

1           IN THE SUPREME COURT OF THE UNITED STATES

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3   QUANTA COMPUTER, INC.,                                 :

4   ET AL.,   :

5                                 Petitioners                                 :

6                                 v.   :   No. 06-937

7   LG ELECTRONICS, INC.   :

8   - - - - - x

9   Washington, D.C.

10   Wednesday, January 16, 2008

11

12                                 The above-entitled matter came on for oral  
13 argument before the Supreme Court of the United States  
14 at 10:16 a.m.

15 APPEARANCES:

16 MAUREEN E. MAHONEY, ESQ., Washington, D.C.; on behalf  
17 of the Petitioners.

18 THOMAS G. HUNGAR, ESQ., Deputy Solicitor General,  
19 Department of Justice, Washington, D.C.; on behalf of  
20 the United States, as amicus curiae, supporting the  
21 Petitioners.

22 CARTER G. PHILLIPS, ESQ., Washington, D.C.; on behalf  
23 of the Respondent.

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

2 (10:16 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument  
4 first today in Case 06-937, Quanta Computer v. LG  
5 Electronics.

6 Ms. Mahoney.

7 ORAL ARGUMENT OF MAUREEN E. MAHONEY

8 ON BEHALF OF THE PETITIONERS

9 MS. MAHONEY: Mr. Chief Justice, and may it  
10 please the Court:

11 Under this Court's exhaustion cases,  
12 exhaustion has always been triggered when two criteria  
13 have been satisfied and the district court properly  
14 dismissed these claims because it found that they were  
15 satisfied here on the undisputed facts. The first is  
16 that there must be an authorized sale under the patent  
17 that was allegedly infringed. That's never been in  
18 dispute in this case. The Federal Circuit recognized  
19 that Intel was authorized to sell these components under  
20 the system and method patents at issue in the case that  
21 have been allegedly infringed.

22 And the second criteria is that the article  
23 sold must be one that falls within the protection of the  
24 patent that was allegedly infringed, here the system and  
25 method patents. But as Univis holds, that test doesn't

1    apply simply to articles that would directly infringe  
2    the patent, because the law with contributory  
3    infringement standards provides that protection to the  
4    patent owner also to articles that would contributorily  
5    infringe. In other words --

6                    JUSTICE STEVENS: Ms. Mahoney, can I just  
7    get one thing straight in my mind. Which transaction  
8    triggered the exhaustion doctrine in your judgment, the  
9    general license to Intel or the sale by Intel to Quanta.

10                   MS. MAHONEY: I think they work in  
11   combination here, Your Honor, because once the sale  
12   was -- once the license was entered into with Intel and  
13   once unrestricted rights were given to make, use and  
14   sell components that would infringe, otherwise infringe  
15   these patents, there was really nothing else that could  
16   happen --

17                   JUSTICE STEVENS: Was the license  
18   unrestricted? That's one of the reasons I asked the  
19   question. Wasn't there a use restriction on the resale?

20                   MS. MAHONEY: Well, there was -- what there  
21   was, the sale was authorized. The sale was authorized.  
22   What --

23                   JUSTICE STEVENS: On the condition that it  
24   be sold to someone who would not use it on non-Intel  
25   products.

1                   MS. MAHONEY: I don't think that's what the  
2 lower courts found and I don't think that's what the  
3 argument has ever been, Your Honor. I think this is  
4 just like Bobbs-Merrill. There is a -- this Court has  
5 recognized that there is a difference between actually  
6 conditioning the seller's authority to sell to someone  
7 who's going to use it for some prohibited purpose, and  
8 that would be a case like General Talking Pictures,  
9 where it says, you do not have authority to sell to  
10 someone who's going to use it for the home market. But  
11 Bobbs-Merrill says if what you do instead -- it was a  
12 copyright case that was applied in Motion Picture  
13 Patents. If what you do instead is you give them  
14 authority to sell, you don't say you'll be in breach if  
15 you sell it to somebody who's going to sell books at  
16 below the retail price I've specified, if instead what  
17 you do is say, you have to agree you'll give them notice  
18 that the -- that the owner of the invention, or in that  
19 case the copyright, is not agreeing to your use of these  
20 books or sale of these books at below a certain price,  
21 that doesn't count. There's still an authorized sale,  
22 that when -- that you can't -- that the patent owner  
23 can't try to retain part of the monopoly right to sell.  
24                   CHIEF JUSTICE ROBERTS: Well, if that's true  
25 then this case really isn't a big deal at all. It just

1 depends on exactly how you word the contract when the  
2 patentee sells it to a purchaser. You can word it -- in  
3 other words, you can word it in such a way that the  
4 patentee's rights extend further downstream and you're  
5 saying all this case turns on is whether the wording  
6 here was correct or not.

7 MS. MAHONEY: Well, the wording hasn't been  
8 in dispute, but a lot of important things turn on it,  
9 because of course if Intel didn't have the authority to  
10 make these sales, it would be liable for contributory  
11 infringement. And undoubtedly when Intel decided how  
12 much to pay for this license it cared deeply about  
13 whether it was going to be exposed to that liability.

14 CHIEF JUSTICE ROBERTS: Well, I understand  
15 your position to -- to acknowledge that they could have  
16 structured the sale to Intel in such a way as to achieve  
17 the same result that you're saying is so bad under the  
18 patent laws.

19 MS. MAHONEY: I don't think so, Your Honor.  
20 Once they have an authorized sale, then the results are  
21 different, because if there has been an authorized sale  
22 --

23 JUSTICE GINSBURG: May I give you a specific  
24 example? I think the Chief has something on this order  
25 in mind. Could the patentee say to the licensee, to the

1 Intel, that, I license you to sell only to buyers who  
2 have a license from the patentee? Could -- could the  
3 licensee be limited in that way?

4 MS. MAHONEY: They could do that, and let me  
5 explain the consequences of doing that. If Intel then  
6 under those circumstances sold to a buyer who did not  
7 have a license, Intel would be liable for contributory  
8 infringement because it wouldn't be an authorized sale,  
9 and the buyer would be liable for infringement because  
10 it didn't acquire the goods through an authorized sale.  
11 If the buyer instead has the license, has obtained the  
12 license from the patentowner, then there has been an  
13 authorized sale and any remedies that the owner of the  
14 patent would have against the buyer would be those found  
15 in contract, because the triggering line under this  
16 Court's cases is has there been an authorized sale? And  
17 this makes perfect sense because --

18 JUSTICE GINSBURG: But explain to me --  
19 perhaps I should ask Mr. Phillips this question -- but  
20 why isn't it done that way? The way -- if the patentee  
21 wants to maintain control further down the line, why  
22 doesn't the patentee just limit the licensee to selling  
23 to people who are licensed?

24 MS. MAHONEY: Presumably because in this  
25 circumstance -- it's not in the record -- but presumably

1 Intel wouldn't agree to these terms unless it in fact  
2 was given authority to sell, no matter how it was going  
3 to be used, because otherwise it would still be on the  
4 hook for liability. And -- and presumably they could  
5 have done something that would have required an  
6 agreement with -- you know, between -- only sell to  
7 someone with an agreement. But for whatever reason the  
8 parties didn't negotiate that term. Perhaps Intel  
9 wasn't willing to do it that way.

10 CHIEF JUSTICE ROBERTS: So the parties are  
11 unwilling to spell out exactly how this is going to work  
12 out in their contract, and each side, it prefers to take  
13 their chances on how the Federal Circuit's going to  
14 rule. It's easier to sell these things if they're not  
15 encumbered by these additional license requirements and  
16 the manufacturer presumably gets a lot more, but there's  
17 a lot of uncertainty, uncertainty that could have been  
18 cured by how the contract was drafted, and people prefer  
19 to live with that uncertainty and litigate rather than  
20 clear it up in the contract.

21 MS. MAHONEY: Well, I think that this  
22 Court's ruling would certainly make things clear, but I  
23 think that the language of the contract recognizes that  
24 the -- specifically says that, notwithstanding anything  
25 to the contrary, the ordinary operation of patent



1 exhaustion is supposed to apply here. In other words, I  
2 think Intel knew --

3 CHIEF JUSTICE ROBERTS: Fine, and the person  
4 who wrote that provision knows that the question of how  
5 the patent-exhaustion doctrine applies is the subject of  
6 great confusion, so much confusion that the Supreme  
7 Court's going to have to decide it, and yet they put  
8 that in there rather than spelling out in the contract  
9 exactly which they had in mind, whether or not you could  
10 impose these further restrictions or couldn't.

