

EXHIBIT S

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BEFORE THE
UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
CERTAIN WIRELESS CONSUMER) Investigation No.
ELECTRONICS DEVICES AND) 337-TA-853
COMPONENTS THEREOF)

Hearing Room B

United States
International Trade Commission
500 E Street, Southwest
Washington, D.C.

Tuesday, March 5, 2013

MARKMAN HEARING

The parties met, pursuant to the notice of the
Judge, at 9:01 a.m.

BEFORE: THE HONORABLE E. JAMES GILDEA

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1 P R O C E E D I N G S

2 (9:01 a.m.)

3 JUDGE GILDEA: I see we have a full
4 house. We won't waste any time getting
5 started, just a couple of preliminary matters.6 Please be mindful that there's no food
7 allowed in the hearing room, only water. And
8 if you haven't done so up to now, please
9 silence your cell phones. We have a full
10 session here today. I understand we have a lot
11 of speakers.12 Normally, I would ask the parties to
13 identify themselves before, at the outset, but
14 I think, in light of the fact that we have so
15 many different speakers for the Respondent,
16 maybe it's best just to reserve that until each
17 of the respective speakers steps up before the
18 podium, and then they can identify themselves
19 on the record and we'll handle it that way.20 As I understand it, the parties have
21 agreed we'll have the tutorial, an hour for
22 each side, that is for the private parties, and
23 then following that, we'll go into the claim
24 construction hearing. And that will be
25 allocated between the three respective parties,

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1 your preference is.
2 JUDGE GILDEA: I'll leave that up to
3 you.
4 MR. FOWLER: I think this would be a
5 logical place to break. Thank you, Your Honor.
6 JUDGE GILDEA: We'll take an hour
7 break, and we'll come back and resume at 1:00
8 then.
9 (Whereupon, at 12:01 p.m., a lunch
10 recess was taken.)
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1 respect to this issue of the external crystal.
2 And as you'll see as we go through these, for
3 the most part the TPL used quite forceful
4 language, and I'll sometimes pause and point to
5 that. So why don't we just go ahead and get to
6 it then.
7 So during prosecution, there were two
8 distinct disclaimers, and TPL really focused
9 today only on the first one and so I'm going to
10 spend just a little bit of time on the first
11 one because I think they concede that point,
12 and then focus most of my time on the second.
13 The first disclaimer is that
14 oscillators that require an external crystal to
15 oscillate fall outside of the claims. And what
16 that means, just to put it in kind of layman's
17 terms, if you need an external crystal to make
18 the oscillator vibrate, just to vibrate, that's
19 oscillate, then that falls outside of the
20 claims. The second disclaimer one, the one we
21 didn't hear TPL talk about today is oscillators
22 that are frequency controlled by an external
23 crystal fall outside of the claims.
24 So that's talking about -- the
25 oscillator is oscillating but you're actually

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1 A F T E R N O O N S E S S I O N
2 (1:00 p.m.)
3 JUDGE GILDEA: Mr. Fowler, when you're
4 ready, sir, you may resume.
5 MR. FOWLER: Thank you, Your Honor.
6 So, Your Honor, we had finished
7 talking about the specification and the claim,
8 and what I'd like to do now is turn to the
9 prosecution history. And I have some of my own
10 law that I'd like to share on top of
11 Mr. Otteson's, none of which I disagree with.
12 And here we have a pretty well-worn
13 statement from the Reox case, "explicit
14 arguments made during prosecution to overcome
15 prior art can lead to a narrow claim
16 interpretation because the public has a right
17 to rely on such definitive statements made
18 during prosecution."
19 As more pithily said in Gillespie, "In
20 short, the patentee is held to what he declares
21 during prosecution of the patent." And as
22 you'll see, I think, Your Honor, as I go
23 through, I'm going to march through this fairly
24 slowly. There are clear and unmistakable
25 disclaimers and there's multiple ones with

