EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No.: 10-23580-Civ-UNGARO

MOTOROLA MOBILITY, INC.,   ) VOLUME 2B
)
            Plaintiff,   )
)
        -v-   )
)
APPLE, INC.,   )
) Miami, Florida
            Defendant.   ) October 18, 2011
) 3:06 p.m.

TRANSCRIPT OF MARKMAN HEARING

BEFORE THE HONORABLE URSULA UNGARO

U.S. DISTRICT JUDGE

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(Continued)

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10   (Call to order of the Court)

11   THE COURT: Okay. You can have a seat. How are we

12   doing this?

13   MR. HASLAM: It's me. Bob Haslam.

14   THE COURT: How much time do you need?

15   MR. HASLAM: I'm going to ask for an hour, but I think

16   I can do it in less.

17   THE COURT: An hour a side? Do you want some rebuttal?

18   MR. HASLAM: Yes.

19   THE COURT: Ten minutes?

20   MR. HASLAM: I will take 10 minutes.

21   As I have been sitting here the last two days, I have

22   had several thoughts, but two I thought I might share with you

23   as sort of an introduction on the '119 patent perhaps that's

24   going to be applicable to some of the other patents.

25   There is a judge in California who has done a lot of

1   patent cases.

2   THE COURT: That poor judge.

3   MR. HASLAM: He would sympathize and probably empathize

4   with what you are going through here yesterday, today, tomorrow,

5   and after we leave. He would give talks to the bench and also

6   to other judges about the process. In one of his favorite

7   examples was a claim that they had that had the term

8   "substantially parallel." When I heard him say that I thought

9   to myself, when I went to school there were parallel lines and

10   nonparallel lines, and I don't know what "substantially

11   parallel" means, so I empathize with him.

12   The second thought that I had, and I did have more than

13   two thoughts the last several days, but the second thought is I

14   don't think the '119 patent is over there in the category of

15   substantially parallel. It's actually at the other end of the

16   spectrum.

17   I suspect you will either have or will wonder on this

18   one, as you did ask on a prior one, why do I need to construe

19   this at all. One of the things I'm going to elaborate on during

20   my presentation is why these terms, which may seem like they are

21   ordinary terms even to the people who might sit in the jury, why

22   there is still a dispute that requires your resolution. It's

23   because we know what mischief, because of other discovery in

24   this case, we know what mischief Motorola will attempt to cloak

25   it's ordinary meaning in.

1   THE COURT: They seem they are mischievous.

2   MR. HASLAM: The first page there it just has the

3   patent; again, it's for reference. I want to start here with

4   what the problem that the '119 patent was aimed at purportedly

5   solving. And the problem they faced was back in the '90s when a

6   user had multiple pagers, changes that were made on one pager

7   were not automatically synchronized with the other. The

8   solution they came up with was automatic synchronization of

9   changes made on one pager -- with one user's pager with that

10   user's other pagers.

11   One of the slides that we use in the tutorial, and it

12   comes right off the specification, an example that the inventors

13   gave is the beach pager, the neon beach pager during the day

14   where the user is on the beach receiving and reading and

15   deleting or saving or protecting messages weren't being

16   automatically made those same changes on his evening black

17   pager. So they wanted to come up with a way that they could

18   avoid the tedious task of having to reread messages, resave

19   them, redelete them, or do whatever at home.

20   Next slide, slide 6, just graphically illustrates what

21   the problem was. The specification, slide 7, is the background.

22   And the background of the invention, again, highlights what they

23   thought the problem was. The user is faced with a different

24   pager and, therefore, has to make the changes.

25   At the end of that portion that I have put up on slide

1   7, they tell us what their solution -- what they were looking

2   for to solve the problem, and they stated, "Thus, what is needed

3   is a way to have message status changes made on any one of the

4   user's pagers automatically made on the user's other pagers."

5   The point I'm going to come back to, and we are going

6   to see it over and over again, is the word "automatically,"

7   which is one of the terms that we believe should be included in

8   the Court's construction.

9   I have put up here Claim 1, and I have walked through

10   it, but I want to move on because I want to go through Claim 1

11   with an animation we have, which I think illustrates what the

12   invention is as described in Claim 1.

13   What we see here on the screen on slide 12 is in the

14   upper, left-hand corner is the neon beach pager, and down below

15   we see the black evening pager. Again, during the daytime at

16   the beach, and a first message has been sent to me if I'm the

17   person at the beach and waiting to go home from my home pager.

18   In the terminology of the claim, we have both pagers, because we

19   have the same address, have received a message, and the first

20   status is unread.

21   The claim goes on to describe a change in the -- there

22   we have the first message coming in, first status unread. The

23   claim goes on to describe a manual input, in this case,

24   causing -- what we see in here is on the first pager the person

25   read the message and then decided to delete it. That's the

1   second status going from unread to delete. A second message

2   with that status was sent in the claim term the wireless

3   transceiver, which is a tower in the wireless network, the

4   paging network, and we have seen in the nighttime at that point

5   in time when the delete was made on my beach pager, it hadn't

6   yet been made on the nighttime pager.

7   What we see here in the terms of the claim is in

8   response to the second message, a third message is being sent.

9   And in the third message the claim provides that the second --

10   the third message has something that is indicative of the second

11   status, indicative, in this case, of the delete.

12   And the claim goes on in the last element to say in one

13   of the other pagers, in this case my home pager, in response to

14   receiving the third message, which is the one that came from the

15   wireless infrastructure, changing the first status of the first

16   message, which was the one that I had received the same as at

17   the beach, to the second status, which in this case is delete.

18   So what I put on the screen here are the proposed

19   constructions. The claim term we are going to focus on is

20   "responsive to receiving the second message, transmitting a

21   third message."

22   Our proposed construction is "upon receiving the second

23   message, automatically transmitting a third message."

24   THE COURT: So what would it be if it wasn't automatic?

25   I mean, that's really the only concept that you introduce here,

1   right?

2   MR. HASLAM: It is. I can give you an example. Later

3   on I have got an example of the accused device that will

4   illustrate what the device is. I thought of another example

5   that might be a little more user friendly.

6   If I'm at home at night and I hear somebody breaking

7   glass downstairs and I call 911, a policeman will be dispatched

8   as a result of or in response to my call --

9   THE COURT: Right.

10   MR. HASLAM: -- and will come to my house.

11   Now, suppose I'm not that smart, so I stay in my house,

12   doorbell rings, a policeman comes to the door soliciting funds

13   for the Policemen's Athletic League. The policeman came to my

14   door, but he did not come in response to the 911 call, and

15   that's an argument that Motorola is going to make in the accused

16   device.

