

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

- - - - -x
 AMAZON.COM, INC., AMAZON DIGITAL :
 SERVICES, INC., AMAZON :
 FULFILLMENT SERVICES, INC., :
 HULU, LLC, NETFLIX, INC., and :
 GOOGLE, LLC, :
 Petitioners, :
 v. : CASE IPR2017-00948
 UNILOC LUXEMBOURG S.A., : CASE IPR2017-01665
 Respondent. :
 - - - - -x

Telephonic conference
 Silver Spring, Maryland
 Thursday, December 21, 2017 - 10:32 a.m.

Reported by:
 Cassandra E. Ellis, RPR
 Job no: 20378

1 Hearing before Judge David C. McKone, Judge
2 Barbara A. Parvis, and Judge Michelle N. Wormmeester,
3 held telephonically, pursuant to agreement, before
4 Cassandra E. Ellis, Certified Court Reporter -
5 Washington, Certified Shorthand Reporter - Hawai'i,
6 Registered Professional Reporter, Certified Livenote
7 Reporter, Realtime Systems Administrator, and Notary
8 Public of The State of Maryland.

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A P P E A R A N C E S

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C O N T E N T S

PAGE

PROCEEDINGS

5

E X H I B I T S

(None.)

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

2 JUDGE MCKONE: We are on the
3 line for the IPR2017-948 and
4 IPR2017-1665 matters. I have
5 Judges Parvis and Wormmeester with
6 me on the call, it sounds like
7 there is a court reporter on the
8 call, is there -- I understand
9 there's several petitioners in the
10 Amazon case, I'm going to refer to
11 them collectively as Amazon, for
12 convenience.

13 Is there anyone on the line
14 for petitioner Amazon? Okay, I'll
15 take that as a no. Is there
16 anyone on the line for petitioner
17 Google?

18 MR. RENNER: Yes, Your
19 Honor, this is Karl Renner, from
20 Fish and Richardson, and I'm
21 joined by Adam Shartzter.

22 JUDGE MCKONE: Okay. Who

1 will be doing the speaking today
2 for Google?

3 MR. RENNER: Thank you, Your
4 Honor, we'll probably both
5 contribute, but Mr. Shartzler will
6 be take the lead on that.

7 JUDGE MCKONE: Okay. Is
8 there anyone on the line for
9 patent owner Uniloc?

10 MR. MANGRUM: Yes, Your
11 Honor, good morning. This is
12 Brett Mangrum, lead counsel for
13 Uniloc, and I'll be doing the
14 speaking today.

15 JUDGE MCKONE: Okay. Is
16 there anyone else on the line for
17 patent owner?

18 MR. HUANG: Yes, Your Honor,
19 this is Jeffrey Huang, for patent
20 owner Uniloc.

21 JUDGE MCKONE: Okay. I will
22 assume that Mr. Mangrum will be

1 doing the speaking, unless you
2 introduce yourself otherwise,
3 Mr. Huang.

4 If there is anyone else on
5 the line and wishes to speak
6 please first identify yourself and
7 the party you represent.

8 Now, which party has
9 arranged for the court reporter?

10 MR. RENNER: Your Honor,
11 it's Google has arranged for the
12 court reporter.

13 JUDGE MCKONE: Okay.
14 Please, when you get a transcript,
15 file it as an exhibit in the case.

16 MR. RENNER: Yes, Your
17 Honor. Thank you.

18 JUDGE MCKONE: Okay. So the
19 reason why we are having this call
20 is Amazon filed a petition
21 challenging the challenge patent
22 in the 948 case, and after we --

1 after we received a preliminary
2 response in that case Google filed
3 another petition challenging the
4 same patent in the 1665 case, on
5 grounds it significantly
6 overlapped with the -- the ground
7 in the 948 case.

8 Patent owner, in its
9 preliminary response in the 1665
10 case, has raised 35 USC Section
11 325D as a defense, and is asking
12 us to -- to deny the petition in
13 1665 for -- for section 325D.