11 MS. MAHONEY: But, Your Honor, I think that  
12 under this Court's decision in *Univis Lens*, as the  
13 district court recognized, the answer in this case is  
14 actually quite clear what the patent-exhaustion doctrine  
15 would require. And the reason it's clear --

16 CHIEF JUSTICE ROBERTS: Well, it wasn't  
17 clear to the Federal Circuit, I guess.

18 MS. MAHONEY: It wasn't clear to the Federal  
19 Circuit, but it was clear to the district court, showing  
20 that the idea that somehow it was absolutely known to  
21 everybody what the outcome of this issue would be is not  
22 correct. The district court, I think correctly,  
23 understood that *Univis Lens* was the controlling case.  
24 Of course, the Federal Circuit didn't even cite it. But  
25 the district court found that the *Univis Lens* standard

1 was satisfied because these components were necessarily  
2 manufactured in a manner that satisfied, that included  
3 the functionality of the system and method patents at  
4 issue here. At 30a, the district court looks to LGE's  
5 own claim charts and says that their own allegations  
6 show that they were manufactured in a way that met many  
7 of the limitations of the claims.

8 In addition, at 67 of the petition appendix,  
9 she says that by attaching the components, the Intel  
10 chips, to the -- the other generic wires and memory, it  
11 necessarily caused these products to infringe. And, at  
12 46, she says, "Failure to follow Intel's design  
13 specifications would render the computers inoperable."

14 So, this is a case where there's just no  
15 question that if LGE's allegations are correct these  
16 products would have contributorily infringed. So Intel  
17 knew that in order to avoid potential liability to -- to  
18 LGE, that it had to get full authority to sell, and it  
19 did. And there's never been any dispute about that.  
20 Instead, there's simply the Federal Circuit's view that  
21 even if you have an authorized sale, that the  
22 patentowner is nevertheless allowed to say, okay, I  
23 authorize the seller to sell it to anybody, but I want  
24 to retain the right to control the use of the -- of the  
25 buyer. And that's exactly what this Court's cases have

1 always said, with the exception of A.B. Dick, cannot be  
2 done because the whole point of the exhaustion doctrine  
3 is to demarcate the line between where the monopoly  
4 power to control rights to use and sell end and where  
5 any rights under contract must begin.

6 JUSTICE SOUTER: Well, there's one --  
7 there's one more wrinkle that you don't expressly advert  
8 to and that is the argument that what is in issue here  
9 are the -- are the systems and methods patents, rather  
10 than the -- the equipment component patents.

11 MS. MAHONEY: Yes.

12 JUSTICE SOUTER: And that with respect to  
13 the equipment component patents nothing is being  
14 retained, but with respect to the systems and method  
15 patents nothing was being granted. What is your answer  
16 to that answer to your argument?

17 MS. MAHONEY: It's completely inconsistent  
18 with the way the case has been litigated from the outset  
19 as well as the terms of the contract. At page 5 of the  
20 petition appendix, the Federal Circuit acknowledges that  
21 Intel had full authority to sell these components under  
22 all of the patents, including the system and method  
23 patents. If it didn't have authority to manufacture and  
24 sell under the system and method patents, it would be  
25 potentially liable for contributory infringement. And

1 in fact LGE has acknowledged in its brief in footnote 7  
2 that Intel isn't potentially liable for contributory  
3 infringement under the terms of this agreement.

4 JUSTICE SOUTER: So the answer simply is  
5 that that the argument rests upon a mistake of fact  
6 which has not been challenged in the record?

7 MS. MAHONEY: It absolutely has not.

8 JUSTICE SOUTER: Yes.

9 MS. MAHONEY: The component patents are not  
10 at issue here at all. And the idea that you couldn't  
11 have one patent on a component and another patent on a  
12 system where the component would contributorily infringe  
13 is nonsensical. These components had thousands of  
14 patents on them. And certainly the argument isn't that  
15 by authorizing the sale of the component all of the  
16 owner's rights are released in that. If, instead, there  
17 had been a sale of a component where a patent owner  
18 says, I'll authorize you to sell my -- my -- that  
19 component under my component patent, but if you sell it  
20 under my system patent -- I'm not giving you authority  
21 to sell it under my system patent, so if you sell it,  
22 I'm going to sue you for infringement, that didn't  
23 happen here, and it's never been litigated in that way.

24 Instead, that first criteria of the  
25 authorized sale has plainly been satisfied, and the only

1 question in this case has been whether or not this  
2 satisfied the contributory infringement standard that  
3 Univis Lens uses to define what articles --

4 JUSTICE STEVENS: Ms. Mahoney, I understand  
5 that's really the way it's been litigated, but I have to  
6 confess I was puzzled by the court of appeals' statement  
7 that the granting of the license constituted a sale for  
8 exhaustion purposes, and they cited the Masonite case  
9 for that proposition, but it doesn't seem to me to  
10 support that proposition.

11 MS. MAHONEY: Your Honor, I think all that  
12 that really is saying is that at a point when you enter  
13 into -- a patentowner enters into an unrestricted  
14 license to make, use, and sell with a manufacturer, then  
15 at that point any articles that are manufactured under  
16 that license, effectively the patent's been exhausted.  
17 But I think it's easier to --

18 JUSTICE STEVENS: It's not exhausted by the  
19 manufacturer, is it?

20 MS. MAHONEY: No. For contributorily  
21 infringing --

22 JUSTICE STEVENS: It's exhausted under this  
23 view by the licensee's sale of an article that it  
24 manufactured pursuant to the license.

25 MS. MAHONEY: But -- right, manufactured

1 pursuant --

2 JUSTICE STEVENS: And it seems to think  
3 there's no distinction between the sale itself and the  
4 basic underlying license, whereas I had thought for  
5 years that there was recognized a distinction between  
6 those two transactions.

7 MS. MAHONEY: Well, I think that it just  
8 means that once you have that transaction any sales that  
9 occur for those articles under that license are going to  
10 be exhausted by definition. But, you know, we have  
11 certainly focused on the sale of the articles to Quanta  
12 from Intel, and I think, you know, it makes sense to  
13 look at it that way.

14 And, as indicated, there really is -- there  
15 have been arguments that somehow this deprives the  
16 patentowner of the right to collect its full royalty,  
17 but that doesn't make any sense. Because if you -- if  
18 you look at the rights that are afforded under  
19 contributory infringement, what Congress has done in  
20 Section 271(c) and what this Court had done before was  
21 to say that if you are the owner of a system patent or a  
22 method patent, you can go ahead and collect your royalty  
23 when someone sells a product that will contributorily  
24 infringe.

25 In other words, your -- your product is

1 sufficiently -- your patent is sufficiently embodied in  
2 those contributorily infringing products that it's  
3 appropriate for you to collect your royalty there.  
4 That's exactly what happened in this case. LGE did get  
5 its royalty from Intel, did give them authority to sell  
6 products which would otherwise contributorily infringe,  
7 and now what it's seeking to do is to say, despite the  
8 authorized sale, despite the fact it would  
9 contributorily infringe, we want to collect another  
10 royalty from the buyer of the product that can't use it  
11 for any other purpose. Why? Well, because we have --  
12 we had them sent a notice that said we wanted to do  
13 that.

14 Under this Court's cases, that is completely  
15 impermissible. In two cases in particular, Motion  
16 Picture Patents, they tried to do the exact same thing.  
17 And in the Millinger case the patentowner said that it  
18 had never gotten paid for the extension rights under its  
19 patent. And this Court said: Nope; once you've sold  
20 the article, that's the royalty you get.

21 JUSTICE KENNEDY: I see your white light is  
22 on. I have just one question. Are there cases where  
23 some downstream restrictions on use might be necessary  
24 to prevent the patent from becoming worthless, i.e., in  
25 the biological area for replication of seeds in

1 agriculture and so forth?

2 MS. MAHONEY: Well, what we're -- exhaustion  
3 is triggered when -- with respect to the rights to  
4 control and use. Rights to make are treated  
5 differently.