17   There is no third message within the context of the

18   claim that is in response to or upon receiving the second

19   message automatically sent. They are going to, and I'm going to

20   talk later about where they are going to try to get that point

21   across in the claim language and out of the specification.

22   I think you have hit the nail on the head. The patent

23   is all about, and I'm going to show you both in the

24   specification, in the claim language, and in the prosecution

25   history is all about in response to receiving the second message

1   there is a cause-and-effect relationship that is a result of

2   that or caused by the receipt of the second message that the

3   third message is dispatched. That's the essence of the dispute.

4   So what I put up here is a big red question mark is

5   Motorola's proposed construction is to leave it to argument to

6   the jury to what "responsive to receiving the second message"

7   means. As my somewhat clumsy example of a 911 call, what they

8   are going to argue is the policeman who is coming to solicit

9   funds for the PAL is somehow in response to my 911 call when he

10   doesn't even know about the 911 call.

11   So here is what the dispute -- one way of phrasing the

12   dispute, "when receipt of the second message causes automatic

13   transmission of the third message," or in Motorola's view, as we

14   believe their position to be, "whether receipt of the second

15   message need not cause transmission of a third message."

16   Here is an overview of the arguments I'm going to make.

17   We find support both in the claim language, specification, and

18   the prosecution history. And let's look first of all at the

19   claim language. I have up here Claim 1, and I have numbered

20   three spaces and color coded them. We see the term "responsive

21   to" in three places in Claim 1. First, is changing the status

22   of the first message to a second message responsive to an input

23   to the one transceiver. Transceiver is in this claim language

24   for purposes of the patent was one of the pagers.

25   As we saw the input in the example in the patent is me

1   at the beach, pushes a button to delete a message. The second

2   place we see it is where the claim dispute exists that we are

3   going to be resolving here, and that is responsive to receiving

4   the second message, transmitting a third message. And the last

5   place is in the last element where the claim says, "responsive

6   to receiving the third message, changing the first status."

7   We know from both parties' legal tutorials that as a

8   very general but very often almost always true, the same term

9   used in a claim should be given the same meaning.

10   When we look at how the --

11   THE COURT: Could you go back. I'm not sure I

12   understand this mechanically. "Responsive to receiving the

13   third message changing the first status of the first message to

14   the second status."

15   MR. HASLAM: Yes.

16   THE COURT: This is we are still talking about in the

17   transceiver that is not the one that originally received the

18   message.

19   MR. HASLAM: Right. That's because since both pagers

20   have the same address, when the first message came in in the

21   claim term, which is, for example, an e-mail from my wife, or

22   today it would be, back then it would be a page from somebody,

23   that goes to both the neon pager and nighttime pager, and they

24   call that the first message.

25   THE COURT: So then when you open the message it's

1   read, so that sends a message to the other beeper saying it's

2   been read?

3   MR. HASLAM: Correct.

4   THE COURT: And then there is a third message that's

5   sent to the beeper itself saying change its status to read?

6   MR. HASLAM: Right. And the second message -- to be

7   precise, the second message is the one that goes from my beach

8   pager to the wireless network. The wireless network turns

9   around the third message which says change your status from the

10   first status in your example which was unread to read, which

11   that's what the last element is talking about.

12   THE COURT: Okay.

13   MR. HASLAM: In those three places they use the term

14   "responsive to." When we look at the specification, when it

15   talks about some of those limitations, it uses words of

16   causation. So Count 5, lines 45 and 46, it's talking about

17   changing the status on the beach pager here, the act of

18   depressing the button causes the status of message 205, which is

19   the first message, to change from unread to read in pager 130.

20   In the parlance of the patent, pager 130 is my neon beach pager.

21   Likewise at column 10, lines 50 to 53, and this is on

22   slide 24, it says: When a first status in a transceiver is

23   changed to a subsequent status, as a result of a subsequent

24   input to the first transceiver, the invention provides a method

25   of automatically changing the first status in a second

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1   transceiver to the subsequent status.

2   So here again in the highlighted portion it uses words

3   of causation when it talks about what "responsive to" means.

4   Because in the claim, remember, in the first part it changes a

5   first message from a first status to a second status responsive

6   to an input, and the specification specifically is talking about

7   that change based on a subsequent input being as a result of.

8   And if we look at the papers in your binder, it's

9   docket number 93-3, it's a notice of allowabilty. The examiner

10   in explaining why he was allowing the patent, among other

11   things, said that "wherein status changes made on a first pager

12   are wirelessly communicated to an infrastructure which

13   automatically communicates such status changes to other pagers,

14   thus causing the other pagers to make corresponding changes in

15   their status."

16   That's in the third claim element I was talking about

17   responsive to receiving the third message changing the second

18   message.

19   So if we look at the claim language mapped up with the

20   specification, we see that the patentees use "responsive to" in

21   a variety of ways to mean something causing something else, as a

22   result of, caused by, or causing something.

23   Now, let's look at what the specification says about

24   "responsive to" receiving the second message transmitting a

25   third message. In the background of the invention, and I

1   alluded to this in an earlier slide, this is column 1, line 66

2   to column 2, line 2 on slide 28, in describing after laying out

3   what the problems with the prior art were, they state the

4   problem that they were going to solve. "What is needed is a way

5   to have message status changes made on any one of the user's

6   pagers automatically made on the user's other pagers."

7   I'm not going to belabor it, but both sides in their

8   tutorials said looking at the problem that the inventors were

9   trying to solve is a helpful way of defining or looking at what

10   should be the proper scope of the claim giving the inventor

11   nothing less than what they claimed, but also nothing more than

12   what they claimed.

13   Then if we look at the abstract, and I know there was a

14   lot of discussion legally about the significance of the

15   abstract, and the cases do look at it. There is actually a very

16   thick book that the Patent Office has called the Manual of

17   Patent Examining Procedures.

18   THE COURT: Where is the abstract?

19   MR. HASLAM: The abstract is on the front page of the

20   patent.

21   THE COURT: Oh. Right. I have got it on.

22   MR. HASLAM: I have got it on the screen here, but it

23   is supposed to be a succinct statement of the technical

24   disclosure and of what is new. That's something that is

25   specified at Section 608.018(b) of the Manual of Patent

1   Examination Procedures. I don't necessarily suggest that you

2   need to go there, but there is guidance as to what it is.