14 Now, as we stated in our --
15 our order of last week, we do see
16 merit in the 325D defense, but we
17 also have to weigh that against
18 the -- if we were to deny it then
19 Google would not have an
20 opportunity to -- to challenge
21 this patent on art that we've
22 already said has a likelihood of

1 success.

2 So our thought was a joinder
3 would be a possible compromise
4 position between denying Google's
5 petition outright and -- on one
6 hand, and on the other hand
7 subjecting the patent owner to
8 serial attacks with similar art.

9 So we asked the parties to
10 meet and confer and determine
11 whether they could agree to
12 joinder and, if so, what the terms
13 of that joinder might look like.

14 So our understanding is that
15 the parties have not been able to
16 reach agreement or at least not --
17 not entirely. For the purposes of
18 this call is for us to understand
19 what the parties' disagreement is
20 and determine whether we ought to
21 join the case, cases, or what the
22 terms would be, or whether we

1 should just simply consider the
2 1665 petition and make a ruling on
3 that.

4 So we'll start with --
5 with -- with Google. So I assume,
6 during my talking here, no one
7 from Amazon has -- has joined, is
8 that correct? Okay.

9 So we'll start with
10 petitioner, Google, because we
11 need to start with someone.

12 So as a result of the meet
13 and confer does any party object
14 to joinder in principal or is the
15 dispute rather around, I guess,
16 the terms of -- of a possible
17 joinder?

18 MR. SHARTZER: Your Honor,
19 this is Adam Shartzter, for Google,
20 and I can certainly address that.

21 JUDGE MCKONE: Go ahead.

22 MR. SHARTZER: I believe the

1 parties do not have a
2 disagreement, in principal, with
3 respect to joinder. As you
4 suggested, there is, however,
5 disagreement with respect to what
6 that joinder looks like and the
7 terms of it.

8 It is Google's position that
9 it has brought forth substantially
10 and meaningfully different
11 arguments with respect to in one
12 ground overlapping art and with
13 respect to Google's second ground
14 some art did overlap but also a
15 meaningfully different reference,
16 the Colloso (phonetic) reference,
17 and Google would like to have the
18 benefit of carrying its arguments
19 forward in a proceeding on the
20 argument that it made with respect
21 to the references in its petition.

22 Google made arguments, for

1 instance, with respect to source
2 code that is in the Domello
3 (phonetic) reference, and there is
4 an expert declaration attached to
5 Google's petition in support
6 explaining what a person of
7 ordinary skill would understand
8 from that source code.

9 Those --

10 JUDGE MCKONE: I think, in
11 our order, I made it clear that
12 we're not here to reargue the 325D
13 issues.

14 MR. SHARTZER: Okay.

15 JUDGE MCKONE: So my
16 understanding of your position is
17 Google wants to press the
18 arguments that it made in its --
19 in its petition that are -- that
20 it contends are substantially
21 different from those pressed in
22 the Amazon petition, is that -- is

1 that, I guess, your position in a
2 nutshell.

3 MR. RENNER: Yes, Your
4 Honor -- this is Mr. Renner --
5 yes, Your Honor, that's correct.
6 And I think the only reason to go
7 down the path that we were just
8 talking about is to help Your
9 Honors, if it weren't apparent, to
10 note exactly that, that these are,
11 we think, materially different
12 presentations of the grounds. And
13 that speaks to whether or not
14 there's a reason to concern
15 ourselves with trying to put them
16 on a different schedule, same
17 schedule, and frankly, have the
18 arguments come along with, but
19 we'll let that rest as -- as
20 you're noting, and maybe just talk
21 about the schedule that we
22 proposed that's -- that's of

1 interest to you.

2 MR. MANGRUM: I would like
3 to present the patent owner's
4 position.

5 JUDGE MCKONE: I'm sorry,
6 who's speaking?

7 MR. RENNER: This is Brett
8 Mangrum for Uniloc, patent owner.

9 JUDGE MCKONE: Okay. Well,
10 I will -- I will -- I will let --
11 I will let you speak after --
12 after Google's had a chance to put
13 forth its position.