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1 controlling the speed of the vibration, how
2 fast it's going to go. Those are two distinct
3 disclaimers, causing it to oscillate and at the
4 speed it's going to oscillate.
5 Now, I'm going to turn first to the
6 first disclaimer, and I believe, I mean, I
7 could be wrong on this, but I believe TPL
8 concedes that reliance on a crystal to cause
9 oscillation was disclaimed.
10 And what I have here is TPL's own
11 reply brief, and I'll just read from that
12 briefly, "importantly, the applicants went on
13 to emphasize that the external crystal in Magar
14 is required for a particular purpose, i.e., for
15 the clock to oscillate. Clearly, the
16 applicants were pointing out that their
17 invention does not require an external crystal
18 oscillator or external frequency generator to
19 generate the clock signal."
20 So from this, a clock that require --
21 requires, an external crystal to oscillate
22 would fall outside the claims. Now I note that
23 even though I think TPL agrees with this, at
24 least in this Court, we'll show what they did
25 in other courts later, at least in this Court

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1 this disclaimer is not included in their
2 proposed construction.
3 And of course, Your Honor, I wouldn't
4 expect that you would just take it based on the
5 brief. We actually have to look at the
6 underlying evidence. Well here's some of the
7 underlying evidence. What we have here is the
8 February 10th, 1990 amendment during the
9 initial prosecution of the patent, and I may
10 have to correct myself if I find myself in
11 error later, but all of the amendments and
12 prosecution history, we're going to be looking
13 at today is in the original prosecution.
14 There's a lot of talk about re-exam
15 history, but this is all going to be in the
16 original prosecution. So here in the February
17 10th, 1998 amendment at page three what we have
18 is the statement and what they're doing is
19 they're trying to distinguish the Magar
20 reference. Magar's clock generator relies on
21 an external crystal connected to terminals X1
22 and X2 to oscillate as is conventional in
23 microprocessor design.
24 So that's the way they distinguish it.
25 Now, what he does next is he turns to the

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1 claimed invention in order to distinguish it.
2 And what he says is, and focusing on
3 the word "entire," Mr. Otteson said the word
4 "entire" is in the claim at the end of the day,
5 ended up in the claim, it is not an entire
6 oscillator in itself.
7 So what they did here with respect to
8 this disclaimer is they said that the Magar and
9 its crystal fall outside of the claim because
10 they used the crystal to oscillate and
11 therefore it's not an entire oscillator.
12 That's the first disclaimer and again
13 I don't think there's any disagreement on that
14 one. So I'm not going to spend more time on
15 it. What I do want to spend time on though is
16 the second disclaimer which we heard nothing
17 about from TPL today.
18 And this disclaimer appears, depending
19 on the way you count, either five or six times
20 in the prosecution history. So it's not one of
21 these things where the Respondents are saying,
22 oh, they were not careful with their words once
23 and look, Judge, if you squint this way, it's a
24 disclaimer. It's clear. It shows up again and
25 again and again during the original

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1 prosecution, and they had to do it to get their
2 claims allowed.
3 So the second disclaimer, as I
4 mentioned before, on Magar, is that Magar's
5 frequency, the clock of the -- the frequency of
6 the Magar clock was controlled by an external
7 crystal.
8 So frequency, not oscillation. Now,
9 this part is not highlighted, but I really want
10 to start, and again I'm sorry, for the record
11 we're looking at the July 7th, 1997 amendment
12 at three and four. I want to start actually
13 above the highlighting in that third line where
14 it says "one of ordinary skill in the art
15 should readily recognize that the speed of the
16 CPU and the clock do not vary together due to
17 manufacturing variation, operating voltage and
18 temperature of the IC in the Magar
19 microprocessor as taught in the above quotation
20 from the reference.
21 So here what the applicants are saying
22 that the clock speed in Magar is not controlled
23 by the PVT parameters you'll recall from this
24 morning that's what the invention was.
25 So they're clearly saying Magar clock