3   THE COURT: Can I make a suggestion? Without

4   understanding what their argument is, it's kind of useless to me

5   because what you are saying makes perfect sense. I need to

6   understand their position on why what you are saying doesn't

7   make perfect sense.

8   MR. HASLAM: I'm perfectly happy on this claim term to

9   sit down. There is another term.

10   THE COURT: There is, right.

11   MR. HASLAM: I'm happy to skip to that.

12   THE COURT: Why don't we do that, and then I will give

13   you a little more time in rebuttal if you have it.

14   MR. HASLAM: All right.

15   The second term which is in that same clause that we

16   were looking at earlier is what does it mean to be indicative of

17   the second status. This is one I suspect that reasonable minds

18   might look at this and say why should I have to construe this.

19   It seems to be reasonably clear what it means.

20   However, we believe it should be made clear that it is

21   descriptive of the changed status. Motorola's proposed

22   construction is ordinary meaning, or here they have given us a

23   proposed ordinary meaning definition, which is "providing an

24   indication of the second status."

25   What we think the dispute might be, but Motorola will

1   have to clarify this for us, we believe that the third message

2   contains the changed status. That is whether the changed status

3   is read, deleted, protected, or some other status. We believe

4   that what Motorola is contending for is that the third message

5   merely indicates that a status change has occurred without

6   actually communicating what the new status is.

7   What I have shown on slide 56, it's a rather busy

8   slide, but I have tried to condense some of the relevant

9   messages and some of the relevant claim terms in one graphic to

10   illustrate why we believe that the third message must contain

11   what the status change is as opposed to merely that a status

12   change has occurred. Again, I have shown the first pager, the

13   beach pager, already having deleted the message, so that's the

14   second status.

15   THE COURT: I don't get this. I mean, then it goes on

16   to say, "and responsive to receiving the second message,

17   transmitting a third message indicative of the second status."

18   So whatever the indication is it's got to be parallel to the

19   second message. So it's got to have some informational content.

20   MR. HASLAM: Precisely. If we actually look at the

21   claim, which I put up there at slide 58, the last claim element

22   says, "receiving the third message and responsive to receiving

23   the third message changing the first status of the first message

24   to the second status."

25   If you don't know what the second status is in that

1   third message, then the home pager doesn't know what to change

2   the status to. If I --

3   THE COURT: I'm not sure I understand this distinction

4   between indicative and descriptive.

5   MR. HASLAM: If indicative means simply that the third

6   message says there has been some status change without telling

7   me what it is. As I said --

8   THE COURT: Okay. I really need to understand how they

9   could take that position, because it's obvious, I think from it

10   here, that the third message has to be reflective in some way of

11   whatever the second message was. Maybe it doesn't have to be

12   words. Maybe it has to be --

13   MR. HASLAM: A bit.

14   THE COURT: Something.

15   MR. HASLAM: This is the example of the three bits, 0

16   was unread, 1 is read.

17   THE COURT: What difference does it make if they assign

18   a number to the information?

19   MR. HASLAM: It doesn't. But I believe what we believe

20   Motorola is contending for is the possibility that the third

21   message simply says some status has changed leaving the second

22   transceiver to guess whether I saved it, whether I deleted it.

23   If I have got a bank stock transaction that I get at my beach

24   pager that I want to make sure I save, and all I send to my home

25   pager is some status has changed, how does it know what to do?

1   How does it know whether to delete it? Save it? Do something

2   else?

3   That's why I said at the outset this is one where the

4   Court might look at me like I have two horns because it seems

5   obvious that it has to say something in some fashion. Whether

6   it's words or in digital data, it has to say something about

7   what the change was.

8   Given that and given that I think it's reasonably

9   obvious that's what it has to mean, I'm prepared to sit down and

10   let Motorola explain.

11   THE COURT: Let me hear from Motorola. I need to

12   understand Motorola's position.

13   MR. PASTOR: We also think that the dispute here is

14   really easy to solve. I would like to start with the first

15   issue, which is "responsive to receiving the second message,

16   transmitting a third message." The claim language here is very

17   clear. This is not an issue where there is any type of term

18   that a person of ordinary skill --

19   THE COURT: If I don't add the word "automatic," how

20   would Motorola construe this term?

21   MR. PASTOR: You have the whole point there, if you

22   don't add the word "automatic." Why is there a requirement to

23   add the word "automatic" to the claim at all? The claim does

24   not contain the word --

25   THE COURT: If I don't infer automatic from this

1   language, what is going on here?

2   MR. PASTOR: Before you even reach that issue, you have

3   to ask what they are really talking about with automatic.

4   THE COURT: I think what I'm talking about is what is

5   this invention about?

6   MR. PASTOR: Let's go back to the background of the

7   invention. The background of the invention, if you look at

8   column, you know, we talked about this earlier on, we talked

9   about column 1. You can start at line 35: If the user reads,

10   deletes, or protects the message on the carried pager, the

11   message remains as unread.

12   So basically what this is talking about is the user

13   then has to manually put in the change in the status in the

14   message on all of his or her devices. Now, what the invention

15   said is that you can have a change in the status amongst all

16   your devices without user intervention.

17   THE COURT: Right, automatically.

18   MR. PASTOR: That is hey, wow, it's done automatically.

19   They are talking about adding the word "automatically" in a

20   particular part of the claim. What they have identified in

21   their alleged noninfringement position is that automatically --

22   we don't do automatically because it's not immediate.

23   THE COURT: I'm sorry, who says that?

24   MR. PASTOR: Apple. Apple says we don't infringe this

25   claim because our system it doesn't have a third message

1 transmitted that's immediately sent. And they say it's not

2 automatically sent. What they are really saying by including

3 that word "automatically" here, we don't infringe because --

4 THE COURT: "Automatic" and "immediate" don't mean the

5 same things.

6 MR. PASTOR: I agree what you have now identified is

7 there is a problem with their construction. Who knows what it

8 means? We are going to have a construction of a construction.

9 THE COURT: It means without using interaction.

10 MR. PASTOR: So if what they are proposing is that in

11 response to receiving the second message that there is a

12 transmission without user interaction? Is that what they are

13 proposing?

14 THE COURT: I don't know. I will ask them.

15 Is that what you are saying?

16 MR. HASLAM: No, Your Honor.

17 THE COURT: You are saying it has to be immediate?

18 MR. HASLAM: No, we are not saying that either.

19 THE COURT: Okay.

20 MR. HASLAM: It has to be caused by the receipt of the

21 second message, not caused by something else. For example, in

22 my 911 where the policeman gets to my house because he is next

23 door on another call immediately in response to my 911 call or

24 whether it takes him a minute, the fact is that he got to my

25 house is in response to, caused by, my phone call.

