

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NETFLIX, INC.,  
Petitioner,

v.

VL COLLECTIVE IP LLC,  
Patent Owner.

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IPR2023-00891  
Patent 8,605,794 B2

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Record of Oral Hearing  
Held: October 10, 2024

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Before KARL D. EASTHOM, JEFFREY S. SMITH, and  
DAVID C. McKONE *Administrative Patent Judges*.

APPEARANCES:

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P R O C E E D I N G S

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JUDGE EASTHOM: Good afternoon, I'm Judge Easthom, with Judge Smith sitting beside me, and Judge McKone is on the video. This is a hearing for *Netflix v. VL Collective IP LLC*, IPR2023-00891, U.S. Patent No. 8,605,794, which we'll refer to as the '794 patent.

Each party has an hour to present its case, Petitioner has the burden of proving unpatentability, and will proceed first, followed by Patent Owner, then followed by the respective rebuttals by each party, if reserved.

Petitioner, who do we have for you today?

MS. CARRANO: Aliza George Carrano of Willkie Farr on behalf of Petitioner, Netflix, and also, I believe, on the line is our in-house counsel.

JUDGE EASTHOM: Okay, welcome, Ms. Carrano, and how about Patent Owner?

MR. CARDENAS-NAVIA: Good afternoon, Your Honors, this is Jaime Cardenas-Navia on behalf of the Patent Owner, and with me are Naveed Hasan and Christine Lehman, and representing the client, the Patent Owner, is Ira Blumberg.

JUDGE EASTHOM: Okay, welcome everyone. All right, Ms. Carrano, how much time would you like reserve for rebuttal?

MS. CARRANO: I'd like to reserve 15 minutes.

JUDGE EASTHOM: Okay, and then Mr. Cardenas-Navia, are you going to speak?

MR. CARDENAS-NAVIA: I will, yes.

JUDGE EASTHOM: How much time do you want to reserve?

1 MR. CARDENAS-NAVIA: 10 minutes.

2 JUDGE EASTHOM: Okay, that can vary I guess, later. So all  
3 right, why don't we get started?

4 MS. CARRANO: Your Honors, I believe we're having some  
5 technical difficulty with the slides.

6 JUDGE EASTHOM: Okay, can we go off the record, please,  
7 for a minute? Thanks.

8 (Whereupon, the above-entitled matter went off the  
9 record at 1:02 p.m. and returned at 1:03 p.m.)

10 JUDGE EASTHOM: Please introduce yourself for the record.

11 MS. CARRANO: Aliza George Carrano representing the  
12 Petitioner, Netflix. May it please the Court. So moving to slide two, we  
13 have here the instituted grounds that the board instituted, so there's four  
14 different grounds, and we're going to -- looking at slide three, we've got  
15 several disputed issues that we're going to discuss today. Anything that we  
16 don't cover, Petitioner rests on its briefs, and there's a lot to discuss, so  
17 we're just going to jump straight to one of the disputed issues which is  
18 content-related data segments, at slide nine.

19 All the independent claims require this limitation, content-  
20 related data segments. Claim 1 is representative of the independent claims,  
21 and it requires synchronizing content related first data segments of a first  
22 data file, and content-related second data segments of a second data file.

23 JUDGE SMITH: Let me just ask you, you said the claim  
24 requires it, are you saying that the preamble is entitled to patentable weight ?

25 MS. CARRANO: Let me clarify what I meant by that. All of  
26 the claims have this limitation, Petitioner has not weighed in as whether or

1 not the preamble is limiting, I don't think that's an issue that we need to get  
2 to, because it whether it is or isn't, Comps teaches this limitation.

3 JUDGE SMITH: Okay.

4 MS. CARRANO: Going to slide 10. So just a little bit about  
5 the '794 patent, the '794 patent is directed to synchronizing media,  
6 multimedia, either from video or audio data or metadata, and as it says in  
7 column three lines four through 10, it synchronizes a plurality of different  
8 data types, so what it's synchronizing is two different data types here, or at  
9 least two different data types. And so how it does it, Figure 1 is an  
10 exemplary embodiment of the '794 patent, and so you have at the top a data  
11 file, D1 and D2, they both get passed into their respective components called  
12 MF, which is a fragmentation modulation, and that modulator then breaks up  
13 the data into content-related data segments, which then gets fed into the  
14 synchronization modulation, and the MF, and that synchronizes the content-  
15 related first data segments with the content-related second data segments.

16 So going to slide 11, the '794 patent tells us that in this  
17 embodiment you have D1 is video data stream, in the first data file, and D2  
18 is an audio data stream designated by D2 in the second data file. So what  
19 you see here is that there's just an audio stream and a video data stream that  
20 are being synchronized together.

21 JUDGE EASTHOM: How does the Patent determine that  
22 they're content-related within each file?

23 MS. CARRANO: Well what the Patent tell us is that content-  
24 related is understood to mean the first and second data segments have a  
25 syntactical meaning within respective data file, so there's this explanation in  
26 the specification that provides that understanding of what content-related is

1 understood to mean, and so really with respect to this term, this limitation,  
2 we've got two issues in dispute here, there's a claim construction issue, and  
3 then there's also whether does Comps actually teach content-related data  
4 segments.

5           And so just talking about the first part, the claim construction,  
6 this is what the '794 patent tells us, and so content-related is understood to  
7 mean that a first and second data segments have syntactical meaning within  
8 the respective data file, and then it provides examples of what that is. And  
9 so you've got an example, a plurality of succeeding second data segments  
10 represent a speech signal of a specific speaker within a dialogue sequence,  
11 and then you have another example which is individual images of a video  
12 sequence can also be content-related data segments.

13           JUDGE EASTHOM: So content-related in the first instance,  
14 it's just from one speaker, so for example, all four of those segments of data,  
15 they would be coming from one speaker, right?

16           MS. CARRANO: That could be coming from one speaker in  
17 this example.

18           JUDGE EASTHOM: Okay, and then how do they make that  
19 determination, that's just assumed that that's something in writing in the  
20 packet there, or the segment? Who makes the determination that they're  
21 content-related.

22           MS. CARRANO: So I believe what you have is the data files  
23 are media data files with data in it, content data in it, representing the speech  
24 signals of someone speaking.

25           JUDGE EASTHOM: But there might be more than one  
26 speaker in there, right?

1 MS. CARRANO: There could be, I believe in the Patent it  
2 discusses that there could be a change in speaker, so there could be data files  
3 that have multiple speakers in the data file.

4 JUDGE EASTHOM: So it has to figure out which ones are  
5 content-related with respect to each speaker somehow, right?

6 MS. CARRANO: That's correct, there's got to be some  
7 metadata in there for that scenario.

8 JUDGE EASTHOM: Okay.

9 MS. CARRANO: So those are examples of some of the data  
10 that gets synchronized with the '794 patent. So going to slide 13, I want to  
11 make very clear that Petitioner has not offered any claim constructions for  
12 any of the terms, whether it's this term or any of the other terms. I know  
13 Patent Owner has, you'll see in its demonstratives and in its sur-reply it  
14 makes it seem like Petitioner has, but those are arguments that Patent Owner  
15 has created. Our position as Petitioner is that all of these terms can be  
16 construed under their plain and ordinary meaning. The way the references  
17 read is that we don't need to get into these specific claim constructions, and  
18 so we don't think it was appropriate for these arguments that we did not  
19 advance to be put into the record, but we just want the Board to reject Patent  
20 Owner's characterizations that are not accurate of Petitioner's arguments  
21 with respect to these terms.

22 JUDGE SMITH: I think one of the points that Patent Owner is  
23 making about the content-related data segments, at least with respect to how  
24 it's mapped to the reference is that the reference makes a distinction between  
25 important events and unimportant events, to the extent that there's a delay in  
26 the reference, where that delay doesn't have any data. If it's for the video

1 track it would be a delay where no video is displayed, or if it's for a sound  
2 track it would be delayed where no sound is output. According to Patent  
3 Owner, those events are content-related data segments within the meaning of  
4 Claim 1. Can you speak to that?

5 MS. CARRANO: We don't disagree, that's not an accurate  
6 characterization of the Comps reference. So what Comps discloses that it  
7 has content data segments that represent either a note or an image or text,  
8 and then in between there's going to be sometimes a waiting time, and  
9 Comps is very clear that -- that waiting time is just time between events, and  
10 Comps is very clear that you've got important events, which are displaying  
11 an image, displaying a text, or playing a sound. Notably, the waiting periods  
12 are not considered to be important events, so those waiting periods are  
13 unimportant events, and so our position is that those waiting periods are not  
14 content-related data segments, because they don't contain any content. So  
15 when you're looking at the Patent, and when you're looking at Comps, both  
16 disclose that audio data, video data, speech signals, are content data, and  
17 Comps teaches those things, there's many disclosures in Comps that  
18 describes how it stores content data and various types of content data.

19 And so the main issue that we have with Patent Owner's  
20 construction, and there's several issues, we can rely on the briefs for most of  
21 them, but the one we want to talk about is that this term, content data, which  
22 is in their construction, and which was in the Board's construction for the  
23 related '086 IPR proceeding where the Petitioner was Unified Patents.  
24 There's this term content data, but the way that Patent Owner is reading  
25 content data is that it's limiting it to actual content and we don't think that  
26 that's supported, that it should be sampled audio as opposed to maybe other

1 representations of content, and we don't think that's appropriate, or that's  
2 actually not even needed because Comps discloses actual content as the data  
3 that it synchronizes.

4           So moving to slide 14, we've got in Comps, you see in Figure  
5 3, this is an exemplary embodiment, where you've got track 1 contains  
6 sound data, track 2 contains video data, and track 3 contains text. And so  
7 Comps broadly talks about that it synchronizes, that it discloses an invention  
8 that synchronizes data and multimedia files, so it's storing data, there's no  
9 restriction on what that data is, it's just the data in multimedia files, and that  
10 data is stored. And this data in the multimedia files, as Comps explains, can  
11 comprise a time value, sound, text, or picture coding values. So it's also  
12 able to store actual content data, so we don't need to get to whether content  
13 data needs to actually be limited to actual content, which is what Patent  
14 Owner is proposing. And there's numerous disclosures in Comps that  
15 Comps just stores data.

16           So if we go to slide 15, Comps says each track of the file 50,  
17 and the file 50 is what you see in Figure 3 of Comps, contains a single type  
18 of data. And it further explains that for example, track 60, which is track 1,  
19 can be MIDI, which is musical instrument digital interface, format track for  
20 sound, track 70 can contain a sequence of pictures, track 80 can contain  
21 sequences of texts. So those are all actual data that Comps is able to store,  
22 that's in Comps' data files that's being synchronized together. Comps goes  
23 on to provide more explanation of the types of data, so at Comps column  
24 three lines 10 through 19, you've got track 60 or track 1 contains only MIDI  
25 sound data. The sound data could consist of sampled sounds, speech,  
26 miscellaneous noises such as applause or microphone noise, track 70 which

1 is track 2 contains only data corresponding to sequences of jpeg images,  
2 that's actual content data. Data could even be video data, video data is  
3 actually a term that's used in the '794 patent, so Comps teaches that it can  
4 synchronize video data, and then Comps also explains that track 80 or track  
5 3 contains only data corresponding to text messages. So all of these  
6 disclosures demonstrate that Comps actually stores and synchronizes actual  
7 content data.

8               So, moving to slide 16. So Patent Owner argues that Comps'  
9 data is actually not content data, but computer instructions, and this  
10 argument ignores the very clear disclosures in Comps, and I'll walk through  
11 that with you. So Comps says that each track contains data organized in the  
12 form of commands, which are executed sequentially by a microprocessor,  
13 for example to display a picture or a text.

14               So you've got data, the actual data just happens to be formed  
15 or grouped together in commands. That doesn't negate the fact that it  
16 actually is storing and synchronizing actual data. There's another part in  
17 Comps that says that data of a first type and of a second type is stored in a  
18 first file, and the second file respectively, and grouped in the form of at least  
19 one event related command. So again, in the Comps data files, you've got  
20 the data and then it's grouped in the form of a one event-related command  
21 that characterizes either an important event or an unimportant event. So just  
22 because Comps has commands within its data file does not mean that Comps  
23 doesn't store content data and only computer instructions, that's not accurate  
24 with the text.

25               JUDGE EASTHOM: Is that the sync, when Comps is talking  
26 about the one event related command, is that the sync command, or is that

1 something else in the -- ?

2 MS. CARRANO: It's something else. So what Comps stores  
3 is the content data, a command that groups that into either a command to  
4 display text, display an image, or reproduce a sound, and then there's a sync  
5 command.

6 JUDGE EASTHOM: Okay, I understand.

7 MS. CARRANO: So there's two commands for each important  
8 event.

9 JUDGE EASTHOM: Okay.

10 MS. CARRANO: So moving to slide 17, another argument that  
11 Patent Owner has is that Comps sole embodiment relies on MIDI for  
12 generating sound data, and this again is ignoring the plain disclosures of  
13 Comps. Comps says clearly for example, so this is just an example type of  
14 data that Comps can store. Fox example, track 60 can be MIDI format track  
15 for sound. And it goes on to say, in this example, so there's all this  
16 exemplary language that's used in comps to demonstrate that this is just an  
17 example of what some sound data could be used in Comps, it's certainly not  
18 limited to just that. And if you look on column three, lines 10 through 14,  
19 Comps also explains that the track could also include sound data, which  
20 would consist of sampled sound. So there's no limit regarding what type  
21 that it's going to be limited to just this MIDI type of sound data, it can  
22 consist of different types of sound data, it wouldn't be restricted to just  
23 MIDI. And we know from case law that you shouldn't limit a claimed  
24 invention to the preferred embodiments, and here that's what Patent Owner  
25 is trying to do, Patent Owner is trying to say that Comps is limited to just  
26 MIDI, and that's not accurate or consistent with Comps' disclosure.

1           Going on to slide 19, another argument that Patent Owner  
2 advances is that the MIDI data does not include content data, it's instructions  
3 for how to play sound content data, and that again is not accurate or true. If  
4 you look at the MIDI documents that Patent Owner had submitted as  
5 exhibits, even those demonstrate that the midi data, it's just another way of  
6 representing content, it's just another way of representing musical content,  
7 and that's what it says on page one of Exhibit 2016, that MIDI data is a very  
8 efficient method of representing musical performance information.