14 MR. MANGRUM: But Your Honor
15 asked whether or not we agreed, in
16 principal, to that joinder, and I
17 wanted to answer that question,
18 but we can -- but we can wait
19 until Google has presented its --

20 JUDGE MCKONE: Please.

21 MR. RENNER: And to that
22 point, Your Honor, Mr. Renner

1 again, our intentions in answering
2 that was only to suggest that both
3 parties came to one another with
4 an expression of -- of what
5 joinder might look like.

6 And so our -- our take from
7 that is that each party is willing
8 or at least amenable to
9 considering joinder, it was really
10 the "what does it look like" is
11 where we really had a hard time to
12 coming to terms with one another.

13 So if we conveyed otherwise
14 that's all our intention was
15 there.

16 JUDGE MCKONE: Okay.

17 MR. RENNER: But as to the
18 schedule we proposed, and how
19 joinder would look, if you're
20 amenable to, we're happy to take
21 you through that.

22 JUDGE MCKONE: Yes.

1 MR. SHARTZER: This is Adam
2 Shartzter, for Google. The
3 schedule that we had proposed to
4 Uniloc was one essentially where
5 there would be a slight delay in
6 the current proceeding between
7 Uniloc and Amazon. We would then
8 give Uniloc an opportunity to
9 respond to the differences in the
10 arguments made by Google. And
11 then what would happen is,
12 essentially, the schedule would
13 pick back up with what we propose
14 is the time about a five-week
15 delay in the current deadlines.

16 And when I say picked back
17 up, once Uniloc files a response
18 to Google's petition then Amazon
19 and Google would simultaneously
20 file a reply brief, about five
21 weeks later, that would allow
22 Amazon and Google to coordinate on

1 a joint deposition, on a single
2 day, so we're not taxing the
3 Uniloc's declarants any more than
4 would otherwise occur in a single
5 joined proceeding.

6 And then, from there,
7 essentially a five-week delay
8 would roll through the rest of the
9 deadlines in the schedule, moving
10 the hearing from early May to
11 early June.

12 And then, from there, the
13 board either would have
14 approximately nine weeks to draft
15 a final written decision or in the
16 joinder situation, as we've seen
17 common, the board could take
18 advantage of the -- the -- the
19 additional time it could grant
20 itself to issue a final written
21 decision in a joinder situation.
22 So that would --

1 JUDGE MCKONE: You are
2 anticipating extending our
3 schedule beyond the final written
4 decision deadline in 948?

5 MR. SHARTZER: It was a
6 possibility. There was --
7 essentially we move the hearing
8 about a month, which would
9 certainly compress the amount of
10 time that the board had to issue a
11 final written decision, and to the
12 extent the board needed more time
13 than nine weeks that would
14 certainly be an option of the
15 board to -- to extend the schedule
16 if, you know, at the board's
17 discretion.

18 JUDGE MCKONE: Now, was --
19 was Amazon or the Amazon
20 petitioners part of the meet and
21 confer process?

22 MR. SHARTZER: Yes, Your

1 Honor, they were.

2 JUDGE MCKONE: Did they,
3 since they're apparently not on
4 the line today, were they -- did
5 they agree or disagree with
6 extending the final written
7 decision deadline in the 948 case?

8 MR. SHARTZER: Your Honor,
9 they were neutral. They were not
10 going to take a position. But
11 they appeared to be fine with a
12 schedule that included additional
13 time just for the board to issue a
14 single final written decision that
15 could handle both cases moving
16 forward.

17 JUDGE MCKONE: Okay. So to
18 summarize your -- Google's
19 position, if there was a joinder
20 you would -- you would prefer
21 joinder that allowed you to
22 present -- press your additional

1 arguments presented in the 1665
2 case that were not presented in
3 the 948 case, and you would
4 propose approximately a five-week
5 delay in the deadlines in order to
6 allow for those issues to get
7 vetted, and that might result in
8 an extension of the final written
9 decision deadline in 948; is that
10 accurate?