6 Univis, of course, though, holds that when  
7 you're talking about the sale of a contributorily  
8 infringing product, you're really talking about the  
9 right to -- to make it, to use it, to complete the --  
10 complete the article. But I think --

11 JUSTICE KENNEDY: I thought Univis was one  
12 of your principal cases.

13 MS. MAHONEY: It is, absolutely. It holds  
14 -- in other words, what Univis holds is that when you  
15 have an article that is uncompleted -- it's not finished  
16 -- as in this case, by the -- the sale will -- will  
17 mean, by definition, that you can use it to complete the  
18 article.

19 I'd like to reserve the remainder of my  
20 time. Thank you.

21 CHIEF JUSTICE ROBERTS: Thank you,  
22 Ms. Mahoney.

23 Mr. Hungar?

24 ORAL ARGUMENT OF THOMAS G. HUNGAR

25 ON BEHALF OF THE UNITED STATES,



1 AS AMICUS CURIAE,  
2 SUPPORTING THE PETITIONERS

3 MR. HUNGAR: Thank you, Mr. Chief Justice,  
4 and may it please the Court:

5 For 150 years this Court has held that an  
6 authorized sale removes the particular item sold from  
7 the protection of the patent laws. The court below  
8 erroneously transformed that patent-exhaustion doctrine  
9 from a definitional principle that delimits the scope of  
10 the patent grant into an optional default assumption  
11 that can be discarded at the whim of the patentee.  
12 If the rationale of the court of appeals were correct,  
13 this Court's decisions in cases like Univis, Motion  
14 Picture Patents, Straus, Bauer and Boston Store would  
15 have to have gone the other way, because in each of  
16 those cases this Court held that the exhaustion  
17 principle overrode express restrictions that the  
18 patentee had attempted to impose on after-sale use or  
19 resale by an authorized purchaser.

20 This Court should follow its precedents and  
21 reaffirm the principle that the patent-exhaustion  
22 doctrine precludes a patentee from employing the patent  
23 law to enforce post-sale restrictions on use or resale  
24 by authorized purchasers, that is --

25 JUSTICE GINSBURG: Mr. Hungar, is there a

1 reason why Congress codified this doctrine in the  
2 Copyright Act, but not in the Patent Act?

3 MR. HUNGAR: We -- there's nothing in the  
4 legislative record that would explain that, Your Honor.  
5 Presumably it's because Congress wanted to specify  
6 particular limits, which Section 109 of the Copyright  
7 Act does. It wanted to specify particular limits to  
8 define the scope of the doctrine in the copyright  
9 context in a way that it has not sought -- found it  
10 necessary to do in the patent area.

11 But there's no legislative history about  
12 this. I mean, this Court has said that the 1952 act  
13 codified, recodified, and readopted, reaffirmed, the  
14 principles of the Court's cases on infringement  
15 generally. Obviously --

16 JUSTICE GINSBURG: And the PTO didn't take  
17 any position on whether it should be codified?

18 MR. HUNGAR: I'm not aware of anything in  
19 the legislative history of the 1952 codification on the  
20 subject of the patent exhaustion doctrine one way or the  
21 other; but, obviously, Congress did not express any  
22 dissatisfaction with it.

23 It did change certain aspects of patent law,  
24 but it did not attempt in any way to override or change  
25 the effect of the first-sale doctrine, which under this

1 Court's cases has been perfectly clear for well over a  
2 century and has the effect we've suggested.

3 And we submit that, although the Respondent  
4 essentially ignores or runs away from the rationale of  
5 the court of appeals, we submit it's important for this  
6 Court to explicitly address and explicitly reject the  
7 Federal Circuit's misunderstanding of the  
8 patent-exhaustion doctrine, its view that a patentee can  
9 essentially override it simply by attaching a notice to  
10 the article that has been sold in an authorized sale.

11 CHIEF JUSTICE ROBERTS: Although you think  
12 it can be overridden simply by providing in the contract  
13 that the same rights and remedies would be available?

14 MR. HUNGAR: No, Your Honor. I mean, it  
15 depends a little bit on what contract we're talking  
16 about and what it says. It is true, as Justice Stevens  
17 indicated, it has always been true, that this Court has  
18 deemed a license under a patent to be different from a  
19 sale of a particular article under a patent. It is the  
20 sale of the article that exhausts. The license does not  
21 -- exhaustion doesn't -- isn't relevant at the mere  
22 licensing stage.

23 CHIEF JUSTICE ROBERTS: A mere license can  
24 prevent the application of the patent-exhaustion  
25 doctrine?

1                   MR. HUNGAR: Well, only at the -- only at  
2     the level of the licensee. That is, if it is true, as  
3     Ms. Mahoney said, if the -- if LG here had given a  
4     restricted license that restricted the right to sell,  
5     that said you can only sell in these instances, and if  
6     Intel then sold outside those permitted instances, that  
7     would be patent infringement.

8                   CHIEF JUSTICE ROBERTS: And it would be  
9     patent infringement by the use of the product by the  
10    people that Intel sold to?

11                  MR. HUNGAR: Yes, because it was an  
12    unauthorized sale.

13                  CHIEF JUSTICE ROBERTS: That would sound  
14    like your friend on the other side, the Respondent, had  
15    actually won in this case.

16                  MR. HUNGAR: Well, that's right. If this  
17    had been an authorized sale -- I mean an unauthorized  
18    sale, they would win. But, of course, it's been  
19    accepted throughout the case, and the court of appeals  
20    explicitly said at page 5A, and it's been undisputed,  
21    that Intel had the right to sell these items to these  
22    Petitioners.

23                  They had the right to sell. It was not  
24    infringing. And if it's not "infringing," by  
25    definition, it's an "authorized" sale. It's authorized

1 under the patent explicitly by the license agreement.

2 JUSTICE BREYER: But you couldn't put in --  
3 you are authorized to sell the bicycle pedals that I  
4 have patented only if you impose a restriction that will  
5 tell the bicycle user that he must send me a check for  
6 \$15 in addition to whatever he pays you. That sounds  
7 unlawful under contract law.

8 MR. HUNGAR: Well, it might be lawful. You  
9 could certainly do what, in fact, I think some of the  
10 seed companies --

11 JUSTICE BREYER: Or you are going to have --  
12 I mean, there's a doctrine that you cannot impose  
13 equitable servitude's upon chattel.

14 MR. HUNGAR: Yes.

15 JUSTICE BREYER: That's a contract law  
16 doctrine.

17 MR. HUNGAR: It would not be enforceable as  
18 a matter of patent law against the authorized purchaser.  
19 If -- if the licensee does what the licensee is  
20 obligated to do, it imposes the -- it attaches the  
21 notice or it requires the --

22 JUSTICE BREYER: My thought is that the  
23 reason that these things are important and you can't  
24 just draft your way around them is because there are  
25 antitrust doctrines, there are contract-law doctrines,

1     that also limit in significant ways what you can and  
2     cannot write into a contract.

3                 MR. HUNGAR:   That's exactly right.

4                 CHIEF JUSTICE ROBERTS:   Well, I think that's  
5     an important question.  I understood the argument at  
6     page 16 of your brief to say that the patent-exhaustion  
7     doctrine doesn't apply in that situation and that you,  
8     therefore, can't have the rights and remedies under  
9     patent law.

10                You told me earlier that if the person to  
11    whom Intel sells the product uses it contrary to the  
12    license stipulation, they would be liable for patent  
13    infringement.

14                Your answer to Justice Breyer suggests to me  
15    that you're saying only that they're liable to -- for  
16    contract infringement, and that's a very big difference.

17                MR. HUNGAR:   Well -- but, Your Honor, it all  
18    goes back to the question:  Was there an authorized sale  
19    of the article at issue?  If the sale is authorized, if  
20    what the licensee --

21                CHIEF JUSTICE ROBERTS:   Sale from whom to  
22    whom?

23                MR. HUNGAR:   The sale from the licensee to  
24    the purchaser.  The license is not a sale -- is not a  
25    sale for purposes of the patent exhaustion.  I think

1     that the Federal Circuit was just wrong in saying that,  
2     because what the patent-exhaustion doctrine talks about  
3     is the sale of an article. All the cases say the sale  
4     of the particular article removes that article from the  
5     -- from the patent monopoly.