9           That reference goes on to say that MIDI is an efficient means of  
10 conveying musical performance information as electronic data. So again,  
11 even though MIDI is a different type of format for representing sound data,  
12 it's still sound data. And even though this reference says that MIDI  
13 messages that can be transmitted are thought of as instructions that tell a  
14 music synthesizer how to play a piece of music, it's still content data, it's  
15 still information about content, it's still information representing the content.  
16 In some ways, it's no different than a WAV file that is representing the  
17 audio data in a WAV file that then gets passed to a media player that then  
18 has to interpret those signals to play media, to play the sound. So this is in a  
19 lot of ways the same way. So this is again MIDI data, it's not just  
20 instructions to play sound data, it's actual content data. The fact that it does  
21 it a little differently doesn't negate that this is still content data.

22           So the next issue in dispute is the assignment rule, so I'm just  
23 going to go to slide 21. So again, Petitioner has no claim construction for  
24 these limitations, the assignment rule limitations, it submits that its position  
25 is still and remains that the plain and ordinary meaning is all that is  
26 necessary for this proceeding. Patent Owner on the other hand has offered

1 several different constructions for this from different proceedings. In the  
2 related '086 proceeding, Patent Owner tried to argue that where in the  
3 assignment is not performed by using exact timing information, and then in  
4 this proceeding, Patent Owner changed its construction to where in the  
5 assigning is not performed by adjusting the timing of content-related data  
6 segments.

7           And so there's several issues with -- there's actually three  
8 issues at least that's wrong with Patent Owner's constructions. One, like  
9 what Patent Owner argued in the '086 IPR, they're trying to argue that their  
10 new construction is warranted based on a prosecution history disclaimer.  
11 And there is no prosecution history disclaimer, just like in the '086 IPR,  
12 there's no disclaimer that would arise to warranting this type of construction.  
13 The second reason, and I'll go through each of these in more detail, the  
14 second reason is that Patent Owner is now offering two inconsistent and  
15 different constructions, multiple constructions, and that's not appropriate.  
16 And then three, Patent Owner argues that personalized media applies, and it  
17 just doesn't. So walking through --

18           JUDGE SMITH: Before you do walk through, let's say we  
19 accept Patent Owner's construction, because if we were to accept Patent  
20 Owner's construction, which in this case it's the assigning is not performed  
21 by adjusting a tiny content-related data segment, is that right? If we accept  
22 that, isn't, you know, whenever you synchronize two tracks, aren't you  
23 necessarily adjusting the timing of at least one of the tracks? I guess what  
24 I'm getting at is, how could you synchronize two tracks even in the  
25 challenged patent without adjusting the timing of one of the tracks?

26           MS. CARRANO: So I believe this construction is actually

1 misdirection, because the assigning that's done in comps does not adjust the  
2 timing of the content-related data segments, what it does is it assigns the  
3 different data segments, and then any type of adjusting, any type of skipping  
4 of the waiting period to catch up to a sync command, say if the master track  
5 reached the sync command before one of the slave tracks, it may skip the  
6 waiting period, and if it does that, that's all after the assignment took place.  
7 Any adjusting that takes place happens as a result of the assignment, it's not  
8 the actual assignment. The data file already has the sync commands already  
9 inserted into the data files, and the assignment's already done, and that's  
10 what's required in the claim.

11 JUDGE SMITH: But I guess what I'm getting at, isn't that --  
12 how is that any different than the way the matching is done in Figure 1 of  
13 the challenged patent, you have this MS module that's pairing these two data  
14 segments together, doesn't that, in the challenged patent, also adjust the  
15 timing?

16 MS. CARRANO: So in the Patent, the Patent has, in Figure 1,  
17 the embodiment of where you've got like the data segments from the first  
18 data file are synchronized with the data segments of the second data file, and  
19 what the '794 patent has, at least for the independent claims, there's no  
20 restriction on whether or not there's any type of restriction as to whether  
21 your assignment is done with the time stamp or adjusting, there's actually no  
22 restriction in that regard. And you see in later claims that the claims are  
23 limited to, that the assignment is not performed using a time stamp.

24 So what happens in the '794 patent in that embodiment is that  
25 it's synchronizing the different data segments together and I don't think it  
26 says anything as to whether any time gets adjusted, but if you look at, I think

1 it's Figure 2, you can see how it does the synchronization with the different  
2 starts and the lengths, and you can see how those different data segments are  
3 broken up. I think all of that goes to say, at least for Comps, Comps assigns  
4 the data segments to the synchronization, and then any adjusting happens  
5 after the synchronization occurs. So the data segments are already lined up  
6 together based on a sync, and so any type of adjusting that may happen  
7 would only occur as a result of the assignment, it's not the actual assigning  
8 of the content-related data segments.

9 JUDGE SMITH: Okay. And then to your point about the  
10 dependent claims in the '794 patent, I think it's claims 20 and 21, have the  
11 assignment rule that is not based on a time stamp, doesn't that imply that at  
12 least for Claim 1 it encompasses the assignment rule being based on a time  
13 stamp?

14 MS. CARRANO: I would agree with that, I would agree that  
15 because we have those dependent claims that restrict the assigning based on  
16 the time -- that you cannot assign based on a time stamp, that would only  
17 necessarily mean for claim construction that the independent claim would be  
18 broader, so it would allow assigning based on time stamps.

19 JUDGE SMITH: Okay.

20 MS. CARRANO: Okay, so we know -- going on to slide 22.  
21 So we know that it's a very high bar for there to be a prosecution history  
22 Estoppel, to be a prosecution history disclaimer, and so there has to be at  
23 least a clear and unmistakable disclaimer, and that's just not present in the  
24 prosecution history of the '794 patent.

25 Going to slide 23, the Board has already examined the  
26 prosecution history for the '086 IPR and already determined that there was

1 no clear and unmistakable disclaimer with respect to whether there is a  
2 disclaimer as to the exact timing information. And the Board found the  
3 exact timing information is used nowhere in the prosecution history, and the  
4 applicant never argued nor did the examiner suggest that the assignment rule  
5 on the '794 patent is not performed by using exact timing information. The  
6 same thing applies here. There's nothing in the prosecution history that says  
7 that adjusting the timing information is used anywhere in the prosecution  
8 history, there's no limitation in that regard. The Patent Owner, the Patentee  
9 doesn't say that there's a limitation in that respect, and nor did they argue  
10 that for the examiner. So the same thing applies here.

11 And you'll see that a lot of the arguments that the other side is  
12 going to raise is very much a repeat of what it did in the '086 IPR, but the  
13 same thing applies here. There's not one statement that they can point to --  
14 to show, to justify their claim construction amounts to a prosecution history  
15 disclaimer.

16 I'm going to skip to slide 25. So the second reason why Patent  
17 Owner's construction should not be adopted is that Patent Owner's proposed  
18 two constructions in two different proceedings, and how it's justified this is  
19 in its sur-reply it says, PO has proposed a different construction that clarifies  
20 a different aspect of the scope of an assignment rule, i.e. that adjusting a  
21 preset timing of data segments is not an assignment rule. PO has not  
22 changed its view of the scope of the assignment view. PO believes that both  
23 its proposed constructions appropriately clarify the terms meanings.

24 But this makes no sense. We know from the basic claims of  
25 claim construction, claim constructions must be applied consistently, you  
26 can't have a different construction for invalidity or a different construction

1 for non-infringement, you have to have the same construction that's going to  
2 be applicable to all scenarios. And what they're proposing here is that both  
3 of their constructions from this proceeding and the '086 Proceedings both  
4 appropriately clarify this term's meaning. You can't have a different  
5 construction, and they cite in their case law that would allow two  
6 constructions based on different references being asserted. So this is another  
7 reason why this construction and the prior construction should be not  
8 adopted.

9           And then going to slide 26, Patent Owner finally argues,  
10 acknowledging that in the event that the statements in the prosecution  
11 history do not amount to a disclaimer that would support its claim  
12 construction that this case, *Personalized Media*, applies, because in  
13 *Personalized Media*, an applicant made repeatedly consistent remarks during  
14 the prosecution, and even though the Federal Circuit found in that case that  
15 those statements didn't amount to a disclaimer, that it still was enough to  
16 limit the claims accordingly. But *Personalized Media* is different from and  
17 distinguishable from the case here.

18           In *Personalized Media*, what was at issue was the applicant had  
19 repeatedly and consistently asserted that encryption and decryption required  
20 a digital process, and it even amended the claim to require that there was a  
21 limitation that the encryption requires a digital signal, and it argued that the  
22 encryption digital information transmission includes encryption information  
23 is limited to digital information. And so even though the Federal Circuit  
24 found that that did not amount to disclaimer, it still found that the claims are  
25 limited to just digital signal transmissions. And that's not the case here, here  
26 there's no amendment that was made to justify a claim construction where

1 the assignment rule has this negative limitation of not adjusting the timing  
2 information of content-related data segments, and there's no argument.

3 JUDGE EASTHOM: I think one of the keys there, too, was  
4 there was no plain and ordinary meaning that was at issue, so disclaimer  
5 applies to limit a plain and ordinary meaning, that was kind of the key there,  
6 that the Board had said well, this meaning is in flux. It was in flux at the  
7 time, like in the 80s, when decrypter and the -- what was the other? The  
8 decrypter and the --

9 JUDGE SMITH: Decoder?

10 JUDGE EASTHOM: Decoder, yes, I forgot what the two were,  
11 but they were sort of in flux, so there was no plain meaning, so there was no  
12 plain meaning to narrow down through a disclaimer, but since they weren't  
13 applying it, they were just trying to figure out how to solve an ambiguity.  
14 So if there's an ambiguity here in this claim term it might apply, and then  
15 like you said, the other question is whether there's a bunch of different  
16 repeated instances.

17 MS. CARRANO: Right, and I think your point further  
18 demonstrates that this case is distinguishable from the '794 patent, where  
19 you don't have these repeated statements, there's no issue of whether the  
20 plain and ordinary meaning is in flux. So this case just does not apply, and  
21 that's another reason why Patent Owner's claim construction should not be  
22 adopted.

23 And just going back to the beginning, you know, even if the  
24 Board were to adopt it, and it shouldn't, but even if it were, Comps does not  
25 adjust the timing information of its content-related data segments. So going  
26 to slide 26, looking at the claims, so Claim 1, the '794 patent has this

1 limitation that each of the content-related second data segments is output  
2 together with an associated one of the content-related first data segments on  
3 the basis of an assignment rule for assigning each one of the content-related  
4 second data segments to one of the content-related first data segments. And  
5 the Petitioner's mapping of this limitation is the synchronization commands  
6 in Comps, that's the assignment rule. You've got these synchronization  
7 commands, and then you've got your content-related first data segments  
8 from the master track, which in the Figure 3 embodiment is the first track,  
9 the sound data, and then you have your slave tracks, the second and third  
10 track, those are then assigned to the first track based on the synchronization.  
11 And so that's how Comps assigns, it does not adjust the timing information  
12 to make the assignment.

13           Going to slide 28, we have a table here that just shows how  
14 these are all lined up. So for SYNCH1 you've got the second note from  
15 track 1 is assigned with the first image from track 2, and so forth for  
16 SYNCH2 and SYNCH3. So you'll see that these content-related data  
17 segments, these content-related second data segments are assigned to the  
18 first content-related data segments based on these sync commands.

19           So moving to slide 29, Comps tell us, and we've gone over this,  
20 but Comps tells us that you're going to have data that's grouped in the form  
21 of at least one event-related command, characterizing an important event or  
22 an unimportant event, and Comps tells us that the important events  
23 correspond to a command to display a text, a command to display a picture,  
24 or a command to reproduce a sound. So moving on to slide 30, Comps then  
25 tells us that these synchronization commands are always inserted before  
26 each event-related command, characterizing an important event. So

1 whenever there's a content-related data segment, there's going to be a  
2 synchronization command, and that's how Comps ensures that the data will  
3 be synchronized.

4 And so Comps goes on to explain that the synchronization  
5 commands relate to various events, such as a note, a picture, or a text, and  
6 Comps is then very clear that these synchronization commands, they're not  
7 temporal commands, like what was done in the prior art. They're instead  
8 dependent on a specific event, and so the specific event for the Figure 3  
9 embodiment would be the reproduction of a note. So when there's a  
10 reproduction of a note or a display of an image or a text, you'll see that  
11 there's going to be a synchronization command, and so these are event-  
12 based synchronization commands, not temporal, it's not using time. Moving  
13 onto slide 31.

14 JUDGE MCKONE: Can you hear me? I do have a question  
15 about how Comps operates. Can you have a situation where -- when I look  
16 at Figure 3 it looks like you could have a situation where you could have a  
17 sound event and a corresponding picture event, right?

18 MS. CARRANO: That's correct.

19 JUDGE MCKONE: Can we also have a situation where there's  
20 a picture event and no corresponding sound event?

21 MS. CARRANO: So in that hypothetical situation, I think if  
22 there was no sound event, meaning there was like an absence of sound or  
23 silence within the content, is that?

24 JUDGE MCKONE: Maybe a delay, where we have a picture, a  
25 JPEG 4 that would line up with a delay, not a sound event, but the D1 or  
26 whatever, a delay.

1 MS. CARRANO: So in the embodiment that Comps has, there  
2 is no situation like that in there, and so I think we can still --

3 JUDGE MCKONE: I understand there's not a specific  
4 example, but is that contemplated by Comps? Could that happen in that  
5 squiggly line region? Because I think Comps Figure 3 is just illustrating a  
6 few data points out of a larger set.

7 MS. CARRANO: Right, and in that squiggly line that you're  
8 pointing to, that's I think before the second sync command. I mean you  
9 have to look at the entirety of what Comps describes, and Comps describes  
10 if there's going to be an important event, such as displaying a picture,  
11 reproducing a sound or displaying a text, there's going to be a  
12 synchronization command. So I think even --

13 JUDGE MCKONE: I understand that, but what I'm asking is,  
14 do you have a situation in Comps, or is it contemplated that a picture  
15 command, a JPEG command could be synchronized to delay of a sound  
16 track, on track 1, rather than content on track 1?

17 MS. CARRANO: So I just want to make sure I understand the  
18 question. So would that mean that there's actual silence within the sound  
19 data, or that there was just no data, that this was just waiting time?

20 JUDGE MCKONE: Whatever delay -- for example, if I look at  
21 Figure 3 on track 1, there's a D1 on track 1. My understanding is that  
22 represents delay.

23 MS. CARRANO: Correct.

24 JUDGE MCKONE: And it doesn't sound like anybody is  
25 arguing that that is content data, is that correct?

26 MS. CARRANO: That's correct.

1 JUDGE MCKONE: Okay. Can we have a situation in Comps  
2 where we have something on track 2, for example, a JPEG four, that would  
3 be synchronized to a delay, for example a D3, track 1, is that contemplated  
4 by Comps?