11 MR. SHARTZER: Yes, Your
12 Honor, that's accurate. There --
13 again, there is case law support
14 for that in the Enzymotec
15 proceeding, it's IPR2014-00556,
16 paper 19, in that particular
17 decision a board determined to
18 join a second filed petition and
19 allowed additional arguments to be
20 brought into that proceeding,
21 detecting that there was neither
22 language in section 311 or 315C

1 that required the board to limit
2 the second petitioner to just the
3 issues of the first petition.

4 JUDGE MCKONE: Okay.
5 Anything else, then, Google,
6 before I turn to the patent owner?

7 MR. RENNER: One last, this
8 is Mr. Renner again, just one last
9 note, I think you maybe picked up
10 on this, I want to make sure it's
11 clear, in joinder situations we've
12 seen articulated is that the
13 one-year bar is not applicable.

14 So that if the nine weeks
15 weren't sufficient we don't
16 believe that the proposal that
17 we're making requires the board to
18 go into its six-month period that
19 is also allowable, it's not --
20 it's not really an invasion of
21 that period, it's just simply the
22 joinder cases are outside of the

1 typical schedule that's imposed on
2 the board is -- is the -- and yet
3 if nine weeks were sufficient then
4 maybe the one year could still be
5 observed, in any event.

6 JUDGE MCKONE: Okay.

7 MR. RENNER: Thank you, Your
8 Honor.

9 JUDGE MCKONE: Would you
10 envision a change in the hearing
11 date, then, in the 948 case?

12 MR. RENNER: We do, as
13 Mr. Shartzter has pointed out, we
14 think the five weeks that we're
15 talking about, that allows for
16 patent owner to respond to the
17 issues that are newly raised here,
18 and then get our schedule
19 consistent with -- with each of
20 the proceedings thereafter.

21 We think rather than
22 compressing later parts of the

1 schedule that five weeks would, if
2 it could carry through, it would
3 just shift the oral argument by
4 the same five weeks.

5 If there were opportunities
6 to compress later on we would be
7 open to considering them, of
8 course, but we thought the
9 simplest would be to carry that
10 through.

11 MR. SHARTZER: And to be
12 clear -- this is Adam Shartzter for
13 Google, again -- the schedule that
14 we proposed to Uniloc would move
15 the hearing from May 8th, to June
16 6th, 2018, of course, that's
17 obviously subject to the board's
18 availability, which we didn't have
19 the benefit of when we posed the
20 schedule, but we are proposing
21 what is a somewhat limited amount
22 of delay in order to sync the

1 schedules.

2 JUDGE MCKONE: All right.
3 Patent owner, what is -- you've
4 been waiting patiently, here, what
5 is your position?

6 MR. RENNER: Yes, good
7 morning, Your Honor. Again, thank
8 you for the opportunity to be
9 heard today.

10 I wanted to just clarify one
11 point from one of the original
12 questions, and that is, Uniloc
13 does not necessarily concede
14 joinder is appropriate, here.
15 However, in the interest of
16 compromise we were prepared and
17 did discuss the possibility of
18 joinder under certain terms, and
19 offered a terms of joinder to the
20 opposing counsel during the meet
21 and confer.

22 However, we just point out

1 that in this instance the -- as
2 the board noted in its order the
3 deadline is passed for joinder.
4 So we're not necessarily conceding
5 joinder is correct. However --

6 JUDGE MCKONE: Well, the
7 deadline is for petitioner to
8 request joinder.

9 MR. RENNER: Exactly. But
10 in view of the board's
11 instructions I think we met and
12 conferred and provided a proposal.
13 I would like to discuss the terms
14 of that proposal.

