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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AYLO FREESITES, LTD and FUBOTV MEDIA INC.[1],
Petitioner,

v.

DISH TECHNOLOGIES L.L.C.,
Patent Owner.

IPR2024-00043 (Patent 11,677,798 B2)
IPR2024-00044 (Patent 11,470,138 B2)
IPR2024-00045 (Patent 10,469,554 B2)
IPR2024-00046 (Patent 10,951,680 B2)
IPR2024-00146 (Patent 10,469,555 B2)[2]

Record of Oral Hearing
Held Virtually: January 16, 2025

Before THU A. DANG, JOHN A. HUDALLA, and
JULIET MITCHELL DIRBA, *Administrative Patent Judges*.

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[1] fuboTV Media Inc., which filed petitions in IPR2024-00901, IPR2024-00902, IPR2024-00903, IPR2024-00904, and IPR2024-00905, has been joined as a petitioner in IPR2024-00043, IPR2024-00044, IPR2024-00045, IPR2024-00046, and IPR2024-00146, respectively.

[2] The combined caption is for administrative convenience only and does not indicate that the above-listed proceedings have been joined. The parties are not authorized to use this caption without express permission from the Board.

IPR2024-00043 (Patent 11,677,798 B2)
IPR2024-00044 (Patent 11,470,138 B2)
IPR2024-00045 (Patent 10,469,554 B2)
IPR2024-00046 (Patent 10,951,680 B2)
IPR2024-00146 (Patent 10,469,555 B2)

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IPR2024-00043 (Patent 11,677,798 B2)
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The above-entitled matter came on for hearing on January 16, 2025, commencing at 10:00 a.m., via video teleconference.

1 P R O C E E D I N G S
2 - - - - -
3 JUDGE HUDALLA: Good morning, everyone. This is the
4 consolidated oral hearing in IPR2024-00043, 44, 45, 46, and 146. I'm Judge
5 Hudalla. I have with me Judges Dang and Dirba. I'd like to start first with
6 appearances. Who do we have today from the Lead Petitioner, Aylo?
7 MR. GASPARO: Good morning, Your Honor. This is Frank
8 Gasparo, Counsel for Petitioner. I'm joined by my colleague, Ian Paquette,
9 who will also be speaking today, and as well as Phil Sheng, who will not be
10 speaking today.
11 JUDGE HUDALLA: Good morning to you. Do we have anybody
12 today from the Joined Petitioner, FuboTV?
13 MS. OSMAN: Good morning, Your Honor. Yes, this is Inge
14 Osman with Latham & Watkins on behalf of FuboTV.
15 JUDGE HUDALLA: Good morning to you. And who do we have
16 today on behalf of Patent Owner?
17 MR. WILLIAMS: Good morning, Your Honor. This is Eliot
18 Williams for the Patent Owner and I have several back up counsel and
19 members of my client's in-house team on the public line.
20 JUDGE HUDALLA: And Mr. Williams, you'll be presenting
21 today?
22 MR. WILLIAMS: That's correct, Your Honor.

1 JUDGE HUDALLA: Okay, great. All right. So per our trial
2 hearing order, each side is going to have 60 minutes of argument time. We
3 have a LEAP practitioner on behalf of Petitioner today, so they have up to
4 15 minutes of extra argument time. Petitioner will go first and may reserve
5 rebuttal time and Patent Owner goes second, and may reserve a brief sur-
6 rebuttal. We are going to plan on probably taking a five-minute break
7 around the time after Petitioner's presentation, so please plan on that.
8 I'm going to remind the parties that we have a public line today.
9 This is open to the public and we also have a protective order in place in this
10 case, so there are confidential materials. So I would warn you not to reveal
11 any confidential information during today's hearing. If there becomes a need
12 to talk about confidential information, please let us know and we'll close the
13 hearing probably near the end of the hearing to talk about it. Also, if you
14 think some of the argument is veering into confidential areas, just obviously
15 speak up and we'll try to take care of it at that time.
16 Just a couple other things. Remember, we're in the virtual
17 environment here, so when you're not speaking, please mute yourselves and
18 then unmute when you're speaking. If you could also let us know what slide
19 you're on as you go through the presentation, that would be very helpful for
20 us. So with that, I think we're ready to start here. Mr. Gasparo, you're going
21 to be starting. Would you like to reserve some rebuttal time?
22 MR. GASPARO: Yes, Your Honor. We'll be reserving 15
23 minutes.

1 JUDGE HUDALLA: Okay. And you may begin when you're
2 ready.
3 MR. GASPARO: Great. Well, good morning, again, Your Honor.
4 So I will be presenting on all topics, except for secondary considerations and
5 the -- and our motion to exclude, which Mr. Paquette, as you mentioned,
6 who's just getting into the LEAP program, will address.
7 So we thought it would be helpful to start with a summary, what
8 we believe to be the key disputes, and I'm just going to read them very
9 quickly. Whether video streaming was well-known during the 1997 to 2004
10 timeframe; whether Ogdon teaches encoding the same video at different
11 qualities and even if not; whether a POSITA would've been motivated to
12 combine Ogdon and Allen, and Allen indisputably teaches encoding the
13 same video at different qualities; whether Ogdon teaches streamlets at the
14 same duration, and even if not, whether SMIL teaches streamlets of the same
15 duration, and the combination of SMIL and Ogdon is not in dispute.
16 Four, whether the limitation a streamlet request requires a client to
17 place a single request to a server for a single streamlet, as argued by DISH;
18 whether claim 6 of the '138 patent requires that the claimed plurality of web
19 servers must retrieve streamlets from the same storage device, as argued by
20 DISH, and even if so, whether Ogdon teaches it; whether Ogdon teaches
21 receiving at least one virtual timeline request as recited in claim 9 of the '138
22 patent; seven, whether Ogdon teaches live event video as recited in claim 18
23 of the '555 patent; eight, whether Ogdon teaches storing streamlets as

1 separate files as recited in claim 16 of the '798 patent, and even if not,
2 whether Shteyn teaches streamlets stored as separate files and whether a
3 POSITA would've been motivated to combine Ogdon and Shteyn; and then
4 Mr. Paquette will address the nexus that's required for secondary
5 considerations.
6 And as we all know, this proceeding involves five related patents.
7 They all share the same spec, they all have the same inventors, they all have
8 the same priority date, and they're all directed to adaptive bit rate streaming
9 over the internet. Very briefly, the challenged patents describe video stored
10 as sets of segments or streamlets with varying bit rates. In DISH's expert's
11 own words, I quote -- and this is on slide 6 -- "The architecture included
12 using a web server hosting sets of content files where each set represented
13 segments ('streamlets') of a larger media presentation encoded in the same
14 format but at a particular streaming bit rate." And I note his use of
15 presentation and the equating segments are streamlets in that quote.
16 And as shown on slide 6, Figure 3b, the set of streamlets is
17 encoded having a low, medium, and high quality. The patents also describe
18 that a client requests lower or higher quality streamlets from a server based
19 on bandwidth, as shown and explained on my -- in slide 7.
20 As Your Honors well known, Petitioner relies on Ogdon as its
21 primary reference. I've been doing this a really long time. In my
22 experience, it's quite rare for a Patent Owner to define the heart of the
23 invention. Well, DISH did it here for us. So what is the heart of the

1 invention, according to DISH. It's three simple things, adaptive-rate content
2 streaming with streamlets of varying quality levels.
3 Unfortunately for DISH, Ogdon discloses the heart. Let's start
4 with adaptive-rate content streaming. Ogdon's got that, as shown on slide
5 10. Column 3, lines 38 to 41, Ogdon reads dynamically and adaptively
6 switch between versions of the presentation according to network
7 transmission, characteristics at each client network node. And also claim 9
8 supports that.
9 Next, so it's adaptive-rate content streaming with streamlets.
10 Ogdon teaches that as well. Line 2, lines -- I'm sorry -- column 2, lines 36 to
11 45, which is on slide 11, note that each of the one or more presentation
12 versions including one or more presentation segments, hereinafter also
13 denoted simply segments, that provide different portions of the presentation.
14 More precisely, subcollections each having one or more segments are
15 provided as presentation elements in that each such subcollection is intended
16 to be an indivisible portion of a presentation performance.
17 DISH's expert, Dr. Jeffay, describing the challenged patents as
18 using a web server, hosting sets of content files, with each set representing
19 segment streamlets of a larger media presentation. Again, I'd like to
20 highlight Dr. Jeffay's use of segments equating to streamlets, as well as his
21 use of presentation, which is also recited in Ogdon.
22 And lastly, adaptive-rate content streaming with streamlets of
23 varying quality levels. Ogdon teaches that, as well, as reflected on slide 12,

1 column 22, lines 44 to 47, better presentation quality, presentation elements
2 may be retrieved, for example, the presentation quality may be enhanced
3 from limited or no animation to full animation. And as for encoding
4 different versions of the same video that DISH harps on in its papers in this
5 proceeding, DISH admitted it was known and the ITC found the same.
6 On slide 13, you'll see some quotes. In this proceeding in its sur-
7 reply, DISH states, I quote, "There, the ITC found that a reference called
8 'Carmel' failed to invalidate certain challenged claims, even though it found
9 that the Carmel reference disclosed 'multiple different copies of [a] video
10 encoded at different bitrates' and stored as 'multiple sets of files'." And those
11 ITC statements are captured on the right of slide 13.
12 On slide 15, we just summarize the various grounds from the five
13 petitions. Today, we'll be talking about four references, Ogdon, Allen,
14 SMIL 2.0, and Shteyn. First up, Ogdon, you don't have to go very far in
15 Ogdon to appreciate its teaching. Right up front in its abstract really is an
16 excellent summary and I would like to read that summary into the record.
17 "A presentation system is disclosed for distributing a performance
18 of a presentation synchronously to a plurality of client nodes on a network
19 such as the internet. The presentation system distributes presentation
20 content data to a plurality of network server nodes, and during a
21 performance of the presentation, the client nodes receiving the presentation
22 determine a particular variation of data presentation to retrieve from the
23 network server nodes. In particular, the retrieval of presentation data

1 depends upon the transmission characteristics of the network such as data
2 transmission rate. Thus, if a low transmission data rate is detected at a first
3 client node, presentation elements of a reduced size can be retrieved.
4 Alternatively, if a higher transmission rate is detected at a second client
5 node, presentation elements of greater size (and corresponding enhanced
6 quality of presentation) can be retrieved. Thus, within a single performance,
7 client network nodes with varying available network bandwidths can be
8 utilized for synchronously and simultaneously performing the presentation."
9 JUDGE HUDALLA: Mr. Gasparo?
10 MR. GASPARO: Yes.
11 JUDGE HUDALLA: We're familiar with the references and I'd
12 prefer that you spend your time actually talking about the arguments rather
13 than just reading from the references.
14 MR. GASPARO: Understood, Your Honor, and that was the only
15 thing I was going to read, so you --- and I was going to jump right to the
16 arguments. Your Honor, would you --- are you interested in me addressing
17 the well-known status of video streaming, you know, in the mid, late '90s,
18 early 2000s?
19 JUDGE HUDALLA: I think the panel is pretty familiar with that,
20 that -- your arguments on that. I think our interest lies in some subtleties
21 about how you presented the Ogdon reference. You say that it discloses
22 multiple copies of the same video at different -- different bit rates of the
23 same video. We're interested in going into that and talking about exactly

1 how you presented it in the petition.
2 MR. GASPARO: Right. So I think what we'll do, Your Honor, is
3 I will jump right to slide 32. So Petitioner's position is that Ogdon and
4 Ogdon plus Allen teach adaptive-rate content streaming and on slide 32, we
5 attempt to summarize what we believe is not in dispute, as well as what the
6 dispute is. So what's not in dispute? Ogdon teaches content at different
7 qualities, Ogdon teaches content including a video presentation, Ogdon
8 teaches adaptive switching. Now, Allen, Allen's Background teaches
9 encoding the same video at different qualities.
10 So the dispute, we believe, is whether Ogdon teaches encoding the
11 same video at different qualities. Now, to be clear, Petitioner does not
12 believe that the challenged claims require identical copies of a video being
13 encoded at different qualities. And even if Ogdon doesn't teach the same
14 video at different qualities, whether a POSITA would've been motivated to
15 combine Ogdon and Allen.
16 JUDGE HUDALLA: How do the challenged claims not require
17 the same video to be encoded? I see the claim language at issue here always
18 says a video and then refers back to the video.
19 MR. GASPARO: There is an antecedent basis. The claims -- none
20 of the challenged claims recite the same video, copies of the video. That is
21 claim language that, you know, patent owner knew how to use it. It used
22 that language or similar language to that in claims that are not being
23 challenged. Here, the claims -- the claims only recite that the video was