5 MS. CARRANO: I don't think that's expressly contemplated  
6 in Comps, I don't think, I don't know if that would necessarily not occur in  
7 Comps, but it's not expressly contemplated in Comps. What Comps  
8 describes is that you've got a master track and it has its data segments, and  
9 then what you're doing is that you're assigning data segments, the content-  
10 related data segments from the slave tracks to the content-related first data  
11 segments from the first track. So there's no express example in that regard,  
12 but I don't know if Comps --

13 JUDGE MCKONE: There is examples, though, right, where  
14 there is something on the master track, track 1, for example Nf3 and Nd3,  
15 and there's no corresponding content data on track 2, for example it says  
16 JPEG D2, which I think we understand is delay and not data, correct? So we  
17 have an instance of data on track 1 and no corresponding data on track 2,  
18 correct?

19 MS. CARRANO: Correct.

20 JUDGE MCKONE: Doesn't it make sense that it would be  
21 contemplated in Comps to have the reverse, data on track 2, but no data  
22 corresponding on track 1, for example a picture where you don't need  
23 sound?

24 MS. CARRANO: Yeah, I think in this hypothetical, I don't  
25 think Comps wouldn't prevent that situation, it's just not expressly described  
26 is my point, so, I don't --

1 JUDGE MCKONE: Well I didn't say there was a specific  
2 example.

3 MS. CARRANO: Right.

4 JUDGE MCKONE: I just wanted to, as far as the algorithm  
5 that Comps uses, if it comes across JPEG three and there's no corresponding  
6 sound at that time, you would just play the picture and there would be no  
7 corresponding sound playing, correct?

8 MS. CARRANO: Right, if there was no sound within the  
9 content, then that could possibly occur, possibly. I just want to make clear,  
10 that there's a difference between these waiting periods and silence within  
11 content, and not to conflate the two. So if there was silence in track 1, the  
12 audio, I think that would still be designated with a note and a frequency, and  
13 the frequency would have maybe some sort of null information in it, and  
14 then it would have some duration, but that would be silence within the  
15 content, not just a waiting period, which I think is what you're referring to,  
16 and I don't think that that is prohibited in Comps, it's just not expressly  
17 disclosed.

18 JUDGE MCKONE: Not even if we had the instance of within  
19 Comps example, we had a JPEG three that was output along with a delay  
20 track, not data but a delay, would that still meet Claim 1?

21 MS. CARRANO: I'm sorry, could you say that again?

22 JUDGE MCKONE: Suppose we had a data segment, track 2, a  
23 picture, JPEG three, output, and because there's no sound associated with  
24 that picture, it would be delay on track 1. Do you understand?

25 MS. CARRANO: I see.

26 JUDGE MCKONE: In that instance, would that still meet

1 Claim 1?

2 MS. CARRANO: I just want to go back to Claim 1's language.

3 JUDGE EASTHOM: I think it's on slide 28.

4 MS. CARRANO: Still on slide 27, so we've got --

5 JUDGE MCKONE: Is there an instance of a content-related  
6 second data segment that is not output better --

7 MS. CARRANO: Yeah, I --

8 JUDGE MCKONE: -- with associated content-related first data  
9 segment.

10 MS. CARRANO: I don't think -- I'm not sure that would meet  
11 the requirement of Claim 1 which requires that you have to assign each of  
12 the content-related data segments to one of the content-related first data  
13 segments, and if you've got a delay period or a waiting period, that's not a  
14 content-related data segment, so that instance would not meet the claim.  
15 And I think, thinking about Comps, the way Comps works is that it syncs,  
16 it's got a master track, which is the first track, so it has to have like some  
17 sort of data there, so I'm not sure that even the scenario of you know,  
18 whether, if there's a delay, whether there could be a delay, and not having a  
19 content there and having data segments from the second track assigned to a  
20 waiting period, because you need to be able to get to --

21 JUDGE MCKONE: Couldn't Comps just simply play the  
22 picture on whatever track that the second processor was using, since it  
23 doesn't need to worry about synchronizing anything with the first track, if  
24 there's nothing on the first track at that point?

25 MS. CARRANO: I think --

26 JUDGE MCKONE: In other words, it doesn't need to re-

1     synchronize at that point.

2                   MS. CARRANO: Look, I think we'd have to analyze this a  
3     little bit more, but I think what would happen is you've got, you have to in  
4     that scenario, you've got the master track, and if the master track doesn't  
5     have data, and it just has in between those two sync commands it has just a  
6     waiting period, you know, at some point things get synced based on when  
7     that master track reaches a synchronization command. So I would have to  
8     think a little more about how that would work, but I think going to your  
9     question as to whether or not Comps contemplates that, I think it's possible  
10    that it could happen, but I think for this case and this situation, we probably  
11    don't even need to get to that scenario, because how Comps is described and  
12    in the example in the Figure 3 embodiment, you have synchronization  
13    commands for each content-related first data segment. So for each audio  
14    data segment you've got a synchronization command, and it's been pairing  
15    up the slave data segments to the content-related first data segment.

16                  JUDGE SMITH: Can you tell me, this hypothetical that we just  
17    talked about, was this issue raised by Patent Owner or otherwise briefed by  
18    the parties?

19                  MS. CARRANO: This was not.

20                  JUDGE SMITH: This is a new issue that hasn't been briefed?

21                  MS. CARRANO: This is a new issue.

22                  JUDGE SMITH: Okay, thank you.

23                  MS. CARRANO: All right, so I just want to skip over to slide  
24    33. So just to point out, important events in Comps are not skipped, so  
25    because the way -- if there's a lag in any of the slave tracks, what happens is  
26    that it will continue to scan the track and then it will not execute any other

1 commands. So when you look at Figure 3, the synchronization commands  
2 all have immediately after that a command to either display an image or  
3 display text, so it's already executing that command, and then to the extent  
4 the master track reaches its sync before the execution of that's done, the  
5 track that's lagging behind, the slave track that's lagging behind will  
6 continue to scan its track, and then it will not read the waiting period, just so  
7 that it can get to the synchronization command as quickly as possible. So  
8 it's not skipping any of its data, and it says that right here, at Comps column  
9 four lines four through 50. Each important command, i.e. a command whose  
10 execution must not be interrupted, is represented by a given field preceded  
11 by a field representing a synchronization command. So there's no limitation  
12 that important commands are only in the master track. Important commands  
13 are any command to display data, present data, or display a text. So going to  
14 the next issues, outputting each, I just want to be really quick on this.

15 JUDGE EASTHOM: Does Comps contemplate what Judge  
16 McKone was talking about, these durations, are those considered important  
17 events?

18 MS. CARRANO: When you look at Comps, Comps expressly  
19 describes important events are displaying an image, displaying a text, or  
20 reproducing sound. Notably the waiting periods are not in that character, is  
21 not characterized as an important event. So necessarily, it's that these  
22 waiting times are unimportant events, and so the unimportant events, that's  
23 not content-related data segments, because there's no content in those  
24 waiting time periods, it's just the timing between events. And there's plenty  
25 of disclosures in Comps, which we've briefed, that show that those capital  
26 D1 sections are all waiting times between the content, between the content-

1 related data segments.

2 JUDGE EASTHOM: So it's kind of Comps' preferred  
3 embodiment, if you will, is not to sync anything in the first track to one of  
4 these important events?

5 MS. CARRANO: I think what Comps does is Comps syncs --

6 JUDGE EASTHOM: In other words, does Comps say let's put  
7 a sync right before the D1?

8 MS. CARRANO: Yeah, Comps does not teach that. What  
9 Comps teaches is that you're going to have a synchronization before  
10 important events, and the waiting times are not important events. And so the  
11 syncs are put before important events because Comps wants to ensure that  
12 it's going to play the content uninterrupted, it does not want to have that  
13 interrupted, and that's one of the benefits that Comps has over the prior art.  
14 So Comps explained that the prior art, which was based on temporal  
15 synchronization, would have these interruptions, because they'd be based on  
16 these temporal synchronizations where every three microseconds there  
17 would be synchronization passed to then the master track to the slave track,  
18 and if the master track got to the synchronization before the slave track, the  
19 slave track would get interrupted. And Comps shows that by doing event  
20 synchronization, it's not going to have that situation, and that's why their  
21 content, even if it's lagging behind from the second track, is not going to get  
22 interrupted, it will finish that content and then it may skip over the waiting  
23 periods. And Dr. Bederson explained it, Petitioner's expert explained this in  
24 his deposition, that these waiting periods are almost put in their so in the  
25 event there is some sort of lag it can then not execute the waiting time period  
26 and go to the synchronization to sync up with the master track.

1 JUDGE EASTHOM: I'm running into your time, I just want to  
2 ask a quick question about Claim 21, in your petition you seem to say that  
3 the markers are part of the -- two things, you've said the markers are in Wan,  
4 and then I thought you also said the markers are in these important events,  
5 like Nf1 and Nf2, and I didn't really understand how the markers could be  
6 both of those things, are you saying that that's an actual place to point to a  
7 marker? Or, for example, Claim 22, I'm sorry, I said 21, but if you go to  
8 your petition, on page 56, that's what you start talking about Claim 22.

9 MS. CARRANO: Right.

10 JUDGE EASTHOM: And you say on page 59, at the bottom,  
11 you say the sound fields Nf1, Nf2, their first content-related markers and  
12 picture fields, but up above you say Wan has scene description, scene  
13 graphs, and they have content-related markers. Are you saying that it would  
14 have been obvious to modify Comps so that you can use these markers such  
15 that in Wan, with Wan's content markers you would then be able to provide  
16 scene descriptions?

17 MS. CARRANO: So what we're saying with this combination  
18 is that Wan teaches that you can have this scene description stream that has  
19 these nodes and media objects and object descriptors. And these are all  
20 temporal, and they are linked to the content and also description streams.  
21 And so it's really just some formal like metadata to help identify these  
22 different scenes that are within the content, and so our combination would be  
23 you would combine that teaching from Wan with what's in Comps. And  
24 looking at the '794 patent, the markers that it used there are just simply  
25 metadata, it's just a start underscore one field, or a start underscore two field  
26 is inserted within the track. And so our combination would be to, how Wan

1 uses the scene description scenes, it would implement that into Comps so  
2 that you could have these additional markers in Comps to help, you know, to  
3 get more information about the data, and that's really all it is.

4 JUDGE EASTHOM: You mean describe the scenes, is that  
5 what you mean?

6 MS. CARRANO: Describe the scenes.

7 JUDGE EASTHOM: Okay, and then with respect to Claims 8  
8 and 9, your friends argued that that's going to destroy the principle. It might  
9 be 18 and 19, let me make sure, sorry.

10 MS. CARRANO: I think that's 18 and 19.

11 JUDGE EASTHOM: Okay, thank you, yeah. So you already  
12 have these sync fields in there, in Comps, so how is it going to work if  
13 you're going to go to another file and look for a sync in another file, how are  
14 you going to know how to sync it in Comps?

15 MS. CARRANO: Right, and I think what Patent Owner has  
16 done is kind of conflated what we were saying. So we do, Petitioner points  
17 to the sync commands as the assignment rule, but the sync commands have a  
18 sync ID. And so what you would do in the combination is you would pull  
19 the sync ID into a separate file. And even Comps recognizes that you can  
20 have synchronization data put in the media data file, which necessarily  
21 means that it could also go in a separate file, and this is all well known.

22 JUDGE EASTHOM: So you're saying that you would have a  
23 sync -- you would still have this, keep the sync portions in Comps, in the  
24 data tracks, and then those would point to another place where the actual  
25 instruction is, is that what you're saying

26 MS. CARRANO: That's correct, if you were to put the

1     synchronization information as separate data, it would just point to, based on  
2     the sync IDs to the data file that had the data.

3                 JUDGE EASTHOM: Oh, the sync IDs are what you would  
4     lead with?

5                 MS. CARRANO: Yeah, that's what Patent Owner is  
6     conflating. It's the sync IDs is what you would pull out into the data, the  
7     separate data file.

8                 JUDGE EASTHOM: All right, I don't have any other  
9     questions, and you're 6:45 into your --

10                JUDGE MCKONE: I have one --

11                JUDGE EASTHOM: Oh, thanks, sorry, yeah.

12                JUDGE MCKONE: So it's your position that we don't need to  
13     determine whether the preamble of Claim 1 is limiting, correct?

14                MS. CARRANO: Correct.

15                JUDGE MCKONE: Okay. So as far as applying Claim 1 to  
16     Comps, is it your position that we do not need to find that every second  
17     content segment is output with a first content segment, or is it your position  
18     that even if we do have to find second segment put with a first segment, that  
19     is what Comps discloses?

20                MS. CARRANO: And I think we don't need to -- and that's an  
21     issue. I know it was raised in institution decision, that's an issue that we  
22     don't need to get to with Comps, because for Comps every content-related  
23     second data segment is assigned to a first data segment. So it's already  
24     doing every second data segment is assigned to a first data segment. So I  
25     don't think that's an issue that we need to get into here.

26                JUDGE MCKONE: Okay, so we don't need to determine

1 whether we can look at only a subset of segments from the second file and  
2 compare them to a subset of the segments of the first data file, we don't need  
3 to even go there?

4 MS. CARRANO: Correct, I don't think we need to go there,  
5 and I believe that if you look at the, where it says each of the content-related  
6 second data segments, you have to look at where that was introduced, which  
7 was in the preamble. And there it says content-related second data  
8 segments, which is plural, so I think there is a question as to whether or not  
9 that means all of every single content-related second data segments or just a  
10 subset, but I don't think that we need to get to that issue here since Comps  
11 assigns every content-related second data segment to a content-related first  
12 data segment.

13 JUDGE MCKONE: And you haven't introduced argument or  
14 evidence either way as to how we would understand the preamble if we  
15 found it limiting?

16 MS. CARRANO: That's correct, we have just submitted that  
17 our position is the plain and ordinary meaning, that's all that's necessary for  
18 this proceeding.

19 JUDGE MCKONE: Okay, that's all I had.

20 MS. CARRANO: Thank you.

21 JUDGE EASTHOM: Okay, you have about six minutes now.  
22 Do you still want to keep 10 minutes?

23 MR. CARDENAS-NAVIA: Yes, it will just be one minute to  
24 get --

25 JUDGE EASTHOM: Oh, I'm not going to start.

26 MR. CARDENAS-NAVIA: Thank you.

1 JUDGE EASTHOM: Take your time.

2 (Whereupon, the above-entitled matter went off the  
3 record at 2:00 p.m. and returned at 2:01 p.m.)