15 So petitioner's offered a
16 case today, they did not offer a
17 case during the meet and confer,
18 so this is the first time that
19 they brought up any case law that
20 allegedly supports their position.

21 However, for our meet and
22 confer we did cite to them, and

1 collectively, the group, pulled up
2 a case and read from it during the
3 meet and confer that supports
4 patent owner's position.

5 So our position is this: To
6 the extent joinder is allowed
7 petitioner should take a limited
8 understudy role. The understudy
9 role is a term I'm sure the board
10 is familiar with, it's been
11 applied in other cases.

12 Now, there's actually a case
13 with surprisingly similar facts,
14 it is, and this is the case that
15 we brought up as the group during
16 the call, it's case IPR2016-00089,
17 it's Innopharma Licensing versus
18 Senju Pharmaceutical, and in that
19 case here's just some facts, there
20 was a follow-on petition that
21 essentially had the same ground as
22 the original petition, but then

1 they added additional grounds, and
2 the board had not yet reviewed on
3 those additional grounds. So the
4 same question came up, should we
5 join those proceedings and what
6 should be the parameters of
7 joinder.

8 And in that case, in the
9 answer to facilitating joinder,
10 what was decided is that the
11 follow-on petitioners would take
12 an understudy role and that the
13 joinder they would be joined to
14 the original petition under the
15 same grounds instituted in the
16 original -- petition -- petition,
17 and the new grounds would --
18 would -- would not be considered
19 by the board.

20 And there was reasons for
21 that, I mean, there's some policy
22 concerns, and the board's already

1 noted that in its order, here in
2 this instance, and in the prior
3 instance, the petitioners have --
4 Google has taken -- has the
5 benefit of patent owner's response
6 to the original petition. And
7 since we've retooled and revamped
8 their petition based on our
9 response, so it's kind of like a
10 second follow-on that's an
11 extension of that briefing,
12 almost.

13 And then we -- one of the
14 problems we have with the proposal
15 of opposing counsel is that it's
16 really not a request for joinder,
17 it's almost, in a sense, a reverse
18 joinder, where the follow-on
19 petition controls the schedule and
20 the follow-on petitioners
21 articulate and argue based on
22 grounds that have not even been

1 instituted by the board.

2 And I want to -- we had a
3 call earlier in this matter, with
4 the board, when we discussed how
5 to proceed in -- in the instance
6 of a contingent notice to amend,
7 which the board likely recalls.
8 And there it was decided that we
9 were instructed that we would
10 proceed. So I'm talking about the
11 original case, we would proceed in
12 the original case according to the
13 original scheduling order.

14 So pursuant to those
15 instructions patent owner filed
16 its contingent motion to amend,
17 and its formal response in the
18 original trial, so I'm talking
19 about the 948 on timeliness. We
20 timely filed pursuant to that
21 deadline.

22 Under this proposed revised

1 schedule the response, to that
2 motion to amend, the opposition
3 would effectively be given an
4 additional five weeks. So not
5 only is it a reverse joinder
6 scenario it's also a scenario
7 where patent owner met their
8 deadline and then -- and when we
9 tried to just buy the fact that
10 there will be additional five
11 weeks for the -- in the original
12 case for the petitioners to then
13 respond.

14 And so the -- the delaying
15 the schedule, and having a reverse
16 joinder where the follow-on
17 petitioners essentially control,
18 not take an understudy role but
19 take the lead role, and introduce
20 new arguments that haven't even
21 been instituted, we think, is just
22 inconsistent with the case we

1 cited and highly prejudicial to
2 the patent owner.

3 JUDGE MCKONE: Okay. Now,
4 as between us instituting on the
5 new -- the 1665 petition, and
6 setting the separate schedule for
7 that case, and joinder of 1665 to
8 the 948 case, with the new issues,
9 and setting a combined schedule
10 there, which would be, I guess,
11 patent owner's preference, and to
12 make clear, we haven't made any
13 decisions on the merits of the
14 1665 petition yet.

