EXHIBIT S

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	1	1	1
		1	APPEARANCES: (Continued)
1	BEFORE THE	2	
2	UNITED STATES INTERNATIONAL TRADE COMMISSION	3	FOR RESPONDENT BARNES & NOBLE, INC.:
3		4	JEFFREY GERCHICK, ESQ.
4	In the Matter of:)	5	DAVID EISEMAN, ESQ.
5	CERTAIN WIRELESS CONSUMER) Investigation No.	6	QUINN EMANUEL URQUHART & SULLIVAN, LLP
6	ELECTRONICS DEVICES AND) 337-TA-853	7	1299 Pennsylvania Avenue, Northwest
17	COMPONENTS THEREOF)	8	Suite 825
8		9	Washington, DC 20004
9		10	(202) 538-8000
10	Hearing Room B	11	
11		12	FOR RESPONDENTS KYOCERA CORPORATION and KYOCERA
12	United States	13	COMMUNICATIONS, INC.:
13	International Trade Commission	14	DAVID DOYLE, ESQ.
14	500 E Street, Southwest	15	MORRISON & FOERSTER LLP
15	Washington, D.C.	16	12531 High Bluff Drive
16		17	San Diego, California 92130
17	Tuesday, March 5, 2013	18	(858) 720-5100
18		19	
19	MARKMAN HEARING	20	
20		21	
21	The parties met, pursuant to the notice of the	22	
22	Judge, at 9:01 a.m.	23	
23		24	
24	BEFORE: THE HONORABLE E. JAMES GILDEA	25	
25			

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1	APPEARANCES :	1	APPEARANCES: (Continued)
2		2	
3		3	FOR RESPONDENTS HTC CORPORATION and HTC AMERICA
4	FOR COMPLAINANTS TECHNOLOGY PROPERTIES LIMITED	4	and NINTENDO CO., LTD., AND NINTENDO OF
5	LLC AND PROENIX DIGITAL SOLUTIONS LLC:	5	AMERICA, INC.:
6	JAMES C. OTTESON, ESQ.	6	STEPHEN R. SMITH, ESQ.
7	PHILIP W. MARSH, ESQ.	1 7	COOLEY LLP
8	irvin E. Tyan, esq.	8	1299 Pennsylvania Avenue, Northwest
9	ERICA SOWERS, ESQ.	9	Suite 700
10	AGILITY IP LAW, LLP	10	Washington, D.C. 20004
11	149 Commonwealth Drive	11	(202) 842-7800
12	Menlo Park, California 94025	12	and
13	(650) 227-4800	13	PHILLIP MORTON, ESQ.
14		14	COOLEY LLP
15	FOR RESPONDENTS ACER, INC.; ACER AMERICA	15	11951 Freedom Drive
16	CORPORATION; AMAZON.COM, INC.; NOVATEL	16	Reston, Virginia 20190
17	WIRELESS, INC.:	17	(703) 456-8000
18	TIMOTHY WALKER, ESQ.	18	and
19	HAROLD H. DAVIS, JR., ESQ.	19	KYLE CHEN, Ph.D, ESQ.
20	Kel gates llp	20	COOLEY LLP
21	4 Embarcadero Center	21	3175 Hanover Street
22	Suite 1200	22	Palo Alto, California 94304-1130
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24	(415) 882-8200	24	
25		25	
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Certain Wireless Consumer Electronics Inv. No. 337-TA-853

. No. 337-TA-853 March 5, 2013

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1	APPEARANCES: (Continued)	1	APPEARANCES: (Continued)
2 3 4 5 6 7 8 9 10 11 12 13 4 5 6 7 8 9 10 11 12 13 4 15 16 7 18 9 20 12 23 4 25 23 4 25 22 23 24 25 22 22 22 23 24 25 20 21 20 20 20 20 20 20 20 20 20 20 20 20 20	<pre>FOR RESPONDENTS LG ELECTRONICS, INC., and ELECTRONICS USA, INC.: MICHAEL MCREON, ESQ. CHRISTIAN A. CHU, ESQ. SCOTT ELENGOLD, ESQ. FISH & RICHARDSON P.C. 1425 K Street, Northwest 11th Floor Washington, D.C. 20005 (202) 783-5070 FOR RESPONDENTS ZTE CORPORATION & ZTE(USA), INC.: ROBERT MALLIN, ESQ. WILLIAM H: FRANKEL, ESQ. BRINKS HOFER GILSON & LIONE NEC Tower, Suite 3600 455 North Cityfront Plaza Drive Chicago, Illinois 60611-5599 (312) 321-4200</pre>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	FOR ITC STAFF: WHITNEY WINSTON, ESQ. Office of Unfair Import Investigations U.S. International Trade Commission 500 E Street, Southwest Washington, D.C. 20436
		L	
			8
1 2 3 4 5 6 7 8 9 10 11	APPEARANCES: (Continued) FOR RESPONDENTS SAMSUNG ELECTRONICS CO., LTD., and SAMSUNG ELECTRONICS AMERICA, INC.: MARK FOWLER, ESQ. DLA PIPER LLP 2000 University Avenue East Palo Alto, California 94303-2214 (650) 833-2442 and JAMES M. HEINTZ, ESQ.	1 2 3 4 5 6 7 8 9 10 11	PROCEEDINGS (9:01 a.m.) JUDGE GILDEA: I see we have a full house. We won't waste any time getting started, just a couple of preliminary matters. Please be mindful that there's no food allowed in the hearing room, only water. And if you haven't done so up to now, please silence your cell phones. We have a full session here today. I understand we have a lot of speakers.
12	DLA PIPER LLP	12	Normally, I would ask the parties to
13 14 15 16 17 18 19 20 21 22 23 24 25	One Fountain Square 11911 Freedom Drive Suite 300 Reston, Virginia 20190-5602 (703) 773-4148	13 14 15 16 17 18 19 20 21 22 23 24 25	identify themselves before, at the outset, but I think, in light of the fact that we have so many different speakers for the Respondent, maybe it's best just to reserve that until each of the respective speakers steps up before the podium, and then they can identify themselves on the record and we'll handle it that way. As I understand it, the parties have agreed we'll have the tutorial, an hour for each side, that is for the private parties, and then following that, we'll go into the claim construction hearing. And that will be allocated between the three respective parties,