4 JUDGE EASTHOM: Whenever you're ready, just introduce  
5 yourself again, please.

6 MR. CARDENAS-NAVIA: Good afternoon, Your Honors,  
7 Jaime Cardenas-Navia on behalf of the Patent Owner. May it please the  
8 Board. I'm going to turn to slide seven here. So Petitioner primarily relies  
9 on the Comps reference for all of its grounds of invalidity, so time  
10 permitting I'm going to focus on three claim limitations that are in all the  
11 independent claims and that Comps is alleged to teach, but does not. It  
12 looks like we just lost Judge McKone.

13 JUDGE EASTHOM: Oh no, let me stop the clock.

14 (Whereupon, the above-entitled matter went off the  
15 record at 2:02 p.m. and returned at 2:05 p.m.)

16 JUDGE EASTHOM: All right, well welcome back Judge  
17 McKone.

18 JUDGE MCKONE: Well, I apologize.

19 JUDGE EASTHOM: NO, no reason to apologize, we're glad  
20 to have you back, and why don't we just start over at 50 here, just repeat  
21 your introduction, please.

22 MR. CARDENAS-NAVIA: Sure thing.

23 JUDGE EASTHOM: Oops, I'm sorry, it's 40 minutes.

24 MR. CARDENAS-NAVIA: Should I just go ahead? Okay.  
25 May it please the Board. So the first claim term I'm going to address is the  
26 assignment rule, and there is a dispute over its proper construction, I'm on

1 slide nine now, and the highlighted language is really the heart of the dispute  
2 between the parties. And really it gets to what role can time stamps play in  
3 assigning data segments from one data stream to the other? And particularly  
4 here we're focused on whether in assigning the data segments you can do  
5 that by adjusting the timing of the content-related data segments, in  
6 particular the time stamps of content-related data segments.

7 I want to point out three things. I think first of all, this has been  
8 portrayed by the Petitioner as an argument over prosecution disclaimer, and  
9 that's not really correct, that's only addressing a portion of our argument.  
10 Our argument is that if you take a look at the totality of the intrinsic evident,  
11 the specification as well as the file history, as well as the claims, it shows  
12 that there absolutely is a carve out for certain types of assignment rules that  
13 involve certain uses of time stamps, and that's what our construction gets at.  
14 And in fact, Petitioners don't even address that argument, they treat our  
15 argument as if all we ever argued was a purely prosecution disclaimer  
16 argument. That's incorrect.

17 JUDGE SMITH: How does this relate to the, I think it's  
18 Claims 20 and 21 that actually explicitly recite using the time stamps,  
19 doesn't that mean that this time stamp wouldn't be contemplated?

20 MR. CARDENAS-NAVIA: No, it doesn't. so first of all, the  
21 doctrine of -- so let's for the moment assume that there was a doctrine of  
22 claim differentiation issue between Claims 20 and 21, and Patent Owner's  
23 proposed construction. The doctrine of claim differentiation is a weak  
24 candidate of a construction, and it can't control the enter analysis, we always  
25 have to look at the totality of intrinsic evidence. We've cited some cases  
26 that stand for that proposition, there's a lot. And actually, let me go ahead

1 and, well --

2 JUDGE EASTHOM: Can I ask you, before we get into that, I  
3 had a question about column six line 46 of the Patent, it seems to be saying  
4 you use a time stamp there, is that just in a different -- I couldn't figure out  
5 why you use a time stamp there?

6 MR. CARDENAS-NAVIA: You're talking about column six --

7 JUDGE EASTHOM: Line 46.

8 MR. CARDENAS-NAVIA: Line 46. Yes, so that is a section  
9 that no Petitioner has brought up in this proceeding or any other, and for  
10 good reason. What it's saying, I think this is great, it actually supports our  
11 construction, right, is it's talking about how the data segments could be  
12 transmitted, and it says you could use this RTP protocol, and it says that  
13 some of the data segments, the ones that are assigned to one another using  
14 the assignment rule are provided with an identical timestamp, right? And so  
15 it's not saying that the assignment rule assigns the data segments based on  
16 the timestamp --

17 JUDGE EASTHOM: Oh I understand.

18 MR. CARDENAS-NAVIA: It's just noting that yeah, they  
19 have the same time stamp because they are intended to be output together.  
20 So, you know, again, I see that as further evidence that the inventors were  
21 well aware of timestamps and they existed, I mean, the '794 specification  
22 references MPEG 2, MPEG 4, and a person of ordinary skill in the art is  
23 going to know that those all involve video and audio with time stamps. It's  
24 not that time stamps cease to exist in the context of the '794 patent, it's just  
25 that they're not what are being used to assign data segments to one another,  
26 to control that outputting --

1 JUDGE EASTHOM: I understand that. And isn't that similar,  
2 though, to Comps? I don't see any use, even word wise in Comps of a time  
3 stamp?

4 MR. CARDENAS-NAVIA: No, it is not similar to Comps.  
5 And I'm --

6 JUDGE MCKONE: Maybe I'll back up one second. What is a  
7 time stamp, what is your understanding of what a time stamp is? Help me  
8 understand what that is so I can compare it.

9 MR. CARDENAS-NAVIA: That's exactly where I was going  
10 to go to, so let me just find the slide number to jump to here, taking things a  
11 bit out of order. Time stamp, I think that's -- let's see. Can you jump to  
12 slide 52? Actually -- well, I'll go to it. I'm on slide 53 here. Okay, that's  
13 not the right slide. Okay, slide 50.

14 Okay, so this is from the declaration of Patent Owner's expert,  
15 Dr. Goodrich, and he says, based on my reading of the '794 patent, I  
16 understand that time stamps can be absolute times or absolute time ranges,  
17 and that of course includes durations. And he just notes that what Unified's  
18 expert in the '086 IPR proceeding, that's what his view of what time stamps  
19 were, so two experts are in agreement, so that could include a range, that  
20 could include duration, it could include at time T1, at, you know, .34  
21 seconds, those are all time stamps. Is there any dispute --

22 JUDGE MCKONE: So it's some kind of absolute time  
23 compared to apply? So if we have a clock running, it could be time 2341 on  
24 the clock, or be a range starting at 234 to 65, that's what you're saying time  
25 stamp is?

26 MR. CARDENAS-NAVIA: Those are absolutely time

1 stamps --

2 JUDGE MCKONE: Something that's tied directly to whatever  
3 system clock that's moving data through?

4 MR. CARDENAS-NAVIA: It could be tied to a clock, it can  
5 also be a duration, and I believe that was a finding the Board made in the  
6 context of the '086 IPR, and analyzing that reference, the Sanahara  
7 reference, because it did output data segments at specific time intervals, T1,  
8 T2, and the Board I believe also credited the testimony that each of those  
9 data segments had a specific duration, and that was necessary and essential  
10 and predetermined to control the timing of the data segments, and that was  
11 also a time stamp. And that was --

12 JUDGE MCKONE: But duration as tied to a specific clock,  
13 right?

14 MR. CARDENAS-NAVIA: Well, there's always a start time  
15 of the data file in general, of the presentation in general, so in a sense, yes,  
16 but if you have a data file and it says two seconds, or it says play this for two  
17 seconds, that's also the type of duration that is a time stamp, and it is also  
18 inherently necessarily in reference to a time clock as well, because that's just  
19 kind of how the presentation plays. That's what enables everything to be  
20 played at the correct time, because there's a sequencing in addition to the  
21 duration.

22 And so there's no dispute from Dr. Bederson, from Petitioner's  
23 expert, about what a time stamp is. We asked him whether an absolute time  
24 is a time stamp, where they had an opinion about that, he said no, we asked  
25 him if he had an opinion about whether an absolute time range is a time  
26 stamp, he said no. So there's no opposition, there's no dispute about what a

1 time stamp is. All right, and I'll continue this thread to talk about the time  
2 stamp and how Comps does use time stamps.

3 JUDGE MCKONE: Please do, and I apologize for interrupting.  
4 Now I'm the one whose question answered, now that I have some better  
5 understanding.

6 MR. CARDENAS-NAVIA: Naveed, can you go back to slide  
7 46? So this is Petitioner's basis for saying that Comps is not based on time  
8 stamps, it's because of this sentence that it says that the sync commands are  
9 not temporal commands, right, but that doesn't mean that nothing in Comps  
10 involves time stamps or isn't time stamp based. And in fact, the very next  
11 sentence explains what that means. It says thus the fields SYNCH<sub>i</sub> are not  
12 present in the track at regular time intervals. So when Comps says the sync  
13 commands are not temporal commands, all it means is they don't appear in  
14 the multimedia files at preset intervals of time. Instead, that was Comps'  
15 innovation over the prior art, was they said hey, we're not going to appear  
16 every three microseconds, like in the prior art example they provided, we're  
17 only going to use sync commands and only conduct the synchronization  
18 after important events. So that was the innovation of Comps. And so it has  
19 nothing to do with time stamps, it's not the same as based on a time stamp,  
20 that's just a very superficial analysis because the word temporal appears  
21 there. You actually have to do the analysis and look at Comps and how  
22 it operates and whether it's based on the time stamp or not, and when we do  
23 that -- so here's Comps. Can we go to slide 53?

24 Okay, and generally speaking, the way Comps works, right, is  
25 that it's got track 1 at the bottom, and that's the master track, and then tracks  
26 2 and tracks 3, it calls them the slave tracks. And the reason for that is

1 because every time there's a sync command, the slave tracks all  
2 resynchronize with the timing of track 1, the master track.

3 JUDGE EASTHOM: Not every time, I mean they might  
4 already be in sync with them.

5 MR. CARDENAS-NAVIA: Okay, it's possible they might  
6 already be in sync, I think that would be extraordinarily rare they would be  
7 exactly in sync, such that there would be no re-synchronization.

8 JUDGE EASTHOM: I was thinking it's rare that it has to sync  
9 all the time, but maybe I'm wrong. Is there any evidence either way?

10 MR. CARDENAS-NAVIA: I don't believe so, I think it would  
11 just go to the nature of the processors, and --

12 JUDGE EASTHOM: Well certainly it says after a certain  
13 amount of times these things eventually fall out of sync, that's what it says.  
14 So I would assume that the first few syncs, maybe, or the first few clock  
15 cycles, I don't know how many, but probably not going to get out of sync for  
16 a while.

17 MR. CARDENAS-NAVIA: I definitely agree with that, I think  
18 it's a question of how you implement Comps, you know, you can use, it says  
19 to use sync commands not that often, not as often as in the prior art, which  
20 was too often and had a large overhead, and you know, too resource  
21 intensive. So I guess I was assuming you were putting them fairly far apart,  
22 but that's maybe an implementation detail.

23 JUDGE EASTHOM: Well Comps probably contemplates a file  
24 with three notes in it, right? And one sync command, certainly.

25 MR. CARDENAS-NAVIA: I think that potentially could be an  
26 implementation of Comps.

1 JUDGE EASTHOM: Okay, and in that situation I can't see it  
2 running out of a -- I mean, maybe, but probably likely not going to have to  
3 sync anything.

4 MR. CARDENAS-NAVIA: That might be, I'm not sure that's  
5 relevant to the argument I'm trying to make here about how Comps operates.

6 JUDGE EASTHOM: Okay.

7 MR. CARDENAS-NAVIA: Because the alleged assignment  
8 rule is based on the use of the sync commands, and kind of this re-  
9 synchronization process --

10 JUDGE EASTHOM: Right, okay.

11 MR. CARDENAS-NAVIA: I suppose maybe if there's no re-  
12 synchronization there's no use of the assignment rule, so maybe in those  
13 instances there just wouldn't be a use of an assignment rule, and there's got  
14 to be, you know, because there's at least a plurality of these data segments  
15 being synced, it would have to be a use of Comps where you got at least --

16 JUDGE EASTHOM: No, I understand, please go ahead and  
17 tell me how the timing works in your situation.

18 MR. CARDENAS-NAVIA: Right, so these are all tracks, and  
19 of course they all have preset timing information, they all have time stamps  
20 that govern how they operate.

21 JUDGE EASTHOM: Where is that said?

22 MR. CARDENAS-NAVIA: So that's, so I've highlighted Nd1,  
23 right, so the track starts, track 1 starts, it's got Nf1, that's just the frequency  
24 of the sound, then it's got Nd1, that's the duration of that first note. So that  
25 duration is a time stamp. It starts right at the beginning, that first note is  
26 played for that duration. So that is a time stamp for that first note. After

1 that --

2 JUDGE MCKONE: So you're not arguing that the sync  
3 commands are time stamped, there are going to be these other portions, these  
4 Nd2 and Nd1, Nd3, whatever, at a specific delay, that those are the time  
5 stamps?

6 MR. CARDENAS-NAVIA: That's exactly right, all those  
7 duration fields, whether they're waiting durations or whether they  
8 correspond to a note, those govern the timing of all of the outputting of the  
9 content in Comps. Those are durations, those are time stamps, and again, I  
10 don't understand there to be any dispute about that. And Petitioners didn't  
11 dispute that they were time stamps, they just take the position it's not  
12 temporal commands, so therefore we don't have to worry about it anymore.

13 JUDGE SMITH: Well how is that different than the segments  
14 that you had, if I look at Figure 1 of the challenged patent, let me see, Figure  
15 1 of the challenged patent has these segments that are all a predetermined  
16 duration, isn't that correct?

17 MR. CARDENAS-NAVIA: Well, it's all about what's the  
18 assignment rule doing, how is the assignment rule assigning data segments  
19 from one data stream to the other? And so again that's the novelty of the  
20 assignment rule in the '794 patent, is what are the durations of segment zero  
21 in one data stream and segment three in another, we don't know, we don't  
22 care, if they've been assigned to one another, we output them together. And  
23 the durations as I think we've noted in our briefing, they could be twice as  
24 long in one, they could be twice as long as one in the other, like we don't  
25 know --

26 JUDGE EASTHOM: But that's not true, because what if the

1 one you assign it to is really long and then it runs, so say in track 2 where  
2 you have the audio, say one of those is really long and then you couldn't  
3 assign another one to the next video if that first one is running over the time  
4 on that.

5 MR. CARDENAS-NAVIA: Well I guess what I meant by not  
6 that it matters in terms of the content outputting chronologically and  
7 sequentially, it doesn't matter in terms of the operation of the assignment.

8 JUDGE EASTHOM: But you still have to ensure that those  
9 times are less than a certain amount, right?

10 MR. CARDENAS-NAVIA: You want to assure that for the  
11 proper presentation of content, but again what we're focused on here is  
12 specifically the assignment rule, and what -- because we're talking about a  
13 method or a system that's doing that. What is that processor doing as it  
14 assigns these data segments from one to the other? And again, we're talking  
15 about MPEG 2, MPEG 4, they have time stamps in the '794 patent, I guess  
16 essentially any item of content is going to have time stamps, it's just about,  
17 again, I'll get to this, but that was the state of the art, there was time stamps  
18 everywhere and in everything, and it's so embedded you don't even talk  
19 about it, but of course it was to be, we're outputting content synchronously,  
20 there's got to be some kind of time connotation and again, that's the novelty  
21 of the '794 patent. And so in '794, yeah, that's why Figure 1 is different,  
22 you're just not -- you're assigning them, and that's your assignment. And  
23 yes, things are done on the back end to assure that it's chronological, but in  
24 terms of the processing and what's going on there, you're not considering  
25 time stamps.