1 encoded into different streams having different qualities. You know,
2 regardless of -- I mean, we, you know, we believe -- the Petitioners believe
3 that Ogdon teaches the same video if -- and I'll go through that, but I just
4 want to make it clear that we don't believe that claim language requires there
5 to be different versions from the same video because of the claim language
6 itself.
7 JUDGE HUDALLA: How can you maintain that with the
8 antecedent basis issue?
9 MR. GASPARO: Yeah. Well, it's a video and it says the video.
10 You know, it's -- again, it just -- it doesn't say copies of the video, it doesn't
11 say the exact same copies. It doesn't -- there's no further limitations on the
12 video, other than it needs to be encoded. I mean, we can come up with
13 hypotheticals, which I don't -- won't benefit anyone, but it just doesn't have
14 to be according to the claim language, the same video encoded into multiple
15 bit rates.
16 JUDGE HUDALLA: So taking one of Patent Owner's examples
17 from their slides, you know, they had Top Gun and Caddyshack I think in
18 one of their slides. So, you know, if I say, a video, and the preamble is Top
19 Gun, how do I get into the body of the claim and use Caddyshack as the
20 video?
21 MR. GASPARO: Yeah. I mean, that's -- we -- that's a sort of off-
22 the-wall example by DISH. I mean, the video is, you know, that's a
23 relatively broad term. It could be a lot of things, like I -- my kids were, you

1 know, big soccer players in high school and we would do multiple video
2 clips of different games and then we would put together one video to send to
3 recruiters. You know, that combination is a video. It happens to be made of
4 multiple videos that make up the big video, but it's a video. So it doesn't
5 have to all be Top Gun, is my -- I guess is my point. So there's no language
6 in the claims that further define what the video is.
7 JUDGE HUDALLA: Okay. Well, I'll keep listening. I am
8 interested in how you rationalize that antecedent basis issue.
9 MR. GASPARO: Okay.
10 JUDGE DIRBA: I'd like to follow up on my colleague's question.
11 I think Judge Hudalla had a really good question. If you could, go back to
12 the slide that you were just on. So in your example of -- as you mentioned, a
13 video could be a bunch of different clips from different videos, to use the
14 example of some of your kids' sports games. Do you think that the claim
15 allows you to encode one of those clips at one rate and a different clip at a
16 different rate and have that meet the claim limitations? In other words, can
17 you satisfy the limitation of the video is digitally encoded at a plurality of
18 different bit rates by encoding one sort of segment of a video at one bit rate
19 and a different segment at a different bit rate?
20 MR. GASPARO: I think using my example, whatever you
21 consider to be the video, whether it be all the videos, all the clips of videos
22 that make up the video or just pick one particular section of that, which is
23 also a video, I think the claim is requiring that you have different versions

1 of, again, however -- whichever you view as the video to have three different
2 bit rates or qualities.
3 JUDGE DIRBA: Okay. And so if I understand your question
4 correctly, and based on my understanding of your positions here, you're
5 mapping the video in this claim to Ogdon's presentation. And so it's, if I
6 understand correctly, your position that the claim then requires that Ogdon's
7 presentation is digitally encoded at each of more than one bit rate; is that
8 right?
9 MR. GASPARO: That's correct, Your Honor.
10 JUDGE DIRBA: Okay.
11 MR. GASPARO: I mean, as Your Honors know, you're not bound
12 by the institution decisions after you consider the full record. Okay. So at
13 its core, Ogdon teaches different versions of segments that are
14 corresponding, replaceable, and substitutable. On slide 34, we include some
15 quotes from Ogdon, column 2, lines 45 to 61. I'm not going to read all this,
16 but it talks about how one version corresponds with a segment, having the
17 same presentation order in each of the other versions, and throughout that
18 quote, it refers to corresponding.
19 In the middle, different versions can be presented as a replacement
20 for another such corresponding segment, and again, it goes on and on about
21 corresponding alternative segments. And then in column 3, lines 38 to 44,
22 Ogdon teaches, it's an aspect of the present invention to dynamically and
23 adaptively switch between versions of the presentation, and then later on

1 states, corresponding (in content) segments.

2 Ogdon also teaches switching between different video versions,
3 and this did not make it in the slide, but we have support in the petition and
4 Your Honors noted in your institution decision. If you look at Figure 2C,
5 the flowchart, and if you look specifically at step 508, I would like to read
6 this. "The host 200 sends one or more commands to the client presentation
7 software 88 at each client node 56 indicating (A) The next collection of one
8 or more (video) segments from one or more presentation versions for
9 presenting at the client node."

10 Also, in Ogdon, on column 22, lines 42 to 47, it reads that the
11 presentation quality can be enhanced from limited to no amination to full
12 animation. So from one version of video to another version of video.
13 Similarly in claim 6, it recites, said first subcollection includes video with
14 motion and said second subcollection with video with reduced motion and
15 no motion.

16 Ogdon further teaches that the different video versions can be the
17 same video, so Ogdon teaches multiple video versions of the presentation.
18 The same presentation we have on slide 36, a quote from Ogdon, column 21,
19 lines 30 to 34, and it explicitly states, "Video versions of the presentation."
20 Ogdon elsewhere describes over and over again, the presentation when it's
21 referring to different versions. And we've included on slide 36 just some of
22 these examples. And if that's not enough, claim 9 recites, "Wherein said
23 first subcollection includes a first video portion and said second

1 subcollection includes a different video portion that corresponds in content
2 with said first video portion."
3 DISH erroneously cites Ogdon's disclosure of a client switching to
4 a slideshow format or a slideshow alternative, to mean switching to a
5 PowerPoint presentation, and we have that excerpt of what they point to on
6 slide 37, Ogdon, column 3, lines 51 through 64. But Ogdon nowhere
7 mentions PowerPoint. And as I'll cover in some subsequent slides, a
8 slideshow format was considered a very low frame rate video.
9 JUDGE HUDALLA: Mr. Gasparo?
10 MR. GASPARO: Yes.
11 JUDGE HUDALLA: It's Judge Hudalla. I wanted to put a little
12 finer point on what you've been talking about right here. I think one of the
13 problems the panel has had is that in your petition, you have essentially two
14 different alternative theories on this multiple versions aspect. And I think
15 the first one is that Ogdon alone discloses this recitation, and then the second
16 one is that Ogdon plus Allen would've rendered it obvious.
17 Now, starting with the first one, Ogdon discloses, and I think this
18 is maybe some of the tension that you at least have highlighted with I think
19 the '146 case in the anticipation ground. This -- your petition doesn't
20 necessarily cite these claims, like claim 9, claim 6, claim 20. It doesn't cite,
21 as far as I know, Figure 2. So are -- I guess you -- have you done cleanup
22 here in the reply? Is that how we're supposed to read it and that's why it
23 discloses under your theory here?

1 MR. GASPARO: Well, I -- what I -- and as far as where we cite
2 things, I'll ask my colleague, Mr. Paquette, to help me put some pin cites on
3 things, but up -- so for Figure 2C, he just -- so apparently -- so the '138 -- for
4 instance, the '138 petition at page 21 is where Petitioner cites Figure 2C and
5 also on page 25. So the Petitioner's argument is that Ogdon teaches a video
6 adding different versions that are each encoded at a different quality, which
7 is a different bit rate. So that's the argument and what Ogdon arguably does
8 not teach is that there are three quality versions of the video. In other words,
9 three different bit rates and that was the combination with Allen, which
10 clearly teaches the same video being encoded in low, medium, and high
11 qualities.
12 JUDGE HUDALLA: It seems to me that your analysis here relies
13 on what we were talking about before, which is that the antecedent basis of a
14 video to the video doesn't really matter. It seems like that -- you almost need
15 that to get where you want to go with this Ogdon discloses theory.
16 MR. GASPARO: If you wanted -- whether the Board interprets,
17 you know, it to be the same video or not, we -- our position is that Ogdon
18 teaches it. It teaches -- again, it talks about video versions of the
19 presentation. So, you know, we believe that that is a pretty clear disclosure
20 of the same video being encoded at different quality levels, bit rates. So I
21 think no matter how the Board wants to look at the claim language, I think
22 Ogdon covers it. What Ogdon is -- Ogdon gets you, you know, to the one
23 yard line. You know, to cross the goal line for low, medium and high, you

1 need to look at Allen and --
2 JUDGE HUDALLA: I think that's -- I think, Mr. Gasparo, that's
3 the issue, I think, is that -- I agree with you. You get to the one yard line,
4 but I think one thing that's kind of lacking, at least if you're going to go
5 Ogdon alone on this, is that your petition doesn't seem to have that extra
6 gloss from an expert saying, hey, I look at all of these things that get me to
7 the one yard line and that would get me over the goal line because I -- I
8 mean, I think there's probably enough to do that. It's just it doesn't seem like
9 your expert ever really knits that together based on Ogdon alone. Now, we
10 can talk about Ogdon and Allen later, but Ogdon alone.
11 MR. GASPARO: Yeah. And I -- it's a fair point. I understand
12 your point and , you know, as you well know, it's, you know -- we are
13 arguing the combination of Ogdon and Allen and maybe I'll flush it out a bit
14 more when I get to that combination with Allen, but I hear you. We don't --
15 with one exception we have, these are 103 Grounds.
16 JUDGE HUDALLA: Okay. I -- it's just that we've been trying to
17 take you more literally on what is actually stated in the petition, which is that
18 Ogdon discloses. To us, that means something as opposed to Ogdon, you
19 know, a person of ordinary skill in the art would've known that Ogdon
20 teaches something based on these other things.
21 MR. GASPARO: Understood.
22 JUDGE HUDALLA: Okay, thank you.
23 MR. GASPARO: So we were last talking about or I was

1 presenting on this slideshow format. I think it's quite notable both experts
2 agree that a low frame rate video is a slideshow video. We have on slide 38,
3 you know, some quotes, Dr. Jeffay, DISH's expert. The question was going
4 back to my example of a car race. The user watching a car race at 30 frames
5 per second and the frame rate drops to one frame per second. Would you
6 agree that the user is still watching the same car race? The answer, well,
7 that's certainly watching the same race. They are essentially seeing a
8 slideshow of the race.
9 DISH's own technical documents refer to a low frame rate video as
10 a slideshow. The prior art also consistently refers to a slideshow format at a
11 very low frame rate. Sorry, slideshow format of a very low frame rate as a
12 very low frame rate video and that's on slide 40. I won't read those, but
13 that's where they're quoted. I mean, this is -- although, Ogdon does not
14 teach switching between videos having different languages. I don't think
15 much needs to be said about this. I think the Board appreciates it's not a
16 great argument for DISH.
17 So even if Ogdon does not teach a video digitally encoded out of
18 plurality, the bit rates -- Petitioner's position is that Allen teaches it and
19 Petitioner is relying on the background, which is not short and it describes in
20 the background section the well-known technology, and this is on slide 42.
21 And I quote, "The redigitized video is then simultaneously processed in a
22 plurality of encoders, which each provide output in a particular popular
23 formatted bit rate." And then elsewhere in the background it states, "In the

1 currently existing model as shown in Fig. 10, content is produced and
2 encoded by the Content Producer (1002) at the point of origination." And
3 then it later goes on to say that each format is encoded into three different bit
4 rates, 56Kbps, 300, and 600.
5 The POSITA would've known -- would've been motivated to
6 combine Ogdon and Allen, and on slide 43, we set forth a snippet of our
7 expert, Dr. Houh's testimony on that. Allen does not teach away. The
8 Petitioner relies on this teaching from Allen's -- we rely on this teaching
9 from Allen's Background, which as I mentioned earlier, describes this well-
10 known and sophisticated method of encoding video into different bit rates,
11 specifically low, medium, and high. Allen does not teach a single bit rate
12 approach. It simply moves the encoding process to the edge service, but it
13 still teaches encoding the same video into low, medium, and high bit rates.
14 And as Your Honors know, teaching away is an exceptionally high
15 bar and we have some information about that on slide 45. Even Dr. Jeffay,
16 he confirmed at his deposition that Allen teaches encoding at -- into multiple
17 bit rates. And on slide 46, we include a quote of his -- from his testimony.
18 And, you know, while we're on this subject of teaching away, Ogdon does
19 not teach away from video streaming. I don't believe there's much need to
20 go through this, but that is summarized on slide 47.
21 I was next going to move to Petitioner's position that Ogdon and --
22 Ogdon plus SMIL teach segments of the same duration, unless anyone --
23 unless you had any further questions on -- as to the first dispute.

1 JUDGE HUDALLA: I don't think so.

2 MR. GASPARO: Great. So what Petitioner believes is not in
3 dispute is that Ogdon teaches that corresponding segments have
4 approximately the same duration and also the motivation to combine SMIL
5 2.0 with Ogdon.