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141 141 2 JURGE (JUREA: 1'11 laws that up to you. 1 respect to this issue of the estamal crystal. 4 MS. FORLEX: I think this would be a 5 1 respect to this issue of the estamal crystal. 4 MS. FORLEX: I think this would be a 5 1 1 5 logical place to break. finak yon, Your Boor. 000005 SILEN: We'll take an hour 7 5 the most year the TPL using prosecution, there were two 6 6 them of the first disclaimer, and TPL really focused 7 5 the most year the tPL using prosecution, there were two 6 7 to way on the first disclaimer, and this they conced take point, 10 and then first disclaimer, and were two 6 distinct disclaimer, and they inter on the second. 11 11 oscillator yang on the first disclaimer, and were two 6 11 and then first disclaimer, and they they inter on the second. 12 13 14 14 oscillator yang on the second. 13 15 14 14 oscillator yang on the second. 14 14 14 15 tars, in you any result to analy the second. 15 15 16 16 tars and hey to you and tars to the 16 16 16 17 17 17 17 17 <th>1</th> <th></th> <th>i r</th> <th></th>	1		i r	
2 And a youll see as we go through these, for 3 you. 3 No. FONLER: I think this would be a 3 logical place to break. Thank you, Your Soor. 7 break, and will come back and resume at 1:00 8 (Mesempon, at 12:01 p.m., a lunch 9 (Mesempon, at 12:01 p.m., a lunch 10 recess was taken.) 11 recess was taken.) 12 and the focus most of my time on the first 13 The first disclaimer, and The first of time on the second. 14 The first disclaimer is the first 15 the manne, just to put it in kind of layman's 16 the manne, just to put it in kind of layman's 17 the manne, just to put it in kind of layman's 18 19 oscillator that require an extranal crystal to make 19 coslilator, that the first disclaimer, sut is oscillators 21 AF T B R N O N S E S S I O N 22 the secillator the arguire to distinct 23 The So disclaimer is the secillator is a collitor threak is put to units to the first disclaimer, sut and the secillator is a collitor secillator is a collitor the secillator is a collitor the arguire is a collitor is a collitor the arese a put the secillator is a		141		143
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23 23 crystal fall outside of the claims. 24 24 So that's talking about the oscillator is oscillating but you're actually 25 26 27 So that's talking about the oscillator is oscillating but you're actually 142 A F T E R N O O N S E S S I O N 1 controlling the speed of the vibration, how 2 (1:00 p.m.) 2 fast it's going to go. Those are two distinct 3 JUDGE GILDEA: Mr. Fowler, when you're 4 disclaimers, causing it to oscillate and at the 4 ready, sir, you may resume. 5 NR, FOWLER: Thank you, Your Bonor. 5 5 MR. FOWLER: Thank you, Your Bonor. 5 Now, I'm going to turn first to the 6 So, Your Bonor, we had finished 6 first disclaimer, and I believe, I mean, I 7 could be wrong on this, but I believe FL concedes that reliance on a crystal to cause 9 prosecution history. And I have some of my own 10 And what I due to share on top of 11 reply brief, and 'l'l just read from that 11 reply brief, and 'l'l just read from that 12 And hare we have a pretty well-worn 13 to emphasize that the external crystal in Magar	1			
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25 25 oscillator is oscillating but you're actually 1 AFTERNOON SESSION (1:00 p.m.) 142 1 AFTERNOON SESSION (1:00 p.m.) 1 controlling the speed of the vibration, how fast it's going to go. Those are two distinct disclaimers, causing it to oscillate and at the speed it's going to oscillate. 3 JUDGE GILDEA: Mr. Fowler, when you're ready, sir, you may resume. 4 speed it's going to oscillate. 4 ready, sir, you may resume. 4 speed it's going to oscillate. 5 MR. FOWLER: Thank you, Your Honor. 5 Now, I'm going to turn first to the first disclaimer, and I believe, I mean, I 6 So, Your Honor, we had finished 6 first disclaimer, and I believe FL 8 and what I'd like to do now is turn to the prosecution history. And I have some of my own 9 oscillation was disclaimed. 10 law that I'd like to share on top of 10 In what I have here is FEL's own 11 reply brief, and I'll just read from that 12 12 And here we have a pretty well-worn 12 briefly, "importantly, the applicants went on 13 statement from the Reox case, "explicit 13 to emphasize that the external crystal in Magar 14 arguments made during				•
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25 disclaimers and there's multiple ones with 25 in other courts later, at least in this Court	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	AFTERNOON SESSION (1:00 p.m.) JUDGE GILDEA: Mr. Fowler, when you're ready, sir, you may resume. MR. FOWLER: Thank you, Your Honor. So, Your Honor, we had finished talking about the specification and the claim, and what I'd like to do now is turn to the prosecution history. And I have some of my own law that I'd like to share on top of Mr. Otteson's, none of which I disagree with. And here we have a pretty well-worn statement from the Reox case, "explicit arguments made during prosecution to overcome prior art can lead to a narrow claim interpretation because the public has a right to rely on such definitive statements made during prosecution." As more pithily said in Gillespie, "In short, the patentee is held to what he declares during prosecution of the patent." And as you'll see, I think, Your Honor, as I go through, I'm going to march through this fairly	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<pre>controlling the speed of the vibration, how fast it's going to go. Those are two distinct disclaimers, causing it to oscillate and at the speed it's going to oscillate.</pre>
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	145		147
1	this disclaimer is not included in their	1	prosecution, and they had to do it to get their
2	proposed construction.	2	claims allowed.
3	And of course, Your Honor, I wouldn't	3	So the second disclaimer, as I
4	expect that you would just take it based on the	4	mentioned before, on Magar, is that Magar's
5	brief. We actually have to look at the	5	frequency, the clock of the the frequency of
6	underlying evidence. Well here's some of the	6	the Magar clock was controlled by an external
7	underlying evidence. What we have here is the	7	crystal.
8	February 10th, 1990 amendment during the	8	So frequency, not oscillation. Now,
9	initial prosecution of the patent, and I may	9	this part is not highlighted, but I really want
10	have to correct myself if I find myself in	10	to start, and again I'm sorry, for the record
11	error later, but all of the amendments and	11	we're looking at the July 7th, 1997 amendment
12	prosecution history, we're going to be looking	12	at three and four. I want to start actually
13	at today is in the original prosecution.	13	above the highlighting in that third line where
14	There's a lot of talk about re-exam	14	it says "one of ordinary skill in the art
15	history, but this is all going to be in the	15	should readily recognize that the speed of the
16	original prosecution. So here in the February	16	CPU and the clock do not vary together due to
17	10th, 1998 amendment at page three what we have	17	manufacturing variation, operating voltage and
18	is the statement and what they're doing is	18	temperature of the IC in the Magar
19	they're trying to distinguish the Magar	19	microprocessor as taught in the above quotation
20	reference. Magar's clock generator relies on	20	from the reference.
21	an external crystal connected to terminals X1	21	So here what the applicants are saying
22	and X2 to oscillate as is conventional in	22	that the clock speed in Magar is not controlled