26 And so that's different than Comps, because what happens

1 when you hit a sync command in track 1, and let's say there is some out of  
2 sync-ness in the slave tracks. So then what you do is normally those slave  
3 tracks, they're following their own time stamps, right? And you know,  
4 JPEG, D0, it looks like it's supposed to be the same duration as Nd1, but  
5 let's say it happens to not, because of the processor speed, it's not. So now  
6 they're out of sync. So what the sync command does is it forces the next  
7 event in track 2, that JPEG 1, to follow the time stamps, the durations, in  
8 track 1. So JPEG 1 will be output after that duration, Nd1. And so  
9 regardless of however long JPEG D0 ended up being, assuming they're out  
10 of sync. And so that's how Comps operates, and as I'll get to, it's how the  
11 prior art that was --

12 JUDGE SMITH: Say that again, I didn't really understand  
13 what you just said, say that again?

14 MR. CARDENAS-NAVIA: Sure, so let me try a slightly  
15 different way. So track 1 is chugging along, right, and it says all right, I'm  
16 going to output this first note of a certain frequency for a certain duration,  
17 and track 2 is chugging along and it's saying okay, I'm going to have this  
18 waiting duration, I'm not going to output any image for a certain duration.  
19 And then we get to a sync command, and let's say track 2 got behind by half  
20 a second by the time we hit that first sync command, what's going to happen  
21 now is track 1 is going to continue chugging along according to its timing  
22 information, its time stamped, it will now output note 2 for a duration Nd2,  
23 and JPEG 1 --

24 JUDGE EASTHOM: Now wait a minute, the first thing that  
25 happens is track 1 is going to hit the sync and it's going to send a sync signal  
26 to track 2, right?

1 MR. CARDENAS-NAVIA: Yes.

2 JUDGE EASTHOM: Okay, and then track 2 is going to say oh,  
3 I'm not at my sync signal yet, and it's going to wait until -- right, it's going  
4 to say I'm not at my sync signal yet, so I have to wait to get there?

5 MR. CARDENAS-NAVIA: That's exactly right, it's going  
6 to -- well, actually, if it's fallen behind and it receives the sync signal from  
7 track 1 it's going to say stop what I'm doing and go immediately to --

8 JUDGE EASTHOM: Yeah, go immediately to the next, that's  
9 right, thank you. Thank you, Counsel. So it doesn't care about what time it  
10 is before that, it doesn't care, it's not tracking the time stamp in the previous  
11 JPEG D0.

12 MR. CARDENAS-NAVIA: I agree with that, it's following the  
13 time stamp in track 1 of Nd1.

14 JUDGE EASTHOM: No, it's just waiting for the sync.

15 JUDGE MCKONE: It's kind of continuously updating the  
16 timing in the second track to match that of the first track, when it sees  
17 segments?

18 MR. CARDENAS-NAVIA: That's exactly right, that's why  
19 the synchronization works, that's why track 1 is called the master track,  
20 because its timing, its time stamps govern the timing of every single event  
21 after a sync command. They're all going to be executed according to the  
22 timing of track 1.

23 JUDGE MCKONE: I'm having a hard time distinguishing that  
24 from the preferred embodiment related to the challenged patent. If a track,  
25 D1, is the first file, I'm assuming that's playing in timing by whatever  
26 processor it is, it's not on board from timing, it's got to have some kind of

1 time stamps, if you're playing sound, you certainly have to have the timing  
2 right on sound, and then we're matching up the second track, D2, to the first  
3 track, D1, so essentially we're matching up D2's timing to that of D1 in the  
4 preferred embodiment. Is that correct, am I missing something?

5 MR. CARDENAS-NAVIA: I think again there is this  
6 distinction between how is the assigning as part of assignment rule, how  
7 does it operate, how does it do that, versus the broader context? Because  
8 again, I'm not denying that the content in both scenarios ends up getting  
9 output synchronously and chronologically, but it's about at that exact step of  
10 assigning, because we're talking about just the assignment rule, in just that  
11 assignment, what's going on there? And so Petitioners have chosen what  
12 they want to try to map to the assignment rule limitation in Comps, and  
13 they've drawn the box around those sync commands and that process of  
14 speeding it up and slowing it down. And so again, I think if that's what  
15 you're looking at, that's what you get. And so Figure 1, I think what is  
16 happening is there is maybe some inferencing, some reading in that there  
17 must be some time component that's considered as a part of this, and again,  
18 if you're just looking at that processing of what is the assignment doing and  
19 assigning it, I think it's very limited and doesn't include this time component  
20 that exists in Comps.

21 JUDGE EASTHOM: So can you run that by me again? So  
22 you're clicking along there in track 1, and then Nd1, I get it, it has a time  
23 and it's going to tell it to go for so long, and then you hit the sync, right, and  
24 then this is the assignment part, and the sync sends a sync signal to the  
25 second processor in track 2, but the second processor in track 2 doesn't care  
26 how much time elapsed in Nd1, it's not tracking that, right? And neither

1 does the sync command in track 1, it doesn't really care, it's going to kick  
2 off the sync command.

3 MR. CARDENAS-NAVIA: Well, I mean we're trying to  
4 assign sort of almost human characteristics to a machine, which can always  
5 be a little tricky, you know, what is it taking into account?

6 JUDGE EASTHOM: It's a microprocessor, if the sync  
7 command hits the microprocessor, it's going to do something, it doesn't  
8 really matter what happened before that.

9 MR. CARDENAS-NAVIA: Let me point to -- let me go back a  
10 few slides.

11 JUDGE MCKONE: Please let me know what slide you end up  
12 on.

13 MR. CARDENAS-NAVIA: Yes, let me find it. Go to slide  
14 53? Go to slide 48, please. So this is how Comps describes the process.

15 JUDGE SMITH: You're on slide 49?

16 MR. CARDENAS-NAVIA: Thank you, slide 49, it's an  
17 excerpt from Comps. It says in the Figure 3 example, musical notes  
18 included in the track 1 data must not be interrupted. So synchronizing the  
19 three tracks must not entail interrupting the music heard by the user, the  
20 microprocessor dedicated to reading this track is considered to be the master.  
21 It forces the other microprocessors in charge of the other tracks referred to as  
22 slaves, to synchronize it with it. So like what algorithm are you employing,  
23 the algorithm you're employing is, again, because you don't want anything  
24 in track 1 to be interrupted, to force all the other tracks to follow the timing  
25 of track 1. That's the assignment rule, '794 patent --

26 JUDGE EASTHOM: I understand that, I understand that

1 totally, I'm just saying that the sync comes along and it tells, like you said,  
2 like you read right there, it basically asks the other microprocessor if they're  
3 in sync or not, and if they're not they either jump ahead or they don't do  
4 anything.

5 MR. CARDENAS-NAVIA: Okay. Let me move back to the  
6 assignment rule, construction of the term assignment rule. Can we go back  
7 to slide 9?

8 JUDGE EASTHOM: And maybe I'm missing something, but  
9 you're saying -- I understand it might be using timing to see how long the  
10 note is, I get that, but then once it hits the sync I just don't see how it's using  
11 timing anymore. So maybe that's a better way to ask it, what I don't  
12 understand, and maybe that's my problem, but I'll think about it.

13 MR. CARDENAS-NAVIA: I'll keep trying to come up with  
14 another way, but I think as Comps says, it's forcing all of the other tracks for  
15 those specific events to follow the timing of the master track, track 1. And  
16 that's how it's based off the timing and those time stamps. And the time  
17 stamps are of a different track, but as I'm about to show when I go through  
18 the file history, that's exactly how the Rosenau reference worked, and it was  
19 distinguished and overcome.

20 JUDGE EASTHOM: Yeah, but Rosenau uses time stamps, so  
21 there's no question about that, you made that argument in the '086, you said  
22 they use timestamps. So we don't have any question about that, right?

23 MR. CARDENAS-NAVIA: Well -- okay. Well I don't think  
24 there's any dispute here that Comps uses time stamps, because experts don't  
25 disagree on what a time stamp is, we've said what's happening in the tracks  
26 are time stamps, and Petitioners never responded. And so again, whether the

1 assignment rule is a mechanism that uses time stamps, I guess as I'm going  
2 to show, in Rosenau the same thing is happening. It's being forced to follow  
3 the time stamps of a different stream of content. So let me jump there.

4 JUDGE EASTHOM: But in Rosenau it has to calculate how  
5 far off it is by calculating how big the video frame is, so it actually in later  
6 columns is describes how it counts the time using the clock, because it  
7 knows a video frame is one thirtieth of a second, and then it knows how  
8 many clock cycles off it is and then it compares that clock cycle and then it  
9 tells you whether you have to jump or skip. So it's patently using timing  
10 and the time clock cycle, and that's just not explained in Comps.

11 MR. CARDENAS-NAVIA: So again, it goes to what is the  
12 alleged assignment rule, what is the alleged assigning? And so the  
13 mechanism that triggers the alleged assigning is slightly different between  
14 Rosenau and Comps, but what is alleged to be the assignment rule, the active  
15 step of assigning, is the same. You're speeding up or slowing down content  
16 to force one data stream to align with the timing of a different data stream.

17 JUDGE SMITH: Well, I mean in Comps it's to align with an  
18 important event, master data streams, so I mean you know, to the extent it's  
19 a stream so of course it has timing information, but it's not using the timing  
20 information, it's using the fact that it's an important event to align the  
21 secondary tracks.

22 MR. CARDENAS-NAVIA: I agree it's only doing it for  
23 important events in Comps, versus here it's doing it based on a time trigger,  
24 how out of sync we are. Again, that's what I'm saying, that's the trigger for  
25 when the alleged assigning happens, it's not how the alleged assigning  
26 happens, right? So in Rosenau, right, you've got your two data streams,

1 their video and audio frames, they each have time stamps, and what's  
2 happening is over time, like in Comps, they get out of sync, because of the  
3 nature of processors all running a little bit different, maybe other factors as  
4 well. And so Rosenau is tracking how out of sync has, I guess in this case,  
5 your video data gotten from your audio data? And once it's reached a  
6 certain threshold, that's your trigger for what was alleged by the examiner to  
7 be the assignment rule, which is, either if we're behind or we're ahead, let's  
8 either skip a frame or let's repeat a frame to restore synchronicity based on  
9 the timing of the other stream of data. They don't call it a master, but it's  
10 master in that it always chugs along, it always follows its time stamps. It's  
11 the other stream of data that is based on the trigger, which is slightly  
12 different, forced to synchronize by restoring it with jumping ahead or falling  
13 behind to restore synchronicity with the other data stream.

14 And so again there's got to be some principled basis for how  
15 that alleged assignment rule of jumping ahead or skipping one or more data  
16 frames to jump ahead or repeating a frame to hold back and wait a little  
17 later, delay the outputting of all the remaining data segments, there's got to  
18 be some way to square that as the alleged assignment of data segments from  
19 one to the other with what Comps does. Which, you know --

20 JUDGE EASTHOM: Is there a sending of a sync signal in  
21 Rosenau?

22 MR. CARDENAS-NAVIA: So my understanding is there's  
23 sending of timing information between the streams so that the non-master  
24 stream can track how out of sync it has become, and so then at that point,  
25 once it's hit that threshold --

26 JUDGE EASTHOM: So it doesn't send a sync signal like it

1 does in Comps, right?

2 MR. CARDENAS-NAVIA: I don't think there's a signal that  
3 triggers the assignment, I think there is a signal that is used as part of the  
4 overall trigger of the assignment.

5 JUDGE EASTHOM: It's a timing signal, right?

6 MR. CARDENAS-NAVIA: That's right.

7 JUDGE EASTHOM: Based on timing? Okay, I think I  
8 understand your argument on that. I don't know, unless anyone else --

9 JUDGE SMITH: Just real quick, the Rosenau, the video data  
10 frames and the audio data frames, they're all of equal duration, is that right?

11 MR. CARDENAS-NAVIA: In that specific embodiment and  
12 that figure, they are, yes.

13 JUDGE SMITH: Okay, okay. I think I understand your  
14 argument, thank you.

15 MR. CARDENAS-NAVIA: Yeah, I think it's generally  
16 describing maybe MPEG or something formats, and maybe they would be,  
17 and maybe not, but it's a helpful example. So let me switch over now, jump  
18 ahead.

19 JUDGE EASTHOM: Can I ask you, if we just stick on that  
20 figure on your slide 16, I think it's your slide 16.

21 MR. CARDENAS-NAVIA: Yes.

22 JUDGE EASTHOM: And I know we've asked your friends a  
23 little bit about the preamble, and maybe it's not an issue, it seems like it  
24 might be an issue, we might need more briefing on it, or maybe we don't,  
25 but D1 there at the top left, that represents the beta file, right?

26 MR. CARDENAS-NAVIA: Yes.

1 JUDGE EASTHOM: And D2 on the right is a data file?

2 MR. CARDENAS-NAVIA: Yes.

3 JUDGE EASTHOM: Now the segments, there's nine of them.  
4 Is that all the segments there are in D1, or are there more segments in D1?

5 MR. CARDENAS-NAVIA: You know, it's an exemplary  
6 embodiment, I haven't super checked to be sure if that's the entirety of it,  
7 but I think that could be the entirety.

8 JUDGE EASTHOM: So it's nine segments long, and the  
9 situation I was asking your friend about, you know, it's pretty clear in your  
10 spec that these content-related data segments, they're syntactically related  
11 with each other. So let's say, we'll make it simple, the ones on the right,  
12 zero through four, let's say that's the audio. So that's the audio from one  
13 person, right? Probably.

14 MR. CARDENAS-NAVIA: I don't read the spec as limiting  
15 the --

16 JUDGE EASTHOM: I'm not limiting it to, I'm saying that's  
17 an example of those four.

18 MR. CARDENAS-NAVIA: It could be the audio data for one  
19 speaker.

20 JUDGE EASTHOM: Right. it couldn't be for two speakers,  
21 unless they're somehow syntactically related, right? it's probably one.

22 MR. CARDENAS-NAVIA: I think it could be the entire audio  
23 for a movie or a TV show, for example, with whatever noises might be in  
24 that series of content data.

25 JUDGE EASTHOM: Okay, okay, so the ones that are  
26 syntactically related to each other, though, in a file, they're for one person,

1 that's one example, right?