6 So what's the dispute? So the dispute is whether Ogdon teaches
7 streamlets of the same duration and even if it doesn't, whether SMIL teaches
8 it. Yeah, as we've already covered, Ogdon teaches segments or in other
9 words, streamlets, as acknowledged by DISH's own expert. And DISH
10 improperly argues that each of Ogdon's streamlets is some sort distinct,
11 standalone piece of content and not the same video divided into smaller
12 portions. I mean, this is all built on their PowerPoint slide theory.

13 I mean, Ogdon's teachings are very clear. We've set forth some of
14 those teachings on slide 50. I'm not going to read them, but there are
15 numerous teachings about segments, in other words, streamlets, and being a
16 -- each being a portion of the overall video presentation.

17 Unfortunately for DISH, DISH's experts and inventors will, you
18 know, even agree that segments are streamlets. We have that specific quote
19 from both DISH's expert, Dr. Jeffay, as well as inventor Major, so no dispute
20 there. Petitioner believes that Ogdon segments can be the same duration.
21 DISH argues that Ogdon segments are only approximately the same
22 presentation duration and cannot include the same duration, but
23 approximately the same duration includes exactly the same duration, and

1 that's how it would be understood by a POSITA.

2 I think it's important to note that Ogdon's use of approximately the
3 same duration is in the context of segments from one version being a
4 replacement or substitute for segments of another version. DISH itself uses
5 modifiers such as about and substantially to include exactly -- I'm on slide
6 54. I particularly like the quote we have from the '138 patent, column 3,
7 lines 21 through 26 where the challenged patent describes the predetermined
8 length of time maybe in the range of about or between about 0.1 and 5
9 seconds. Yet, in the claim language, DISH recites the range of 0.1 to 5
10 seconds. So clearly, DISH itself thinks about 0.1 includes exactly 0.1 and
11 inventor Major considers substantially the same to include the same, and
12 we've included a quote to support that on slide 54.

13 Modifiers such as approximately are, you know, frequently used in
14 patents to include exactly on slide 55. You know, we have some cases here
15 that courts have construed that language to include exactly. DISH relies on
16 this Ortho-McNeil case, but the case supports Petitioner because the range
17 that the Federal Circuit was faced with actually included the exact ratio and
18 we have that on slide 56. I mean, and to the extent that Ogdon -- the Board
19 does not think Ogdon teaches segments of the same duration, making them
20 the same duration would've been obvious to a POSITA. And on slide 57, we
21 have where Petitioner's expert, Dr. Houh, states the reasoning.

22 And if Your Honors don't agree, first, Ogdon teaches streamlets of
23 the same duration and second, you don't agree it would've been obvious to a

1 POSITA, SMIL has got that, as reflected on slide 58. Again, DISH did not
2 contest the combination of SMIL 2.0 with Ogdon and Allen, and nor did it
3 address the "dur" attribute in its Patent Owner response, so, you know, it's
4 arguably waived, having been brought up for the first time in their sur-reply.
5 JUDGE HUDALLA: Mr. Gasparo?
6 MR. GASPARO: Yes.
7 JUDGE HUDALLA: Sorry. I should've probably jumped in a
8 minute ago. I wanted to go to your slide 53, if we could for a second.
9 MR. GASPARO: So I have my glasses -- let's see if I can see. I
10 just have to make sure that what you're seeing is the same thing that I've got
11 in front of me. Okay.
12 JUDGE HUDALLA: Okay.
13 MR. GASPARO: Yes.
14 JUDGE HUDALLA: There you go. Thank you. Just a quick
15 question about this. Now, your ground doesn't obviously include the Ogdon
16 provisional application, and I think that's an argument Patent Owner made in
17 response to you actually citing the Ogdon provisional. How is it that you're
18 bringing this in to kind of frame what is disclosed in the Ogdon reference
19 that's actually being asserted?
20 MR. GASPARO: First of all, it's not -- we don't need to -- the
21 reason I skipped this, we don't need the provisional and file history to
22 support the argument. And no, there is not a ground that combines the file
23 history or the provisional. That is true. The purpose of -- Ogdon's

1 provisional file history are part of Ogdon's intrinsic record. They're public
2 and the point of referring to them was simply for the POSITA to confirm,
3 Dr. Houh, that his understanding of what Ogdon teaches is correct. So he
4 reads Ogdon, he confirms, same duration. He didn't have to go any further,
5 but he looks at the provisional and file history and confirms that he's correct.
6 JUDGE HUDALLA: Yeah. I --
7 MR. GASPARO: That was the purpose.
8 JUDGE HUDALLA: I understand that. I just -- I don't know how
9 we could ever bring that kind of information into the case, and I also think
10 the quotation you have here from *Ortho-McNeil* is for a claim construction
11 case, which really is not apt in kind of the context we're using it here.
12 MR. GASPARO: Yeah, and I don't think you need to bring in the
13 prosecution and file history to reach the conclusion that Petitioner thinks is
14 the correct one. And the only purpose of the *Ortho-McNeil* case, our
15 purpose -- I mean, we didn't cite it. It was cited by Patent Owner and just --
16 when we read it, well, this doesn't necessarily help them because, you know,
17 it takes a term like approximately and interpreted as about and makes our
18 point that approximately the same includes exactly. So that was just a
19 response to a case that DISH brought into the proceeding.
20 JUDGE HUDALLA: Thank you.
21 MR. GASPARO: So I'm running out of time and so I've only
22 gotten through disputes 1 to 3. I'm going to ask Your Honors, I mean from
23 disputes 3 to 8, is there any questions you have because I -- yeah, we believe

1 the slides are pretty self-explanatory, as are our papers because I don't want
2 to encroach on Mr. Paquette's time for secondary considerations and the
3 motion to exclude.
4 JUDGE DIRBA: Well, Counsel, I will say you shouldn't assume
5 that the panel has reviewed the slides, okay? If there's something that you
6 want to address in your presentation -- I know that Judge Hudalla asked you
7 about this slide because he noticed it, but don't assume that we've looked at
8 the other ones, other than the ones that you presented to us today.
9 MR. GASPARO: And I appreciate that, Your Honor, but are there
10 any specific questions? I know you've asked some great questions so far
11 about the same video and some of the topics, but was there anything
12 specifically you had questions about that are unrelated to secondary
13 considerations that we didn't already cover?
14 JUDGE HUDALLA: I don't think I have any questions. Yeah, I
15 think you can probably move on to secondary considerations then.
16 MR. GASPARO: Okay. Thank you, Your Honor, and we've
17 reserved some time, so I can address any questions you may think of once I
18 sit down later on.
19 JUDGE HUDALLA: Okay, thank you.
20 MR. GASPARO: Thank you.
21 JUDGE HUDALLA: I guess we'll be turning now to Mr. Paquette.
22 MR. PAQUETTE: Good morning, Your Honors. Ian Paquette
23 here for Aylo Freesites, Petitioner, and I'll be addressing how Patent Owner's

1 arguments of secondary considerations have failed to overcome Petitioner's
2 strong *prima facie* cause of obviousness. Okay. I'll turn first to slide 83.
3 DISH has failed to meet its burden to show that the commercial Move Player
4 has a nexus to any of the challenged claims here. As the Board knows, the
5 Patent Owner has a burden, if it wants to have a rebuttal presumption of
6 nexus, to show that the commercial product, in this case, the Move Player,
7 embodies and is coextensive with the claimed invention. And the Federal
8 Circuit has made clear in *Fox Factory*, "A patent claim is no coextensive
9 with a product that includes a 'critical' unclaimed feature that is claimed by a
10 different patent and that materially impacts the product's functionality." And
11 I'll get to shortly how Patent Owner has failed to meet this burden.
12 Alternatively, the Patent Owner has a burden to show that there is
13 a -- that evidence of secondary considerations is a direct result of some
14 unique characteristic of the claimed invention, and that nexus, as the Federal
15 Circuit has explained, must be to some aspect of the claim not already in the
16 prior art. In other words, the unique characteristic can't just be something
17 that was known in the prior art. And I will get to shortly how DISH has
18 failed in that respect, as well.
19 Turning now to slide 84. Regarding the presumption of nexus,
20 Patent Owner failed to show that the Move Player is coextensive with any of
21 the challenged claims here. DISH's own evidence shows that according to
22 Move, the key secret feature of the Move Player was their use of multiple
23 TCP connections between a client and the origin web server. We have here

1 on slide 84 an excerpt from DISH's Exhibit 2011, which is a Move internal
2 document, and it speaks for itself. It describes, the single innovation that
3 allowed Move to, quote, "Alleviate to the extent possible the problems of
4 reliability, efficiency, and latency" in video streaming. Was this use of
5 multiple TCP connections? And then the document goes on to distinguish
6 between other streaming solutions that use a single connection and states,
7 quote, "By requesting more than one streamlet at a time ('parallel retrieval ')
8 with each request on a different connection, efficiency is raised to near
9 maximum and latency is virtually eliminated."
10 And the second exhibit we have of DISH's, Exhibit 2059, makes
11 essentially the same point. So from Move's perspective, the key to their
12 success and the key to making the Move Player stream effectively and
13 overcome the problems associated with streaming was this use of multiple
14 TCP connections. Now, there can be no reasonable dispute that the
15 challenged claims at issue here do not recite this key feature, this critical
16 feature. At best, the claims here recite at least one generic network or
17 internet connection, not even specifically TCP connection.
18 Moving onto slide 85, here we see that DISH has actually claimed
19 this critical unclaimed feature in other patents. For example, U.S. Patent No.
20 10,225,304 claims multiple TCP connections, and claim 10 even claims an
21 aspect of parallel retrieval. Therefore, under *Fox Factory*, DISH cannot be
22 entitled to a presumption of the nexus here because there is at least one
23 critical unclaimed feature that, according to Move, materially impacts the

1 function of the Move Player and that is not present here, but claimed in
2 another patent.
3 Moving now to slide 86. This is an excerpt from DISH's expert,
4 Dr. Jeffay, his claim chart attempting to map the Move Player to an
5 exemplary challenge claim and it actually does the opposite. As you can
6 see, in addition to the multiple TCP connections shown here in this excerpt
7 from Exhibit 2062, we also have other critical unclaimed features that show
8 up in this excerpt. For example, the use of HTTP GET, simple HTTP
9 protocol, and importantly, the use of standard web servers rather than
10 deployment of expensive media servers. These features also don't show up
11 in any of the challenged claims that DISH points to, to show a nexus.
12 JUDGE HUDALLA: Mr. Paquette?
13 MR. PAQUETTE: Yes.
14 JUDGE HUDALLA: I agree with you that, you know, these
15 particular aspects don't show up necessarily in the claims, but what makes
16 them critical? You say they're critical here. How do you know that?
17 MR. PAQUETTE: Well, DISH has repeatedly explained that the
18 use of standard web servers and simple HTTP requests is the reason they
19 were able to get their invention working, and even -- so these are important,
20 but Your Honors don't even have to reach that because we have in Move's
21 own words, what the critical feature is and it was the use of multiple TCP
22 connections.
23 JUDGE HUDALLA: Okay. So just getting back to the HTTP

1 thing, is there --
2 MR. PAQUETTE: Sure.
3 JUDGE HUDALLA: -- you just don't have any necessarily
4 evidence showing us that it's critical. I mean, it's certainly not claimed. I
5 would agree with you on that, but it's -- nothing to show that it's critical.
6 MR. PAQUETTE: Well, I would say that if you just look at the
7 description of -- and I can get the cites for you later on rebuttal, but if you
8 look at the description of DISH's background and their Patent Owner
9 response where they describe their invention -- they describe it as -- what
10 made their invention successful, according to them, was the use of HTTP
11 and ordinary non-specialized media servers. So I think from their
12 perspective, they would say it was critical and they have in filings, and even
13 in court filings describe their invention that way. So again, we don't even
14 need to get here to show that there can be no presumption of a nexus, but
15 this is just an additional reason that there's no nexus.
16 JUDGE HUDALLA: Understood. If you could provide those on
17 the rebuttal, that'd be great.
18 MR. PAQUETTE: Yes, Your Honor. So after -- now DISH
19 having failed to show that it's entitled to the presumption of nexus, we're
20 now going to move on to how DISH has failed to show that any of the
21 purported unique characteristics were not already in the prior art. So as I
22 noted before, in order to show nexus, DISH had to show that some -- that a
23 secondary consideration to evidence was a direct result of some unique

1 characteristics of the claimed invention and as we pointed out in our petition,
2 every unique characteristic that the ITC determined existed was already in
3 the prior art and disclosed by Ogdon.
4 And then once Patent Owner set forth its Patent Owner response
5 and put forth its evidence of secondary considerations in these proceedings,
6 in our replies and in our supplementary expert opinion from Dr. Houh, we
7 pointed out that it wasn't just Ogdon. And as you saw from my colleague,
8 Mr. Gasparo's presentation, Ogdon discloses the heart of DISH's invention,
9 but it wasn't just Ogdon. We put forth that Leaning, this other reference,
10 also discloses every unique characteristic of the claimed invention. And
11 indeed, essentially every characteristic of the claimed invention, as Dr.
12 Houh's claim charts point out.
13 Further evidence that all of the unique characteristics were in the
14 prior art is the fact that the PTAB and the USPTO have recently instituted
15 and ordered re-exams over Leaning and other references on related DISH
16 patents. Now, interestingly, DISH has known about the Leaning reference
17 for probably about a year now, ever since Aylo filed its first Leaning-based
18 IPR petition. Yet to date, DISH has been either unable or unwilling to
19 address the merits of Leaning and they chose not to do so here in their sur-
20 reply. Rather than point out anything that Leaning doesn't disclose that was
21 an alleged unique characteristic, they simply state that Leaning was similar
22 to Leaning U.S., which was cited on the face, and therefore, it's of no
23 moment.