6                 CHIEF JUSTICE ROBERTS: But what you --  
7     well, but what you say in your brief is that in the  
8     situation we're talking about the licensee stands in the  
9     shoes of the patentee. Now, if that's right it seems to  
10    me that you're telling me that the patent remedies are  
11    available and not simply contractual remedies.

12                MR. HUNGAR: No. What we're saying is this.  
13    If -- if the licensee has a restricted license, that is  
14    its right to sell is restricted, it can only sell on  
15    Mondays and not on Tuesdays --

16                CHIEF JUSTICE ROBERTS: Well --

17                MR. HUNGAR: -- and it sells on a Tuesday.

18                CHIEF JUSTICE ROBERTS: Well, or, more  
19    pertinently, it can only sell if the person they sell to  
20    agrees not to use the product in a certain way.

21                MR. HUNGAR: Fine. If they have that  
22    restriction and they sell and they do not -- they do not  
23    obtain the contractual promise of the party that they  
24    are obligated to obtain, they're violating the terms of  
25    their right to sell. It's patent infringement by the

1 seller, and if the buyer uses it it's patent  
2 infringement by them as well.

3 CHIEF JUSTICE ROBERTS: Exactly. That's the  
4 critical point. You're telling me that if the buyer, in  
5 other words, the kind of third person in this chain,  
6 uses the patented article in a way that is contrary to  
7 the license that was given to the second person in the  
8 chain, then he is liable for contributory infringement  
9 under the patent laws and not, as I understood you to  
10 answer to Justice Breyer, only under contract law.

11 MR. HUNGAR: Yes, because --

12 CHIEF JUSTICE ROBERTS: Do you sue under  
13 patent law or just contract law?

14 MR. HUNGAR: If -- in your hypothetical, as  
15 I understand it, it's an unauthorized sale. The  
16 licensee does not have the right to sell under the  
17 patent in those circumstances, and therefore the  
18 exhaustion principle does not apply.

19 JUSTICE SOUTER: But not every infringement  
20 of the license is necessarily an unauthorized sale.

21 MR. HUNGAR: That's correct.

22 JUSTICE SOUTER: So there could be a  
23 restriction in the license which is not a restriction on  
24 sale and that could be violated. And the exhaustion  
25 doctrine would still apply, and you might have remedies



1 in some another theory, i.e., contract.

2 MR. HUNGAR: That's correct. That's  
3 correct. Likewise, what happens in the real world is  
4 the patentee, if the patentee wants to restrict what  
5 people can do downstream, they say to the licensee, you  
6 can only sell if you obtain a contractual promise from  
7 the purchaser.

8 JUSTICE STEVENS: Are you saying that this  
9 case would come out differently if instead of just  
10 requiring a notice that the -- the item should only be  
11 used on Intel products, that had been a condition of the  
12 license. If the license itself said you may manufacture  
13 and sell to only people who agree to use the product  
14 exclusively with Intel products?

15 MR. HUNGAR: Yes. In if those  
16 circumstances, if Quanta had -- if that -- if that  
17 license condition --

18 JUSTICE STEVENS: So the key fact in this  
19 case is it was just a requirement of giving notice  
20 rather than a condition in the license?

21 MR. HUNGAR: But let me be clear. The key  
22 distinction is between an authorized sale and an  
23 unauthorized sale. So if there is an authorized sale,  
24 that is, Intel --

25 JUSTICE STEVENS: I understand that.

1                   MR. HUNGAR: Well, I think I haven't been  
2 clear, because I want to make sure that that the  
3 consequences are clear --

4                   JUSTICE STEVENS: The big key is what is an  
5 authorized sale? And I'm asking you if the -- if the  
6 license agreement to the -- to Intel had said you may  
7 only sell to people who agree to use the products on the  
8 patentee's products, that then would -- and they did  
9 otherwise, they didn't get -- then it would not have  
10 been an authorized sale?

11                  MR. HUNGAR: Correct, and it would be patent  
12 infringement. But if they sold and the purchaser did  
13 agree, they did enforce that requirement, they did  
14 require the purchaser to sign a promise -- may I finish,  
15 Your Honor -- to promise to limit the use and the  
16 purchaser then violated that promise, the point is that  
17 would be a breach of contract but it would not be patent  
18 infringement because the sale was authorized, the patent  
19 monopoly ends and only contract principles control  
20 thereafter.

21                  CHIEF JUSTICE ROBERTS: Thank you,  
22 Mr. Hungar.

23                  Mr. Phillips.

24                  ORAL ARGUMENT OF CARTER G. PHILLIPS

25                  ON BEHALF OF THE RESPONDENT

1                   MR. PHILLIPS: Thank you, Mr. Chief Justice,  
2 and may it please the Court:

3                   Justice Souter, I want to go to your  
4 question, because, frankly, I think it is the key to the  
5 entirety of this case. And that is, what is the "it"  
6 that we are talking about? And what's absolutely  
7 critical here is, yes, there was -- you know, this is  
8 the first sale doctrine. It's easy to call it  
9 patent-exhaustion, but the truth is it's the first sale  
10 doctrine.

11                  And the question is, what was sold here?  
12 And the only sale that was involved here was the  
13 chipsets. And there is a completely separate patent  
14 that deals with the rest of the system and that deals  
15 with the method. And nothing -- and this is the key  
16 point of this. The exhaustion doctrine only goes as far  
17 as the sale.

18                  CHIEF JUSTICE ROBERTS: Well, but there's  
19 nothing to do with these chipsets other than use them in  
20 the computers. I mean, you don't put them on your  
21 shelf. They're not good for anything other than using  
22 in the computer. So saying there's a separate patent  
23 for how you use them with the other systems doesn't seem  
24 to be very significant.

25                  MR. PHILLIPS: It would be -- and that's why

1 you would ordinarily -- you don't deal with this as an  
2 exhaustion issue. That's why you would deal with this  
3 as an implied licensing issue.

4           The assumption would be, in the absence of  
5 clear evidence to the contrary, that if I'm selling you  
6 something that only has a single use and that's in a  
7 separate patent, that you in fact are being licensed to  
8 go and use it that way. But what's absolutely critical  
9 in this case is that both the district court and the  
10 court of appeals specifically rejected the notion that  
11 there was any implied license. And it's important to  
12 realize this.

13           Even as we approach this case, we didn't sue  
14 for any of the activities that predated when the other  
15 side received its notice. We sued only for the  
16 activities post notice. Why? Because at that stage it  
17 was absolutely clear that there was no implied license  
18 any longer and there's no basis for expanding the  
19 exhaustion doctrine to try to fill that void.

20           The exhaustion doctrine ought to be retained  
21 as a very narrow first sale doctrine, because it doesn't  
22 have any congressional support or approval at this  
23 point. It is a logical way of proceeding. It protects  
24 people against being surprised when they purchase a  
25 particular product. But to go beyond that and to say

1 that simply because that sale, that particular product  
2 is, quote, an "essential feature" of a separate patent  
3 and therefore you have now exhausted the rights to that  
4 second patent seems to me a stretch that --

5 JUSTICE BREYER: Well, there's a reason, I  
6 guess, that would be so. Imagine that I want to buy  
7 some bicycle pedals, so I go to the bicycle shop. These  
8 are fabulous pedals. The inventor has licensed somebody  
9 to make them, and he sold them to the shop, make and  
10 sell them. He sold them to the shop. I go buy the  
11 pedals. I put it in my bicycle. I start pedaling down  
12 the road.

13 Now, we don't want 19 patent inspectors  
14 chasing me or all of the other companies and there are  
15 many doctrines in the law designed to stop that. One is  
16 the equitable servitudes on chattel. Another is the  
17 exhaustion of a patent. And now you talk about implied  
18 license.

19 I would say, why does it make that much  
20 difference? What we're talking about here is whether  
21 after those pedals are sold to me under an agreement  
22 that the patent -- you know, you have a right to sell  
23 them to me -- why can't I look at this as saying that  
24 patent is exhausted, the patent on the pedals and the  
25 patent for those bicycles insofar as that patent for the

1 bicycles says I have a patent on inserting the pedal  
2 into a bicycle.