1   We are not arguing for immediate. What we are going

2   for is it has to be caused by the receipt of the second message.

3   When I get back up I will show you.

4   THE COURT: So the issue is not the automatically. The

5   issue is it's a response to the second message?

6   MR. HASLAM: It's caused by.

7   MR. PASTOR: Now we have gone down the rabbit hole of

8   what "automatically" means. The claim language already talks

9   about a cause and effect. It talks about responsive to

10   receiving the second message, transmitting a third message. I

11   don't see how the word "automatically" adds anything but

12   confusion to the claim, because we have now heard that

13   automatically does not mean without user intervention, which is

14   the problem that the inventors were trying to solve. It means

15   something else, and this what they have just described, this is

16   the first time they have told us.

17   THE COURT: They are saying once the second message is

18   input, there is no user intervention, they agree with that, it's

19   automatically sent. It's just that they are saying that the

20   automatic transmission is triggered by the receipt of the second

21   message.

22   MR. HASLAM: That's right. I think he just said that

23   this third message is caused by receipt of the second. If they

24   will stipulate that the third message is caused by the receipt

25   of the second message, we have no dispute. We can resolve that

1   and take that language.

2   MR. PASTOR: The third message is transmitted in

3   response to receiving a second message.

4   THE COURT: I don't get the dispute.

5   MR. PASTOR: We are talking about -- there is no

6   dispute of the ordinary meaning. The ordinary meaning says

7   responsive to receiving a second message transmitting a third

8   message. What they are trying to say is, and it's not just that

9   there is causation, but there is nothing in between.

10   THE COURT: Well, they say -- no, they are not saying

11   that. They are not saying automatic means immediate.

12   MR. PASTOR: Now they are being a little bit tricky

13   again. Now what they are saying in their noninfringement

14   position --

15   THE COURT: They think you are mischievous.

16   MR. PASTOR: That's okay. I my be mischievous, but not

17   today.

18   The point is if you look at their noninfringement

19   position, I guess we can go to their slide 46 -- might as well

20   start at 45.

21   THE COURT: Is there some difference here between

22   "responsive" and "caused by"?

23   MR. PASTOR: Well, is there a difference between

24   "responsive" to and "caused by"? You know, I would have to look

25   at the ordinary meaning of "caused by." I don't have a

1   definition of "caused by." I generally think that we are

2   talking about that it is both of those terms would be talking

3   about one of the --

4   THE COURT: It's a trigger. It's just a trigger.

5   MR. PASTOR: It's whether it's the sole trigger or

6   whether it's just part of the trigger. Now, you can be

7   responsive to something without being -- that something being

8   the sole reason why you have performed an action. In other

9   words --

10   THE COURT: In this context what else could it possibly

11   be?

12   MR. PASTOR: Well, because the patent specification

13   talks about transmitting the second message or a number of

14   different messages, and it talks about there could be delays in

15   the system. This goes back to what the invention is. The

16   invention is not talking about a system of synchronizing

17   messages where there is no delays in the system whatsoever or

18   whether, you know, after receiving one of the messages --

19   THE COURT: Do you think responsive connotes immediate?

20   MR. PASTOR: No, I do not. I do not. I don't think

21   there is any requirement.

22   THE COURT: Do you think that's why they are trying to

23   sneak this word "automatic" in, because they want to say that

24   responsive means immediate?

25   MR. PASTOR: You just heard that responsive does not

1   mean without user intervention -- I'm sorry, that automatic,

2   what they were trying to do does not mean without user

3   intervention, which was what the invention was, which is what

4   the references in the specification and prosecution history

5   referred to, what you understood it to be. That's not what they

6   are trying to do.

7   They are trying to say that responsive, automatic

8   somehow means that it's the sole causation, and that if you look

9   at their infringement or noninfringement position --

10   THE COURT: What other cause could there be?

11   MR. PASTOR: What do you mean?

12   THE COURT: What do I mean?

13   MR. PASTOR: I'm sorry, maybe I didn't hear you.

14   THE COURT: What other cause could there possibly be?

15   MR. PASTOR: Perhaps we could resolve this issue if we

16   can ask Apple would they agree to adding "without human

17   interaction."

18   THE COURT: To which part? In other words, would they

19   take out "automatic"?

20   MR. PASTOR: Where they wanted "automatic."

21   THE COURT: "Upon receiving the second message

22   transmitting a third message without human interaction."

23   MR. PASTOR: Exactly. That's what the invention was.

24   MR. HASLAM: No, that's not what the invention is.

25   When the patent wanted to talk about user intervention, it

1   specifically did so with respect to changing the first status to

2   the second status upon an input. It doesn't say in the receipt

3   of the second message to the third message how that happens,

4   whether it's with or without user interface. What the patent

5   consistently says is it is caused by the receipt of the second

6   message.

7   You know, he danced around the question when you asked

8   him whether or not he thought we were trying to get instant or

9   instantaneously. As I inside my example of the 911 call, the

10   answer is no as long as what triggers the sending of the third

11   message is the second message. Everywhere in the patent --

12   THE COURT: But there is no human intervention in

13   sending the second message.

14   MR. HASLAM: There isn't, but that is one aspect of it.

15   They put their finger on it. They are going to have some other

16   cause other than the second message trigger the third message.

17   THE COURT: Give me an idea what would that be.

18   MR. PASTOR: Pardon?

19   THE COURT: Give me an idea what would that be?

20   MR. PASTOR: First, I think he is misstating the

21   dispute. We are not saying that something else needs to be the

22   sole cause. Okay? What we are talking about is that responsive

23   to the second message, that means that third message is not

24   going to be sent prior to receiving that second message that

25   it's in response to. So the plain language of the claims here

1   is exactly what we are talking about, exactly what was

2   described.

3   What they are trying to do is say that there is nothing

4   intervening between receiving the second message and then

5   transmitting the third message. Okay? That's what their

6   noninfringement position clearly is laid out to be.

7   We are saying -- and that's why they add the word

8   "automatically." Again, it's what they are trying to say is

9   that there is nothing in between, nothing happens between

10   receiving the second message and transmitting the third message.

11   What we have really come out --

12   THE COURT: Nothing does happen, right?

13   MR. PASTOR: See, now the claim does not require that

14   nothing else happens. It just says that responsive to the

15   second message, a third message is sent. The claim is broad

16   enough to have other items, other steps occur, and that's the

17   real dispute here. This patent does not say that there is

18   nothing else that occurs between receipt of the second message

19   and transmission of the third message. The patent does not

20   state that no delay can occur between receipt of the second

21   message and transmission of the third message.