1 Finally, Dr. Jeffay himself has elsewhere, when opining on behalf
2 of Petitioners in other proceedings, said that everything that is found to be
3 unique here was already in the prior art before the priority date here.
4 Finally, now on slide 90, even looking at the substance of DISH's secondary
5 considerations of evidence, Patent Owner is unable to actually tie any of it to
6 the challenge claimed here. For example, DISH relies heavily on this 2020
7 Sling Emmy that was awarded for work done, quote, "over the past five
8 years", sixteen years after DISH's patents were filed. No mention of any
9 limitations that are related to the patent claims here.
10 And similarly, DISH's arguments about copying are purely
11 speculation in any window. They don't have any direct evidence. And
12 further undermining their arguments of copying is the fact that neither Move
13 nor DISH ever chose to sue Microsoft or Apple, even though they now claim
14 that they copied their technology. And shortly, DISH is going to show you a
15 lot of quotations from random blogs on the internet and unauthenticated
16 emails, but you'll notice that these quotations do not directly tie to any
17 unique features of the claimed invention. Now, if Your Honors have any
18 questions about secondary considerations I can address now, I'm happy to do
19 so.
20 JUDGE HUDALLA: I don't --
21 JUDGE DIRBA: I just have a quick question, Mr. Paquette. The
22 ITC, if I understand correctly, found that their -- that the secondary
23 considerations of evidence was indicative of non-obviousness for at least

1 some of these patents. A couple questions related to that. Did the ITC have
2 the same record that we do here? Do they have any additional information
3 or evidence that isn't in our record?
4 MR. PAQUETTE: I'm not sure if they had exactly the same
5 record, as we pointed out in our motions to exclude that I can speak to
6 shortly. Some of the evidence here wasn't properly authenticated and is
7 hearsay and some of the evidence in the ITC record is sealed because some
8 of it was confidential information. So we don't have access to the entire
9 record, but the ITC opinion on secondary considerations was rather
10 perfunctory and conclusory, and it was -- the ITC found that the references
11 of record did not render the claims obvious, and then sort of as an
12 afterthought said, even if I had found it obvious, the secondary
13 considerations would've overcome it. And as we set forth in our petition, we
14 believe that determination was in error because, as I mentioned, every
15 unique characteristic was already in the prior art.
16 JUDGE DIRBA: And so if I understand your answer correctly,
17 Aylo does not know whether or not the same record was at issue because
18 you weren't a party to the ITC proceeding and because some of those
19 documents are confidential, you can't even go check and see whether the
20 record is the same; is that correct?
21 MR. PAQUETTE: Correct. And also, the one thing that the ALJ
22 and the ITC found for finding a nexus was that the Respondents in the ITC
23 argued that a prior use of the Move Player was invalidating and then the ALJ

1 took that to say, essentially, well, you've conceded that it embodies the
2 invention. So that's also inapplicable here.
3 JUDGE DIRBA: And so did the ITC ALJ rely simply on the
4 presumption of nexus for that Move Player? In other words, did that ALJ
5 determine that the Move Player embodied and was coextensive with the
6 claims, thus, Patent Owner gets a presumption of nexus and from that found
7 secondary considerations? Or did that ALJ also go through and say, hey,
8 some of that evidence Patent Owner has shown has a direct relationship with
9 unique characteristics of the claim to match it?
10 MR. PAQUETTE: He did do both, but as I mentioned very
11 briefly, for presumption of nexus, he did find that essentially, the
12 Respondents had conceded that there was a presumption of nexus and then
13 he said some unique characteristics interestingly -- the unique characteristics
14 he pointed to were the use of HTTP and ordinary web servers, and switching
15 up and down, which we set forth in our petitions why Ogdon actually
16 disclosed that. So going back to Judge Hudalla's earlier question, that just
17 goes to show that at least it's plausible that this HTTP was pretty critical, if
18 that was supposed to be a unique characteristic found by the ALJ.
19 JUDGE DIRBA: Thank you.
20 MR. PAQUETTE: And I also have some slides on the motion to
21 exclude. If Your Honors don't feel you need that, I'm happy to just skip it,
22 but if you'd like, I can go through it or answer any questions you have.
23 JUDGE HUDALLA: Why don't you go ahead and do the motion

1 to exclude, please?

2 MR. PAQUETTE: Sure. So here on slide 92, Petitioner moved to
3 exclude three categories of documents of improper evidence and arguments
4 from Patent Owner. First, Patent Owner, during the cross-examination of
5 Dr. Houh, essentially read into the record unadmitted and unauthenticated
6 documents that Dr. Houh had not seen, purporting to relate to this MSHOW
7 commercial product that DISH says is the Ogdon's commercial product.

8 We just -- as we said in our papers, that's improper. It violates the
9 rules, it violates the rules of evidence, and we simply submit that if Your
10 Honors are going to consider this evidence, we respectfully request that
11 Your Honors consider the evidence we listed on redirect where we pointed
12 out that even the MSHOW product actually did video over IP streaming
13 based on user bandwidth. So that's our only point on that.

14 On slide 93, DISH is also --

15 JUDGE DIRBA: Counsel, I'm sorry. I have -- I realized I have
16 one question about the MSHOW piece. If we were to determine -- so the
17 MSHOW piece is only relevant because it's referenced in the Ogdon
18 provisional; is that correct?

19 MR. PAQUETTE: That's -- yes. That's what Patent Owner is
20 saying.

21 JUDGE DIRBA: And so if we decide that the Ogdon provisional
22 is not relevant to us when determining what Ogdon says, do we even
23 consider -- like do we even reach this evidence at that point? Does it matter

1 at that point or is there another reason why we would care about what
2 MSHOW does, is, or says?
3 MR. PAQUETTE: I don't think there's any reason why Your
4 Honors would care about what MSHOW is or does, and certainly if Your
5 Honors decide not to even get to the Ogdon provisional, there would be no
6 reason to look there.
7 And here on slide 93, DISH has also attempted to bring in new
8 arguments about this ABC.com Emmy that was apparently awarded in July
9 2006 to argue that this was just another example of Move Technology being
10 awarded an Emmy. But as we pointed out, again, Patent Owner's Counsel
11 simply read into the record unadmitted testimony and unadmitted exhibits.
12 And we actually pointed out how it could -- it's factually impossible for this
13 ABC Emmy that was awarded in July 2006 to be related to Move
14 Technology at all because by DISH's own evidence, the earliest that
15 ABC.com started using Move Technology was late March 2007, many
16 months after this award was even given. So again, we argue this should be
17 excluded.
18 And finally, on slide 94, there's a variety of email chains that
19 include all non-declarants and third parties. We argue that first, DISH has
20 failed to properly authenticate these. They haven't provided any declarants
21 with personal knowledge on these emails. And second, they are hearsay and
22 there's no hearsay exception applicable. And that concludes my slide deck.
23 If Your Honors have any questions, I can answer them now or I can

1 conclude here.
2 JUDGE HUDALLA: I had one question for you, Mr. Paquette. I
3 just wanted to ask briefly about the Ericson declaration and Ericson
4 transcript. I think that's Exhibits 2090 and 2092. From what we could tell,
5 Patent Owner included them in the opposition to the motion to exclude as
6 supplemental evidence, and I think your argument was that the declaration --
7 the supplemental evidence of the declaration was actually offered to combat
8 or rebut an objection for something that you didn't even move to exclude. Is
9 that a correct understanding?
10 MR. PAQUETTE: Yes, that's absolutely correct. So Patent
11 Owner submitted an excerpt from Mr. Ericson's ITC testimony and then
12 when we objected to that, Patent Owner served the supplemental evidence of
13 -- in form of the declaration. We ultimately did not move to exclude that
14 excerpt of Ericson's ITC testimony. Therefore, the supplemental evidence is
15 irrelevant and shouldn't be admitted.
16 JUDGE HUDALLA: Okay. And so just to be clear, that
17 supplemental evidence doesn't pertain to any other objection, other than the
18 ITC Ericson testimony?
19 MR. PAQUETTE: That's certainly our understanding, yes.
20 JUDGE HUDALLA: Okay. All right. Unless my fellow panel
21 members have any other questions, and I don't think they do, that'll conclude
22 the Petitioner's presentation here. So what we'll plan on doing is going and
23 taking a five minute break right now and I'll let the Court Reporter announce

1 the time so that we can know when to come back.
2 COURT REPORTER: Okay. I guess we'll go off the record at
3 11:01 a.m. Thank you, Your Honor.
4 (Whereupon, the above-entitled matter went off the record at 11:01
5 a.m. and resumed at 11:07 a.m.)
6 COURT REPORTER: Back on the record at 11:07 a.m.
7 JUDGE HUDALLA: Thank you. Just before we turn to you, Mr.
8 Williams, I wanted to mention to Mr. Gasparo and Mr. Paquette that I had
9 them at 17 minutes left. Okay.
10 Mr. Williams, would you like to reserve some surrebuttal time?
11 MR. WILLIAMS: I would, Your Honor. If you could let me
12 know when I have 10 minutes left, that would be helpful.
13 JUDGE HUDALLA: Okay. And you may begin.
14 MR. WILLIAMS: Okay, thank you. And let me try to share my
15 slides, as well. Give me one second. Let me know if you're able to see that.
16 JUDGE HUDALLA: We can.
17 MR. WILLIAMS: Oh, perfect. Okay, sorry. I'm just reorganizing
18 the thing. Thank you, Your Honor. Let me just start at the outset by saying,
19 you know, in general what we think is going on here is Petitioner has a very
20 vague combination and it's being supported by extremely weak motivation.
21 Even if you were to accept that motivation, the actual combination they're
22 proposing we think doesn't result in the claim combination.
23 So for instance, it would still lack multiple copies of the same

1 content, such that all the viewers would see that same content as their
2 bandwidth changes, as well as other missing elements that I'll cover.
3 Nothing in the prior art was able to achieve this, where the invention did.
4 This is only sort of one of the numerous reasons that we think the Board
5 should not find the claims are unpatentable.
6 Let me begin by just briefly sort of talking about the actual
7 invention here, which is shown in slide 16. It basically relates to this
8 streamlet idea. And so as you see here what's going on is you've got some
9 continuous video that's -- or digital content that's running in time, from left
10 to right. The invention takes that, you know, continuous video and breaks it
11 up into these time-lined portions and for each -- and so those are sort of
12 horizontal lines going across would be the whole video, and then the vertical
13 lines going up and down show you these individual portions broken up by
14 time. So time is running from, you know, essentially left to right here.
15 And free to these timed portions, the video is broken down and
16 then re-encoded into three -- at least three different quality levels or bit rates.
17 Now, this slide is showing you sort of how that data is then stored. You
18 know, obviously, it'll be on the server somewhere. In and of itself, maybe it
19 doesn't seem that impressive, but in practice what this does is allows,
20 obviously, this adaptive bit rate streaming that's become ubiquitous today
21 and is nowhere in the prior art, certainly not in Ogdon or in Allen. An
22 important point to note here is what this enables, as we'll see here on -- go to
23 our slide 8 -- if I type that number correctly, it'll probably work better.