23	microprocessor design.	23	by the PVT parameters you'll recall from this
24	So that's the way they distinguish it.	24	morning that's what the invention was.
25	Now, what he does next is he turns to the	25	So they're clearly saying Magar clock
www.			
	146		148
1	146 claimed invention in order to distinguish it.	1	148 speed is not controlled by PVT. And then they
1 2		1 2	
	claimed invention in order to distinguish it.		speed is not controlled by FVT. And then they
2	claimed invention in order to distinguish it. And what he says is, and focusing on	2	speed is not controlled by PVT. And then they go on to explain why, and that's what's
2 3	claimed invention in order to distinguish it. And what he says is, and focusing on the word "entire," Mr. Otteson said the word	2	speed is not controlled by PVT. And then they go on to explain why, and that's what's highlighted here.
2 3 4	claimed invention in order to distinguish it. And what he says is, and focusing on the word "entire," Mr. Otteson said the word "entire" is in the claim at the end of the day,	2 3 4	speed is not controlled by PVT. And then they go on to explain why, and that's what's highlighted here. This is simply because the Magar
2 3 4 5	claimed invention in order to distinguish it. And what he says is, and focusing on the word "entire," Mr. Otteson said the word "entire" is in the claim at the end of the day, ended up in the claim, it is not an entire oscillator in itself.	2 3 4 5	speed is not controlled by PVT. And then they go on to explain why, and that's what's highlighted here. This is simply because the Magar microprocessor clock is frequency controlled by a crystal, which is also external to the
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	<pre>claimed invention in order to distinguish it. And what he says is, and focusing on the word "entire," Mr. Otteson said the word "entire" is in the claim at the end of the day, ended up in the claim, it is not an entire oscillator in itself. So what they did here with respect to this disclaimer is they said that the Magar and its crystal fall outside of the claim because they used the crystal to oscillate and therefore it's not an entire oscillator. That's the first disclaimer and again I don't think there's any disagreement on that one. So I'm not going to spend more time on it. What I do want to spend time on though is the second disclaimer which we heard nothing about from TPL today. And this disclaimer appears, depending on the way you count, either five or six times in the prosecution history. So it's not one of these things where the Respondents are saying, oh, they were not careful with their words once</pre>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	speed is not controlled by PVT. And then they go on to explain why, and that's what's highlighted here. This is simply because the Magar microprocessor clock is frequency controlled by a crystal, which is also external to the microprocessor. Crystals are, by design, fixed frequency devices whose oscillation speed is designed to be tightly controlled, and to vary minimally due to variations in manufacturing operating voltage and temperature. And I'm sorry, I forgot the most important part, at the end that's not highlighted, the Magar processor in no way contemplates a variable speed clock as claimed. So this has nothing to do with the disclaimer that Mr. Otteson was talking about, this is saying that the use of a crystal means you're going to have a fixed frequency and the PVT, the whole purpose of having your clock controlled by the PVT is so it can vary. So right here we have in very clear
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<pre>claimed invention in order to distinguish it. And what he says is, and focusing on the word "entire," Mr. Otteson said the word "entire" is in the claim at the end of the day, ended up in the claim, it is not an entire oscillator in itself. So what they did here with respect to this disclaimer is they said that the Magar and its crystal fall outside of the claim because they used the crystal to oscillate and therefore it's not an entire oscillator. That's the first disclaimer and again I don't think there's any disagreement on that one. So I'm not going to spend more time on it. What I do want to spend time on though is the second disclaimer which we heard nothing about from TPL today. And this disclaimer appears, depending on the way you count, either five or six times in the prosecution history. So it's not one of these things where the Respondents are saying, oh, they were not careful with their words once and look, Judge, if you squint this way, it's a</pre>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	speed is not controlled by PVT. And then they go on to explain why, and that's what's highlighted here. This is simply because the Magar microprocessor clock is frequency controlled by a crystal, which is also external to the microprocessor. Crystals are, by design, fixed frequency devices whose oscillation speed is designed to be tightly controlled, and to vary minimally due to variations in manufacturing operating voltage and temperature. And I'm sorry, I forgot the most important part, at the end that's not highlighted, the Magar processor in no way contemplates a variable speed clock as claimed. So this has nothing to do with the disclaimer that Mr. Otteson was talking about, this is saying that the use of a crystal means you're going to have a fixed frequency and the PVT, the whole purpose of having your clock controlled by the FVT is so it can vary. So right here we have in very clear terms the applicants saying that the fixed
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<pre>claimed invention in order to distinguish it. And what he says is, and focusing on the word "entire," Mr. Otteson said the word "entire" is in the claim at the end of the day, ended up in the claim, it is not an entire oscillator in itself. So what they did here with respect to this disclaimer is they said that the Magar and its crystal fall outside of the claim because they used the crystal to oscillate and therefore it's not an entire oscillator. That's the first disclaimer and again I don't think there's any disagreement on that one. So I'm not going to spend more time on it. What I do want to spend time on though is the second disclaimer which we heard nothing about from TPL today. And this disclaimer appears, depending on the way you count, either five or six times in the prosecution history. So it's not one of these things where the Respondents are saying, oh, they were not careful with their words once</pre>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	speed is not controlled by PVT. And then they go on to explain why, and that's what's highlighted here. This is simply because the Magar microprocessor clock is frequency controlled by a crystal, which is also external to the microprocessor. Crystals are, by design, fixed frequency devices whose oscillation speed is designed to be tightly controlled, and to vary minimally due to variations in manufacturing operating voltage and temperature. And I'm sorry, I forgot the most important part, at the end that's not highlighted, the Magar processor in no way contemplates a variable speed clock as claimed. So this has nothing to do with the disclaimer that Mr. Otteson was talking about, this is saying that the use of a crystal means you're going to have a fixed frequency and the PVT, the whole purpose of having your clock controlled by the PVT is so it can vary. So right here we have in very clear