15 MR. MANGRUM: Understood,
16 and I appreciate the question
17 allowing us to respond to that, we
18 would prefer to keep, to the
19 extent the trial's even instituted
20 on the new grounds, to keep them
21 separate. We believe they're
22 separate issues. And it's in

1 interest to my client to proceed
2 in the original case as
3 expeditiously as possible.

4 JUDGE MCKONE: So you would
5 prefer, if we decide we ought to
6 go forward on the 1665 case, you
7 would prefer that to just proceed
8 on its own separate schedule?

9 MR. MANGRUM: That is
10 correct.

11 JUDGE MCKONE: Okay.
12 Does -- does Google have anything
13 else? Actually, before Google,
14 patent owner, do you have anything
15 else to say on the issue?

16 MR. MANGRUM: No, Your
17 Honor.

18 JUDGE MCKONE: Okay. Google
19 do you have any response?

20 MR. RENNER: Your Honor,
21 just to Uniloc's final point,
22 there, to your question regarding

1 proceeding under a separate
2 schedule or a joined schedule, you
3 know, certainly we -- we
4 approached the issue of joinder
5 with Uniloc because the board
6 requested us to do that.

7 If it's Uniloc's preference
8 to proceed separately, you know,
9 certainly, you know, it sounds
10 like that is their preference, and
11 there is precedent for that, the
12 3Shape case, which actually came
13 after the Innopharma case, so the
14 3Shape is IPR2016-00481, in legal
15 paper number 12, 3Shape was a --
16 was a third petitioner in line,
17 that shared a 102 ground with all
18 three petitions that had been
19 filed.

20 There the patent owner had
21 argued that 325D should apply, but
22 the board rejected that argument,

1 and -- and it moved forward on
2 the -- the difference -- the --
3 the overlapping grounds and the
4 different grounds, essentially
5 allowing the parties to proceed
6 separately and not detecting any
7 type of 325D issues.

8 And so I just wanted to
9 supplement the record, at least
10 with that case, and say that
11 certainly if the board's inclined
12 to institute and move forward
13 separately on Google's petition
14 that is something that Google is
15 amenable to, and for which there
16 is support.

17 MR. MANGRUM: And, Your
18 Honor, this is Brett Mangrum, for
19 patent owner, I just wanted to
20 clarify an earlier answer, if I
21 understood the question. So there
22 is essentially there's multiple

1 options, here.

2 The patent owner's
3 preference is actually joinder,
4 for the reasons articulated
5 earlier, but joinder under the
6 limited understudy role. We
7 believe that serves everyone's
8 interests. And -- and -- and
9 applying the same understudy role
10 conditions set forth in the
11 2016-89 case, that's our
12 preference.

13 But if -- if the question
14 is, essentially, what I'm told is
15 a reverse joinder that Google's
16 proposing or -- or proceed
17 independently in the different
18 matter, that the reverse joinder
19 we feel is just highly
20 prejudicial.

21 So if that's the question
22 then we believe the proceedings

1 should be kept -- and in the event
2 that the board decides to
3 institute, if that's the question
4 we believe it should be
5 independent or separate.

6 JUDGE MCKONE: To summarize,
7 it's patent owner's position that
8 if we should consider -- if we go
9 forward with Google's new issues
10 you prefer that it go forward in a
11 separate case on a separate
12 schedule?

13 MR. MANGRUM: That's
14 correct.

15 JUDGE MCKONE: Okay.

16 MR. MANGRUM: And in the
17 event the board is inclined to
18 consider a joinder under the same
19 parameters as the Innopharma,
20 where there is joinder, but
21 there's no new issues, there would
22 be essentially joinder on the

1 original petitions, the 948
2 petition, that would actually be
3 our preference. We believe it
4 serves all interests.