3 Call it exhaustion, call it implied license.  
4 Who cares?

5 MR. PHILLIPS: I don't have any problem with  
6 your hypothetical because it's not this case. Your  
7 hypothetical deals with the situation of what would have  
8 happened if you had bought the chip. Would we be in a  
9 position to say, even though you bought the chip, we  
10 nevertheless want to retain some right to come out -- to  
11 come after you claiming we still have a patent in that  
12 chip? And the answer is no. We exhausted -- that was  
13 exhausted by the sale of the chip.

14 The question is if you buy a pedal, can you  
15 then take that pedal that was designed for a bicycle,  
16 put it into a Stair Master --

17 JUSTICE BREYER: Ah, but I thought --

18 MR. PHILLIPS: -- patent in the Stair  
19 Master --

20 JUSTICE BREYER: Yes. Of course, I think  
21 the answer to that is no, probably no, but, but, but,  
22 but. Now you can clarify this because I may be off on a  
23 wrong track. I thought we're talking about using the  
24 sold item in those mechanisms which account for  
25 virtually almost the only logical use of the sold item.

1     Thus, if you took the bicycle blanks -- not the bicycle  
2     blanks; they are eyeglass blanks. I'm mixed up between  
3     bicycles and eyeglasses, there we are.

4                 But if you took the eyeglass blanks and you  
5     use them for the purpose of growing plants instead of  
6     inserting them into eyeglasses, I guess we'd have had a  
7     different case.

8                 MR. PHILLIPS: Right.

9                 JUSTICE BREYER: And I take it here they are  
10    using those chips in those mechanisms that the chips are  
11    almost exclusively designed for and there isn't much  
12    else to use them for. Am I right or wrong?

13                MR. PHILLIPS: That is true. But the -- but  
14    the point here is that that's not the relevant  
15    distinction. It's not whether or not this is in some  
16    sense an essential use. What this Court said in Univis  
17    is that this would be a very -- that would have been a  
18    very different case if there had been a separate patent  
19    on the grinding and finishing of those lenses. And that  
20    is precisely our case. There is a separate patent when  
21    you take those components and you then put them into our  
22    separate system.

23                And from my perspective, Your Honor, the  
24    better way to analyze this is not as a question of  
25    exhaustion. Let's keep the exhaustion doctrine where it

1 fits. It's a first sale component. You buy it, you  
2 exhaust. Let's use the implied licensing as the  
3 mechanism for dealing with related patents.

4 But the beauty of that in this case,  
5 obviously, is that -- is that the implied license in  
6 this case the courts below have flatly said doesn't  
7 exist. And it goes to the point that you made, Justice  
8 Breyer, as well when you said, you know, I buy this and  
9 I sort of assume that I'm going to be able to use it in  
10 a particular way. These -- this is a \$10 billion  
11 company that at the time they bought these components,  
12 these chips, received explicit and specific notice that  
13 the one thing they could not do was use these chips to  
14 build new systems and then sell those systems,  
15 obviously, beyond -- you know, under a completely  
16 separate patent.

17 CHIEF JUSTICE ROBERTS: Mr. Phillips.

18 MR. PHILLIPS: So it's not as though they  
19 didn't know what they were getting when they bought it.  
20 They bought cheap chips and turned them into \$2,000  
21 laptops because they didn't --

22 CHIEF JUSTICE ROBERTS: Mr. Phillips?

23 MR. PHILLIPS: Yes, Your Honor.

24 CHIEF JUSTICE ROBERTS: What in the world  
25 does clause 3.8 of the license mean? It says,



1 "notwithstanding anything to the contrary in this  
2 agreement, the parties agree that nothing herein shall  
3 in any way limit or alter the effect of patent  
4 exhaustion that would otherwise apply when a party  
5 hereto sells any of its licensed products."

6 In other words, the patent exhaustion  
7 doctrine may not apply for all the reasons that we've  
8 been talking about, but it applies in the way it would  
9 apply if we just sold these licensed products. That  
10 seems to me to give away everything you're talking  
11 about.

12 MR. PHILLIPS: No. Because that -- that  
13 depends on the scope of the patent exhaustion doctrine.  
14 If the patent exhaustion doctrine is limited to the sale  
15 of the specific product -- let's for instance assume for  
16 a moment that what in fact happened was that Intel sold  
17 the system, rather than the chips. Then that would --  
18 that would exhaust the patent doctrine.

19 Now, you know, the question is -- and here  
20 there is a disconnect in some respects between the  
21 Mallinckrodt decision in the Federal Circuit and some of  
22 this Court's previous decisions on to the extent to  
23 which you can condition a sale, and I think in some ways  
24 that language may have been given up what rights we  
25 might have been able to assert under Mallinckrodt on a

1 somewhat broader basis. But I don't think it can be  
2 read any further than that, and it certainly -- and the  
3 key to this is it certainly doesn't in any way waive our  
4 rights, you know, as an implied license matter, because  
5 that's -- specifically what both the district court and  
6 the court of appeals held is there is no implied license  
7 in this particular context, and so therefore for them to  
8 prevail they have to expand the patent exhaustion  
9 doctrine or the first sale doctrine beyond the first  
10 sale; and that I submit to you is something that's  
11 simply not appropriate.

12 JUSTICE STEVENS: Am I correct in  
13 understanding that you do not defend the Mallinckrodt  
14 decision?

15 MR. PHILLIPS: I do not defend the  
16 Mallinckrodt decision, Justice Stevens, and clearly I  
17 don't believe I have to. All I need to do is have this  
18 Court recognize that the central limiting feature of  
19 Univis was the fact that it was all one patent and that  
20 all you were doing was fulfilling the rights that had  
21 been provided for you in that single patent, and that  
22 that that's fundamentally -- and that the Court  
23 recognized that if there were a separate patent involved  
24 and you were trying to enforce those rights, that would  
25 be a completely different matter.

1 JUSTICE STEVENS: I understand you also do  
2 not challenge the proposition that the sale by the  
3 licensee in this case should be treated as a first sale.

4 MR. PHILLIPS: Right, the chip.

5 JUSTICE STEVENS: Yes.

6 MR. PHILLIPS: Absolutely. There's no  
7 question about that. We have never challenged that, and  
8 I think the point I made earlier is also valid. We  
9 didn't challenge their use, their otherwise infringement  
10 of our system until we gave them notice; and at that  
11 point we said there is no implied license, because I do  
12 think, Mr. Chief Justice, it's a fair point, and it's  
13 the same point Justice Breyer made, which is, look, if  
14 you buy something and you think this is your normal  
15 assumption that you're going to use it in a particular  
16 way, that ought to be protected. I think that's  
17 ordinary kind of contract expectation rules. But the  
18 point here is that the language of this notice could not  
19 have been plainer to anyone --

20 JUSTICE BREYER: All right, now if it should  
21 be protected -- and here I'm not sure I'm understanding  
22 it, so correct me. Let's suppose we have this contract.  
23 So everything is identical except we've got my bicycle  
24 example in here because I'm more comfortable with that.  
25 I know how to ride a bicycle and I don't know how to

1 work the chips. So what I do --

2 MR. PHILLIPS: Me too.

3 JUSTICE BREYER: But you see the analogy I'm  
4 making.

5 MR. PHILLIPS: Right.

6 JUSTICE BREYER: So what I do I go to the  
7 shop and I buy this, this mechanism with the pedals on  
8 it, and then I insert it in my bicycle. Now, actually I  
9 need help in doing that, but I do it. Okay. Now I  
10 start pedaling off, and now what is it for all these  
11 things here that would stop that original inventor from  
12 catching me and hauling me into court, and say, what  
13 you've done, Breyer, is you've put my -- my mechanism  
14 here in this bicycle and I happen to have a patent on  
15 the system. And now you start talking to me about,  
16 well, the patent was exhausted on the bicycle --

17 MR. PHILLIPS: Pedal.

18 JUSTICE BREYER: -- pedals, but not on the  
19 system.

20 MR. PHILLIPS: Right.

21 JUSTICE BREYER: And you agree that  
22 shouldn't happen.

23 MR. PHILLIPS: Right.

24 JUSTICE BREYER: But if I follow you and I  
25 write an opinion just for you, what stops it from

1     happening?

