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L7 L8	JUDGE PETTIGREW: This is Judge
	•
L9	Pettigrew. Also on the call with me are Judges
20	Chung, Hudalla, Melvin and Leni. Who do we have
21	on the call for Petitioner?
22	MR. SEITZ: This is Adam Seitz for
23	Petitioner Apple. Also joining me is my partner
0/1	Paul Hart



25	JUDGE PETTIGREW: Thank you. And
	2
1	who do we have on the call for Patent Owner?
2	MR. PLUTA: Good afternoon, your
3	Honor. This is Robert Pluta on behalf of Patent
4	Owner Maxell. And also on the call with me is my
5	colleague Saqib Siddiqui.
6	JUDGE PETTIGREW: Which party
7	arranged for the court reporter?
8	MR. SEITZ: That was Petitioner's
9	counsel. This is Adam Seitz. We arranged for the
10	reporter.
11	JUDGE PETTIGREW: All right, thank
12	you. So we ask you to file a transcript as soon
13	as possible as an exhibit after the call.
14	So we scheduled this call to address an
15	email we received from Petitioner requesting
16	authorization to file a two-page supplemental
17	brief along with appropriate exhibits relating to
18	a summary judgment motion that Maxell filed in
19	the parallel District Court proceeding involving
20	the three patents that are challenged in the
21	three IPRs before us.
22	Petitioner states in an email that the
23	summary judgment motion may impact our analysis



- of Fintiv Factor 4, the potential overlap of
- 25 issues between the District Court litigation and

3

- 1 IPRs.
- 2 The emails do not specify whether Patent
- 3 Owner opposes the request. In the future please
- 4 make sure the parties meet and confer before
- 5 contacting us with any requests. And also you
- 6 should specify in the email whether the other
- 7 party opposes the request.
- 8 Let's start with Petitioner. Please
- 9 explain briefly why you believe there's good
- 10 cause for the requested briefing and in
- 11 particular we'd like to hear the subject of the
- 12 summary judgment motion and why it's relevant to
- 13 our Fintiv analysis.
- 14 MR. SEITZ: Yes, your Honor. This
- is Adam Seitz on behalf of Petitioner. Thank you.
- 16 Your Honor, in the summary judgment argument
- 17 submitted to the District Court, Maxell challenges
- 18 the invalidity case against the three patents that
- are subject to the IPRs that we are here
- 20 discussing.
- 21 And we believe it is relevant to your
- 22 Honor's proceeding specifically in the Fintiv



- 23 analysis regarding the alleged overlap with the
- 24 District Court. In its sur-reply that was
- 25 granted to Maxell to discuss the Fintiv factors,

4

- 1 Maxell argued that there was overlap between
- 2 these proceedings at the P tap and the District
- 3 Court and that the same issues would be decided
- 4 and that under Fintiv that was an independent
- 5 grounds for denial raising the questions of
- 6 whether there would be inconsistent rulings, et
- 7 cetera.
- 8 The summary judgment motion itself that
- 9 Maxell has filed challenges the reference Abowd
- 10 A.B. O W D and its public availability. That is
- 11 one of the issues that the parties have briefed
- 12 here as well. The question of Abowd and its
- 13 public availability was the subject of additional
- 14 briefing in the reply and the sur-reply in these
- 15 petitions or in these matters as well.
- 16 One of the most fundamental there's two
- 17 things I want to point out here, your Honor.
- 18 First, probably the most fundamental thing,
- 19 Maxell bases its summary judgment motion to the
- 20 District Court on the fundamental premise that
- 21 the Abowd article, the question of whether it is



- 22 publicly available, whether Apple has proved that
- 23 it's publicly available at the District Court, is
- one of clear and convincing, a standard that is
- one of the highest if not the highest at the

5

- 1 civil level for district courts. They say that
- 2 Apple has failed to show clear and convincing
- 3 evidence.
- 4 The board, however, applies a different
- 5 standard. Under the board's precedential
- 6 decision in Hulu, the board examines whether
- 7 Petitioner has shown a reasonable likelihood that
- 8 the reference, here Abowd, was publicly
- 9 accessible and a reasonable likelihood of whether
- 10 the reference qualifies as a printed publication.
- 11 So looping back to the question of
- overlap, there is no scenario where there will be
- inconsistent positions here. The District Court
- 14 could find on the highest burden of proof, that
- 15 clear and convincing evidence, that Apple made a
- 16 very strong showing but failed to meet the clear
- 17 and convincing standard. The board could find
- 18 that very same evidence meets a reasonable
- 19 likelihood standard. That is not an
- 20 inconsistency such of the type that Fintiv is



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