5 MR. RENNER: Your Honor,
6 counsel for Google, if you have --
7 if we may say another word?

8 JUDGE MCKONE: Okay.

9 MR. RENNER: Sir, this is
10 Mr. Renner again, and two
11 comments, one is that of all of
12 the options prior to, that is the
13 option that we actually least
14 prefer, a ride-along joinder. In
15 the case that's been cited, the
16 Innopharma case, we think is
17 distinct. We think that the
18 understudy role that was described
19 in that case is wholly
20 inappropriate here.

21 In that case the record
22 reflects that even the petitioner

1 that was second filing classified
2 the grounds they were presenting
3 as essentially the same as those
4 grounds that had earlier been
5 provided. In our case, as you
6 heard Mr. Shartzler began our talk
7 today, we think that the
8 presentation and the application
9 of the art is quite different in
10 our petition as it relates to the
11 first filed petition.

12 So we think the Innopharma
13 case is very specific on that
14 point and submits material
15 distinction.

16 And then as to the other two
17 grounds or two approaches we just
18 want to see this done as
19 efficiently and effectively as
20 possible.

21 So we're amenable to Your
22 Honor's whatever discretion would

1 have, but we're amenable to either
2 approach that is a separately
3 conducted proceeding, where the
4 material differences can be
5 vetted, we think most efficiently,
6 again, in this forum, since the
7 board is taking this up as opposed
8 to a later different forum.

9 But alternatively, if we
10 could have a schedule that is
11 consolidated in the way that we've
12 described we think that's a fair
13 way to efficiently move forward
14 here, as well.

15 JUDGE MCKONE: Okay.

16 MR. MANGRUM: Your Honor,
17 this is Brett Mangrum.

18 JUDGE MCKONE: Hold on, I'll
19 give you another chance in a
20 moment.

21 So for Google, as between
22 joinder and an understudy role

1 with no new issues, and outright
2 denial of Google's petition,
3 Google, do you have a preference
4 as between those two?

5 MR. RENNER: Sorry, I -- I
6 think I was expecting the question
7 to be a little different. Can you
8 repeat it just to make sure I'm
9 getting it right?

10 JUDGE MCKONE: As between
11 joinder with the 984 case, under
12 the terms of the 948 case, as an
13 understudy, in the understudy
14 role, as between that and outright
15 denial of Google's petition under
16 325D, does Google have a
17 preference?

18 MR. SHARTZER: Well, Your
19 Honor, it's -- it is not something
20 that we have discussed with Google
21 and our client, there is precedent
22 in the 3Shape case for moving

1 forward on substantial grounds in
2 a separate proceeding.

3 JUDGE MCKONE: We understand
4 that, and that's one of the things
5 we will be considering, but one of
6 our other options is to deny the
7 1616 -- 1665 petition under
8 section 325D.

9 If we reach the conclusion
10 that that -- that that ought to
11 be -- that that's the correct
12 result, would you oppose joinder
13 to the 948 in an understudy role
14 in order to protect Google in the
15 event that Amazon settles?

16 MR. RENNER: Your Honor,
17 we're not in a position to be able
18 to accept a joinder under those
19 particular terms. And we do have,
20 you know -- our second ground in
21 our petition is certainly
22 different from anything that has

1 been instituted in the current
2 proceeding, and with Amazon, and
3 at minimum we would think that
4 that grounds ought to be heard
5 certainly as a matter of, you
6 know, fairness and certainly for
7 completeness of the record.

8 MR. SHARTZER: And Your
9 Honor, you seem to be in command
10 of this, I'll say it just to make
11 sure it's on the table, we do
12 think, as a matter of policy,
13 these proceedings being ones that
14 are affected to relieve district
15 courts that otherwise could be
16 held more efficiently here, we
17 have some concerns over -- over
18 that kind of approach, however,
19 because it seems like that might
20 create the most inefficiency.

21 JUDGE MCKONE: Okay. Sounds
22 like a moment ago patent owner

1 wanted to say one more thing.