22   This whole talk about the specification, the problem to

23   be solved, none of that was talking about transmitting the

24   second message without any delay after receiving the second

25   message -- transmitting the third message after receiving the

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1   second message. That's the mischief. We are talking about

2   mischief, Your Honor. That's the mischief that's caused by

3   adding the word "automatically."

4   Now, we would stipulate --

5   THE COURT: Let me make sure what it is this chart

6   says. "The accused systems do not transmit status changes

7   automatically upon receiving them. Instead status changes are

8   transmitted only when the receiving device first requests them."

9   MR. PASTOR: Where are you reading from?

10   THE COURT: I'm reading from the chart.

11   MR. PASTOR: That's their noninfringement position, I

12   believe.

13   THE COURT: Right. I'm trying to understand what that

14   means.

15   MR. PASTOR: They are saying --

16   THE COURT: In other words, if I have two beepers, and

17   I get a message on my first beeper and I read it, under Apple's

18   product it would not necessarily change that status on the

19   second beeper unless I requested an update in status or

20   something like that?

21   MR. PASTOR: No.

22   THE COURT: Is that the idea?

23   MR. PASTOR: No. Their system would have an update in

24   status that does not require human intervention.

25   Now what they would try so say is we have another

1 server involved or that this other severer sends a message to a

2 second server. There is an intervening step, in other words,

3 that occurs between receipt of the second message and

4 transmission of the third. The claim does not care whether

5 there is anything --

6   THE COURT: Because this is a method claim, right?

7 This is not an apparatus claim? Right?

8   MR. PASTOR: It is.

9   THE COURT: Right? So it doesn't define exactly how

10 the messages get transmitted?

11   MR. PASTOR: Correct. There could be other steps. You

12 know, a device can infringe a method claim even though it

13 performs -- I'm sorry, a method can infringe a claim, method

14 claim, even if that method is performed and then there is other

15 steps performed on top of that. That's the instance that we

16 have here.

17   In other words, an easy example is if you have a

18 computer, okay, and the claim says I have a computer with a CPU,

19 a keyboard, and a screen. We go ahead and we say, oh, this

20 computer infringes that, and they say no, no, no, that doesn't

21 infringe because it also has a touch pad.

22   THE COURT: This gets to a problem that I have been

23 having with some of these. I have a lot of trouble

24 understanding how these proposed constructions meet head on the

25 issue that one side or the other is trying to address. If

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1         that's what Apple is trying to address here, and I don't mean to

2         put you in the position of talking to Apple, I don't really see

3         how adding this word "automatically" has anything to do with

4         whether or not there is some intervening communication device.

5                  MR. PASTOR:  Well, it's because, as we have identified

6         today, they didn't really just mean automatic.  Automatic is

7         defined as --

8                  THE COURT:  So, again, this is part of my problem here

9         is that I don't understand how the choices of words that each

10        side is putting into these proposed constructions, I oftentimes

11        do not understand how the words chosen by each side address the

12        problem that each side is trying to also address.

13                 MR. PASTOR:  Well, in the case of Motorola, Your Honor,

14        that's why we have tried -- well, they don't here.  In the case

15        of Motorola, we have tried to explain, for instance, with moving

16        and unlock image.  We tried to explain that our construction

17        required movement from one location to another, and it's our

18        position that our products don't have an image that moves from

19        one location to another.

20                 Now here, however, they have admittedly now come up

21        with a construction that is really just a predecessor to a

22        further construction.  We want you to add the word

23        "automatically," but what we are really going to say during the

24        infringement stage is automatically means something else.

25        That's the problem here.  This claim clearly does not require
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1   any modification whatsoever. There is no support for having

2   some intervening step between receiving the second message and

3   transmitting the third message.

4   THE COURT: What if said "simultaneously"?

5   MR. PASTOR: It could be simultaneous.

6   THE COURT: But there could be a time lag.

7   MR. PASTOR: And that's the issue, is that this claim

8   is broad enough to include the instance where it's all

9   automatic, near automatic, or may happen an hour down the road.

10   But it's still --

11   THE COURT: So the real point from your perspective is

12   it's without human intervention?

13   MR. PASTOR: Exactly, Your Honor.

14   THE COURT: Do you want to talk about the other issue?

15   MR. PASTOR: Unless you want to continue on this.

16   THE COURT: I need to take a short recess. I'm sorry,

17   but something came up. Let's take 5 minutes.

18   (Recess taken at 3:49 p.m.)

19   (Resumed at 3:54 p.m.)

20   THE COURT: Let's go on to the other issue. Maybe we

21   don't have a dispute about this one.

22   MR. PASTOR: We certainty have a dispute, Your Honor.

23   Let me just get to that set of slides. Indicative of second

24   status. This is just another example of Apple's attempting

25   literally to rewrite the claim. The claim requires that the

1   second message be indicative of a second status. It does not

2   say descriptive of a second status. That's in Claim 1, it's in

3   Claim 5.

4   Now, we have provided a construction, we said,

5   "indicative of a second status means providing an indication of

6   the second status." We don't think that there is any reason to

7   change the word "indicative" in the claims to read to be

8   "descriptive."

9   THE COURT: In other words what you are saying is

10   delete equals ping, then the third message could be just a ping?

11   MR. PASTOR: It needs to be some type of indication.

12   It does not have to describe what the changed status was.

13   THE COURT: But it has to have some kind of content or

14   else the user doesn't know what this means.

15   MR. PASTOR: Exactly. It has to have some kind of

16   context, but enough context that's indicative of.

17   THE COURT: So in other words like a ping? Ping means

18   delete.

19   MR. PASTOR: Ping could be indicative of it. It

20   depends on the system.

21   THE COURT: Or ping could be message read?

22   MR. PASTOR: Absolutely. That's indicative.

23   Now, if you just look at what they have proposed here,

24   Your Honor, in the claim they basically just crossed out the

25   word "indicative" and replaced it with "descriptive." That's

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1   not a construction, that's an actual rewriting of the claim.

2   There is nothing in the claim language here that says

3   "indicative" should be changed to "descriptive." The two terms

4   have two separate meanings. They are not synonymous.

5   Indicative means serving to indicate. Descriptive means serving

6   to describe.