Certain Wireless Consumer Electronics

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1	So the use of an external crystal to	1	invention and when the applicants wanted to
2	control clock speed falls outside of the	2	talk about really what was at the core of the
3	claims. I think that is the only reasonable	3	invention, they're saying clock speed was
4	reading of this language. So let's go to a	4	determined by the PVT parameters.
5	second place where this shows up. This is the	5	And how did they distinguish Magar?
6	February 10th, 1998 amendment at three.	6	"While the frequency or rate of the signals
1	And we'll start with the highlighted	7	depicted in Magar Figure 2A are determined by
8	language. And with the crystal, the clock rate	8	the fixed frequency of the external crystal."
9	generated is also conventional in that it is at	9	Pretty clear, I think.
10	a fixed, not a variable, frequency.	10	It's saying that if you use a fixed
11	So again, they're pointing to the	11	frequency external crystal to control the clock
12	crystal as causing fixed clock speed. It goes	12	rate, that is not the invention. Matter of
13	on to say, "the Magar clock is comparable in	13	fact, it's the essential difference is that the
14	operation to the conventional crystal clock	14	PVT parameters are used to control clock speed
15	'434 depicted in Figure 17 of the present	15	instead.
16	application for controlling the I/O interface	16	And if that's not enough, we've got
17	at a fixed rate frequency," and get this, Your	17	more. So July 7th, 1997 amendment at three.
18	Honor, "and not at all like the clock on which	18	And I'm looking at the highlighted language on
19	the claims are based, as has been previously	19	slide 28, starting in the middle of a sentence,
20	stated."	20	it says, "crystal oscillators have never to
21	So again what we're seeing here is use	21	applicants knowledge been fabricated on a
22	a crystal, you get a fixed rate. And what is	22	single silicon substrate with a CPU for
23	it that's not at all like the clock on which	23	instance" so that's the starting point.
24	the claims are based? It's a clock that's	24	We don't think it's ever on the same
25	controlled, the speed of which is controlled by	25	substrate. I think we're saying to our
<u> </u>	1 FA		
1	150 the PVT parameters.	1	152 knowledge it's always external but look what
2	So again what we have here is a		they said next, Your Honor, "even if they were"
3	disclaimer of the use of the crystal, a fixed	3	so what he's saying is what the applicants are
4	rate crystal to control the speed of the clock.	4	saying, let's just assume that you could have a
5	Let's go to the third one. This is at	5	crystal, a fixed speed crystal on the same
6	the February 10th, 1998 amendment, at page	6	
7	four. Now, this is interesting, we've already		substrate as the CPU. So what follows is on
•			substrate as the CPU. So what follows is on that assumption. It's not assuming it's
8		7	that assumption. It's not assuming it's
8	seen some pretty strong language in some of	8	that assumption. It's not assuming it's external.
9	seen some pretty strong language in some of these other ones that in no way contemplates,	7 8 9	that assumption. It's not assuming it's external. Even if they were, as previously
9 10	seen some pretty strong language in some of these other ones that in no way contemplates, so forth. Here we have some really strong	7 8 9 10	that assumption. It's not assuming it's external. Even if they were, as previously mentioned, crystals are, by design, fixed
9 10 11	seen some pretty strong language in some of these other ones that in no way contemplates, so forth. Here we have some really strong language, essential difference.	7 8 9 10 11	that assumption. It's not assuming it's external. Even if they were, as previously mentioned, crystals are, by design, fixed frequency devices whose oscillation frequency
9 10 11 12	seen some pretty strong language in some of these other ones that in no way contemplates, so forth. Here we have some really strong language, essential difference. I'm not sure how you distinguish	7 8 9 10 11 12	that assumption. It's not assuming it's external. Even if they were, as previously mentioned, crystals are, by design, fixed frequency devices whose oscillation frequency is designed to be tightly controlled and to
9 10 11 12 13	seen some pretty strong language in some of these other ones that in no way contemplates, so forth. Here we have some really strong language, essential difference. I'm not sure how you distinguish something more clearly than use the "essential	7 8 9 10 11 12 13	that assumption. It's not assuming it's external. Even if they were, as previously mentioned, crystals are, by design, fixed frequency devices whose oscillation frequency is designed to be tightly controlled and to vary minimally due to variations in
9 10 11 12 13 14	seen some pretty strong language in some of these other ones that in no way contemplates, so forth. Here we have some really strong language, essential difference. I'm not sure how you distinguish something more clearly than use the "essential differences." The first part of what I'm about	7 8 9 10 11 12 13 14	that assumption. It's not assuming it's external. Even if they were, as previously mentioned, crystals are, by design, fixed frequency devices whose oscillation frequency is designed to be tightly controlled and to vary minimally due to variations in manufacturing, operating voltage and
9 10 11 12 13 14 15	seen some pretty strong language in some of these other ones that in no way contemplates, so forth. Here we have some really strong language, essential difference. I'm not sure how you distinguish something more clearly than use the "essential differences." The first part of what I'm about to read is describing the claimed invention,	7 8 9 10 11 12 13 14 15	that assumption. It's not assuming it's external. Even if they were, as previously mentioned, crystals are, by design, fixed frequency devices whose oscillation frequency is designed to be tightly controlled and to vary minimally due to variations in manufacturing, operating voltage and temperature."