2 MR. CARDENAS-NAVIA: That could be an example, again, I  
3 don't --

4 JUDGE EASTHOM: Well that's right out of your spec.

5 MR. CARDENAS-NAVIA: Right, that would be an example,  
6 but that's what I meant by it's not limiting, it's --

7 JUDGE EASTHOM: I understand, I understand.

8 JUDGE SMITH: The claim is broader than that, but it at least  
9 encompasses that.

10 MR. CARDENAS-NAVIA: Yes.

11 JUDGE EASTHOM: Okay, so then let's say over here on the  
12 left you have a picture of a guy that's speaking, you have nine frames of  
13 video of him, and so obviously you want to assign that speaker's text, his  
14 audio, to those frames, right, the video?

15 MR. CARDENAS-NAVIA: Yes.

16 JUDGE EASTHOM: Okay, now what if you have five  
17 speakers in D2, you have five speakers you've taped in D2, right?

18 MR. CARDENAS-NAVIA: Yes.

19 JUDGE EASTHOM: You're not going to assign -- and let's  
20 say you only have a movie for one of those guys, you only have one of them  
21 in there. In that situation you would just assign the one guy's audio, the four  
22 audio segments, you would assign all those to the video on the left, but you  
23 wouldn't assign the other four to that video, because that's not who is  
24 speaking, right?

25 MR. CARDENAS-NAVIA: I'm not sure I understand the set  
26 up there. The other audio files, are they --

1 JUDGE EASTHOM: No there's one audio file and it has five  
2 speakers, audio from five speakers in that audio file.

3 MR. CARDENAS-NAVIA: Okay.

4 JUDGE EASTHOM: And let's say speaker A, his picture is in  
5 D1, you've got a video of just speaker A. So speaker A right here in Figure  
6 1 is going to get assigned and sent out synchronously with his video, but  
7 then the other four guys, we're not going to assign those four guys to this  
8 video A, right?

9 MR. CARDENAS-NAVIA: Well, it depends on what you're  
10 trying to do, but in an example, you might not, you might assign it to later  
11 segments.

12 JUDGE EASTHOM: Okay, so I think what we agree is that  
13 you're not going to assign all the data segments in one file, necessarily.

14 MR. CARDENAS-NAVIA: I'm not sure I understand what  
15 you're trying to -- what point -- I'm not sure if I agree or disagree because  
16 I'm not entirely sure --

17 JUDGE EASTHOM: Well I mean I think your argument is that  
18 you have to have all the data segments assigned in this claim, you can't just  
19 assign some of them. But we just agreed, you can assign some of them.

20 JUDGE MCKONE: Maybe we should start there. Claim 1  
21 says assigning -- each of the content-related second data segments is output  
22 together with an associated one of the content-related first data segments,  
23 right? Are you understanding that to mean that every content-related second  
24 data segment in the second file is output together with something in the first  
25 file?

26 MR. CARDENAS-NAVIA: So I'll answer that question, yes, I

1 think it has to for the term ‘each’ to have any meaning, and for other terms  
2 like ‘chronological’ to hold true and have meaning, but I don’t think the  
3 Board has to decide that.

4 JUDGE MCKONE: But as far as ‘each’ is concerned, we need  
5 to figure out, each of what?

6 MR. CARDENAS-NAVIA: Right.

7 JUDGE MCKONE: And if we want each of all of the content-  
8 related second data segments in the second data file, I would assume we  
9 would need to go into the preamble to get to the second data file, and then  
10 the question becomes why all the segments, the second data segments, not  
11 just some of the second data segments?

12 MR. CARDENAS-NAVIA: Right, I think that was the dispute  
13 that we had with Petitioner. Do you need to, you know, it’s each of the  
14 content-related second data segments need to be assigned with a content-  
15 related first data segment, and you know, in our response we said hey, well  
16 you guys are only alleging at best a subset of the content-related data  
17 segments, the alleged content-related data segments in Comps to content-  
18 related first data segments. And they said that’s not what we’re doing -- can  
19 you go to slide six --

20 JUDGE EASTHOM: No, I know what you’re saying, they said  
21 they are assigning all the content-related, because the other ones aren’t  
22 content-related.

23 MR. CARDENAS-NAVIA: That’s right, and that’s why I  
24 don’t understand this to be an issue that the Board needs to decide.

25 JUDGE EASTHOM: Okay.

26 JUDGE SMITH: So you don’t have an opinion one way or the

1 other on whether the preamble should be given weight, is that right? Is that  
2 what you're saying, we don't need to decide?

3 MR. CARDENAS-NAVIA: I don't understand it to be relevant  
4 to any dispute that's at issue, because Petitioner doesn't have a theory under  
5 interpretation where you don't need to assign each data segment, in for  
6 example, Figure 3 of Comps, from the alleged content-related second data  
7 segments to the first.

8 JUDGE SMITH: Because in Figure 3 of Comps the delays  
9 where no JPEG image is shown is image-related content data under your  
10 construction of that term, is that right?

11 MR. CARDENAS-NAVIA: Well, we don't think anything in  
12 Comps is a content-related data segment, but --

13 JUDGE SMITH: You don't think anything is a content-related  
14 data segment?

15 MR. CARDENAS-NAVIA: No, we don't think any of it is.

16 JUDGE EASTHOM: Because none of it has content, right?

17 MR. CARDENAS-NAVIA: Because none of it has content,  
18 but if any of it is, then a lot more than just what Petitioner says are content-  
19 related data segments need to be content-related data segments.

20 JUDGE SMITH: I guess what I'm getting at is the unimportant  
21 events under your theory are content-related data segments?

22 MR. CARDENAS-NAVIA: Well, again, none of it is, but if  
23 any of it is, then all of it has to be.

24 JUDGE SMITH: Well, I mean I'm asking you to explain your  
25 position, what's your position? Is your position that the unimportant events  
26 in Figure 3 are content-related data segments?

1           MR. CARDENAS-NAVIA: No, because they don't have  
2 content.

3           JUDGE SMITH: So you agree with Petitioner on that point?

4           MR. CARDENAS-NAVIA: Well our position is that none of it  
5 has content, but our position is that you've got to be consistent. If you're  
6 saying some of it is content-related data segments, then all of it needs to be.  
7 And I'll get there, I do just want to make sure I'm clear on this point. Can  
8 you go to slide 60? Right, because I think this is important, and this is why  
9 the Board doesn't need to -- I don't understand there to be any dispute about  
10 the preamble, because we said, we told them in our response it's about, is it  
11 all the content-related data segments, or is it a subset, and they said don't  
12 worry about it because we're not saying it's a subset, because we're saying  
13 it's all.

14           JUDGE EASTHOM: This is relevant to Judge McKone's  
15 interesting hypothetical that we discussed with your friend earlier, because  
16 if, Judge McKone is saying that if Comps is asking whether Comps can  
17 assign a content-related data segment from track 2 and make that  
18 synchronous with a non-content-related data segment in track 1, if that's  
19 true, and you have to match up all of them through the preamble or  
20 whatever, then Comps doesn't meet the claim. Did you make that argument,  
21 first of all, and second of all, that's why we're asking about the preamble.

22           MR. CARDENAS-NAVIA: We actually did make that  
23 argument, we didn't make it using the precise hypothetical of Judge  
24 McKone, but yeah, that's our whole point, is that --

25           JUDGE SMITH: Where did you make that argument?

26           MR. CARDENAS-NAVIA: It's the section about the 'each,'

1 we construe the each, and then we argued it's got to be all of them, not just a  
2 subset. Can you go to slide --

3 JUDGE SMITH: Because I looked at that section, I didn't see  
4 that argument in that section.

5 MR. CARDENAS-NAVIA: Well, let me --

6 JUDGE EASTHOM: You're saying you made it generally, but  
7 maybe not the specific hypothetical?

8 JUDGE SMITH: The argument that I saw you making was that  
9 the unimportant events are content-related data segments, and because those  
10 aren't always matched up, it doesn't meet the claim. That's what I  
11 understood this argument --

12 MR. CARDENAS-NAVIA: Can you go to slide 83? Right, so  
13 here's the arguments we make. We make a lot of them, so maybe we can  
14 start to keep track, because we think there's a lot of issues, right? So again,  
15 our view is, everything that's a content-related data segments needs to be,  
16 you know, alleged second data segments, so tracks 2 and 3, so anything  
17 that's a content-related data segment in track 2 or 3 needs to be assigned to a  
18 content-related data segment in track 1. And maybe I'll get to later, we  
19 think nothing is a content-related --

20 JUDGE SMITH: Yeah, just for the sake of this discussion,  
21 could you stop saying nothing is a content-related data segment?

22 MR. CARDENAS-NAVIA: Yeah, yeah.

23 JUDGE SMITH: Go with it, just for the sake of this discussion,  
24 identify what you want us to consider for this argument to be the content-  
25 related data segments and why this reference doesn't meet the claim.

26 MR. CARDENAS-NAVIA: Sure. So okay, it goes to the

1 nature of important events, is part of this, right, because Petitioner, they --  
2 okay, at a high level, let's look at track 3. There's only two events that are  
3 alleged to be content-related data segments, right, so two out of at least five,  
4 and then probably more because of the squiggly lines.

5 JUDGE SMITH: You're talking about text one and text two?

6 MR. CARDENAS-NAVIA: Yes, those are the alleged content-  
7 related data segments.

8 JUDGE SMITH: Okay.

9 MR. CARDENAS-NAVIA: And so in our view, all the other  
10 blocks, text D0, text D1, whatever's represented by a squiggly, are also  
11 content-related data segments, none of them have sync commands before  
12 them. And so there's not an alleged assignment rule governing all of those,  
13 right? And so that's, I understand that to be Judge McKone's argument, it's  
14 got to be all of them, because in our view they all are content-related data  
15 segments, if any of them are. Same is true for track 2, right? They've only  
16 even alleged that combinations of two different data segments are actually a  
17 single content-related data segment, there's a lot they haven't alleged that  
18 for. So for Petitioners to prevail, they need to show definitively that all  
19 those other segments that aren't highlighted in tracks 2 and tracks 3 are not  
20 content-related data segments.

21 JUDGE SMITH: So you're saying that for example in track 2,  
22 where it says JPEG D2, which I take it to mean, just a blank space, or some  
23 kind of delay?

24 MR. CARDENAS-NAVIA: It's a waiting time, it's an event,  
25 it's a command to the computer saying don't output any images for a  
26 specific amount of time.

1 JUDGE SMITH: Okay, so it's what the reference calls an  
2 unimportant event?

3 MR. CARDENAS-NAVIA: No, and let me go to that slide,  
4 because I think that is an important point. Petitioners are just dead wrong  
5 about what an important event is. Can you go to slide 70? So here we go.  
6 Here's Comps, I'm on slide 70, it says to this end, the invention provides a  
7 method of synchronizing data in a multi-media document, in which, and I'll  
8 skip to the highlighted part, said synchronization command is inserted before  
9 each event-related command characterizing unimportant events. So it's  
10 talking about the invention, and it's saying that unimportant events are those  
11 with the synchronization command in front of it, that's what it's saying,  
12 that's what it's describing as the invention.

13 Then in the paragraph below it, this is what Petitioner is  
14 focused on, and in the brief they left out the first line, which is its preferred  
15 embodiment, the method is advantageously characterized in that the  
16 important event corresponds to a command to display a text, a command to  
17 display a picture, or a command to produce a sound. So that's the preferred  
18 embodiment, not necessarily what an important event is, and that it's  
19 preferred, because that's what you want, you want your output of content to  
20 not be interrupted. So that's potentially, you know, ideally something you  
21 would do, not at all a requirement.

22 Here we go, the Comps -- I think that was a definition, here's  
23 another definition. Thus, each important command, i.e. a command whose  
24 execution must not be interrupted, is represented by a given field proceeded  
25 by a field representing a synchronization.

26 JUDGE EASTHOM: So, but the point is, isn't the point in

1 Comps though that it's up to the user of this program in Comps, the guy  
2 that's trying to figure out whether these are related or not, right? So that  
3 user determines all this stuff? And that's sort of similar to your patent,  
4 right? Because somebody figures out these are contextually related, it's  
5 somewhat subjective, I guess.

6 MR. CARDENAS-NAVIA: So we're dealing with  
7 anticipation, so Comps needs --

8 JUDGE EASTHOM: But can you just answer the question that  
9 I asked you, is that similar? I mean they're both sort of -- how you figure  
10 out if it's contextually related or content-related, that's a subjective  
11 determination in both instances that's determined by the user of your  
12 disclosed algorithm and Comps'.

13 MR. CARDENAS-NAVIA: I don't agree with that.

14 JUDGE EASTHOM: Okay.

15 MR. CARDENAS-NAVIA: Content-related is a defined term  
16 that has a very specific meaning that you've either got to mean, or not.

17 JUDGE EASTHOM: Okay, who determines whether they're  
18 content-related in your patent?

19 MR. CARDENAS-NAVIA: I mean whoever the decision  
20 maker is, the Board, the jury -

21 JUDGE EASTHOM: The Board?

22 MR. CARDENAS-NAVIA: It's a defined term.

23 JUDGE EASTHOM: No, no I'm saying physically, how do  
24 you say oh A1 and A2 and A3, they're all content-related data segments,  
25 who makes that determination? Not to ask you as a claim construction, I'm  
26 asking you physically, is there something in a packet that says these are

1 related? It seemed like you had somewhere in there where it said --

2 MR. CARDENAS-NAVIA: Can you go to slide 94?

3 JUDGE EASTHOM: My point is somebody in the system says  
4 these are content-related.

5 MR. CARDENAS-NAVIA: I don't agree with that, and I think  
6 this is the definition of content-related data segments, right, comes from the  
7 specification, and maybe this will help, at least me understand your question  
8 better. And so it's segments of content data that have a syntactical meaning  
9 within the respective data file.

10 JUDGE EASTHOM: Okay, and how do we know they have a  
11 syntactical meaning, who makes that up, who determines that?

12 MR. CARDENAS-NAVIA: I mean if you're talking about in  
13 terms of the -- I guess I don't understand that.

14 JUDGE EASTHOM: Who figured out that one through four in  
15 Figure 1 are syntactically related to each other, how does your system figure  
16 that out?

17 MR. CARDENAS-NAVIA: I guess that's not an issue that's  
18 been debated.

19 JUDGE EASTHOM: It's an issue I'm asking you about,  
20 though, I'm interested.

21 JUDGE MCKONE: Maybe I can make this more concrete. If I  
22 look at Figure 3 of Comps, this JPEG 1, there's a field there, JPEG 1. If we  
23 disagree with you, and we conclude that this includes image data, right, with  
24 the pointer, if we conclude it's image data, how do we determine whether  
25 it's syntactically related such that it meets the claim language?