7   You can indicate something exists without describing

8   that something exists. Indication is much broader, and they are

9   trying to narrow the claim so that it reads descriptive. There

10   is no reason to change the words of the claim here.

11   The examples in the specification are examples where

12   the second status is simply indicative -- the second message is

13   simply indicative of the changed status. We went through this

14   at the tech tutorial. The message status here basically

15   contains three bits, and those bits, again, a bit is just a

16   binary digit. It has two values, it has the value of 0 or a

17   value of 1. Those -- the change of whether it's 0 or 1 will

18   indicate to the rest of the system that there is a changed

19   status of some type.

20   The specification expressly states that these three

21   bits indicate the corresponding status. They don't say -- the

22   specification does not say that the three bits somehow describe

23   the status. They don't say guess what? You have a change.

24   It's just a 1 or a 0.

25   Now, during the tech tutorial, Apple's counsel admitted

1   that bits, like the ones in the embodiment of figure 3, merely

2   indicate a status change. They stated we can think of a bit

3   similar to, for example, the light on your phone. Many phones

4   have a light, and that would be an example of where you could

5   think of one bit of information, a 0 or a 1, an "on" or an "off"

6   as indicating a piece of information is relevant.

7   Now, you probably have a light on your phone.

8   THE COURT: Not anymore. On the Blackberry.

9   MR. PASTOR: Okay. On the Blackberry that light is

10   called a message indicator. These lights don't describe the

11   message that you have, they merely indicate that you have a

12   message, that's what this bit is.

13   THE COURT: I guess I have a little trouble with this

14   language "transmitting a third message indicative of the second

15   status." So it seems to suggest -- first it says transmitting a

16   second message indicative of a second status, and then

17   transmitting a third message indicative of the second status.

18   Somehow the third message has to convey, it seems to me, the

19   second status.

20   MR. PASTOR: What they are talking about is -- I know

21   it's confusing because there is a number of different status and

22   a number of different messages. What the second message is is

23   it's a message from a first transceiver.

24   Let me just point out here that what we are dealing

25   with, what the claims require, and what the field of the patent

1   clearly states in the '119 patent is we are dealing with

2   transceivers, we are not dealing with pagers. They keep talking

3   about how this is a pager patent. The claims called for

4   receivers. The field for invention were two-way communication

5   devices, i.e. a transceiver. I want to digress for one moment

6   and address that this is not a pager patent, despite Apple's

7   best attempts to try to portray it as a pager patent.

8   So the claim requires after a first transceiver, a

9   first phone receives a message, that's a message from me to

10   Mr. Perlson. His phone receives my message. He looks at my

11   message, and as oftentimes he does, immediately deletes it.

12   There is now a change in status of that message.

13   Now, Mr. Perlson also has a second phone that's at home

14   that he uses when he goes out rather than when he is at work.

15   His first phone, the one at work, sends a status change message.

16   That's the second message, and that goes up to the system, and

17   the system then in response to receiving that second message

18   sends a third message back down to his phone at home. That's

19   the second message and the third message. So they are both

20   indicative of status changes. That's all it needs to be. It

21   just needs to indicate, guess what, I deleted this at work, I

22   don't need to delete it at home.

23   There is not a requirement that the second message or

24   third message needs to actually describe e-mail number 482 from

25   Anthony Pastor to David Perlson was just deleted.

1   THE COURT: Okay. So under your construct, if it's

2   pings, it can all be pings.

3   MR. PASTOR: Absolutely.

4   THE COURT: The first -- the second and third

5   notification can both be equivalent pings?

6   MR. PASTOR: It certainly could be.

7   THE COURT: Because the third ping could be indicative

8   of the second ping or the third ping.

9   MR. PASTOR: If the system understands it as thus, yes.

10   It needs to be indicative of. If there is some indication, then

11   the system does something upon that indication.

12   THE COURT: Okay.

13   MR. PASTOR: Okay.

14   THE COURT: Okay.

15   MR. PASTOR: Thank you.

16   THE COURT: Now I really need to hear from Apple

17   because I'm totally confused. This makes me very uncomfortable,

18   because the way Motorola makes it sound is that you are being

19   very tricky and that you are trying to talk me into adding this

20   word "automatically" when really there is a centrifuge here. If

21   we add the word "automatically," and we get to the jury trial on

22   infringement, you are going to be arguing somehow what I meant

23   by "automatically" is that there could not be any

24   intermediate -- another infrastructure conveying the message.

25   That might not at all be what I have in mind by adding the word

1   "automatically" if I were inclined to do that. So that's very

2   troublesome to me. I don't want to fall into that kind of a

3   trap if that's what's going on here.

4   MR. HASLAM: That's not what's going on here. I

5   wouldn't want to lead you into that trap any more than you want

6   to fall into it. If I did, and I then subsequently made that

7   argument, I would be setting it up for reversal.

8   THE COURT: And a really annoyed judge.

9   MR. HASLAM: The point, and the Court hit on it, and if

10   the Court is more -- we chose "automatically" because that is a

11   term that the inventors use frequently in the specification and

12   how they characterized it during prosecution.

13   If the Court is more comfortable, I will take what

14   Motorola's counsel said during his argument, "responsive" to

15   mean caused by. There is no mischief in saying, if it will make

16   the Court more comfortable, that the third -- the transmission

17   of the third message is caused by receipt of the second message.

18   THE COURT: Well, they didn't agree with that.

19   MR. HASLAM: He said causation was the point.

20   THE COURT: He may have said that, but he specifically

21   disclaimed "caused by" and "responsive" being equivalent.

22   Now we are on to something it seems to me totally

23   different than what you were proposing in your construction, so

24   I'm very frustrated with your construction, because now I am of

25   the belief, perhaps, that your proposed construction has nothing

1   to do with what you are really proposing.

2   MR. HASLAM: Can we go to slide 45 in the deck. There

3   is a lot of discussion by Motorola of what they think the

4   mischief is going to be. Let's run through what the system is

5   they are accusing of infringement, and I will show you where the

6   dispute lies and why we thought "automatically" addressed it.

7   The essential thing is I showed in my slide --

8   THE COURT: Where does the dispute lie? Does the

9   dispute lie with whether or not there is another intermediate

10   transmission tower?

11   MR. HASLAM: No, it's whether or not what causes the

12   status --

13   THE COURT: What does that mean? Does that mean that

14   the direct cause is the second message and that excludes the

15   possibility of a second transmission tower or other structure?

16   MR. HASLAM: No. The second message can go through a

17   variety of transmission towers as long as, and they claimed it

18   this way, as long as the wireless infrastructure which is

19   ultimately responsible for sending the third message.