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1 speed is not controlled by PVT. And then they
2 go on to explain why, and that's what's
3 highlighted here.
4 This is simply because the Magar
5 microprocessor clock is frequency controlled by
6 a crystal, which is also external to the
7 microprocessor. Crystals are, by design, fixed
8 frequency devices whose oscillation speed is
9 designed to be tightly controlled, and to vary
10 minimally due to variations in manufacturing
11 operating voltage and temperature.
12 And I'm sorry, I forgot the most
13 important part, at the end that's not
14 highlighted, the Magar processor in no way
15 contemplates a variable speed clock as claimed.
16 So this has nothing to do with the disclaimer
17 that Mr. Otteson was talking about, this is
18 saying that the use of a crystal means you're
19 going to have a fixed frequency and the PVT,
20 the whole purpose of having your clock
21 controlled by the PVT is so it can vary.
22 So right here we have in very clear
23 terms the applicants saying that the fixed
24 frequency use of a crystal is at odds with the
25 invention.

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1 So the use of an external crystal to
2 control clock speed falls outside of the
3 claims. I think that is the only reasonable
4 reading of this language. So let's go to a
5 second place where this shows up. This is the
6 February 10th, 1998 amendment at three.

7 And we'll start with the highlighted
8 language. And with the crystal, the clock rate
9 generated is also conventional in that it is at
10 a fixed, not a variable, frequency.

11 So again, they're pointing to the
12 crystal as causing fixed clock speed. It goes
13 on to say, "the Magar clock is comparable in
14 operation to the conventional crystal clock
15 '434 depicted in Figure 17 of the present
16 application for controlling the I/O interface
17 at a fixed rate frequency," and get this, Your
18 Honor, "and not at all like the clock on which
19 the claims are based, as has been previously
20 stated."

21 So again what we're seeing here is use
22 a crystal, you get a fixed rate. And what is
23 it that's not at all like the clock on which
24 the claims are based? It's a clock that's
25 controlled, the speed of which is controlled by

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1 invention and when the applicants wanted to
2 talk about really what was at the core of the
3 invention, they're saying clock speed was
4 determined by the PVT parameters.

5 And how did they distinguish Magar?
6 "While the frequency or rate of the signals
7 depicted in Magar Figure 2A are determined by
8 the fixed frequency of the external crystal."
9 Pretty clear, I think.

10 It's saying that if you use a fixed
11 frequency external crystal to control the clock
12 rate, that is not the invention. Matter of
13 fact, it's the essential difference is that the
14 PVT parameters are used to control clock speed
15 instead.

16 And if that's not enough, we've got
17 more. So July 7th, 1997 amendment at three.
18 And I'm looking at the highlighted language on
19 slide 28, starting in the middle of a sentence,
20 it says, "crystal oscillators have never to
21 applicants knowledge been fabricated on a
22 single silicon substrate with a CPU for
23 instance" so that's the starting point.

24 We don't think it's ever on the same
25 substrate. I think we're saying to our

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1 the PVT parameters.

2 So again what we have here is a
3 disclaimer of the use of the crystal, a fixed
4 rate crystal to control the speed of the clock.

5 Let's go to the third one. This is at
6 the February 10th, 1998 amendment, at page
7 four. Now, this is interesting, we've already
8 seen some pretty strong language in some of
9 these other ones that in no way contemplates,
10 so forth. Here we have some really strong
11 language, essential difference.

12 I'm not sure how you distinguish
13 something more clearly than use the "essential
14 differences." The first part of what I'm about
15 to read is describing the claimed invention,
16 the last part is describing Magar.

17 So let's walk through this -- and I
18 admit I'm going to be skipping over some words
19 and only going to be reading what's in the red
20 underline on slide 27 for kind of ease of
21 understanding. "The essential difference is
22 that the frequency or rate of the" "signals is
23 determined by the processing and/or operating
24 parameters of the integrated circuit."

25 So, again, they're talking about the

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1 knowledge it's always external but look what
2 they said next, Your Honor, "even if they were"
3 so what he's saying is what the applicants are
4 saying, let's just assume that you could have a
5 crystal, a fixed speed crystal on the same
6 substrate as the CPU. So what follows is on
7 that assumption. It's not assuming it's
8 external.

9 Even if they were, as previously
10 mentioned, crystals are, by design, fixed
11 frequency devices whose oscillation frequency
12 is designed to be tightly controlled and to
13 vary minimally due to variations in
14 manufacturing, operating voltage and
15 temperature."

