by this Court, and if the plaintiff then urges  
03:54 4 a meaning in its opening expert report on infringement  
03:54 5 that does not comport with the plain and ordinary  
03:54 6 meaning, would the defendants be able to request that  
03:54 7 mini Markman as Judge Albright holds?

03:55 8 THE COURT: Well, and I can't speak  
03:55 9 specifically for Judge Albright, but I would expect he  
03:55 10 would take it up just like he would in any other case  
03:55 11 and decide whether to have a mini Markman or not.

03:55 12 I can tell you, just for consideration  
03:55 13 and since clients are on it, if all the parties consent  
03:55 14 to trial before the magistrate, I can answer all these  
03:55 15 questions --

03:55 16 (Laughter.)

03:55 17 THE COURT: -- for you. So it's  
03:55 18 something to think about.

03:55 19 But I would expect he would take it up  
03:55 20 just like he would in any other case, and that that  
03:55 21 option would be available if the Court deems it  
03:55 22 appropriate at the time. Given all the ifs.

03:55 23 MR. SHELTON: Very good, Your Honor.  
03:55 24 Thank you. That's all.

03:55 25 THE COURT: You're welcome.

03:55 1 Mr. Chan?

03:55 2 MR. CHAN: Thank you, Your Honor. This  
03:55 3 is Alfonso Chan.

03:55 4 I just wanted to state on the record that  
03:55 5 we haven't yet had a chance to consider or evaluate any  
03:55 6 of the proposals from Mr. Sirota. So if that should  
03:55 7 evolve later on, then we'll address it at that  
03:55 8 appropriate time.

03:55 9 THE COURT: That sounds good. And just  
03:55 10 for clarification -- or clarity for both the record and  
03:56 11 the parties, any terms not argued today, obviously, or  
03:56 12 positions in the briefing, are preserved for appeal.  
03:56 13 Nobody's waived anything by not arguing a term today  
03:56 14 that was briefed. And if it becomes necessary to  
03:56 15 address the issues in Footnote 4 of the opening brief,  
03:56 16 we'll give the parties the opportunity to be heard on  
03:56 17 that as well.

03:56 18 MR. CHAN: Thank you very much, Your  
03:56 19 Honor.

03:56 20 And just one point here, not related to  
03:56 21 the proceeding, but I would like to recognize my fellow  
03:56 22 veteran, Chris Hsu.

03:56 23 If you could stand, please.

03:56 24 This is his first hearing after leaving  
03:56 25 the Air Force JAG Corp a couple of months ago. And so

03:56 1 I hope it's a pleasant experience on this side of the  
03:56 2 bar.

03:56 3 THE COURT: Well, and first, Mr. Hsu,  
03:56 4 thank you for your service. And second, I think the  
03:56 5 fact that you were in the JAG explains why you didn't  
03:56 6 look a whole lot more nervous as a first argument.

03:57 7 MR. HSU: I was very nervous, especially  
03:57 8 having to argue against very capable and much more  
03:57 9 experienced attorneys on the other side. So thank you,  
03:57 10 Your Honor.

03:57 11 And thank you, opposing counsel, for your  
03:57 12 indulgence and patience.

03:57 13 THE COURT: Our pleasure.

03:57 14 MR. CHAN: Your Honor, I hope you paid  
03:57 15 attention that he was standing at attention when you  
03:57 16 came in and out of chambers -- of the courtroom. And  
03:57 17 he's wearing his polished uniform shoes for you.

03:57 18 THE COURT: All right. I can't quite see  
03:57 19 those from up here. But I noticed he had excellent  
03:57 20 posture as everybody stood at attention.

03:57 21 So with that, I appreciate all of you. I  
03:57 22 appreciate all of you coming in person today. It's  
03:57 23 great to see everybody in court and in Waco. And we'll  
03:57 24 stand adjourned.

03:57 25 (Hearing adjourned)

1 UNITED STATES DISTRICT COURT )  
2 WESTERN DISTRICT OF TEXAS )

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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 20th day of May 2022.

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