9 10 11 12 13 14 15 16	seen some pretty strong language in some of these other ones that in no way contemplates, so forth. Here we have some really strong language, essential difference. I'm not sure how you distinguish something more clearly than use the "essential differences." The first part of what I'm about to read is describing the claimed invention, the last part is describing Magar.	7 8 9 10 11 12 13 14 15 16	that assumption. It's not assuming it's external. Even if they were, as previously mentioned, crystals are, by design, fixed frequency devices whose oscillation frequency is designed to be tightly controlled and to vary minimally due to variations in manufacturing, operating voltage and temperature." So let me just stop there. Right
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9 10 11 12 13 14 15 16 17	<pre>seen some pretty strong language in some of these other ones that in no way contemplates, so forth. Here we have some really strong language, essential difference.</pre>	7 8 9 10 11 12 13 14 15 16 17	that assumption. It's not assuming it's external. Even if they were, as previously mentioned, crystals are, by design, fixed frequency devices whose oscillation frequency is designed to be tightly controlled and to vary minimally due to variations in manufacturing, operating voltage and temperature." So let me just stop there. Right there the applicants are basically saying crystals don't achieve what we want here.
9 10 11 12 13 14 15 16 17 18	seen some pretty strong language in some of these other ones that in no way contemplates, so forth. Here we have some really strong language, essential difference. I'm not sure how you distinguish something more clearly than use the "essential differences." The first part of what I'm about to read is describing the claimed invention, the last part is describing Magar. So let's walk through this and I	7 8 9 10 11 12 13 14 15 16 17 18	that assumption. It's not assuming it's external. Even if they were, as previously mentioned, crystals are, by design, fixed frequency devices whose oscillation frequency is designed to be tightly controlled and to vary minimally due to variations in manufacturing, operating voltage and temperature." So let me just stop there. Right there the applicants are basically saying crystals don't achieve what we want here. Crystals won't vary according to the FVT
9 10 11 12 13 14 15 16 17 18 19	<pre>seen some pretty strong language in some of these other ones that in no way contemplates, so forth. Here we have some really strong language, essential difference. I'm not sure how you distinguish something more clearly than use the "essential differences." The first part of what I'm about to read is describing the claimed invention, the last part is describing Magar. So let's walk through this and I admit I'm going to be skipping over some words and only going to be reading what's in the red</pre>	7 8 9 10 11 12 13 14 15 16 17 18 19	that assumption. It's not assuming it's external. Even if they were, as previously mentioned, crystals are, by design, fixed frequency devices whose oscillation frequency is designed to be tightly controlled and to vary minimally due to variations in manufacturing, operating voltage and temperature." So let me just stop there. Right there the applicants are basically saying crystals don't achieve what we want here.
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9 10 11 12 13 14 15 16 17 18 19 20 21	<pre>seen some pretty strong language in some of these other ones that in no way contemplates, so forth. Here we have some really strong language, essential difference.</pre>	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	that assumption. It's not assuming it's external. Even if they were, as previously mentioned, crystals are, by design, fixed frequency devices whose oscillation frequency is designed to be tightly controlled and to vary minimally due to variations in manufacturing, operating voltage and temperature." So let me just stop there. Right there the applicants are basically saying crystals don't achieve what we want here. Crystals won't vary according to the FVT parameters. And then they go on to say, "the oscillation frequency of a crystal on the same substrate with the microprocessor would
9 10 11 12 13 14 15 16 17 18 19 20 21 22	<pre>seen some pretty strong language in some of these other ones that in no way contemplates, so forth. Here we have some really strong language, essential difference.</pre>	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	that assumption. It's not assuming it's external. Even if they were, as previously mentioned, crystals are, by design, fixed frequency devices whose oscillation frequency is designed to be tightly controlled and to vary minimally due to variations in manufacturing, operating voltage and temperature." So let me just stop there. Right there the applicants are basically saying crystals don't achieve what we want here. Crystals won't vary according to the FVT parameters. And then they go on to say, "the oscillation frequency of a crystal on the same
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<pre>seen some pretty strong language in some of these other ones that in no way contemplates, so forth. Here we have some really strong language, essential difference. I'm not sure how you distinguish something more clearly than use the "essential differences." The first part of what I'm about to read is describing the claimed invention, the last part is describing Magar. So let's walk through this and I admit I'm going to be skipping over some words and only going to be reading what's in the red underline on slide 27 for kind of ease of understanding. "The essential difference is that the frequency or rate of the" "signals is determined by the processing and/or operating</pre>	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	that assumption. It's not assuming it's external. Even if they were, as previously mentioned, crystals are, by design, fixed frequency devices whose oscillation frequency is designed to be tightly controlled and to vary minimally due to variations in manufacturing, operating voltage and temperature." So let me just stop there. Right there the applicants are basically saying crystals don't achieve what we want here. Crystals won't vary according to the PVT parameters. And then they go on to say, "the oscillation frequency of a crystal on the same substrate with the microprocessor would inherently," pretty strong word, "inherently