2                   MR. PHILLIPS:   Well, in that -- in that  
3     particular context, in the absence of relatively clear  
4     notice, I think it would be quite reasonable to  
5     potentially find that there was an implied license to  
6     use it under those circumstances.

7                   JUSTICE SOUTER:   What --

8                   JUSTICE BREYER:   Then why isn't it in your  
9     case?

10                  JUSTICE SOUTER:   I'm sorry.   No.   I didn't  
11     mean to interrupt you.   It's your --

12                  JUSTICE BREYER:   Why doesn't it mean that?  
13     Why isn't it in your case equally?

14                  MR. PHILLIPS:   Because the courts below  
15     specifically analyzed whether there was -- -

16                  JUSTICE BREYER:   You mean that they just got  
17     it all wrong?   You mean it should be that they got it  
18     wrong?

19                  MR. PHILLIPS:   No, no.   They got it right  
20     because there was very specific and explicit notice  
21     provided to the purchaser at the time of the purchase  
22     that, while this clearly gives you the right to use this  
23     particular product, what it doesn't give you the right  
24     --

25                  JUSTICE BREYER:   Oh, so if I go in the

1 bicycle shop, I go in the bicycle shop and I buy the  
2 pedals and then they give me, you know, one of these  
3 pieces of paper that has all of the 42,000 words on it  
4 and there in these 42,000 words it says, and now you are  
5 put on notice that once you put it in your bicycle and  
6 you pedal away, they're going to get you and you're  
7 going to be hauled into Patent Court, then -- then  
8 that's okay?

9 MR. PHILLIPS: Well, Justice Breyer, we can  
10 quarrel about sort of the nature of the notice and what  
11 notice is adequate to do that, but the basic point here,  
12 which I think is indisputable, is that, one, the notice  
13 here is quite clear. It's one page. It's very  
14 specific. These are very sophisticated parties and they  
15 understood that they were not obtaining an implied  
16 license by purchasing the chips rather than going out  
17 and purchasing the systems.

18 JUSTICE SOUTER: Okay. But assuming a  
19 simple notice, the answer to his bicycle hypo is yes,  
20 they can chase me down the road.

21 MR. PHILLIPS: Oh, to be sure. If I have  
22 separate patent on the bicycle, I'm entitled to stop  
23 people from using that particular bicycle. Now,  
24 generally speaking, to be sure, you don't go after the  
25 consumers because most people who are in the business of

1 manufacturing don't develop a really good following by  
2 suing their ultimate consumers. So what you do is you  
3 find the people who are in the middle, the middle spot,  
4 who are actually doing the manufacturing and who are in  
5 fact violating the patent, and that's who you go after.  
6 And in this context --

7 JUSTICE STEVENS: That's other --

8 MR. PHILLIPS: Precisely -- I'm sorry.

9 JUSTICE STEVENS: Is the reason that there's  
10 no implied license here, one, because you got the  
11 notice, or two, because the component has uses in other  
12 kinds of methods than the patented method?

13 MR. PHILLIPS: I think the better answer is  
14 one, because they had clear notice.

15 JUSTICE STEVENS: You think the notice on  
16 that to defeat the implied --

17 MR. PHILLIPS: Right. I think there is an  
18 argument as to whether there might be non-infringing  
19 uses. We disagree about that. But I think the better  
20 argument is one.

21 JUSTICE STEVENS: The court below did not  
22 rely on the fact that there might be non-infringing  
23 uses, did it?

24 MR. PHILLIPS: No. The court below did not  
25 rely on that.

1 JUSTICE STEVENS: It relied on the notice.

2 MR. PHILLIPS: Right, right. Well, I mean,  
3 the court of appeals had a much -- it was a much easier  
4 case, frankly --

5 JUSTICE STEVENS: It seems to be kind of an  
6 unusual answer to the implied license argument, because  
7 normally it doesn't depend on what the patentee decides  
8 to say somewhere down - down the line. That's kind of  
9 an unusual reason for not finding an implied license, I  
10 think.

11 MR. PHILLIPS: Well, I mean I think the  
12 district court just said, look, that -- you know,  
13 ordinarily you would say, if you're buying something  
14 with the understanding that you're going to -- that its  
15 primary or maybe exclusive use will be in a particular  
16 way, that that would be a reasonable implied -- you  
17 could imply a license by those facts alone. Then the  
18 question is whether or not that implication has in some  
19 sense been clearly overridden by the conduct of the  
20 parties under the circumstances.

21 JUSTICE SCALIA: But it's subsequent  
22 conduct. If the implied license occurred, it didn't  
23 occur at the time of the sale; and it couldn't be -- it  
24 couldn't be negated at the time of the sale. If it  
25 occurred, it occurred at the time of the license, right,



1 from the patentee of the patent at stake.

2 MR. PHILLIPS: Right. And once he received  
3 -- and once the --

4 JUSTICE SCALIA: And there was no such  
5 notice there. There was no such statement there that  
6 this does not -- you don't have the right to sell this  
7 for its normal uses?

8 MR. PHILLIPS: No, but every -- every sale  
9 after --

10 JUSTICE SCALIA: Yeah, but the horse is out  
11 of the barn.

12 MR. PHILLIPS: No, no, but that just means  
13 that the patent --

14 JUSTICE SCALIA: That -- I mean if both  
15 parties -- if both parties agree to that notice, I guess  
16 that would be something else. Did both parties agree to  
17 that notice?

18 MR. PHILLIPS: Well, you mean both Intel and  
19 --

20 JUSTICE SCALIA: Yes.

21 MR. PHILLIPS: Oh, yes. Both Intel and --  
22 and Quanta clearly agreed -- I mean, both Intel and and  
23 LG clearly agreed to that, if that's what you're asking  
24 about. But the -- but the point here is that the notice  
25 was prior to the sale.

1 JUSTICE SCALIA: Yes, but that -- that  
2 doesn't matter to me. What matters to me is whether it  
3 was prior to the license. If there was an implied  
4 license here, it occurred at the time that the --

5 MR. PHILLIPS: Of the sale.

6 JUSTICE SCALIA: No. No.

7 MR. PHILLIPS: Well, when else -- an implied  
8 license clearly can't extend to the ultimate purchaser  
9 until the ultimate purchaser gives something.

10 JUSTICE SCALIA: You give the licensee --  
11 you implicitly give the licensee the right to permit the  
12 people to whom he sells the product to use the license.

13 MR. PHILLIPS: Right.

14 JUSTICE SCALIA: But it's given to the  
15 licensee surely.

16 MR. PHILLIPS: But we clearly didn't do  
17 that. That -- I mean that -- the two court rulings  
18 clearly resolved that.

19 JUSTICE SCALIA: Unless it's implicit,  
20 unless it's implicit when you sell a -- a bicycle pedal  
21 that can only be used in bicycles.

22 MR. PHILLIPS: Right. But if I say at the  
23 time, but you cannot use it in a bicycle because it has  
24 a separate patent, and therefore" --

25 JUSTICE SCALIA: Did you say that?

1                   MR. PHILLIPS: Yes, that's exactly what the  
2 notice says.

3                   CHIEF JUSTICE ROBERTS: That's what the  
4 notice says.

5                   JUSTICE SCALIA: That's the notice. That's  
6 later. That's downstream. That's after the license.  
7 That's at the time of the sale.

8                   MR. PHILLIPS: But that goes to clear -- I  
9 mean, but that goes to the clear understanding -- I mean  
10 the question is -- if the question is did Intel have the  
11 right to sell the system as a system, the answer is yes.  
12 It was licensed to do that. But it didn't sell the  
13 system as a system. It sold the components of the  
14 system. And then the question is, does it have as a  
15 consequence of that some kind of an implied license to  
16 do this? And the courts below both specifically held  
17 no.

18                   And I think the other thing about this,  
19 Justice Scalia, is that this was not an issue in this  
20 case. Both courts below held that that's not the  
21 question presented. In order for the Petitioner in this  
22 case to prevail, they have to demonstrate that this is  
23 an exhaustion concept.