2 MR. MANGRUM: Yes, Your
3 Honor, and thank you for the
4 opportunity.

5 I wanted to correct the
6 record of something, in attempting
7 to distinguish Innopharma
8 Licensing versus Senju
9 Pharmaceutical case IPR2016-0089,
10 paper number 13, the counsel for
11 petitioner seems to suggest that
12 there were no additional grounds
13 authorized or -- or considered in
14 the follow-on petition, and that's
15 just not correct.

16 I'm reading from paper
17 number 13, the board said, and I
18 quote, Innopharma's petition
19 includes additional grounds not
20 authorized in the inter partes
21 review instituted in the loop in
22 IPR.

1 So -- and I -- I apologize,
2 I'm done with the page, because I
3 had screen scraped this, but
4 that's from paper 13, it's very
5 clear in that matter that there
6 were new grounds. And so the
7 point of distinction is really
8 illusory.

9 And the second point I want
10 to make is in good faith Uniloc
11 did its research before the meet
12 and confer, and provided this case
13 to opposing counsel during the
14 meet and confer, and then gave
15 opposing counsel the opportunity
16 to pull it up during the meet and
17 confer and read it and consider
18 it.

19 Here, opposing counsel's
20 lied behind the law, and for the
21 first time during the call
22 introduced cases without providing

1 any notice to patent owner that it
2 was going to even present these
3 cases or arguments with respect to
4 this case. And it's kind of a
5 prejudicial strategy to, you know,
6 for the first time, during a call,
7 introducing case law.

8 To the extent the board's
9 going to even consider that Uniloc
10 would appreciate the opportunity
11 to maybe even have a briefing or
12 discussion of that further. It's
13 just -- it -- we -- we --

14 MR. RENNER: Your Honor,
15 we're not asking for any
16 additional briefing here.

17 MR. MANGRUM: Okay. I just
18 want to at least make the record
19 clear of the circumstances of how
20 Uniloc is prepared to discuss case
21 law in our meet and confer and we
22 had no cases cited to us during

1 the meet and confer by opposing
2 counsel.

3 MR. RENNER: Your Honor, on
4 that note, if I may, I'd just like
5 to make sure you're apprised of
6 what the petitioner said about its
7 grounds.

8 JUDGE MCKONE: I -- I don't
9 need to go over the back and forth
10 of your meet and confer. I think
11 the parties have put forth what
12 their -- what their positions are
13 on this point.

14 MR. RENNER: Thank you.
15 And -- and I just cite to page
16 three, paper one in the same case,
17 in lead up to Your Honor's review.
18 I'm happy to comment on it but I
19 will leave it at that.

20 JUDGE MCKONE: Okay. So
21 we're not going to give a decision
22 today. At this point we're going

1 to fully consider the 1665
2 petition and consider whether or
3 not the 325D argument raised by
4 patent owner has merit.

5 And we'll also consider the
6 party's argument today for and
7 against joinder if -- if we reach
8 the point where we think we need
9 to consider that. And it's been
10 helpful today to hear what your
11 positions are.

12 And Google, do you have any
13 other -- anything else to say on
14 these issues?

15 MR. RENNER: No, thank you,
16 Your Honor. I appreciate the
17 time.

18 JUDGE MCKONE: Okay. Patent
19 owner, do you have anything else
20 to say on these issues?

21 MR. MANGRUM: No, Your
22 Honor. Again, thank you for the

1 opportunity to be here.

2 JUDGE MCKONE: Okay. We'll
3 issue decisions on these issues in
4 due course, as soon as we can,
5 and -- and with that, this call is
6 adjourned. Thank you very much.

7 (Whereupon, the hearing was
8 adjourned at 11:07 a.m.)

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Cassandra E. Ellis, Registered Professional
3 Reporter and Notary Public, the officer before whom
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5 certify that the foregoing transcript is a true and
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8 thereafter reduced to typewriting under my
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10 related to, nor employed by any of the parties to this
11 case and have no interest, financial or otherwise, in
12 its outcome.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 and affixed my signature this 22nd day of December
15 2017.

16 My commission expires:
17 December 14, 2022

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