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	153		155
1	way as the frequency capability of the	1	external to the IC." This is not the case.
2	microprocessor on the same underlying	2	The clock gen part of the oscillator circuit is
3	substrate, as claimed."	3	clearly on the IC but not the crystal. You
4	So, again, once again, fourth time	4	heard something different this morning, but
5	we've seen this, where the applicant is saying	5	that's what the applicant said during
6	if you use a crystal, that's going to be fixed	6	prosecution.
7	speed, it's going to set the speed, it's going	7	Applicants note that the crystal is
8	to fix the speed, and that's not our invention	8	external and then jumping over the language it
9	because our invention is controlling speed	9	goes on to say "thus, while most of Magar's
10	through the PVT parameters.	10	clock (generator) circuitry is on the IC, the
11	Let's look at the fifth one. This is	11	entire oscillator, which because it requires an
12	that, the February 10th, 1990 amendment at four	12	external crystal, is not."
13	and five. And above the highlighting, it	13	So what we take from this and the
14	starts with, "The Magar teaching is well known	14	prior language is that if you're using a
15	in the art as a conventional crystal controlled	15	crystal that's off the chip to control the
16	oscillator. It is specifically distinguished,"	16	clock speed, then you don't meet that entire
17	again, pretty good words for a disclaimer	17	oscillator limitation that's in the claim.
18	argument, "specifically distinguished from the	18	So to sum up on this point TPL
19	instant case in that it is both," and I want to	19	distinguished Magar on two separate and
20	highlight that, Your Honor, both, there are two	20	distinct grounds, Magar's on-chip clock
21	disclaimers here, not one, "both fixed	21	circuitry required an external crystal to
22	frequency being crystal based." So what	22	oscillate, which I believe is conceded, and
23	they're saying here is using a crystal will	23	Magar's on-chip clock circuitry was frequency
24	result in a fixed frequency, not variable	24	controlled by an external crystal.
25	according to the PVT parameters, that's our	25	As we say in this Krippelz case, I
	154		156
1	disclation too and requires an external	1	think I pronounced that correctly the Federal

disclaimer too, and requires an external think I pronounced that correctly, the Federal 2 crystal or external frequency generator. Circuit said a correct construction must 3 That's what Mr. Otteson was talking about. capture both disclaimers, not neither or one. That's Disclaimer 1. But there's two 4 Now, there was some discussion, and 5 disclaimers here, very clear, not one. this is where I'm going to try not to get into 6 Now, Your Honor, I think Mr. Otteson the noninfringement, infringement argument, 7 showed you this, and perhaps Dr. Subramanian there was a reference in the brief which was ß did too, but this gives a little bit of mentioned again today by Mr. Otteson, and this 9 context, this is the Figure 2A that was is a part of TPL's initial brief at 14, it's on 10 referenced in one of the file history excerpts slide 233, where they say "There is certainly I showed of Magar and it shows the clock 11 no clear disavowal in the '336 file history generator, it's on the chip. We've highlighted 12 that would somehow prohibit the use of an 13 the border of the chip which is outlined by off-chip crystal as a reference 14 element 10, the dashed lines, that's the chip, signal -- especially when the entire ring and then X1 and X2 are the terminals that are 15 oscillator is fully integrated on the chip." 16 referred to in one of the file history excerpts So apart from the fact that you'll note there's I mentioned, they're the pins to the chip 17 no citation there to support that, the basically and the external crystal sends the 18 fundamental flaw with that is that using an inputs over those pins to the clock generator 19 off-chip crystal as a reference signal means 20 on the chip. And when you're going back and you are controlling the clock speed with the you're looking at some of these excerpts, this 21 crystal and more specifically you're making it may help you in reading those now, this is the 22 a fixed speed. February 10th amendment. And above the 23 He calls it a reference signal, but highlighting it says "The examiner also states 24 what you're saying if you have that crystal off that applicants contend that Magar's clock is 25 the chip. Then the signal on the chip will