1 The idea here is shown on slide 8, and we've got a series of slides
2 here you can look through to get the gist, but you know, the point is that the
3 client station is selecting the individual streamlets it wants to see. So the
4 individual streamlets being one of those boxes I just showed you on the prior
5 slide, and in this case, for instance, it can start by picking the high quality
6 box. You know, the green box on the bottom left, it picks as its first
7 streamlet and it moves through time, it picks the next high quality. But then
8 because of bandwidth changes happening on its connection to the server, it
9 decides I'm going to need, you know, to go to a lower quality version. It'll
10 then pick a lower quality version. Maybe the meeting quality maybe has to
11 drop down to the lowest quality at some point. As conditions then improve,
12 it can go back and pick the larger version.
13 So as the user is watching this video through time, you know,
14 they're seeing essentially different quality versions that reflect the nature of
15 the connection they have to the server at various times. The important point
16 is, as you'll see on slide 15 here, as an example, the important is although the
17 quality may differ, the content is not. The content is the same. The user is
18 going to see the same thing if he's on the low quality connection than as the
19 user on the high quality connection. It's just going to be a slightly different
20 quality version of that same exact content. This turns out to be, obviously,
21 the very important point to what these patents have enabled. Let me then --
22 JUDGE HUDALLA: Mr. Williams?
23 MR. WILLIAMS: Yes.

1 JUDGE HUDALLA: So on this slide you have here, say the low
2 quality one on the left there is just a static image and then the high quality
3 version is actually a video. Why doesn't Ogdon teach that --
4 MR. WILLIAMS: Sure.
5 JUDGE HUDALLA: -- if it teaches, you know, you can send a
6 static image say? And I'm on slide -- talking about Patent Owner's slide 15.
7 MR. WILLIAMS: Okay. Let me just go to Patent Owner's slide
8 15. I'm going to cover that in a great amount of detail in a few minutes, but -
9 -
10 JUDGE HUDALLA: I'm sorry. That was your slide that you just
11 had up. I wanted to mention that for the record. That's all.
12 MR. WILLIAMS: My slide 15. I'm sorry. Oh. Oh, yes. Sorry,
13 sorry, sorry. Okay. Fair enough. So why couldn't it be a single static
14 image? Well, we don't think that's -- so as I'm going to point out, I don't
15 think a single static image actually would satisfy the streamlet criteria and
16 we'll talk about that in a moment or two, but I also don't think that's what
17 Ogdon teaches, and in particular, I'm going -- and I'll get to this in a few
18 minutes, but when Ogdon actually talks about its changing content, it never
19 suggests that that content is going to be the same. It certainly never suggests
20 that one of the options would be to take a video and turn that into a single,
21 you know, image -- a single static image.
22 Instead, it talks about substituting that for something else, but we'll
23 get to that in a moment. But, you know, when Ogdon talks about preserving

1 things that are the same, when it tells you it's giving the same content, it's
2 very clear and it does add a connection with audio. And when it talks about
3 the visual part of the presentation, Ogdon is also similarly clear that it's not
4 the same content or certainly doesn't have to be the same content. So there's
5 nothing in Ogdon that's going to guarantee you're going to get -- that
6 everyone is going to see the same thing, which is the opposite of the claimed
7 invention.
8 JUDGE HUDALLA: Mr. Williams, what about claims 6 and 20 of
9 Ogdon where it says, you get a video with motion, which was kind of like
10 the right example in that slide that we had up a minute ago and then there's
11 also something that talks about reduced motion, which could probably
12 correlate to one of the other two parts, the medium or the low quality
13 version.
14 MR. WILLIAMS: Yeah. So I mean, I think that -- those claims
15 actually show that the use that Ogdon is giving to the notion of video is
16 significantly different than the type of video that is being talked about in
17 these claims because there is -- it's just a non-sequitur to say there's a video
18 with no motion. And as Dr. Jeffay points out, that's not what video is. I
19 mean, that's an image and that's a very different idea.
20 JUDGE HUDALLA: Well, even if I were to believe that --
21 MR. WILLIAMS: Mm-hmm.
22 JUDGE HUDALLA: -- claims 6 and 20 of Ogdon also say,
23 reduced motion. So I have a video with motion and a video with reduced

1 motion. How isn't that the same thing as in the slide with the Peloton bike
2 thing that you just sent -- showed us?
3 MR. WILLIAMS: Well, then I think we would need to know
4 exactly what Ogdon means by that video with reduced motion, and does he
5 mean that those are the two -- that those two corresponding segments are the
6 same in content and the only difference is motion. That -- if that were true,
7 then you were get closer to the idea of a streamlet. Ogdon is still going to
8 fail to meet the claim elements for several reasons, that I'm going to get to in
9 just a moment. So I hear you want me to get there, so let me -- maybe I can
10 just turn to it really quickly. Let's just get there. Again, one second.
11 JUDGE HUDALLA: Yeah, I appreciate that. I think we have a
12 lot to get through, Mr. Williams, so --
13 MR. WILLIAMS: Yeah. No, no, we obviously do and that's fine.
14 Okay. Let me get right there. I guess one thing we can sort of start with is
15 you're asking about Ogdon's claim 6, was it?
16 JUDGE HUDALLA: Claims 6 and 20 were -- was what I was just
17 talking about.
18 MR. WILLIAMS: Yeah, yeah. Yeah, so okay. I mean, there is a
19 theory here that I think Petitioner could have tried to articulate based on this
20 claim to try to explain how it is. This claim is really showing that what's
21 going on in Ogdon is you're just providing different versions of the same
22 video as you move through time. That's not what this claim says. This
23 claim says that I can show you that one of the presentation segments I show

1 you can be video and when I do that, I can have a video with motion and --
2 to one client, and the video with reduced motion to another client. I mean,
3 so that may show a single segment that has the two different encodings.
4 This would be the best argument I can make for a Petitioner, which they
5 don't make and their expert doesn't make, but I mean, I hear you want me to
6 respond to it, so I will.
7 You know, what if they had made that argument in the Petition, my
8 response would've been what I just said, is that this is maybe giving you a
9 single point in time where you have two streamlets that do correspond to
10 each other. I would still need proof that what's going on here actually has all
11 the other elements of the claim, which I'm going to get to in a second, like
12 they need to be the same exact duration, they need to correspond exactly to
13 the same portion of the video, which this is not saying. It doesn't get you all
14 the way there. It sort of suggests that direction, for sure, but I don't think it's
15 necessarily getting you there.
16 But the point is, then this never says within the next element, the
17 next segment of the video or the next segment of the presentation is then the
18 next temporal part of the video. So you're getting -- in other words, going
19 back to my demonstrative showing the -- how these things are encoded.
20 Yeah, here. So in other words, you're getting -- maybe with that single
21 claim, you're getting one of these kind of corresponding groups of
22 streamlets, but you're never getting the rest of them. You've got to take one
23 video and break it up like this so that this happens every single time, you

1 know, as you go through this digital content in temporal fashion. Ogdon
2 doesn't get you there. All right. Let me --
3 JUDGE DANG: Mr. Williams?
4 MR. WILLIAMS: Yes.
5 JUDGE DANG: Does the claim require the rest of them --
6 MR. WILLIAMS: Yes. Yes, I can show you.
7 JUDGE DANG: -- be available? Can you just have this one
8 segment that is -- it's the same?
9 MR. WILLIAMS: Yeah, let me address that. Thank you, Your
10 Honor. That's where I wanted to go first was to actually talk about the claim
11 language so that we're all on the same page. This is an important point.
12 Okay. Our slide 31 -- again, Patent Owner -- the Petitioner talked about this,
13 the fact that Ogdon teaches everything. Ogdon is actually going to miss all
14 of these things, we we're going to talk about, but let's look at what the claim
15 language actually says, starting with slide 32. Okay.
16 So the first thing to note about these claims is that they all require
17 some form of either video or digital content and it is this that forms,
18 obviously, the, you know -- this is antecedent basis for a lot of these things
19 in the claim, but notice it says, you know, the video or digital content. So
20 this is -- very much makes it clear, it must be the same video that we're
21 talking about as we go through these streamlets, but even if that weren't
22 clear, it's made absolutely explicit in the other claim elements.
23 So if you look at slide 41, here we get into the actual streamlet part

1 of the claims. You'll notice things like encodes the same first portion of the
2 live event video. So these are talking about the overlapping nature of the
3 streamlets. They have to encode exactly the same pieces, so whatever the
4 low-quality version is and the high-quality version is, they've got to be the
5 same. That's true in all of the claims, with the potential exception of this one
6 claim that happens to be on the slide here from the '555 patent, which is
7 claim 1. But this element is in all the other independent claims of '555, so
8 claim 10, 18, and 26 all require this notion of the same portion of the video
9 being encoded.
10 So it's happening in two, you know, so there's sort of two different
11 criteria happening. You've got the notion as you work across the different --
12 as you work across the page from left to right. That's got to be a continuous
13 video that's segmented into these streamlets, but also, when you're looking at
14 the particular, you know, corresponding streamlets, they have to encode the
15 exact same part of the video. Those are two features of what a streamlet is
16 in these claims, just by the text.
17 So now talking about, you know, the question of Ogdon here.
18 Now, as you know, the Board, in some of its other institution decisions here,
19 correctly are going to be found that Ogdon never describes two copies of the
20 same video. It doesn't refer to creating two copies of identical content,
21 video, or otherwise that are encoded differently. It doesn't teach storing
22 multiple copies of the same video. We agree with that, and the Petition is
23 deficient because of this reason.

1 Ogdon does have some portions, as I was alluding to earlier, if you
2 see on slide 34, where it talks about sort of preserving the same content. It
3 does that in the context only of audio. So it is true that the users will get the
4 same audio presentation and that's the point of Ogdon. Ogdon is using audio
5 to try to, you know, stitch this all together because they recognize that visual
6 presentation is going to be completely different for various users, and in
7 many cases, the users may not get the video at all, as you see here on slide
8 34. So, you know, there is the possibility that users just can't get the video
9 portion of the presentation and Ogdon fixes that by saying the audio, not the
10 video.
11 JUDGE HUDALLA: Mr. Williams, you just referenced the denial
12 of *inter partes* review in IPR2024-00047. I think it's on your slide 36, is
13 what it was, or I guess, yeah, here on 33, as well.
14 MR. WILLIAMS: Mm-hmm.
15 JUDGE HUDALLA: You mentioned that Ogdon doesn't have all
16 these features and I think you heard our conversation or my conversation
17 with Counsel in the first part of the hearing where, okay, well Ogdon gets us
18 to the one yard line. Doesn't Allen get us over the goal line then when
19 there's, you know, they certainly talk about -- Allen certainly talks about
20 three different streaming qualities. Does it not?
21 MR. WILLIAMS: It does. Yeah.
22 JUDGE HUDALLA: So why --
23 MR. WILLIAMS: I mean, it talks about three different streaming

1 qualities, but it tells you not to do that, so yeah, I'll talk about the
2 combination with Allen. Let's go there. I mean, Allen directly teaches away
3 from this idea.
4 JUDGE HUDALLA: Well, I think Allen also teaches doing
5 exactly that at edge servers, so I'm not so sure that it's a complete teaching
6 away.
7 MR. WILLIAMS: Okay. Well, yeah. Let's -- okay, that's fine.
8 All right. So starting with what the petition says about the motivation. This
9 is our slide 60, I think, if I'm reading that correctly. Yep. So here's what
10 Petitioner says. A POSITA, which I'm assuming is the person of ordinary
11 skill in the art, would have been motivated to encode each recorded video
12 segment of Ogdon into each quality level, okay? This is what Petitioner
13 says you would do. So let's see what Ogdon actually says about doing that.
14 Ogdon, if we go to slide 65 -- so and I should say, Ogdon in its
15 Background section does talk about encoding into different formats. That's
16 on slide 62. I'll just mention it briefly. You know, this is what Ogdon is
17 saying was the state of the art at the time of his invention. Okay. Now,
18 what does Ogdon say about this idea of doing that?
19 JUDGE HUDALLA: Mr. Williams?
20 MR. WILLIAMS: Yeah.
21 JUDGE HUDALLA: Just to be clear, you're talking about Allen,
22 not Ogdon, right?
23 MR. WILLIAMS: Sorry, sorry. Yes, I'm sorry. Yes, I meant to

1 say Allen. I didn't mean to say Ogdon. So what Allen actually says is if you
2 try to encode into the various different bit rates that you may need to
3 respond to the universe of potential clients, you're going to place an
4 insurmountable burden on everyone in the value chain and you would have
5 to encode an impossible number of streams. I mean, this is direct teaching
6 away. This is saying, hey, the thing that I just told you about in the
7 Background where you encode into different bit rates, don't do that. That is
8 a terrible idea.
9 And instead, what is Ogdon's solution? Ogdon's solution -- I'm
10 sorry, Allen's solution, as you see on slide 26, to just serve customers from
11 the edge. So you take one hop from where they are. Maybe if they have a
12 cable modem, you go to the cable modem provider. If it's a DSL, you go to
13 the DSL provider, and you encode there in one bit rate that just will work for
14 everyone on that DSL network or that cable network.
15 So this is what Allen is teaching. If you read Allen as the person
16 of ordinary skill in the art, you walk away with a singular vision, which is
17 you absolutely do not want to do multiple encoding of a single file. And
18 instead, you want to encode just for the particular network of customers
19 you're serving. So I mean, Allen is really about moving things to the edge.
20 It has nothing to do with multiple encoding of a single file.
21 JUDGE HUDALLA: Doesn't Allen teach that, though, at page 24
22 where it talks about multiple edge encoders that convert the stream into
23 formats and bit rates matched to that of each viewer?