24                   JUSTICE SOUTER: Yes, because they're saying  
25 --

1                   MR. PHILLIPS: That's the question presented  
2     in the petition.

3                   JUSTICE SOUTER: They're saying the reason  
4     they have done so is that the following distinction is  
5     significant. There's a distinction between a license  
6     that says you can't sell this unless certain conditions  
7     are satisfied and, on the other hand, a license that  
8     says you can sell this, but if you sell it to a buyer  
9     who is described by conditions A and B, you've got to  
10    tell the buyer that we're going to make a claim against  
11    A and B. And the ones -- in the first example, there is  
12    a limit to the right to sell. In the second example,  
13    there is no limit on the right to sell, but there's a  
14    warning about what we're going to do if you do sell  
15    under certain conditions. And I think they're saying  
16    that unless you have a contract of the former sort which  
17    limits your right to sell, then when you do sell,  
18    exhaustion applies and whatever you may do against the  
19    ultimate buyer is -- is a contract problem or what-not,  
20    but it's not -- it's not a matter of patent.

21                  MR. PHILLIPS: Right, and the problem --

22                  JUSTICE SOUTER: Number one, do you think I  
23     am being correct in characterizing, describing the  
24     distinction they make?

25                  MR. PHILLIPS: I think so.

1 JUSTICE SOUTER: And B, if I am, why isn't  
2 that distinction an answer to your argument?

3 MR. PHILLIPS: Because, because it ignores  
4 the fact that there are separate patents involved in  
5 this case. There is no question that -- there is an  
6 issue. I mean I don't think there's a question that --  
7 you know, as to how far you can go down the road in  
8 trying to condition a particular sale. I thought this  
9 Court may have resolved this already. Mallinckrodt  
10 leaves that issue open, but that's not -- that's not the  
11 question.

12 The issue here is if I sell to you, Justice  
13 Souter, a particular chip, whether I condition it or  
14 not, I think that's -- to me that's unenforceable. But  
15 the question is, can you then take that chip and use it  
16 to violate a separate patent? And the reason you know  
17 that it's not exhaustion --

18 JUSTICE SOUTER: No. I understand where  
19 you're going. So then what you're saying, I guess, is  
20 that the real issue does not involve this distinction  
21 between a --

22 MR. PHILLIPS: Right.

23 JUSTICE SOUTER: -- a limited right and a  
24 right --

25 MR. PHILLIPS: Exactly.

1 JUSTICE SOUTER: -- to go after people  
2 later.

3 MR. PHILLIPS: That's not the issue in this  
4 case.

5 JUSTICE SOUTER: What it -- what it involves  
6 is the statement that they make that if you license the  
7 manufacture, use, and sale of a particular component and  
8 that particular component has only one reasonable use --

9 MR. PHILLIPS: Right.

10 JUSTICE SOUTER: -- then you have  
11 necessarily licensed them to sell with that ultimate use  
12 in mind, and when you do -- when you license them to  
13 sell, the patent-exhaustion doctrine attaches to any  
14 patent right that you may have, whether you call it  
15 system --

16 MR. PHILLIPS: Right.

17 JUSTICE SOUTER: -- or whether you call it  
18 component.

19 MR. PHILLIPS: Right.

20 JUSTICE SOUTER: And you are saying that  
21 argument is no good because that, in fact, is an implied  
22 license argument, and there were findings that there was  
23 no implied license.

24 MR. PHILLIPS: That's --

25 JUSTICE SOUTER: So I understand your

1 position.

2 MR. PHILLIPS: That is correct, Justice  
3 Souter.

4 JUSTICE SOUTER: Okay.

5 MR. PHILLIPS: And let me further --

6 JUSTICE BREYER: Then explain -- now this  
7 you might know because it's just following up on what  
8 Justice Souter said better than I did. I think from  
9 these briefs I've gotten the impression that at least  
10 some people think that where you invent a component,  
11 say, like the bicycle pedals, and it really has only one  
12 use, which is to go into a bicycle, it's the easiest  
13 thing in the world to get a patent not just on that  
14 component but to also get a patent on the system, which  
15 is called handlebars, body, and pedals.

16 And since that's just a drafting question,  
17 all that we would do by finding in your favor is to  
18 destroy the exhaustion doctrine, because all that would  
19 happen, if it hasn't happened already, is these  
20 brilliant patent lawyers, and they don't even -- they  
21 can be great patent lawyers, not just fine lawyers, and  
22 just draft it the way I said and that's the end of the  
23 exhaustion doctrine. And that's why it is preferable to  
24 say it is exhausted. What is exhausted? One, the  
25 patent on this component and, two, the patent on any

1 system involving this component where that system is the  
2 only reasonable use of the component, rather than using  
3 the terminology "implied license."

4 Now, I think that's an argument that's being  
5 made in some of these briefs, and if so I'd like to you  
6 reply.

7 MR. PHILLIPS: Well, I think that clearly  
8 understates the role of the PTO in granting a separate  
9 patent. I mean, this is not -- these are not things you  
10 pick up at the corner drugstore. You have to justify  
11 them. And if you look at Section 282, "a patent shall  
12 be presumed valid," each claim shall be presumed valid  
13 independently of the validity of other claims. And  
14 there's an independence that's embedded in this entire  
15 scheme. If it's true that the PTO has in fact granted  
16 patent rights on something that's fundamentally not  
17 different from the other -- from some other patent, the  
18 solution to that is a validity challenge. And candidly,  
19 I think that's exactly what all of those arguments are  
20 --

21 CHIEF JUSTICE ROBERTS: Well, then --

22 MR. PHILLIPS: -- is patent validity  
23 challenges.

24 CHIEF JUSTICE ROBERTS: That argument didn't  
25 prevail last year in the KSR case, right? I mean, we're



1 -- we've had experience with the Patent Office where it  
2 tends to grant patents a lot more liberally than we  
3 would enforce under the patent law.

4 MR. PHILLIPS: Right, but all -- I'm not --  
5 I'm not particularly criticizing the PTO. What I'm  
6 saying is that the statutory scheme presumes that there  
7 is a separateness when a patent is issued and, therefore  
8 -- and which is why -- again, the first -- there's no  
9 reason to go to an expansion of the first-sale doctrine  
10 in order to deal with the kinds of problems you have  
11 here because in general -- in general you can deal with  
12 it as a matter of implied license, but that issue has  
13 been resolved adverse to the other side in this case,  
14 and there's no reason to sort of fill in that void.

15 JUSTICE SCALIA: Mr. Phillips, when you say  
16 that was resolved adversely, you say there was a finding  
17 of no implied license.

18 MR. PHILLIPS: That's correct.

19 JUSTICE SCALIA: Was that a finding of no  
20 implied license from LGE to Intel or no implied license  
21 from Intel to the buyers?

22 MR. PHILLIPS: From Intel to the buyers.

23 CHIEF JUSTICE ROBERTS: Mr. Phillips --

24 JUSTICE SCALIA: Is that the crucial -- is  
25 that the crucial step?

1                   MR. PHILLIPS: Yes. That's -- that's the  
2 critical component of this case.

3                   JUSTICE SCALIA: If that --

4                   MR. PHILLIPS: The buyer would have to  
5 assert exhaustion.

6                   JUSTICE SCALIA: If that was an implied  
7 license from LGE to Intel, then Intel would have  
8 authority to sell -- to sell these things for their --  
9 for their use.

10                  MR. PHILLIPS: To be sure, Intel has the  
11 authority to sell these things, and it has the authority  
12 to sell -- it depends on what the things are. It has  
13 the authority to sell the chips. It has the authority  
14 to sell the systems, but what it doesn't have the  
15 authority to do is to allow somebody downstream to take  
16 the chips and put them into the separately patented  
17 systems, and the -- and the people downstream know that  
18 they don't have that entitlement.

19                  Justice Souter, to me the patent-exhaustion  
20 doctrine is --

21                  JUSTICE SCALIA: I think the exhaustion, if  
22 Intel got -- if Intel got -- I'm sorry. Yes, if Intel  
23 got an implied license to the system from LGE when it  
24 sold those products, it seems to me the exhaustion  
25 doctrine would take hold and would -- would apply to

1     that implied license just as it applied to the -- to the  
2     license of the chips.

3                 MR. PHILLIPS: I think the answer to that is  
4     it shouldn't, that the exhaustion doctrine should be  
5     retained as a first-sale doctrine alone. That's the way  
6     it's always been understood for 150 years. And to  
7     expand it this way is to undermine the rights of -- in  
8     the separate patents.