20   THE COURT: So the third message has to be triggered by

21   the second message?

22   MR. HASLAM: Yes. If it goes through four towers,

23   that's fine.

24   THE COURT: Does Motorola disagree with that, that the

25   third message has to be triggered by the second message,

1   assuming it goes through 100 transmission towers in between?

2   MR. PASTOR: Frankly, I don't even know what they are

3   proposing construction is at this moment. It's certainly not

4   automatic. So if I could just --

5   MR. HASLAM: Triggered by.

6   MR. PASTOR: Triggered by? That's certainly nowhere in

7   the claim. And, you know, if you want to give us a few minutes,

8   maybe we can try to work something out.

9   THE COURT: I really don't think you all are that far

10   apart. I'm getting off the bench and letting you work on this.

11   Goodbye. I will give you 10 minutes.

12   (Recess taken at 4:07 p.m.)

13   (Resumed at 4:23 p.m.)

14   THE COURT: Okay. What did we achieve?

15   MR. HASLAM: I think we both agreed that we are both

16   right, unfortunately. I have five slides that I think will

17   crystallize where the --

18   THE COURT: I don't think it's going to crystallize it

19   for me until you tell me where you are going.

20   MR. HASLAM: That's what I'm going to show you, where

21   the dispute is. I'm going to show you where the pings are,

22   where the accused device is, and you can see how each side is

23   going to argue its position, if you adopt their position.

24   THE COURT: Okay.

25   MR. HASLAM: Go to slide 45. This is part of what we

1   showed in the tutorial. I have stepped into the process here a

2   little bit. So we have to imagine that before we see what's on

3   the slide, somebody has sent me an e-mail, and I have gotten it

4   on both my iPad and on my iPhone, and I have deleted it on my

5   iPhone.

6   That sends a message which they will call the second

7   message that says okay, I have now deleted a message. It will

8   go to this IMAP server, which is the particular server that

9   handles delivery of mail to the devices. When it gets there no

10   message is sent.

11   This was the question Your Honor asked me in the

12   tutorial. Can it sit there for an hour? It's possible it could

13   sit there for an hour. What happens, then, is at some point

14   somebody sends me a new e-mail. It comes in through the

15   Internet, the mail server, goes to the IMAP. What happens then

16   is this notification server recognizes that a new message has

17   come in.

18   THE COURT: So basically something else has to happen

19   in order to trigger?

20   MR. HASLAM: Yes.

21   THE COURT: I remember this now. Right.

22   MR. HASLAM: And the ping that goes out isn't a ping

23   that says delete, it just says -- it's like a tap on the

24   shoulder. It says contact the server. So in response to the

25   ping, the tap on the shoulder, the device will go to the IMAP

1   server, it will request the information that's there and will

2   pick up the new message, and if there were status updates, it

3   will pull down the status updates.

4   Our view, if I go back, is that the receipt of the

5   second message by the server, and it could have gone through a

6   variety of cell towers, but when it gets to where it's going to

7   be turned around, the third message which contains the status

8   change has to be triggered by or caused by the receipt of the

9   second message.

10   Their argument without human intervention, they one

11 point noted sole causation is going to be that they can say

12 well, this didn't happen with user intervention, but it also

13 didn't happen, in our view, as a result of or caused by the

14 status update. That's where the dispute lies.

15   "Automatically" may have been a poor choice of words.

16 "Triggered by" or "caused by" is more directly how the patent in

17 some places that I showed you. There is other support for why

18 their limitation is wrong.

19   THE COURT: It could have been in the wireless

20 infrastructure that you are receiving the second message and as

21 a direct result of receiving the second message transmitting a

22 third message?

23   MR. HASLAM: Yes, and that permits delays. Delays is a

24 red herring. I also think their argument about delay is wrong.

25 I want to show you that because it also -- where they didn't

1   want a message to be triggered directly by something, they knew

2   how to say it, and they said it in Claim 1 elsewhere.

3   I'm going to go to page 37 of my slides, and this was

4   the argument -- this is how I think Motorola was initially going

5   to attempt to get initially in their argument to you today was

6   to say, well, our "automatically" could exclude delay. As I

7   indicated, it didn't, and delay is a red herring.

8   Their argument about delay for the third message is

9   misplaced anyway. Here is their brief, responsive brief at 26.

10   THE COURT: Haven't we all agreed that delay is

11   irrelevant?

12   MR. HASLAM: Have we?

13   MR. PASTOR: I don't think that delay is irrelevant for

14   the purposes of claim construction. They have now proposed that

15   the --

16   THE COURT: So I have a proposed construction. Okay?

17   How about "upon receiving the second message and as a direct

18   result of receiving the second message, transmitting a third

19   message"?

20   MR. HASLAM: That's fine.

21   MR. PASTOR: We would actually -- at the point what

22   that does is it adds the word "as a direct result." The claims

23   say "responsive to," not "directly responsive to." This goes

24   back to the idea of being an immediate response to, responsive

25   to.

1   THE COURT: That has nothing to do with immediacy.

2   MR. PASTOR: Well, you say it's directly resulting it.

3   So what that means --

4   THE COURT: That has nothing to do with immediacy. It

5   just means there doesn't have to be an intervening message. Not

6   an intervening tower, just there doesn't have to be another

7   intervening message. That there is no intervening message. In

8   other words, we are not at a fourth message, a fifth message.

9   MR. PASTOR: We believe that there could or does or

10   does not have to be an very intervening message. The claims are

11   broad enough to cover a system that does not have intervening

12   message or that do have an intervening message because it just

13   says "responsive to."

14   That's the whole point. This whole rabbit hole started

15   because they want "automatic" or some immediate action after the

16   second message. There is nothing in the intrinsic evidence.

17   THE COURT: I don't think this has anything to do with

18   immediacy.

19   MR. PASTOR: I misunderstood. When I heard "in direct

20   response to," and you have to understand, again, this all goes

21   back to their noninfringement argument. Their noninfringement

22   argument is they don't fringe because there is an intervening

23   act in between receiving the second message and transmitting the

24   third.

25   THE COURT: Under their theory they are not infringing

1   because what happens is the second message is received, but

2   nothing happens in response so receiving the second message

3   until there is at least a third message, which then transmits --

4   MR. HASLAM: The ping.

5   THE COURT: -- a ping.

6   MR. PASTOR: Your Honor, if you hook at page 48, all of

7   these actions, you know, this action from the IMAP to the SMTP

8   to the notification server back to the iPhone, all of those

9   actions are in response to receiving that new message, which is

10   the second message that is claimed.