1 MR. WILLIAMS: Yeah. And this is what he says -- I mean, if
2 you read -- I mean, the relevant teaching there is on slide 26. I mean, he's
3 saying, yeah, there are encoders that can give you multiple bit rates and there
4 are different formats that you're going to need to accommodate. At the time,
5 you know, essentially there was an Apple and a Microsoft version of
6 streaming that you would want to accommodate, but what he says is you go
7 to the edge, and what you encode there at the edge is the Apple and the
8 Microsoft version of the bit rate that corresponds to your customers, because
9 all of the users there will have the same network speed. So again, he -- it's
10 very clear. He says it's impossible to do the thing that Petitioner wants to
11 rely on Allen to teach, which is this multiple encoding and places
12 insurmountable burdens. It's very clear he's saying don't do that.
13 So this is sort of the epitome of teaching away. It is not teaching to
14 do the things they're saying. And again, even if, you know, even if for some
15 reason the Board were to conclude that doesn't rise to the level of
16 impeachment language -- I think it clearly does, but let's be discriminating
17 about that. It's still more than sufficient to find there's a lack of motivation
18 here and we cite this lab reparation case on the slide 67, which is a recent
19 case from the Federal Circuit making this point. You don't have to get to
20 teaching away in order for you to realize that when a reference is telling you
21 not to do the thing that they're proposing, that's a good reason to say the
22 motivation is deficient.
23 JUDGE HUDALLA: Is that the only reason you think the

1 motivation is deficient?

2 MR. WILLIAMS: Is that the only reason we think the motivation
3 -- well, no. There's several other reasons that -- we think the obviousness
4 fails. The main one is it's destroying the whole point of Ogdon. Ogdon
5 starts with a notion that you've got these -- I think I have a picture from our
6 Exhibit 2007 here I can show you. I think this is 2007. Let me make this
7 smaller so I can see. Yeah, that's 2007.

8 So, you know, this picture from 2007 is showing what these sort of
9 telepresentation centers that Ogdon was talking about looked like at the
10 time. And what Ogdon says is these things have all sorts of problems with
11 them. Most of which is that they're incredibly expensive and they really
12 restrict who can watch the video. And so instead, you know, he moves in a
13 totally different direction. He doesn't try to stream the live presentation. He
14 doesn't want to do that at all. What he says is, we're going to instead just
15 stream the audio -- and this is slide 19 of our presentation where Ogdon talks
16 about these things -- and we're going to give you instead something like a
17 slideshow. Where we're going to take -- sorry, I meant to actually put slide
18 18 up. Yep.

19 So this is where Ogdon is saying, hey look, these telepresentation
20 centers have substantial expense. They require -- they have numerous
21 drawbacks, they're expensive, you have to travel to them, and people who
22 don't have these very high-speed connections are going to be excluded. And
23 so again, his solution is shown on slide 19, was to develop these alternative

1 versions of your slide presentation, some of which have video, but other of
2 which just could have static images or, you know, very low -- let's see,
3 multimedia data, audio images, animation, video. These are the possible
4 ways that you might encode it. Then he says there would be a potential to
5 present these things in full animation or in a slideshow format. This is on
6 slide 19, I'm showing.
7 JUDGE HUDALLA: Mr. Williams, could I ask you a couple
8 questions about that point?
9 MR. WILLIAMS: Yeah, mm-hmm.
10 JUDGE HUDALLA: Would you agree that Ogdon teaches
11 providing two different versions of a video?
12 MR. WILLIAMS: Would I agree it teaches two different versions
13 of a video? But I -- yeah, potentially, he does -- I mean, the claim he
14 pointed to suggests that. That's what I'm thinking of.
15 JUDGE HUDALLA: Okay. And then do you -- would you agree
16 that Ogdon teaches streaming video?
17 MR. WILLIAMS: No, no. I think he teaches the opposite of that.
18 That's the point I was just making. Streaming video would be that
19 telepresentation center I just told you about. There, I'm sitting in the room,
20 I'm watching the presentation take place. That's a streaming video. He
21 teaches the exact opposite. He says, let's get away from streaming, we can't
22 do this, let's not try. Instead, we'll stream you the audio, we'll keep that the
23 same, and we'll send you something else for video. So no, and more

1 importantly, you know, the actual thing that he's talking about doesn't
2 guarantee that you're getting the same presentation at all. In fact, the
3 opposite is true. So if we go to slide 35, let's see here.
4 JUDGE DIRBA: Mr. Williams, just to make sure that I
5 understand, it's your position that Ogdon doesn't teach that anyone gets a
6 streamed video. So in other words, Ogdon's solution is hey, telepresentation
7 systems were too hard to implicate, so nobody gets video streamed to them;
8 is that correct?
9 MR. WILLIAMS: I think that's somewhat ambiguous. I think
10 Ogdon leaves open the possibility that people who actually do -- are at a
11 telepresentation center may get a more complete stream, but the problem is,
12 nowhere in Ogdon is there -- I mean, he doesn't even describe a camera in
13 the room when the presentation is taking place, so I can't say that that's
14 explicit in Ogdon. I think that's just sort of hinted at in an ambiguous way.
15 So maybe that's possible in Ogdon, you could read that, but --
16 JUDGE DIRBA: And Ogdon does specifically say that it's going
17 to send -- that it can, rather, send video and it can send animation.
18 MR. WILLIAMS: Well, he says that segments can be video. I
19 mean, I can embed in this presentation a video. In fact, I've done that. The
20 PDF that we uploaded has a video in it. I'm not going to show it just for
21 time, but yeah. That's what he's talking about. Yeah, I can put a video as
22 one of my slides. He does say that, yes.
23 JUDGE DIRBA: Do you agree that Ogdon is sending the stuff or

1 it discloses a possibility of sending this information real-time?
2 MR. WILLIAMS: No, no. I don't, I don't.
3 JUDGE DIRBA: So it's your position that Ogdon only discloses
4 sending these videos and slides, what have you, in advance to the
5 participants? There's nothing other than the audio that happens during -- in
6 real-time while this is happening?
7 MR. WILLIAMS: Yeah. I mean, it would depend -- we'd have to
8 define real-time, I guess, which has not been defined by the parties in the
9 proceeding so far. One thing I can say for sure is it does -- whatever you're
10 going to send to the end user has to be previously recorded, and we'll get to
11 that in a moment. I'm just talking about the live claims and certainly, this is
12 going to be important for the live claims where those things are missing.
13 JUDGE HUDALLA: Before we leave that point, Mr. Williams, I'd
14 like to follow-up on Judge Dirba's question there.
15 MR. WILLIAMS: Mm-hmm.
16 JUDGE HUDALLA: Could you turn to column 2 of Ogdon?
17 MR. WILLIAMS: Ogdon. Yes, column 2, you said?
18 JUDGE HUDALLA: Yes, please.
19 MR. WILLIAMS: Mm-hmm.
20 JUDGE HUDALLA: I'll wait until you get there. I know you're --
21 MR. WILLIAMS: No, I'm here. What line?
22 JUDGE HUDALLA: Okay. I was just -- I want to read in just a
23 couple lines, column 2, line 8 is where it starts. It says, "For example, both

1 the video and audio portions of the presentation may be provided solely by a
2 TCP/IP network, such as the internet, assuming that there is sufficient
3 communication bandwidth."
4 MR. WILLIAMS: Um-hum.
5 JUDGE HUDALLA: Doesn't that teach streaming?
6 MR. WILLIAMS: No. I mean, it teaches streaming of -- this
7 would be -- I mean, this sentence is talking about the ability to send audio
8 over the internet connection, as well, and audio is streamed in Ogdon. I
9 mean, I agree with that, so I think that is suggesting you can stream audio, as
10 well, if you had the sufficient bandwidth. But the video that's being talked
11 about here is not video of someone making a live presentation. The video he
12 means is the visual part of this presentation, whatever it is, the slides.
13 JUDGE HUDALLA: Well, it says video, though. How do you
14 interpret that as something other than video that has moving pictures? I'm
15 having --
16 MR. WILLIAMS: No --
17 JUDGE HUDALLA: -- trouble there.
18 MR. WILLIAMS: -- I'm not interpreting it that way. That's just --
19 this is just how the expert has interpreted it in their case. Dr. Jeffay explains
20 this, I think, in his declaration, at some length, but you know, the point is
21 video here is distinguished from the audio portion of the presentation. I
22 mean, it is the visual part of what's going on, but it's not like it's a live video
23 of the presenter. No one has suggested that's what this teaches and again,

1 Ogdon doesn't even have a camera disclosed in it. So --
2 JUDGE HUDALLA: Well, I don't think your claims require a
3 camera either, do they?
4 MR. WILLIAMS: No, but they do require -- with the exception of
5 one time -- they require a video and in some cases, live video.
6 JUDGE HUDALLA: Okay. Well, I'm having trouble
7 understanding your point here. Maybe on sur-rebuttal, you can point me to
8 the testimony that you're referring to from --
9 MR. WILLIAMS: Okay.
10 JUDGE HUDALLA: -- the expert.
11 MR. WILLIAMS: Yeah. I'll come -- okay. Maybe I'll come
12 around back to it in a second. It's just going to --
13 JUDGE DANG: Mr. Williams?
14 MR. WILLIAMS: Yes.
15 JUDGE DANG: Yeah. I'm sorry, I had a question.
16 MR. WILLIAMS: Uh-huh.
17 JUDGE DANG: So in your Patent Owner Response, I'm looking
18 at -00043 on page 5 -- and 6, you indicated that, Petitioner's combination
19 requires modifying the principal operation of its lead reference Ogdon from
20 an adaptive content streaming system to an adaptive-rate streaming system.
21 So are you saying there that it is a streaming system?
22 MR. WILLIAMS: Well, it streams -- again, I'm saying it streams
23 audio, but what he does with the visual portion of this presentation is to

1 change the content. And this is the point we're making on slide 35 where we
2 show examples of that. What he says is you could present these
3 corresponding segments as alternative segments and in one case, you can
4 have real-time or animated video and in the other case, you can have graphic
5 slides. Those are two different things. Those are not the same thing.
6 There's a substitution going there.
7 And moreover, you know, we know that the content can be
8 different. I mean, just going back to Ogdon here, if we go to slide -- or
9 sorry, go to column 19 of Ogdon -- which we talk about in the POR and in
10 the sur-reply, but, you know, the point is in Ogdon, he talks about, you
11 know, the initial presentation segments, as well as the subsequent segments
12 may be different for clients at different sites. And the examples he gives
13 would be different corporate logos, different confidential financial data. It's
14 different information. This is the point. Ogdon is not trying to preserve the
15 actual content. That would be a completely different approach. He changes
16 the content to match your bandwidth.
17 JUDGE HUDALLA: I don't deny that it teaches different types of
18 content, but then I turn to like claim 6 and claim 20 of Ogdon and it tells me,
19 I can have a video with, you know, high quality and then, you know, a lower
20 quality.
21 MR. WILLIAMS: Yeah. And again, I think it's -- I think it is --
22 again, this is an argument the Petitioner doesn't -- really doesn't make, but
23 let's assume that they did. What that would teach me is that I can have one

1 slide that has two different versions of that video, so I can give you a high-
2 quality video and someone else a lower quality video. Okay, that's fine.
3 That would give you a single instance of an overlapping video.
4 That is not our invention. Our invention is taking that video -- let's
5 say that video is, you know, Jaws. I'm going to give you all of Jaws. You're
6 going to see Clint getting eaten by the shark in whatever your bandwidth is.
7 That's not what that's saying. What that's saying is I'm going to show you a
8 little bit of video and I'll give that to you in two different versions. Then I'm
9 going to move on and show you something else because now my
10 presentation is about something else. It's not saying I'm going to take that
11 video and break it down into these timeline pieces and play it back to you.
12 That maybe is one timeline piece, but that single video segment that we're
13 talking about, but it's not talking about a cohesive video.
14 The only thing that's cohesive in Ogdon is a presentation and
15 there's no evidence at all that that presentation is a single video that's getting
16 broken up in the way you're suggesting, Your Honor. And it could happen
17 for a single -- again, this is all about making a presentation. I'm selling you
18 some widget, I'm showing you all the features of it. I'm going to have
19 different slides about each of those features. Okay, that's fine, but that is not
20 taking a single video and breaking it up into pieces and then encoding you to
21 those at a different bit rate. That's the distinction we're talking about here
22 and it's very clear from Ogdon that's what he's -- that that's what he's doing.
23 JUDGE DIRBA: Mr. Williams? That -- you raised a point that I