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1	MR. WINSTON: That's all I have for	1	agree that the the applicants made it very
2	now. Thank you.	2	clear to the examiner that these prior art
3	JUDGE GILDEA: All right. We can go	3	references were using clocks that were not on
4	into the next group of terms or are we going	4	the chip.
5	to have the next group of terms?	5	Now, when you and what's very clear
6	MR. OTTESON: I have just a couple of	6	from the invention from both the
7	short things to say regarding the previous	7	specification and the claims and the file
8	discussion on ring oscillator and entire	8	history is that if you take a ring
9	oscillator, Your Honor.	9	oscillator, which everybody is very clear on
10	First of all, you always have to ask	10	what that is, it's just like what we see in
11	yourself, as a judge, when an accused infringer	11	Figure 18, it's very simple.
12	wants to add a bunch of terms in like they're	12	And if you put a ring oscillator on
13	doing here, why is that? And is there really a	13	the same semiconductor substrate as the CPU,
14	justification for it? And that's why Judge	14	they will vary together as a result of process
15	Ware, when he construed exactly the same term	15	variations, voltage, and temperature because of
16	didn't include those limitations because there	16	the laws of physics.
17	was no justification for it.	17	Now, that doesn't mean that you can't
18	And, in fact, when you were asking	18	add another element there, which is some way to
19	before I can't remember if it was the	19	manage or control the frequency of the ring
20	Staff I think it was the Staff whether	20	oscillator.
21	any construction was necessary for the entire	21	And if you look at if you look at
22	ring oscillator terms, the answer is, quite	22	what Respondents do, and this is what what
23	frankly, no.	23	Mr. Winston is alluding to, again, this in
24	I mean, on their face, if you look at	24	this situation, the off-chip crystal is a
25	Claim 6, for example, it says, "an entire	25	metronome, but that isn't what the off-chip

206 208 1 oscillator disposed upon said integrated 1 crystal was used in either Magar or Sheets. 2 circuit." Claim 1 says, "an entire ring 2 There's a big difference between a oscillator variable speed clock integrated on 3 metronome, which is used for comparison 3 purposes, I'm playing the piano, I'm listening the same integrated circuit as the CPU." 4 4 5 All it's talking about is the 5 to the metronome, and I'm trying to keep up, oscillator -- the ring oscillator, that's but the beat, the frequency comes from me, as I 6 6 disclosed as item 430 in Figure 17 of the 7 7 try to play. patent, which is that -- that thing that 8 8 And in this situation, the frequency oscillates because you have an odd number of 9 9 or the beat comes from the ring oscillator, inverters arranged in a loop. I mean, they're 10 which they have on their chip. And the entire 10 ring oscillator is on the chip, and that's all 11 trying to make it way more complicated than 11 12 this needs to be. 12 the applicants we're talking about, that the 13 13 JUDGE GILDEA: But Staff says that entire oscillator needed to be on the chip. 14 there's some problems down the road when we get 14 Now, with Magar and Sheets, so what they're doing really is a metronome, but that's 15 into infringement questions, as to whether or 15 not we have elements that some would say is 16 a completely different situation than when you 16 17 have, in Magar, for example, the external 17 part of that, that are not on the chip. 18 MR. OTTESON: Yeah, I understand that, 18 crystal is used as the engine to create the but here's another point that I'd like to make, 19 19 frequency. 20 which is this: If we look at both Sheets and 20 That's what the applicants were 21 Magar, it's very clear that the oscillator was 21 explaining to the examiner. They're saying, 22 22 our invention doesn't use an external crystal not on the chip. 23 23 as the engine to create the frequency, we don't So the distinction that the applicants 24 made, and Mr. Fowler went through those 24 use an external crystal for the oscillator. 25 and -- you know, what was said was said, and I 25 And that's what Magar was doing -- and also