11   THE COURT: Not according to him.

12   MR. PASTOR: That's an issue of infringement, whether

13   the claims infringe.

14   THE COURT: According to him the reason the

15   notification is going is not because of the second message, but

16   because of some independent message.

17   MR. PASTOR: See, that's, again, an issue of

18   infringement. We are here to determine whether the disputed

19   claim language needs to add the word "automatic," needs to add

20   the word "directed," "direct result." It just says "responsive

21   to." That language is broad enough, and that's what they -- I

22   think they are going to admit that because they are worried that

23   our infringement construction is going to actually read on their

24   device.

25   THE COURT: So let me just see if I understand your

1   position. So your position would be this infringes, what they

2   have got up on 48, right?

3   MR. PASTOR: Yes.

4   THE COURT: Because the ping, while it might be most

5   immediately responsive to the fact that a new e-mail came in,

6   would not have been sent at all if the second message hadn't

7   been received?

8   MR. PASTOR: It is still responsive to.

9   THE COURT: So it's still responsive to. So there is

10   like concurrent causes.

11   MR. PASTOR: Correct.

12   MR. HASLAM: The ping is sent based on the new message

13   whether or not there is a status update or not there. I think

14   the Court's proposed construction distilled the dispute to

15   causation or triggered by, or as the Court said, directly caused

16   by. As the Court said, the temporal or immediacy is not an

17   issue. If a status update gets to the tower, and the tower sits

18   there and processes it and there is a delay because it's got --

19   these towers are getting messages, it takes some time to turn

20   that message around. That's not the issue.

21   THE COURT: So at least for the purposes of my

22   evaluating this proposed construction of Apple, can you just

23   agree that your proposed construction is not automatically, but

24   as a direct result of receiving the second message?

25   MR. HASLAM: Yes.

1   THE COURT: Otherwise I don't know what "automatically"

2   means.

3   MR. HASLAM: I understand the Court's concern, and the

4   Court's proposal is satisfactory.

5   THE COURT: I'm only proposing that's Apple's proposed

6   construction now, and I will just have to reflect on it.

7   MR. PERLSON: The notion of surprise earlier today, I

8   mean you have raised that. We have agreed that they proposed

9   "automatically," we agreed "without human intervention," which I

10   think everyone here agrees that's what that means.

11   MR. HASLAM: I don't agree to that.

12   MR. PERLSON: That's what the ordinary meaning of it

13   is. Now it seems that there is an entirely new construction

14   that is actually construing a different term. I mean, before we

15   had "responsive to" in there. If we are going to have this new

16   thing, I mean, I think it would be appropriate for us to at

17   least have some sort of response, perhaps in writing or at least

18   some time to prepare, because the issue as teed up is completely

19   different than what was briefed.

20   MR. HASLAM: I don't know how they could have seen the

21   tutorial and these particular slides in my argument and not know

22   the causation was the principal issue.

23   THE COURT: Let me reflect on that. When we wind

24   things up tomorrow let's talk about it. Okay? Just keep it in

25   mind.

1   I think that this is really as far as we can go with

2   this at this point on this particular construction.

3   What about the descriptive of the changed status issue?

4   Do you want to say anything else about that?

5   MR. HASLAM: I did want to say something. The patent

6   clearly requires, and if we start with the claim language, if we

7   go to the claim language, we have "indicative of the second

8   status." But look at the next claim limitation, "responsive to

9   receiving the third message, changing the first status of the

10   first message to the second status."

11   If, as I understand, all it requires is hey, something

12   has changed, how can you change the first status to the second

13   status? It goes back to my problem. How do I -- I save

14   something at the beach, a little ping goes to my home computer

15   and it says, oh, okay, I'm going to delete it. It has to have

16   something descriptive.

17   The patent talks at column 6, lines 1 through 9 when it

18   describes the bits it says it has a read/unread bit, it has a

19   protect bit and it has a delete bit. So the bit, even though

20   its it's a 0 or a 1, conveys information. So if the 0 or 1 is

21   in the right place, if you've got three bits in a message, and

22   it's in slots 10, 11, and 12, the device knows that the bit in

23   slot 10 is a read/unread bit.

24   THE COURT: So the language I guess that you would

25   point to that really supports this within the claim is changing

1   the first status of the first message to the second status. So

2   the device has to know something in order to change the status.

3   MR. HASLAM: Yes. It has to know more than just a

4   status has changed. It has to know what it is in order to be

5   able to change it.

6   If we look at the abstract, slide 62: Status changes

7   made on the first pager are wirelessly communicated to an

8   infrastructure which communicates the status changes to other

9   pagers so that the other pagers make corresponding status

10   changes.

11   How can you make the corresponding status change if you

12   don't know what the status change was in the first place? The

13   specification is replete with examples of it. Slide 65, it's

14   the patent in columns 6, lines 12 through 30, talk about the

15   process: The infrastructure transmits the status of the first

16   message via a third message, or message 255. Pager 150

17   determines that message 255 has status change information due to

18   the status change control signal included in status field 258.

19   And the slide below we have shown out of the patent

20   message 255 with a status change 258, and we have added, this is

21   not in the figure, at the bottom there we have added what we

22   think the specification means when it says there are three bits

23   of information in that status message.

24   And then the specification goes on to say: In response

25   pager 150, and pager 150 is the home pager in this example, 130

1   is the one at the beach, in response pager 150 changes the

2   status of the first message 205 to correspond to the status set

3   by the user placing inputs to pager 130 at step 220 and delay

4   230.

5   There again it's talking about making corresponding

6   changes, and it can only do that if it has some piece of

7   information that tells you what it is. A ping that just says

8   it's a tap on the shoulder that says call him. And even in the

9   accused device the ping doesn't cause in that example the iPad

10   to make the change. It has to go back and get the new message

11   with the status update, get the status update, and because the

12   status update has information in it that says this is what I

13   changed the message on my iPhone, deleted in my example, then it

14   knows how to delete it. But it knows it because of information

15   that says I deleted this message, I didn't save it. I didn't

16   forward it. I didn't do something else to the status of that

17   message.

18   The notion that because it's a 0 or 1 just connotes

19   something. The patent very specifically says those three bits

20   connote read/unread, protect, delete.

21   THE COURT: Okay. I think enough of this.

22   Next? What are we doing next?

23   MS. HASKETT: Your Honor, next we are doing the '006

24   patent.

25   THE COURT: Okay. So let me just find this on the