16 So let me just stop there. Right
17 there the applicants are basically saying
18 crystals don't achieve what we want here.
19 Crystals won't vary according to the PVT
20 parameters. And then they go on to say, "the
21 oscillation frequency of a crystal on the same
22 substrate with the microprocessor would
23 inherently," pretty strong word, "inherently
24 not vary due to variations in manufacturing,
25 operating voltage, and temperature in the same

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1 way as the frequency capability of the
2 microprocessor on the same underlying
3 substrate, as claimed."
4 So, again, once again, fourth time
5 we've seen this, where the applicant is saying
6 if you use a crystal, that's going to be fixed
7 speed, it's going to set the speed, it's going
8 to fix the speed, and that's not our invention
9 because our invention is controlling speed
10 through the PVT parameters.
11 Let's look at the fifth one. This is
12 that, the February 10th, 1990 amendment at four
13 and five. And above the highlighting, it
14 starts with, "The Magar teaching is well known
15 in the art as a conventional crystal controlled
16 oscillator. It is specifically distinguished,"
17 again, pretty good words for a disclaimer
18 argument, "specifically distinguished from the
19 instant case in that it is both," and I want to
20 highlight that, Your Honor, both, there are two
21 disclaimers here, not one, "both fixed
22 frequency being crystal based." So what
23 they're saying here is using a crystal will
24 result in a fixed frequency, not variable
25 according to the PVT parameters, that's our

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1 disclaimer too, and requires an external
2 crystal or external frequency generator.
3 That's what Mr. Otteson was talking about.
4 That's Disclaimer 1. But there's two
5 disclaimers here, very clear, not one.
6 Now, Your Honor, I think Mr. Otteson
7 showed you this, and perhaps Dr. Subramanian
8 did too, but this gives a little bit of
9 context, this is the Figure 2A that was
10 referenced in one of the file history excerpts
11 I showed of Magar and it shows the clock
12 generator, it's on the chip. We've highlighted
13 the border of the chip which is outlined by
14 element 10, the dashed lines, that's the chip,
15 and then X1 and X2 are the terminals that are
16 referred to in one of the file history excerpts
17 I mentioned, they're the pins to the chip
18 basically and the external crystal sends the
19 inputs over those pins to the clock generator
20 on the chip. And when you're going back and
21 you're looking at some of these excerpts, this
22 may help you in reading those now, this is the
23 February 10th amendment. And above the
24 highlighting it says "The examiner also states
25 that applicants contend that Magar's clock is

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1 external to the IC." This is not the case.
2 The clock gen part of the oscillator circuit is
3 clearly on the IC but not the crystal. You
4 heard something different this morning, but
5 that's what the applicant said during
6 prosecution.
7 Applicants note that the crystal is
8 external and then jumping over the language it
9 goes on to say "thus, while most of Magar's
10 clock (generator) circuitry is on the IC, the
11 entire oscillator, which because it requires an
12 external crystal, is not."
13 So what we take from this and the
14 prior language is that if you're using a
15 crystal that's off the chip to control the
16 clock speed, then you don't meet that entire
17 oscillator limitation that's in the claim.
18 So to sum up on this point TPL
19 distinguished Magar on two separate and
20 distinct grounds, Magar's on-chip clock
21 circuitry required an external crystal to
22 oscillate, which I believe is conceded, and
23 Magar's on-chip clock circuitry was frequency
24 controlled by an external crystal.
25 As we say in this Krippelz case, I

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1 think I pronounced that correctly, the Federal
2 Circuit said a correct construction must
3 capture both disclaimers, not neither or one.
4 Now, there was some discussion, and
5 this is where I'm going to try not to get into
6 the noninfringement, infringement argument,
7 there was a reference in the brief which was
8 mentioned again today by Mr. Otteson, and this
9 is a part of TPL's initial brief at 14, it's on
10 slide 233, where they say "There is certainly
11 no clear disavowal in the '336 file history
12 that would somehow prohibit the use of an
13 off-chip crystal as a reference
14 signal -- especially when the entire ring
15 oscillator is fully integrated on the chip."
16 So apart from the fact that you'll note there's
17 no citation there to support that, the
18 fundamental flaw with that is that using an
19 off-chip crystal as a reference signal means
20 you are controlling the clock speed with the
21 crystal and more specifically you're making it
22 a fixed speed.
23 He calls it a reference signal, but
24 what you're saying if you have that crystal off
25 the chip. Then the signal on the chip will