1 wanted to ask you about because you seem to make this assumption in your
2 briefing. You -- it seemed that you assumed that Ogdon's presentation is
3 necessarily a series of slides and those slides might include videos, but you
4 seem to read Ogdon as being limited in that way, as opposed to presentation
5 perhaps being more generic and just generally referring to hey, this is the
6 media content that is being displayed to the participants.
7 What in Ogdon or where in Ogdon do you get that from? Where in
8 Ogdon do you get the concept that that presentation is a series of slides that
9 may include video, but somehow excludes the presentation as a whole from
10 being video? And let me clarify my question a little bit, too. Let's assume
11 for the sake of argument that I agree with you that Ogdon doesn't
12 specifically say some of the things that we're talking about Ogdon not
13 saying, but I also don't see Ogdon specifically saying that that presentation
14 has to be a series of slides; does that make sense?
15 MR. WILLIAMS: It does. And yeah, the language Ogdon uses is
16 segments. It's not slides, so I mean, I agree with you about that, but just
17 turning to -- we can just start with slide 48 to give you the gist. Ogdon is
18 based around a leader making a presentation performance, okay? This is a
19 person doing something. This is not me just setting up a computer that's
20 going to automatically stream through all the streamlets of Jaws for you.
21 What it is talking about is a person who's able, as the presentation is going,
22 to change it, to skip things, to rearrange portions of this presentation
23 performance. Maybe you want to ask me about how well this, you know,

1 this widget is going to dig down into the ground. I've got a separate set of
2 slides I can show you for that and we're going to go to that. This is what
3 Ogdon is talking about, so you see that throughout.
4 I mean, this is just one example, obviously from Ogdon, that I'm
5 showing you on slide 48, but there are certainly many others if you look at,
6 you know, slide 26 of -- sorry, not slide 26 -- maybe column 26 of Ogdon
7 where he goes into detail about, you know, how these presentations are
8 actually going to be performed.
9 There's all sorts of clear teachings that it's the leader who's
10 deciding what to do here. So for instance, at line 45, you see this notion of
11 delete or hold, which causes the host, which is -- the host is the computer
12 part that's sort of running what -- running the presentation as the leader
13 instructs you to. The host is going to suspend the script interpretation until
14 the next command is received from the leader designated next in route to
15 perform. You might want to do that if you're going to ask, you know, there's
16 a pause in the presentation because you're asking questions. And so, you
17 know, this is another section that sort of shows that same point is on slide
18 47.
19 Now, on the right, you'll see this -- you'll see the excerpt from
20 Ogdon at column 6, among other advantages. This enables dynamic control
21 of the pace of the presentation-by-presentation leader. Well, each client
22 node selects sufficient materials to obtain that pace. That's how we know
23 that Ogdon is about making a presentation, by a person because it says so

1 numerous times.
2 JUDGE DIRBA: But why is a presentation by a person
3 necessarily a slideshow?
4 MR. WILLIAMS: Well, okay, again, we're using the term
5 slideshow to describe this idea of a presentation with different segments.
6 That's all we mean by slideshow, so --
7 JUDGE DIRBA: But for example, even if -- let's assume that you
8 were not displaying the slides to us. Would you say that you were making a
9 presentation to us? I would.
10 MR. WILLIAMS: Yeah. Sure, sure. Yeah, I agree. And if you
11 were streaming my video along with the material that I'm showing you and it
12 was being shown to you in one cohesive thing and regardless of your
13 bandwidth, you were getting all that because I've divided this thing into
14 streamlets that are encoded at different rates and you can -- your client can
15 pick from them. Yeah. I mean, if those things are present, then yes, you
16 would be doing our invention. Yeah, it doesn't have to be Jaws. I mean, it
17 could very well be a video of me giving this presentation and maybe
18 someone, you know, will do that, but there's no magic to the slideshow.
19 Just the point is, what Ogdon is about is a person who is giving
20 you different visual pieces of information that are different. And maybe,
21 you know, if one of those visual pieces of information is itself a video, yeah,
22 that can be encoded at multiple rates, maybe. I mean, I think there's some
23 suggestions of that in various places of Ogdon, but that still doesn't get you

1 all the way to what the claims require, which would require multiple of these
2 same timelines that are giving you a cohesive single video broken up in that
3 way. Okay. Let me turn to a couple other missing features, if I might. Just
4 for --
5 JUDGE HUDALLA: Actually, I'd like a follow-up, Mr. Williams.
6 MR. WILLIAMS: Sure.
7 JUDGE HUDALLA: And I apologize. I know we've been taking
8 you off track the entire time here. I'd like to --
9 MR. WILLIAMS: That's why I'm here.
10 JUDGE HUDALLA: -- follow-up on one question. I do want to
11 mention that you've got about 15 minutes left --
12 MR. WILLIAMS: Okay.
13 JUDGE HUDALLA: -- and I do want to get to secondary
14 considerations and the motion to exclude.
15 MR. WILLIAMS: Okay.
16 JUDGE HUDALLA: But one last question from me. I'd like to
17 hear how you define streamlets, such that Ogdon's segments don't meet a
18 streamlet as a limitation. And I'm troubled because you seem to load into
19 the word streamlet quite a bit of meaning, and yet you haven't put forth a
20 claim construction for it.
21 MR. WILLIAMS: Yeah. I mean, I think the claims itself -- the
22 claims themselves define that term very clearly, as we just sort of talked
23 about. So there is the notion of a single video or presentation that's broken

1 up into these streamlets, so that -- so we know already form the claims that
2 the streamlets are part of this larger thing, whatever it is, the video or the
3 presentation. And then when you look at, you know, the -- I'm in slide 41, I
4 can put up again -- has further details of the streamlets that, you know, there
5 are a group of them. The group of them correspond to one quality level, so
6 those are the lines that go across from left to right, the horizontal lines. And
7 then within those groups, each of the ones that correspond to each other.
8 So for instance, the first ones, they all correspond to this same first
9 portion of the video or whatever the thing is that is the larger stream. So, I
10 mean, that's really it. Those are the features of what the streamlet are. I
11 don't think it requires any further construction. The plain meaning of the
12 claim gives you that.
13 JUDGE HUDALLA: Just -- so that -- I guess where it says first
14 and second streamlets, that's where you're kind of bringing me into the idea
15 of time alignment?
16 MR. WILLIAMS: Well, yeah. I mean, right, this is on slide 41.
17 You see here they encode the same first portion of a live event video and in
18 a few other places, we say, first temporal portion, for instance, '798 claim
19 says that. But yeah, that's what we mean. That's the portions we're talking
20 about is the time. This is broken up in time as you move across the
21 individual, you know, streamlet foundries.
22 JUDGE HUDALLA: Okay. Is there -- are there any other
23 different -- I mean, differences in your mind between the recited streamlets

1 and the segments of Ogdon?
2 MR. WILLIAMS: Yes. For one thing, there's no streamlet
3 requests, so let's turn to that in Ogdon, slide 53. So the point, again -- we'll
4 get to this in a minute when I talk about secondary projective indicia. The
5 reason this thing is so important -- the reason that having divided this up into
6 streamlets that are timelined is important because now the clients can
7 actually just decide which one they need as they're going along. I don't need
8 a sophisticated server to figure this out. I don't need state machines to know
9 what -- you know, what video the client is watching, where they are in the
10 video, if there's a change in network bandwidth.
11 The client can do all of that and they can do that by knowing
12 exactly what's available. I've got three different bit rates I can pick from
13 and, you know, for this next segment, it looks like I'm going to need to
14 change, so it can make that decision and change on its own. It's, you know,
15 the magic is in creating the streamlet structure that the clients can then use.
16 When we get to slide 53, you see this is the streamlet request
17 portion of the claims, which is in most of the asserted claims. It may not be
18 quite all of them, but this is -- it's a very important point, Ogdon has no
19 notion of this. Instead, Ogdon requests a collection of segments. Never an
20 individual piece of a video.
21 It never takes a portion of a video and asks for it. It only -- it takes
22 the notion of segments and, you know, that is an important -- a very
23 important distinction because otherwise -- on slide 56, you'll see that's how

1 the Petitioner has mapped Ogdon to the claims. It's, you know, there is a
2 stream corresponding this group of segments -- sorry -- a group of streamlets
3 which they, you know, assigned to the notion of segments. As you see on
4 slide 54 in Ogdon, you don't actually ask for -- the client doesn't actually ask
5 for any particular segment. What they ask for is a collection of segments, so
6 Ogdon is working in this notion of bulk transfer. He's concerning about
7 these bursty, you know, bursty transfers of information between the client
8 and server, and so he's going to lump things together into collections of
9 segments. That's what the client's asked for. That's nowhere in Ogdon.
10 Petitioner doesn't rely on Shteyn to solve this problem with any of
11 its grounds, so you know, Shteyn is just irrelevant to this point. So there's
12 nothing in Ogdon that actually teaches individual selection of these
13 streamlets. So that would be another thing that is missing. The other thing
14 that we would say is missing in Ogdon is the notion of live event video.
15 Again, there's nothing -- the only thing potentially live going on in Ogdon is
16 some presenter is making a presentation and I can stream you the audio, but
17 the video is not live. And in fact, the video are the slides that are all pre-
18 determined. So the person presenting the slide decides, you know, what
19 they're going to show.
20 Those things all get predefined, and they get preloaded into --
21 showing here on slide 58, you see some portions of Ogdon talking about
22 that, being predefined segments. And then 60 is where, you know,
23 Petitioner, at some point, seemed to realize, kind of acknowledge that in

1 Ogdon, what's going on is, you know -- each of these segments that they're
2 talking about. They call them video segments, which again, we have a
3 dispute about whether that's true, but whatever they are, you know, even
4 they admit that they were previously recorded. Okay. So there's no notion
5 of live video.
6 We also have arguments in the brief about virtual timeline. Those
7 are sort of summarized in the slides. I'm not going to go into them in great
8 detail, but there are various claims where there's a virtual timeline present
9 and in our view, Ogdon doesn't have that because what's required by these
10 claims -- at least when it's here on the screen -- is that the virtual timeline be
11 requested by the client. What the petition maps these to is a script, but is --
12 because we point out in Ogdon, the scripts are never sent to the client.
13 These are the only things that are executed at the host. This is a central
14 server that's kind of guiding the clients on what's available to them, but that
15 script never goes to the client. It's only happening at the host, okay? Let me
16 just see --
17 JUDGE DIRBA: Mr. Williams?
18 MR. WILLIAMS: Yeah.
19 JUDGE DIRBA: I'm going to ask you to circle back to the
20 question that Judge Hudalla was asking you earlier. So if I understand
21 correctly, you're not proposing any constructions of any terms in this case; is
22 that right?
23 MR. WILLIAMS: I'm not sure that's strictly true. I don't think

1 there's a construction that matters to the outcome, so I would agree with that.
2 I think we might've put in the construction of virtual timeline I didn't go
3 back to --
4 JUDGE DIRBA: I believe what you said was that a virtual
5 timeline includes a playlist, but --
6 MR. WILLIAMS: Yeah.
7 JUDGE DIRBA: -- it doesn't require any expressed construction --
8 MR. WILLIAMS: I believe that's right. Yes, yes.
9 JUDGE DIRBA: -- in the -043 IPR.
10 MR. WILLIAMS: Yes.
11 JUDGE DIRBA: But if I understand the answers to the question --
12 or your answers to Judge Hudalla's questions about streamlet, it's your
13 position that the claim or the -- I'd say the context of the claim or other
14 words in the claim -- require a streamlet to be a temporal piece of a stream;
15 is that correct?
16 MR. WILLIAMS: I think the plain meaning of the claim says that,
17 what you just said, yes. That's right.
18 JUDGE DIRBA: Okay. Did you propose a construction for
19 stream or streaming?
20 MR. WILLIAMS: I don't believe so.
21 JUDGE DIRBA: Okay, thank you.
22 MR. WILLIAMS: Okay. I'll turn to objective indicia, I guess. I
23 think this is the time for that. How much time do I have left? Sorry, Your