9                 And now I'll try to make the point I wanted  
10    to make to Justice Souter. Read the reply brief: A  
11    sale authorized by one patentee does not exhaust patents  
12    held by a different patentee. So we wouldn't even be in  
13    this case if it turned out that we didn't just -- we  
14    didn't happen to have all of these rights in the first  
15    place. I mean, if they bought the chips and if Wang had  
16    held on to some portion of the system patent in this  
17    case, there is no question that Wang would have the full  
18    opportunity -- that sale didn't exhaust their rights in  
19    that patent.

20                CHIEF JUSTICE ROBERTS: And the way you  
21    achieve that result is to condition the sale. What  
22    you're trying to do is expand what you get under a  
23    condition to what you get under a notice. And the  
24    reason that troubles me is because if you had imposed a  
25    condition on the sale, Intel wouldn't have paid you as

1 much for it. But you say, all right, we'll take the  
2 money because -- additional money because there's no  
3 condition, but we want to achieve the same result  
4 because of the notice.

5 MR. PHILLIPS: I mean there can't -- there's  
6 no serious basis for doubting what Intel knew precisely  
7 what it was getting in this. It was getting peace on  
8 both sides of the aisle in terms of litigation, and it  
9 knew that there were separate patents here and that when  
10 it sold the chips it would certainly be entitled to  
11 assume that there would be exhaustion. That's the  
12 provision you read. But when it sells the chips, it  
13 didn't know and it specifically gave notice that it  
14 recognized that that doesn't remotely say what the right  
15 answer is with respect to the systems and with respect  
16 to the methods. And that to me, Mr. Chief Justice, is  
17 the fundamental distinction.

18 CHIEF JUSTICE ROBERTS: Well, they're happy  
19 with that because the notice says you can't -- you can  
20 only use this with Intel products. So they're happy  
21 with that solution as well.

22 MR. PHILLIPS: Well, that's part of the  
23 reason why it was negotiated in that way. But I mean  
24 that is -- so far as I know, there is no particular  
25 issue by reference to that particular limitation.

1           The reality is if we entered into the same  
2   agreement with AMD, which is one of the other  
3   chipmakers, I am sure they would ask for the same  
4   restriction on it: That you could only do it with AMD  
5   products, as well. I mean that doesn't have anything to  
6   do with the nature of the underlying problem that we are  
7   confronting in this particular context.

8           It seems to me the fundamental issue here is  
9   they have a limited right when they purchase that  
10  product. They didn't get the right to make other  
11  products. They didn't get the right to breach or  
12  infringe a completely separate patent. And that is the  
13  basis on which the judgment of the Court of Appeals,  
14  which is all that is before the Court, should be  
15  affirmed.

16           JUSTICE STEVENS: Before you sit down, to  
17  what extent do you think the Court of Appeals has  
18  already adopted your theory of the case?

19           MR. PHILLIPS: Well, I mean they recognized  
20  specifically that these are completely separate. That  
21  the claims that are at issue here are different from the  
22  amounts that were -- from the products that were, in  
23  fact, purchased. So the elements, the constituent  
24  elements, they have clearly embraced. The conclusion,  
25  they have clearly not embraced.

1 JUSTICE STEVENS: They did not get your  
2 theory of the case out of my reading of their opinion.

3 MR. PHILLIPS: Well, my --

4 JUSTICE SOUTER: Isn't the difference  
5 between "conditional sale" and "limited sale" -- you are  
6 saying they used the word "conditional." You are saying  
7 it was a "limited sale" that only -- a "limited  
8 license." It only licensed Patents A and B and not  
9 Patents C and D.

10 MR. PHILLIPS: Well, what I was actually  
11 saying is that if you read the language in 4a and 5a  
12 where it says: The patents asserted by LGE do not cover  
13 the products licensed to, or sold by, Intel. They have  
14 to be combined with additional components. And then in  
15 5a they say: Notably, the sale involved a component of  
16 the inserted, patented invention, not the entire  
17 patented system.

18 So they recognize, to my mind, what are the  
19 predicate factual bases from which I say the "exhaustion  
20 doctrine" shouldn't have been -- shouldn't have been  
21 triggered. But, to be sure, they -- they -- it was a  
22 much easier task for them because they -- as far as they  
23 are concerned, all kinds of conditions are permissible.  
24 And we don't need that in order to win this case. I'm  
25 not asking the Court to embrace that particular

1 approach.

2 If there are no other questions, I would ask  
3 you to affirm the decision.

4 CHIEF JUSTICE ROBERTS: Thank you,  
5 Mr. Phillips. Ms. Mahoney, you have four minutes  
6 remaining.

7 REBUTTAL ARGUMENT OF MAUREEN E. MAHONEY  
8 ON BEHALF OF THE PETITIONERS

9 MS. MAHONEY: I'd like to start by  
10 emphasizing what counsel did not say. He never said  
11 that Intel lacked the authority under the system and  
12 method patents to sell these components. He never said  
13 that. In fact, he said that Intel was released. Why  
14 were they released? This would have been contributory  
15 infringement, otherwise.

16 The reason they were released was because  
17 they had the authority under this license to sell these  
18 components under the system patent. And that's what the  
19 Federal Circuit acknowledged, and that's what the  
20 district court recognized, and it's never been in  
21 dispute.

22 Their position is simply that, despite that,  
23 despite express authority to sell these under that  
24 patent -- not just under some other patent, under the  
25 patents at issue here -- that they can enforce

1 conditions on post-sale use. And that's what this Court  
2 has never allowed.

3 Univis is on all fours. They say, well,  
4 that just involved a single patent. Well, as far as  
5 this case is concerned, it just involves a single  
6 patent, too. The whole issue here is whether or not  
7 Quanta's taking of the components and combining them  
8 with some generic things like wires and memory  
9 necessarily infringed under LGE's allegations.

10 And the district court found that they  
11 would, and that's not in dispute. And what that means  
12 is that, just as in Univis where you had -- the court  
13 finds there were really two products there. It finds  
14 there were two different commodities, the lens blank and  
15 the finished lens.

16 It says under Miller, the Miller/Tydings  
17 Act, these are two different commodities, and the patent  
18 was only on the finished lens. But, in order to make  
19 that finished lens, you had to -- you had to make a lens  
20 blank that would embody many of the limitations of the  
21 claim. That's exactly what the district court found  
22 happened here.

23 For this, when Intel manufactured these  
24 chips, the microprocessors and the chipsets, it  
25 manufactured them in a way that embodied many of the



1 limitations of the system and method patents that are at  
2 issue here. So, as in the language of Univis, there  
3 they said, well, we are dealing with a product that is  
4 being manufactured in multiple stages.

5                   And during that first stage, while it's true  
6 it wasn't -- it didn't directly infringe because the  
7 lens blank wasn't the patented product, they,  
8 nevertheless, practiced the patent in part. Why?  
9 Because they -- they -- some of the -- while  
10 manufacturing it, they have met some of the limitations  
11 of the claim.

12                   And they said when that lens blank was sold,  
13 that it exhausted the rights of the patent owner to  
14 enforce any conditions, any type of conditions on use or  
15 resale after that sale. And it didn't have to rely on  
16 implied license because of the exhaustion doctrine.  
17 Once there is an authorized sale of a product that is  
18 protected by the patent that covered that final finished  
19 product, exhaustion is triggered.

20                   That's exactly what we have here. And they  
21 said, oh, but you could disclaim that with an agreement.

22                   Well, in Univis there was an agreement. The  
23 purchaser of that lens blank specifically agreed by  
24 contract that it would only use it in certain ways and  
25 only charge certain prices. So they expressly

1     disclaimed, you know, the idea that they were -- that  
2     they couldn't use it in those ways. And, nevertheless,  
3     this Court found exhaustion.

4                 When the district court found no "implied  
5     license," all the court was saying was, well, under the  
6     Federal Circuit precedent "implied license" is an  
7     "equitable doctrine."

8                 I see my time is finished. Thank you.

9                 CHIEF JUSTICE ROBERTS: Thank you, Ms.  
10    Mahoney. The case is submitted.

11                (Whereupon, at 11:16 a.m., the case in the  
12    above-entitled matter was submitted.)

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