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1 MR. WINSTON: That's all I have for
2 now. Thank you.
3 JUDGE GILDEA: All right. We can go
4 into the next group of terms -- or are we going
5 to have the next group of terms?
6 MR. OTTESON: I have just a couple of
7 short things to say regarding the previous
8 discussion on ring oscillator and entire
9 oscillator, Your Honor.
10 First of all, you always have to ask
11 yourself, as a judge, when an accused infringer
12 wants to add a bunch of terms in like they're
13 doing here, why is that? And is there really a
14 justification for it? And that's why Judge
15 Ware, when he construed exactly the same term
16 didn't include those limitations because there
17 was no justification for it.
18 And, in fact, when you were asking
19 before -- I can't remember if it was the
20 Staff -- I think it was the Staff -- whether
21 any construction was necessary for the entire
22 ring oscillator terms, the answer is, quite
23 frankly, no.
24 I mean, on their face, if you look at
25 Claim 6, for example, it says, "an entire

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1 oscillator disposed upon said integrated
2 circuit." Claim 1 says, "an entire ring
3 oscillator variable speed clock integrated on
4 the same integrated circuit as the CPU."
5 All it's talking about is the
6 oscillator -- the ring oscillator, that's
7 disclosed as item 430 in Figure 17 of the
8 patent, which is that -- that thing that
9 oscillates because you have an odd number of
10 inverters arranged in a loop. I mean, they're
11 trying to make it way more complicated than
12 this needs to be.
13 JUDGE GILDEA: But Staff says that
14 there's some problems down the road when we get
15 into infringement questions, as to whether or
16 not we have elements that some would say is
17 part of that, that are not on the chip.
18 MR. OTTESON: Yeah, I understand that,
19 but here's another point that I'd like to make,
20 which is this: If we look at both Sheets and
21 Magar, it's very clear that the oscillator was
22 not on the chip.
23 So the distinction that the applicants
24 made, and Mr. Fowler went through those
25 and -- you know, what was said was said, and I

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1 agree that the -- the applicants made it very
2 clear to the examiner that these prior art
3 references were using clocks that were not on
4 the chip.
5 Now, when you -- and what's very clear
6 from the invention -- from both the
7 specification and the claims and the file
8 history -- is that if you take a ring
9 oscillator, which everybody is very clear on
10 what that is, it's just like what we see in
11 Figure 18, it's very simple.
12 And if you put a ring oscillator on
13 the same semiconductor substrate as the CPU,
14 they will vary together as a result of process
15 variations, voltage, and temperature because of
16 the laws of physics.
17 Now, that doesn't mean that you can't
18 add another element there, which is some way to
19 manage or control the frequency of the ring
20 oscillator.
21 And if you look at -- if you look at
22 what Respondents do, and this is what -- what
23 Mr. Winston is alluding to, again, this -- in
24 this situation, the off-chip crystal is a
25 metronome, but that isn't what the off-chip

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1 crystal was used in either Magar or Sheets.
2 There's a big difference between a
3 metronome, which is used for comparison
4 purposes, I'm playing the piano, I'm listening
5 to the metronome, and I'm trying to keep up,
6 but the beat, the frequency comes from me, as I
7 try to play.
8 And in this situation, the frequency
9 or the beat comes from the ring oscillator,
10 which they have on their chip. And the entire
11 ring oscillator is on the chip, and that's all
12 the applicants we're talking about, that the
13 entire oscillator needed to be on the chip.
14 Now, with Magar and Sheets, so what
15 they're doing really is a metronome, but that's
16 a completely different situation than when you
17 have, in Magar, for example, the external
18 crystal is used as the engine to create the
19 frequency.
20 That's what the applicants were
21 explaining to the examiner. They're saying,
22 our invention doesn't use an external crystal
23 as the engine to create the frequency, we don't
24 use an external crystal for the oscillator.
25 And that's what Magar was doing -- and also

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1 Sheets. It had an off-chip oscillator.
2 But that's very different than what
3 Respondents are doing, where their engine for
4 creating that frequency is this oscillator that
5 is on chip. And really, that's all applicants
6 were saying when they added "entire." They're
7 saying, hey, our entire oscillator is on the
8 chip.