26 MR. CARDENAS-NAVIA: In terms of it's syntactically

1 related, I mean I think it's does it have a syntax within a specific data file? I  
2 don't understand that issue to be in dispute in this proceeding, so I'm not  
3 sure that determination needs to really be made here in this proceeding.

4 JUDGE MCKONE: But if I decide that JPEG 1 includes image  
5 data, I should conclude that it is content-related data?

6 MR. CARDENAS-NAVIA: Well it also has to have a  
7 syntactical meaning with respect to data files, but I don't think anyone  
8 disputes that it does, so I think that's right, and I think that's why our view is  
9 that all the waiting times are also must be content-related data segments,  
10 because certainly under Petitioner's view they relate to content, and they've  
11 got a syntactical meaning within a data file. I mean, they're about -- well,  
12 you know, we're saying that it is, we don't see how it's different from the  
13 other segments. It's in there, it's got a structure, a syntax to it, in terms of  
14 it's the same format, the same events, fields, commands, it's in the  
15 multimedia file, it's the same as all the others, it governs how the content is  
16 outputted, we don't see how it's any different, other than it corresponds to  
17 silence instead of displaying something or presenting something, but silence  
18 is presenting something, I think that's, voice patterns in your -- Petitioner's  
19 expert conceded that, silence absolutely can be content.

20 JUDGE MCKONE: So potentially any piece of data in a file is  
21 a content-related data segment?

22 MR. CARDENAS-NAVIA: If it relates to, depending on  
23 whose construction you adopt, if it relates to content and is within a data file  
24 and has syntactic meaning, which again, I think it does, in this context, does  
25 it have syntactical meaning, well, it's part of a presentation of audio --

26 JUDGE MCKONE: If I agree with you that we have to have

1 image data or sound data, rather than pointers to image data or sound data,  
2 JPEG 1 has sound data, if I conclude that JPEG 1 has sound data, and JPEG  
3 D1, the delay period, does not have sound data, it has merely some kind of  
4 limitation of a wait time. Why would JPEG D1, under your construction, be  
5 a content-related data segment?

6 MR. CARDENAS-NAVIA: Well, because I disagree that in  
7 this context a waiting time isn't a content-related data segment, isn't content,  
8 and our expert explained why that was, and their expert never responded,  
9 because he never provided a supplemental declaration. So I don't  
10 understand them to have expert support for their position otherwise, I  
11 believe it's one-sided on that issue. The other thing I'll say is that there's  
12 inconsistency in how they presented it. Can you pull up the slide with  
13 Figure 3 in it?

14 JUDGE MCKONE: So it's your position that if I look at track  
15 1, if that Nf2 is a MIDI signal, some kind of MIDI code, or a flute, and Nd2  
16 is the amount of time that flute is played for, Nf2 is not content-related, but  
17 Nd2 is content-related?

18 MR. CARDENAS-NAVIA: Well again --

19 JUDGE MCKONE: Under your construction.

20 MR. CARDENAS-NAVIA: Under our construction, I think,  
21 again, none of it is content-related, because it's not content, but let's say it  
22 is --

23 JUDGE SMITH: Let's say you lose on that argument, so you  
24 need to make it -- yeah, we get your point, you don't need to keep saying  
25 that.

26 MR. CARDENAS-NAVIA: Then it would all be content-

1 related data segments, both would be. And that's the problem, they say --

2 JUDGE MCKONE: If we agree with your construction that  
3 would exclude a MIDI signal, we would have the situation where Nf2 is a  
4 MIDI signal, or has MIDI code, so that, I would understand under your  
5 construction, is not content-related, however the following field, Nd2, is just  
6 the time, duration that that code is played for. And you seemed to say a  
7 moment ago that that is content-related, in your construction, that's why I'm  
8 confused.

9 MR. CARDENAS-NAVIA: I think it's again that other things  
10 are confusing it. In the context of MIDI, no, like none of it is content-related  
11 data segments, because these are just all instructions for a computer to  
12 execute things. So I'm not saying that silence is always content, I'm saying,  
13 again, if we're in a world where we're not dealing with MIDI, where JPEG 1  
14 is actually a JPEG file, then JPEG D1 is saying don't output anything, that's  
15 implicitly saying output white screen or output a black screen, or output  
16 something, and that is content. And again, same with the notes, if a  
17 frequency is, play this note, you know, like silence is content too, silence is  
18 critical to the presentation of any content, and to treat it fundamentally  
19 different, there's just no basis for that, and there's certainly no basis for  
20 combining these two data segments and claiming they're both somehow  
21 combined a content-related data segment. And they do it for track 1 and  
22 track 2, but not for track 3, like if text by itself in track 3 can be a content-  
23 related data segment, then why is JPEG 1 and Nf2, why are those not  
24 content-related data segments? And if we're in that world, then that's our  
25 other issue, if they're combining two of these things together and claiming  
26 they're a single content-related data segment, and we think that's improper.

1 JUDGE EASTHOM: Well that's why I was asking you the  
2 question about who makes that determination, and it seems like whoever is  
3 using Comps is a person who is going to set up the sync command and  
4 they're going to say hey, this is important, this is important, this is  
5 important. So anything they think is important is content-related.

6 MR. CARDENAS-NAVIA: I disagree with that. I think  
7 whether it's content-related comes down to this question of is it content or  
8 not.

9 JUDGE EASTHOM: Okay, besides the content part, let's  
10 assume it all has content, and then the way I read Comps is all this data is  
11 content-related because they're trying to sync everything up, it's all part of  
12 one movie or file or whatever, and so, but the user determines what is going  
13 to be important there, and then just like in your patent, the user, they mark  
14 which ones are going to be content-related, there's some marking in the  
15 packet, if you will, oh, this is related to this other packet.

16 MR. CARDENAS-NAVIA: The user absolutely determines  
17 what is important, and I think this goes to Judge McKone's point, and it is  
18 something we point out, is that's why, for example, JPEG D2, which is a  
19 waiting period, is right after a sync event. If that's a view of what's  
20 important, then it should be a content-related data segment, and the same  
21 would be true for text D1 and track 3. If that's how we're defining what's  
22 important, then that's got to apply universally, and again, there's no dispute  
23 that each -- it's got to be every content-related data segment.

24 JUDGE EASTHOM: Well that's what I was going to ask you,  
25 too, about the partial, whether you have to satisfy this for all the plural  
26 things. And I think we agree that in your Figure 1 you don't have to line up

1 all of second data segments in the second file to the first file, because you  
2 could have a bunch of people talking that aren't even in the first file.

3 MR. CARDENAS-NAVIA: In the context of Claim 1, you  
4 have to assign each content-related second data segment --

5 JUDGE EASTHOM: Okay, I understand your claim  
6 construction argument, I was contemplating from your disclosure though,  
7 about how those work, because in your disclosure you don't say how many  
8 segments are in that file at the top of Figure 1, the file D2, it doesn't say D2  
9 only comprises of those four data segments, nowhere does it say that.

10 MR. CARDENAS-NAVIA: I think the specification is very  
11 clear that it's always assigning every content-related second data segment to  
12 a first content-related data segment, and again, I don't understand the parties  
13 to be in dispute, and I don't understand Petitioner to have a theory based on  
14 an alternate construction where it only needs to be a subset.

15 JUDGE EASTHOM: Okay, and then I just have one final  
16 question about that. You know, Comps contemplates only having one of  
17 these two tracks, so it could just be the text track that's synced up with the  
18 lower track, in Figure 3 there?

19 MR. CARDENAS-NAVIA: That could be a possibility.

20 JUDGE EASTHOM: So, and I'm wondering why wouldn't  
21 someone envision Comps, like I asked you before, just using two of those  
22 texts things, like NBC, whatever, that has three notes, and maybe you have  
23 three notes and you have three text things, why, isn't that contemplating  
24 Comps?

25 MR. CARDENAS-NAVIA: No, Comps is based on a -- it's an  
26 anticipation reference, Comps nowhere discloses that, it says do the

1 opposite. Comps distinguished itself over the prior art, which was aligning  
2 content at set time intervals like three microseconds, it said that's too much,  
3 that's too long --

4 JUDGE EASTHOM: I'm sorry, I wasn't clear. I'm saying,  
5 doesn't Comps contemplate only having three or four segments to line up  
6 with three or four segments?

7 MR. CARDENAS-NAVIA: It could be a small number of  
8 segments, but not with sync commands before all of them. It says don't do  
9 that, so that would be a modification of Comps.

10 JUDGE EASTHOM: Okay, even if Comps thought they were  
11 all important, you're saying Comps wouldn't have a sync command lined up  
12 to all four text segments, if there were only four?

13 MR. CARDENAS-NAVIA: Nowhere does Comps say that, it  
14 says don't do that, it says only do it before important events, use it -- the  
15 whole point is to lighten the load of these sync commands as opposed to the  
16 prior art, that was how they distinguished from the prior art was don't do it  
17 so often.

18 JUDGE EASTHOM: Okay, I appreciate that, and now you're  
19 one minute over and we've asked you a lot of questions. Do you want extra  
20 time to wrap it up?

21 MR. CARDENAS-NAVIA: Maybe I'll just -- if I could get a  
22 few minutes for rebuttal if that would be possible?

23 JUDGE EASTHOM: Sure, right now we'll give you two and a  
24 half minutes for rebuttal and I'll grant your friend the same thing.

25 MR. CARDENAS-NAVIA: Thank you.

26 JUDGE EASTHOM: Thank you. And if you want more, just

1 tell me.

2 MR. CARDENAS-NAVIA: Okay.

3 JUDGE EASTHOM: So you had six, so you'll have eight and a  
4 half, Counsel.

5 MS. CARRANO: Okay, I think we've got it. So I want to  
6 clear up some of the things that Patent Owner's counsel said, starting with  
7 issues related to the assignment rule. So one thing that Patent Owner's  
8 counsel said was that Petitioner's expert, Dr. Bederson, had no opinion on  
9 whether or not, what is a time stamp, and that's just not true. In his  
10 deposition, which is Exhibit 2012, he was asked, and that's what's on the  
11 screen right now, what's your understanding of time stamps did you apply in  
12 your declaration?

13 JUDGE SMITH: What page number is that, of the deposition?

14 MS. CARRANO: This is page 68.

15 JUDGE SMITH: Okay, thank you.

16 MS. CARRANO: Starting at line two. And so he answered in  
17 paragraph 52, I described some of what I just explained and cited to the '794  
18 patent, column two lines 36 through 43, as well as Claims 20 and 21. And I  
19 used the plain and ordinary meaning of the word time stamp, which is  
20 clearly related to time, and the fact that Comps, as I said, expressly uses  
21 synchronization commands that are not temporal commands, that teaches  
22 that they're not time stamps. So Dr. Bederson did respond and he did have  
23 an opinion on time stamps involve time, and that Comps does not use time  
24 or time stamps when it's assigning content-related first data segments and  
25 content-related second data segments.

26 And so I want to show, going to slide 28 of Petitioner's slides,

1 the table on slide 28 shows the assignments. And how Comps works is that  
2 it has the data files, the different data files for the different types of content  
3 data, and it inserts the synchronization. And so the claim requires that  
4 there's this associated line of content-related first data segments on the basis,  
5 so you've got -- I'm sorry, let me just back up. The claim requires that you  
6 have each of the content-related second data segments is output together  
7 with an associated one of the content-related first data segments on the basis  
8 of an assignment rule for assigning each one of the content-related second  
9 data segments to one of the content-related first data segments. And so  
10 when you put the syncs, you know, from Figure 3 of Comps, and you see in  
11 this table, this is how they're assigned, they're assigned by event, they're  
12 assigned by the note, they're not assigned by time, there's no time involved  
13 here.

14 What Patent Owner does is conflates this part of Comps, and  
15 going to slide, I'm going to jump to slide 32. There's this disclosure in  
16 Comps that describes what happens when there might be a lag between the  
17 master track and a slave track, so when there's a lag and the master track  
18 reaches its sync first, then what Comps describes is that the slave track that's  
19 lagging behind, it continues to scan its file without executing the commands  
20 encountered, in order to reach the field sync one as quickly as possible. So  
21 it's not cutting off the content, it's continuing to scan its file, but it's not  
22 going to then, if there happens to be a waiting period, it's not going to  
23 execute that command for the waiting period because it wants to reach the  
24 next sync as quickly as possible.

25 JUDGE EASTHOM: But Counsel, I think your friend's point  
26 is that within these squiggly lines there might be a content-related data

1 segment that it's going to skip over.

2 MS. CARRANO: And that's not consistent with the disclosure  
3 in Comps, and he even showed the disclosures in Comps that says that  
4 whenever there's an important event there's going to be a sync command.

5 JUDGE EASTHOM: Well what about his argument that no,  
6 Comps doesn't want you to put all those sync commands in there?

7 MS. CARRANO: I think that's also a misdirection and it takes  
8 out of context the statements that Comps made with respect to the prior art.  
9 So with the prior art, which I've gone over before, the prior art was based on  
10 temporal synchronization, where every three microseconds there would be  
11 sync data that would be sent between the master track to the slave track.  
12 And so if you think about that, that's what, one second is one million  
13 microseconds, that's a lot of synchronization data. And Comps simplified  
14 that by not making it based on time stamps, what it did is made it based on  
15 the events. So when there's a note, that's an event, that's an important  
16 event, that's going to be determining where you're going to insert a  
17 synchronization command. If there's a text that needs to be displayed, that's  
18 an important event, that's going to require a sync command.

19 So I don't think Comps really explains what those squiggly  
20 lines are, but even if you want to take Patent Owner's understanding of what  
21 that means, that there could be multiple events in there, you necessarily have  
22 to from Comps' disclosure have to have a synchronization, because  
23 important events require synchronization command to occur right before it.

24 JUDGE SMITH: So if I could just ask, to make it concrete,  
25 let's say it's Beethoven's Fifth Symphony and you have the four notes, duh,  
26 duh, duh, duh, each one of those notes is an event, each one of those notes

1 gets a sync command, according to Comps?

2 MS. CARRANO: That would be correct, that would be how  
3 Comps, every note, at least how it's described in Figure 3 in that  
4 embodiment, each note would be an important event, there would be a  
5 synchronization preceding that important event so that things can line up.

6 JUDGE SMITH: Okay, and then when the second track is out  
7 of sync and it needs to synchronize, it's looking for the sync command, it's  
8 doing it by looking for the -- it's not jumping to a specific time, it's just  
9 scanning the file until it gets to the sync command?