209 211 Sheets. It had an off-chip oscillator. 1 1 than -- are you saying that --2 But that's very different than what 2 MR. OTTESON: Right, right. 3 Respondents are doing, where their engine for 3 JUDGE GILDEA: It's restricted to 4 creating that frequency is this oscillator that 4 simply an oscillator that the clock is -- it's 5 is on chip. And really, that's all applicants 5 the clock, it's the entire ring oscillator were saying when they added "entire." They're 6 6 variable speed system clock. 7 saying, hey, our entire oscillator is on the 7 MR. OTTESON: Right. And we 8 chip. 8 need -- yes, exactly right, and we need to look 9 Now, whether you want to add something 9 at the claims and specification to see what 10 else like a metronome for comparison purposes, 10 that is. Here's Figure 17, ring oscillator that's the D in your claim. These guys have an 11 11 variable speed clock. The only thing that the 12 A, B, and a C, and they also have a D. That 12 patent talks about that it uses as a variable 13 doesn't mean they don't infringe. That's the 13 speed system clock is the ring oscillator. 14 14 A.B. Dick case. The familiar ring oscillator discussed 15 JUDGE GILDEA: Well, would you agree 15 in column 16. That's it. That is the entire 16 16 with Staff's construction in the context of ring oscillator variable speed clock, and the 17 what you just said? 17 distinction over Magar was made simply to make 18 MR. OTTESON: No, Your Honor. And 18 clear that, hey, all of our transistors, all of 19 19 here's why -- here's why: Mr. Winston is the inverters that we need for this ring 20 20 saying that all of the things that affect oscillator, which is our clock, have to be on 21 frequency have to be on the chip, but this was 21 the same silicon as a CPU. 22 22 something that wasn't contemplated by the We're not like these external crystal 23 patent, it's something extra. And if you add 23 clocks that provide the frequency because we're providing the frequency on chip. But that 24 something extra, you still infringe. 24 What was contemplated by the patent is 25 doesn't mean that you couldn't add something 25

210 212 1 that the entire oscillator be on the chip. else which is a comparator. 1 2 That's what that is, it's the entire 2 As long as you have an entire ring 3 oscillator. There's a ring oscillator in 3 oscillator variable speed clock, which is the 4 there. That's what was discussed in the file 4 entire oscillator on the same chip, there's 5 5 history. That's what was added to the claims, nothing to say, according to A.B. Dick, that 6 6 vou couldn't have something extra, which is that there be an entire oscillator or an entire ring oscillator on the chip. 7 7 exactly what Respondents do here. They have 8 And that's what Magar and Sheets 8 this metronome which is just a comparator. But the engine -- the generator of 9 lacked. There was no on-chip oscillator to 9 10 create a frequency. And so I would not agree 10 their frequency is here in the ring oscillator, with Mr. Winston's construction because what 11 and make no mistake, it's all on the chip. 11 12 he's trying to say is even the off-chip 12 That's the only way they can get frequencies 13 external crystal, which is used for reference. 13 that high. 14 which means it's used as a metronome, it 14 And also, make no mistake, that being 15 doesn't generate the frequency. What it does 15 on the same semiconductor substrate as the CPU, that ring oscillator and the CPU do vary 16 is it's used for comparison purposes. 16 17 17 Again, the frequency in these chips is together with differences with manufacturing 18 18 so fast, 3.0 gigahertz is just an example, variations and voltage and temperature. 19 there's no way you can generate a frequency 19 Now, you also asked one question about controllable or noncontrollable, whether that 20 from an off-chip crystal. It's just a 20 21 21 reference for comparison purposes in -- that's was a coined term. And honestly, I think that 22 used in this phase detector. 22 it was. It came from the examiner. I mean, 23 JUDGE GILDEA: But the -- the claim 23 you remember when we walked through the file 24 24 term is, as I quote, "an entire ring oscillator history on that. 25 variable speed system clock," that's more 25 It was the examiner in an amendment

Certain Wireless Consumer Electronics

Inv. No. 337-TA-853 March 5, 2013

213	215
1 who said that he he used the word	1 the Staff's construction does that or
2 "noncontrollable," which is right here. He was	2 attempts to do that implicitly.
3 characterizing whether he understood or didn't	3 The other point I wanted to make is
4 understand exactly what the applicant was	4 that there was discussion, both with respect to
5 saying, that's the only place in the file	5 Mr. Otteson and Mr. Whitney, and if we could
6 history. And remember, it wasn't the file	6 have our slides back up and go to give me a
7 history for the '336, it was a different	7 moment, Your Honor, I apologize. Here we go.
8 patent. That's the only place that word	8 It was pointed out to Your Honor that
9 appears.	9 the word "entirely" was added by amendment. It
10 And what happened is that he said, "I	10 was a February 10th, 1998 amendment. But
11 will reconsider the current rejection based on	11 that's not what resolved the issue for the
12 a forthcoming response, which will include	12 applicants. That's not what got them over the
13 arguments similar to what was discussed."	13 hurdle.
14 The patentee submitted this and said,	14 If that had been the case, then what
15 we are not Talbot because Talbot doesn't have a	15 you would see in the comments section of that
16 ring oscillator. The circuit of Talbot isn't a	16 amendment is where we've changed this to be
•	
	· · · · · · · · · · · · · · · · · · ·
18 case because a ring oscillator looks like	18 same physical substrate. We're done with
19 Figure 18, where you have a bunch of inverters	19 Magar. We're done with Sheets.
20 arranged in a loop, and that's how it	20 But that's not what they did at all.
21 oscillates. And what did the examiner say in	21 And what I want to point out to Your Honor is
22 response?	22 here, on slide 226, the amendment at page
23 He says, well, I considered those	23 three, this is the same language I showed you
24 arguments that Talbot doesn't have a ring	24 before, so I won't belabor the issue, but look
25 oscillator, I agree. You can have your claims,	25 at what they're saying.
214	216
1 so noncontrollable should not be a limitation.	1 They're distinguishing Magar from the
 so noncontrollable should not be a limitation. And three judges before you have agreed that it 	1 They're distinguishing Magar from the 2 claim based on the fact that Magar uses a
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