9 Now, whether you want to add something
10 else like a metronome for comparison purposes,
11 that's the D in your claim. These guys have an
12 A, B, and a C, and they also have a D. That
13 doesn't mean they don't infringe. That's the
14 A.B. Dick case.

15 JUDGE GILDEA: Well, would you agree
16 with Staff's construction in the context of
17 what you just said?

18 MR. OTTESON: No, Your Honor. And
19 here's why -- here's why: Mr. Winston is
20 saying that all of the things that affect
21 frequency have to be on the chip, but this was
22 something that wasn't contemplated by the
23 patent, it's something extra. And if you add
24 something extra, you still infringe.

25 What was contemplated by the patent is

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1 than -- are you saying that --

2 MR. OTTESON: Right, right.

3 JUDGE GILDEA: It's restricted to
4 simply an oscillator that the clock is -- it's
5 the clock, it's the entire ring oscillator
6 variable speed system clock.

7 MR. OTTESON: Right. And we
8 need -- yes, exactly right, and we need to look
9 at the claims and specification to see what
10 that is. Here's Figure 17, ring oscillator
11 variable speed clock. The only thing that the
12 patent talks about that it uses as a variable
13 speed system clock is the ring oscillator.

14 The familiar ring oscillator discussed
15 in column 16. That's it. That is the entire
16 ring oscillator variable speed clock, and the
17 distinction over Magar was made simply to make
18 clear that, hey, all of our transistors, all of
19 the inverters that we need for this ring
20 oscillator, which is our clock, have to be on
21 the same silicon as a CPU.

22 We're not like these external crystal
23 clocks that provide the frequency because we're
24 providing the frequency on chip. But that
25 doesn't mean that you couldn't add something

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1 that the entire oscillator be on the chip.
2 That's what that is, it's the entire
3 oscillator. There's a ring oscillator in
4 there. That's what was discussed in the file
5 history. That's what was added to the claims,
6 that there be an entire oscillator or an entire
7 ring oscillator on the chip.

8 And that's what Magar and Sheets
9 lacked. There was no on-chip oscillator to
10 create a frequency. And so I would not agree
11 with Mr. Winston's construction because what
12 he's trying to say is even the off-chip
13 external crystal, which is used for reference,
14 which means it's used as a metronome, it
15 doesn't generate the frequency. What it does
16 is it's used for comparison purposes.

17 Again, the frequency in these chips is
18 so fast, 3.0 gigahertz is just an example,
19 there's no way you can generate a frequency
20 from an off-chip crystal. It's just a
21 reference for comparison purposes in -- that's
22 used in this phase detector.

23 JUDGE GILDEA: But the -- the claim
24 term is, as I quote, "an entire ring oscillator
25 variable speed system clock," that's more

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1 else which is a comparator.

2 As long as you have an entire ring
3 oscillator variable speed clock, which is the
4 entire oscillator on the same chip, there's
5 nothing to say, according to A.B. Dick, that
6 you couldn't have something extra, which is
7 exactly what Respondents do here. They have
8 this metronome which is just a comparator.

9 But the engine -- the generator of
10 their frequency is here in the ring oscillator,
11 and make no mistake, it's all on the chip.
12 That's the only way they can get frequencies
13 that high.

14 And also, make no mistake, that being
15 on the same semiconductor substrate as the CPU,
16 that ring oscillator and the CPU do vary
17 together with differences with manufacturing
18 variations and voltage and temperature.