10 MS. CARRANO: Exactly, that's exactly what happens. It  
11 continues to scan, because another important part of Comps is that you can't  
12 interrupt the content. So if -- I'll just go to a picture of -- I'm going to go to  
13 slide 27 so we can see Figure 3. We're looking at the second note, so it's  
14 Nf2, Nd2, both of those define the second note, if the master track completes  
15 playing the second note and somehow gets through the waiting period and  
16 reaches its SYNCH2 before the second track is finished displaying the  
17 JPEG, it's going to continue scanning the file and it's not going to, based on  
18 the disclosure that I just showed you, it's not going to execute any other  
19 commands until it reaches the sync command. So it's not going to execute  
20 the waiting time command, it's going to just skip to go to the sync, and  
21 that's not based on any specific time, it's not doing this on some adjustment  
22 of time, it's just going to find the next sync.

23 JUDGE SMITH: And then I have one more question, I know  
24 you're running out of time, but real quick, looking at Figure 3, Patent Owner  
25 is saying that in track 2 you have JPEG D2, which is some type of no data,  
26 to the extent that Patent Owner is arguing that well their expert said no

1 visual data is visual data and so it should be treated as an important event  
2 and there's no evidence to the contrary from Petitioner, what do you say to  
3 that?

4 MS. CARRANO: I think their statement that there's no  
5 evidence to the contrary, I think puts above expert testimony over the actual  
6 record of Comps, and there's nothing to support that understanding of  
7 Comps or that interpretation of Comps. Because what Comps says, in many  
8 different places, is that these capital D portions are waiting time periods, it's  
9 waiting time between events, it's not part of the content. And what Patent  
10 Owner has done repeatedly is conflate when there's a silence or when  
11 there's a blank and a picture that's part of the content, that's content. If  
12 there's a waiting time period in Comps, that is not content, that's just time  
13 between content.

14 JUDGE MCKONE: How do we determine -- okay. So you're  
15 saying for example that if I looked at Track 1, D1 is not content-related, is  
16 that correct?

17 MS. CARRANO: That is correct.

18 JUDGE MCKONE: How do I determine whether or not that is  
19 the -- what is the language, syntactically related within the meaning of file  
20 one? How do we determine that?

21 MS. CARRANO: How you determine that is that there's no  
22 content in D1, so it's not syntactically related, because when you look at --  
23 going to slide 28, these are --

24 JUDGE MCKONE: Well D1 has something there, right, it has  
25 an indication of how long we're going to wait until the next event occurs, so  
26 then it has something, it has some kind of data, and then that data shows how

1 the first note, if that's a note, relates to the second note timing-wise, that  
2 would seem to be syntactically related, wouldn't it?

3 MS. CARRANO: I disagree, it's not syntactically related, that  
4 time period, that waiting time period is just that, it has no relation to the  
5 actual content, it's just the timing between content, so it's not syntactically  
6 related to the content data, it's just waiting time periods.

7 JUDGE MCKONE: What test should we employ to figure that  
8 out?

9 MS. CARRANO: I'm sorry, would you please repeat that?

10 JUDGE MCKONE: What test should we employ to figure out  
11 whether we agree with you that D1 is not syntactically related?

12 MS. CARRANO: I think we have to look at what Comps says.  
13 What Comps says is that D1 -- and let me go to that, I think it's slide 41.

14 JUDGE MCKONE: But I think we know what D1 is, is it's  
15 just simply delay time, it says wait four seconds, for example, before you  
16 play the next note. Is there anything, is this something -- a term that needs  
17 to be further construed? How do we understand what syntactically related is  
18 so that we can apply that meaning to D1 or JPEG D2, or any of the other  
19 delay periods.

20 MS. CARRANO: Well I think we have to take it back to the  
21 claim language. The claim language is content-related data segments, either  
22 content-related first data segments or content-related second data segments.  
23 So you have that, it's got to be content related and it's got to have some  
24 syntactical meaning to it. And so the waiting time period doesn't have  
25 content, so it doesn't even meet the basis of the actual literal phrase of the  
26 claim term. There's no content there, it's just time, it's just time between

1 content.

2               So it's nothing more than that, it's not content-related, and how  
3 Petitioner understands Comps and applies Comps to the claim is not  
4 inconsistent, as Patent Owner argues, because what needs to be assigned are  
5 content-related data segments, and what we've mapped is the content-related  
6 data segments from the second data file or even just looking at track 3, track  
7 3's data file. Those are being assigned to track 1, and all you need to look at  
8 is the content-related, not every data segment needs to be assigned to a  
9 content-related first data segment, it's just the content-related, and D1, those  
10 delay periods, do not meet that, there's just no content in them. And so what  
11 you see, what Patent Owner does, Patent Owner conflates silence within  
12 content with waiting time periods in Comps, which are two different things.

13               JUDGE EASTHOM: Counsel, I think we're sort of way over  
14 time here, I know we asked you a lot of questions. I think we got the gist of  
15 your argument, so why don't we hear from your friends, unless you want to  
16 wrap it up in one more minute and I'll give them the extra time too?

17               MS. CARRANO: No, I think I've covered it, thank you.

18               JUDGE EASTHOM: Oh, you're welcome. Okay, and then  
19 we're 4:30 plus two and a half, seven, is that fair?

20               MR. CARDENAS-NAVIA: That sounds fair, and I think that  
21 should be enough. Just going to set up technologically real quick.

22               JUDGE EASTHOM: Counsel, before I forget and while we're  
23 getting ready here, we can stay on the record, but Exhibit 1002 you both  
24 cited to, and you cite the Bates numbers, and I know Petitioner filed it, I  
25 didn't see any Bates numbers on the bottom of the exhibit and it's kind of  
26 hard to find. A couple times you cite the specific action and the date, so I

1 can get those, but I was wondering if you two could get together, maybe  
2 Petitioner send you over and file a new Exhibit 1002 with the Bates numbers  
3 on it, and make sure -- because you cited it also in your briefing, both sides  
4 did, and I want to make sure to check your cites, because I think you have  
5 some cites in your sur-reply also that I wasn't able to find.

6 MR. CARDENAS-NAVIA: We can work together to get that  
7 done, Your Honor.

8 JUDGE EASTHOM: Appreciate that. And then one other  
9 book keeping item, did you already file your briefs in the Federal Circuit for  
10 the other case, the '086?

11 MR. CARDENAS-NAVIA: We'll be filing it tomorrow.

12 JUDGE EASTHOM: Can you file an exhibit as a copy for us  
13 too, please? Thank you.

14 MR. CARDENAS-NAVIA: Sure. Let me just make a note of  
15 that. Okay, I'm ready. So I've got -- actually, can you jump to slide 85?  
16 And I think maybe I understand better now this question about content-  
17 related and who determines whether it's content-related, and I think it  
18 probably does get into a syntactical meaning, and what precisely that means.  
19 But what I will say is we do have expert testimony, and it almost at times  
20 does seem like maybe this is a musical expert testimony is what we need  
21 more than a technical expert testimony, but I don't think that's entirely true,  
22 because think we're talking about in the context of MPEG 2, or MPEG 4,  
23 these various audio codex, what is content, what is not content? And here  
24 you've got their expert, Dr. Bederson saying, you know, the question is, and  
25 sometimes in audio streams there will be parts of the audio stream where  
26 there is no sound, right, it's silence? Answer, I think that's right. Can we go

1 to the next slide?

2 JUDGE EASTHOM: What slide is that? Sorry, I was behind  
3 you.

4 MR. CARDENAS-NAVIA: That was slide 85, and now I'm on  
5 slide 86.

6 JUDGE EASTHOM: Thank you.

7 MR. CARDENAS-NAVIA: And here the question is, in the  
8 context of the '794 patent, can audio content include content in which what's  
9 going to be output is silence? And the answer is, I think sitting here today, I  
10 can envision sometimes there might be, I can envision sometimes in audio,  
11 like a recording of a person talking, which is a preferred embodiment, where  
12 they're not talking for a moment, so there might be silence. And so just  
13 talking generally, can audio content include silence, he says yes. So when  
14 we're talking about a multimedia file that Petitioner is saying is audio or  
15 video or text, I think their expert's testimony works exactly against their  
16 position.

17 JUDGE EASTHOM: Sorry, and with your patent, you already  
18 have the time built in with each segment, is that fair to say?

19 MR. CARDENAS-NAVIA: There are, I think, in some  
20 embodiments, there would be time stamps within the data segments.

21 JUDGE EASTHOM: Okay.

22 MR. CARDENAS-NAVIA: And of course our expert also  
23 takes this position, so there's unopposed expert testimony on this. The  
24 other, I think, really solid guidepost we have, if you could jump to slide  
25 five? On content-related and syntactical meaning, is right that the  
26 requirement that using the assignment rule, the data segments are all output

1 sequentially and in chronological sequence. And again, I think that's the  
2 problem with just pulling one data segment here, one data segment there,  
3 and ignoring data segments that don't have sync commands or ignoring  
4 waiting periods, is that you're not going to end up outputting the segments  
5 chronologically, for sure, because if you just skip waiting periods, you just  
6 ignore them, the content is not chronological. It might be in the correct  
7 order, but you're going to be missing, you know, all the audio is going to be  
8 jumbled together, for example, or the text will be one right after the other,  
9 instead of pauses at appropriate times between them. So I think that's  
10 another clear guidance on syntactical meaning.

11 JUDGE EASTHOM: I mean given that we don't even know  
12 what's in your segments, what's in your packets, we have no idea -- why  
13 couldn't Petitioner arbitrarily have said all three of those things as one  
14 segment instead of two of them? I mean, it would have been the same result,  
15 you have the timing and the duration all in one packet, and that seems to be  
16 what your patent is doing, because we have no idea how it controls the  
17 timing. You know, you were talking about how we need to know the  
18 distance between notes, so you just pack it all up and say oh, it's one  
19 segment.

20 MR. CARDENAS-NAVIA: Well that was -- we did move for  
21 claim construction on that issue.

22 JUDGE EASTHOM: Okay.

23 MR. CARDENAS-NAVIA: Naveed, you can take me to slide  
24 number 58. Actually, slide 59. Right, so we flagged that issue, because  
25 you're right, I think there is some risk, and I think this is what Petitioners did  
26 to some degree is just bundle events in Comps or data segments together and

1 say that's one big data segment, and that can't be right, because if you do  
2 that, you're reading out the word 'each.' Because if, you know, if instead of  
3 every -- if every other content-related data segment in one stream is assigned  
4 to the other, you could just say all right, well I'll lump every two together,  
5 and there you go, each. And if you've done that, you've read out the term --

6 JUDGE EASTHOM: Well that's what you did essentially,  
7 that's what you did in your patent, you put the timing inside each packet,  
8 right, each segment?

9 MR. CARDENAS-NAVIA: I'm not sure I'm following.

10 JUDGE EASTHOM: Well, I'm sorry, I won't belabor the  
11 issue. I'm just saying, how do you know how far apart to space your  
12 images, for example?

13 MR. CARDENAS-NAVIA: In the '794 patent, again, we're  
14 always focused on one, you've got to assign each of one of the two data  
15 streams.

16 JUDGE EASTHOM: No, I'm saying that you assigned it to in  
17 the video, say the video that you assigned it to, the main one, the main  
18 driver, you send one, and then you send another one, and then you send  
19 another one, you send them right after each other, how do you know how  
20 long to time between them, what governs the timing between each video  
21 segment?

22 MR. CARDENAS-NAVIA: In the --

23 JUDGE EASTHOM: In the patent, the challenged patent.

24 MR. CARDENAS-NAVIA: In the content-related first data  
25 segments in the first data file?

26 JUDGE EASTHOM: Yes, yes, thank you.

1 MR. CARDENAS-NAVIA: The claim doesn't speak to that.

2 JUDGE EASTHOM: No, I'm asking you how it does it  
3 physically in your patent, how do you accomplish that? For example, if I go  
4 to your slide, Petitioner's slide 10, you've got nine, eight, two, you've got all  
5 these segments flying down there, it doesn't say -- how do I know how far  
6 apart eight is from nine, or do they just, one successive after another, or is  
7 it --

8 MR. CARDENAS-NAVIA: The claims don't speak to that, so  
9 I think there's a number of ways you could do that, because that doesn't  
10 implicate what the assignment rule must be or must not be, so I think that's  
11 left to the implementer to decide on their own, and then I think there is an  
12 inversion with Comps where to some degree in the '794 patent, the second  
13 content-related data segments are in a sense, they control the timing, to some  
14 degree, that's inverted in Comps, because what they're pointed to as the  
15 content-related second data segments are the slave tracks, and so they're not  
16 dictating the timing, they're having the timing dictated to them, and in my  
17 view that's exactly what happens in Rosenau.

18 JUDGE EASTHOM: Okay.

19 MR. CARDENAS-NAVIA: Let me make maybe one or two  
20 other quick points. Can you go to slide 73? So these are just some  
21 examples, this is on slide 73 through 75, Comps talks about this a lot, about  
22 use sync commands, just for important events, and frequently, you don't  
23 want to create a lot of size, so that's just for reference.

24 JUDGE SMITH: But infrequently, with respect to infrequently,  
25 if it's doing it for every note, that would be, according to Comps,  
26 infrequently. I mean, infrequently is a relative term, Comps doesn't say do

1 it for every second note or every 10th note, it says do it for each note.

2 MR. CARDENAS-NAVIA: I think at that point you're getting  
3 into -- can you go to slide 91? A scenario where you're modifying the  
4 reference, you're adding a disclosure that isn't actually in Comps and you're  
5 departing it from some way. You know, if Comps wanted to say, use it as  
6 much as you want, use it for every single event, it could have done that. It  
7 doesn't do that, and it's very clear that it says don't do that.

8 JUDGE EASTHOM: Counsel, I'm sorry to say we've run to  
9 the end of -- can you just wrap it up, please, you're already over your time,  
10 and I apologize, we've all been asking a lot of questions.

11 MR. CARDENAS-NAVIA: Yeah, I'll just go to slide 51 real  
12 fast, I'll just end on this last point. You know, Petitioner put up this slide of  
13 testimony from Dr. Bederson's deposition, and he's not saying what he  
14 understands a time stamp to be, he just says he's applying its ordinary  
15 meaning, which is related to time, which isn't saying a whole lot, and he's  
16 reiterating their position that because Comps says they're not temporal  
17 commands you don't have to think about it anymore, and we disagree with  
18 that.

19 JUDGE EASTHOM: Well, we commend both sides for trying  
20 to help us sort this out, both really well prepared and argued, we appreciate  
21 that. So with that, we're adjourned. Thank you.

22 (Whereupon, the above-entitled matter went off the  
23 record at 3:31 p.m.)

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