19 Now, you also asked one question about
20 controllable or noncontrollable, whether that
21 was a coined term. And honestly, I think that
22 it was. It came from the examiner. I mean,
23 you remember when we walked through the file
24 history on that.

25 It was the examiner in an amendment

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1 who said that he -- he used the word
2 "noncontrollable," which is right here. He was
3 characterizing whether he understood or didn't
4 understand exactly what the applicant was
5 saying, that's the only place in the file
6 history. And remember, it wasn't the file
7 history for the '336, it was a different
8 patent. That's the only place that word
9 appears.

10 And what happened is that he said, "I
11 will reconsider the current rejection based on
12 a forthcoming response, which will include
13 arguments similar to what was discussed."

14 The patentee submitted this and said,
15 we are not Talbot because Talbot doesn't have a
16 ring oscillator. The circuit of Talbot isn't a
17 ring oscillator, and we all know that's the
18 case because a ring oscillator looks like
19 Figure 18, where you have a bunch of inverters
20 arranged in a loop, and that's how it
21 oscillates. And what did the examiner say in
22 response?

23 He says, well, I considered those
24 arguments that Talbot doesn't have a ring
25 oscillator, I agree. You can have your claims,

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1 the Staff's construction does that -- or
2 attempts to do that implicitly.

3 The other point I wanted to make is
4 that there was discussion, both with respect to
5 Mr. Otteson and Mr. Whitney, and if we could
6 have our slides back up and go to -- give me a
7 moment, Your Honor, I apologize. Here we go.

8 It was pointed out to Your Honor that
9 the word "entirely" was added by amendment. It
10 was a February 10th, 1998 amendment. But
11 that's not what resolved the issue for the
12 applicants. That's not what got them over the
13 hurdle.

14 If that had been the case, then what
15 you would see in the comments section of that
16 amendment is where we've changed this to be
17 entirely. And all that means is it's on the
18 same physical substrate. We're done with
19 Magar. We're done with Sheets.

20 But that's not what they did at all.
21 And what I want to point out to Your Honor is
22 here, on slide 226, the amendment at page
23 three, this is the same language I showed you
24 before, so I won't belabor the issue, but look
25 at what they're saying.

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1 so noncontrollable should not be a limitation.
2 And three judges before you have agreed that it
3 shouldn't be.

4 So with that, I think I'd like to move
5 on to the next group, if that's okay, Your
6 Honor.

7 JUDGE GILDEA: I think your
8 counterparts would like to have an opportunity
9 for their rebuttal.

10 MR. OTTESON: Okay. Thank you.

11 MR. FOWLER: Thank you, Your Honor,
12 I'll try to keep this brief. I'd like to, very
13 briefly, comment on Staff's input, which I
14 found to be very useful. Staff acknowledged --
15 I can't remember if they told you -- or in
16 response to a question, that there are
17 disclaimers during the prosecution history.

18 That's certainly our position. I
19 didn't really hear that there weren't from
20 TPL's counsel, and so if there are, in fact,
21 disclaimers, they have to be reflected in the
22 construction.

23 The claim can't be read or construed
24 in a way that encompasses what was disclaimed.
25 Our construction does that expressly. I think

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1 They're distinguishing Magar from the
2 claim based on the fact that Magar uses a
3 crystal that controls, that sets a fixed rate
4 frequency and contrasts that with the clock of
5 the claims where the clock speed is controlled
6 by the PVT parameters. So they're not saying,
7 look, it's entirely. They're not saying that's
8 the end of it.

9 They're still distinguishing Magar,
10 even after that amendment, based upon the fact
11 that Magar used a crystal to fix the rate of
12 the clock. And that's right there at three,
13 and that's not the only time they did it. Look
14 at slide 27, same amendment, February 10, 1998,
15 at four, this is where they said it was the
16 essential difference, this is after they added
17 the word "entirely."

18 And they're still distinguishing Magar
19 on the grounds that Magar has a fixed frequency
20 external crystal, whereas the patent -- the
21 claim, the speed is controlled by the
22 parameters.

23 And then they did it again, here, we
24 have slide 29. February 10, 1990 amendment, at
25 five, look what they did, it is specifically