1 Honor. Didn't keep track.
2 JUDGE HUDALLA: You have about five minutes left, I think.
3 MR. WILLIAMS: All right, perfect. Okay. There is, as we point
4 out, an overwhelming amount of additional objective indicia here that
5 confirmed that these approaches that were touted by Ogdon and Allen.
6 Ogdon meaning, you know, change the content, don't try to preserve it.
7 Allen meaning, please don't try to encode at multiple bit rates. Those all
8 were abandoned once the ABR patents came on the market, where now, you
9 know -- we are going to -- now, we are going to try to preserve content and
10 we're going to do it in multiple bit rates. And so this idea, you know, was
11 immediately adopted by everybody and realized, you know -- everyone does
12 realize this is the groundbreaking way to do streaming.
13 Let's just start with a quick just overview of the history here
14 because it's -- I want to make sure it's clear. I think it comes through in the
15 briefs, but we have slide 80 up here just showing, so Move Network was
16 eventually acquired by DISH and became --
17 JUDGE HUDALLA: Mr. Williams?
18 MR. WILLIAMS: Yeah? Sorry.
19 JUDGE HUDALLA: You have limited time, so I think we're very
20 interested in the nexus argument, so --
21 MR. WILLIAMS: Yeah, yeah.
22 JUDGE HUDALLA: -- why don't we start with that and if we
23 have extra time at the end, maybe we can --

1 MR. WILLIAMS: Sure, sure, but yeah, just so you understand
2 how the -- why we're talking about Move, you know -- the Move patents
3 ultimately got acquired by Sling, and so Sling is using that technology today.
4 Move used the technology early on. As to the nexus point, you know, Sling
5 has been awarded an Emmy for this technology, so that's why this Emmy to
6 Sling becomes relevant. It's because this is the same exact technology and
7 same product that Move was moving. As to --
8 JUDGE HUDALLA: Doesn't the evidence say that that was for
9 work done in the previous few years, which was years after the patent?
10 MR. WILLIAMS: I mean, it was for work -- taking that
11 technology and moving it into Sling's product where you can now, using this
12 ABR technology, stream essentially just like you could, you know --
13 recreating essentially the cable TV linear experience. So that was what the
14 patent was for. Yeah, but I mean, it's based on -- I mean, there's no change
15 in the underlying -- well, you know, again, the key to this technology was
16 the Move technology. That's why Sling ultimately bought Move. It was to
17 acquire this technology so it can do this thing. The fact that it came later is
18 totally irrelevant. There's no been no showing that some product change
19 was made that led to the Emmy being awarded. That's --
20 JUDGE HUDALLA: Well, I think that's the issue here, though,
21 Mr. Williams. We'd like to talk about the nexus issue because --
22 MR. WILLIAMS: Yeah, yeah.
23 JUDGE HUDALLA: -- you're relying -- I guess is it true you're

1 only relying on a presumption of nexus; is that right?
2 MR. WILLIAMS: No. We have -- so Dr. Jeffay, in his
3 declaration, paragraph 170, you know, does the full mapping of the claims to
4 the Move product. He has a whole separate exhibit, Exhibit 2062, which is a
5 claim chart showing how the claims map directly onto the Move Player. So
6 we took the Move Player as it existed and mapped it right into the claim
7 showing this is how, you know, the claim reads right onto the product and
8 it's the product that everyone was talking about that's relevant.
9 JUDGE HUDALLA: Wait. Just a second, sir. I'm confused by
10 that because it says -- at least on the Patent Owner's response I'm looking
11 for, it says, DISH is entitled to a presumption of nexus.
12 MR. WILLIAMS: We are.
13 JUDGE HUDALLA: That to me sounds like you're relying on
14 presumption of nexus.
15 MR. WILLIAMS: Well, no. I mean, we are entitled to a
16 presumption nexus. It doesn't mean that I'm only relying on that. I think --
17 which is what I thought your question was. We also proved that there is a
18 nexus in our declaration, you know, paragraph -- again, paragraph 170 of
19 Exhibit 2006. I think it's the same everywhere, but I'm looking at the '043
20 declaration.
21 JUDGE HUDALLA: So could you point me in the Patent Owner's
22 response to the evidence of direct nexus? That's what I think I'm -- I'm
23 surprised to hear you say that because I thought you were only relying on

1 presumption of nexus, the way the brief is written.
2 MR. WILLIAMS: Sure. Let me just pull up the Patent Owner
3 Response. Give me a second. Okay. So I'm in -- I don't know which one
4 you have. I'm on the '043 patent Response. It's probably going to be very
5 similar. Page 53, there's a heading, A, the streaming products offered by
6 DISH embody the claimed invention.
7 JUDGE HUDALLA: Okay, I see that.
8 MR. WILLIAMS: Yeah. The first sentence, Move's
9 contemporaneous document show the Move Player practiced the challenge
10 claims. And then we have a whole bunch of cites, including Exhibit 2062.
11 So that's what I mean and, you know, we go on a little bit more, but I think
12 it's definitely in the patent response.
13 JUDGE HUDALLA: So the 2062 citation is what you're relying
14 on for your evidence of direct nexus there?
15 MR. WILLIAMS: Well, so what we're relying on directly is Dr.
16 Jeffay's declaration where he explains, you know, I've looked and I've made
17 this conclusion, 2062 is the claim chart that supports that analysis that we're
18 relying on. So --
19 JUDGE HUDALLA: Okay.
20 MR. WILLIAMS: -- I mean, that's certainly part of the evidence.
21 I don't want to say it's the exclusive evidence we're relying on.
22 JUDGE DIRBA: Mr. Williams, perhaps I'm not understanding
23 your answer. So that would be evidence in support of your contention that

1 you're entitled to a presumption of nexus. In other words, if the Move
2 product --
3 MR. WILLIAMS: Correct, yeah.
4 JUDGE DIRBA: -- were to claim -- or were the product -- were to
5 embodiment the claim, right?
6 MR. WILLIAMS: Correct.
7 JUDGE DIRBA: It is coextensive with them, et cetera, et cetera.
8 Then you would be entitled to a presumption of nexus. My colleague's
9 question is, let's assume that we disagree with you --
10 MR. WILLIAMS: Okay.
11 JUDGE DIRBA: -- on that because assuming that we find if
12 there's a critical unclaimed feature, for example, as Petitioners argued, then
13 where does that leave us?
14 MR. WILLIAMS: Yeah.
15 JUDGE DIRBA: Have you shown any of your evidence is the
16 direct result of unique characteristics of the claimed invention and to the
17 degree you think you have shown that, can you point us to that evidence?
18 MR. WILLIAMS: Yeah. So I mean, it's probably easier to just
19 address what has been proposed to the contrary of that by the Petitioner. So
20 they point to two things, as I understand it. One is an increase in bandwidth
21 that occurred just, you know, organically over time that is what actually led
22 to this product working.
23 JUDGE DIRBA: So let me stop you there --

1 MR. WILLIAMS: Yeah.
2 JUDGE DIRBA: -- because I do know that we have limited time.
3 From my perspective, I want to know what evidence you have to show
4 nexus.
5 MR. WILLIAMS: Yeah, yeah, yea
6 JUDGE DIRBA: (CROSSTALK) but it's your burden to show
7 nexus. I can read Petitioner's arguments in response to that. My question is,
8 what evidence do you have? So assuming that we find -- we disagree with
9 you on a presumption of nexus, have you shown nexus and what evidence --
10 MR. WILLIAMS: Yeah.
11 JUDGE DIRBA: -- do you have that shows that your evidence is -
12 - let's see -- that the evidence of secondary considerations is the direct result
13 of the unique characteristics of the claim they mention?
14 MR. WILLIAMS: Right. So okay, two -- right, two things. I
15 mean, the reason for the presumption is that I show you my product is, you
16 know, this product is successful and it achieved all sorts of awards and had
17 surprising results, and it embodied the patent. Now, I'm entitled to the
18 presumption and the reason for that is because otherwise, what am I going to
19 respond to? Am I going to invent the critical feature and then defeat it? I
20 can't. I need to respond to what the supposedly new critical feature is that
21 I'm not addressing.
22 That's why I want to do it in that context, but the only other
23 features that have been pointed to are his increase in bandwidth -- that's

1 refuted on slide 84 by the contemporaneous documents we were getting
2 from Level 3 who's a, you know -- a player -- this is a content delivery
3 network. They're working with all of the streaming players in the field at the
4 time and they tell us, hey, there's enough bandwidth, but no one else is doing
5 what you do. You know, what are you doing --
6 JUDGE DIRBA: Counsel?
7 MR. WILLIAMS: -- that's successful?
8 JUDGE DIRBA: Counsel, I apologize for interrupting you --
9 MR. WILLIAMS: Yeah.
10 JUDGE DIRBA: -- but this --
11 MR. WILLIAMS: Sure.
12 JUDGE DIRBA: -- isn't answering my question.
13 MR. WILLIAMS: Okay.
14 JUDGE DIRBA: My question is -- and let me try to restate it
15 because I don't believe that I did a very good job the first time. So you agree
16 with me that Patent Owner has the burden to establish nexus, correct?
17 MR. WILLIAMS: I agree with you, yes, that we have the burden
18 to show that we have a product that was successful, that was -- that
19 embodied the claim features and then were entitled to presumption of nexus.
20 JUDGE DIRBA: Okay. So let's say we disagree with you and let's
21 assume, for the sake of my question, the Board finds you are not entitled to a
22 presumption of nexus. Is there any other -- and we can discuss -- sort of get
23 into the nitty gritty of that determination and whether or not there's critical

1 unclaimed feature, et cetera, which I think might be what you're responding
2 to here. My question is different.
3 MR. WILLIAMS: Uh-huh.
4 JUDGE DIRBA: If we disagree with you on the presumption of
5 nexus, is there any other showing that you've made to show nexus? In other
6 words, if we disagree with you on nexus, have you -- or on presumption of
7 nexus, I'm sorry --
8 MR. WILLIAMS: Yeah.
9 JUDGE DIRBA: -- can you show nexus, and if so, what evidence
10 is that, point us to that, let's talk about that piece of it.
11 MR. WILLIAMS: Yeah. I mean, so we produce, you know, the
12 Move documents themselves that do talk about the presumption of nexus.
13 JUDGE DIRBA: Counsel, I just said (CROSSTALK) --
14 MR. WILLIAMS: I'm sorry. Not for the nexus, but the --
15 JUDGE DIRBA: -- find against you on the presumption of nexus
16 piece.
17 MR. WILLIAMS: Sorry. I didn't mean -- I did says -- yeah, sorry.
18 We have the Move documents themselves that show the claim they
19 mentioned is co-extensive with the player, right, I mean, that create this
20 notion of nexus. So let me --
21 JUDGE DIRBA: How is it co-extensiveness as it's -- because
22 you're again talking about the presumption of nexus, are you not? In other
23 words, the evidence -- let me ask this question differently. Does any of your

1 evidence say that the commercial success or the industry praise, et cetera, et
2 cetera, was due to unique features of the claimed invention? And if any of
3 your evidence says that --
4 MR. WILLIAMS: Yeah.
5 JUDGE DIRBA: -- if you'd point us to that.
6 MR. WILLIAMS: Sure. Okay, yeah. Yeah. Let me get them --
7 let me -- so I should be showing now what is Petitioner's slide 84. This is
8 the slide they're pointing to, to show no nexus, but it actually shows the
9 opposite of that. This is our document. This is the Move internal document
10 and what it says is the streamlet is the key, okay? So I think this is the best
11 answer I have to your answer.
12 What is the claim feature? The claim feature is the streamlet and
13 this is the document that tells you, hey, the streamlet is how we do this. This
14 is how we accomplish this thing. So by making -- by dividing this video up
15 into these streamlets in this way, we allow the user then to make the request
16 for the streamlet that they need at that particular time for their particular
17 circumstance.
18 And at the same time when you do that, you know, you can do
19 multiple of those at the same time. So now the client doesn't -- isn't stuck
20 asking for one at a time. It can say, okay, I'm going to need -- it looks like
21 I'm going to need the medium quality for a while, so I'm going to start
22 pulling the medium quality ones using multiple TCP connections. That's
23 this document they're pointing to about why TCP connections was the secret.

1 It's not that the TCP connections are the secret. It's that you have to have
2 divided this video up into streamlets in order to do that, and the document
3 itself says that.
4 The document says, other streaming solutions use a single
5 connection by requesting more than one streamlet at a time. With each
6 request, efficiency is raised. There was no way to do this before because
7 you didn't have the streamlet. This is the point, you know, and Move
8 internal documents make this clear.
9 JUDGE HUDALLA: Where is that in your briefing, sir?
10 MR. WILLIAMS: Well, again, I just pointed to you in the Patent
11 Owner Response to where we make this argument that it's co-extensive with
12 the challenged claims.
13 JUDGE HUDALLA: Okay. Well (CROSSTALK) --
14 MR. WILLIAMS: (CROSSTALK) to 50 --
15 JUDGE DIRBA: Yeah. Let me ask the question a different way.
16 MR. WILLIAMS: We're --
17 JUDGE DIRBA: If we disagree with you that it's co-extensive, it
18 sounds like that's the end of your secondary considerations argument; is that
19 correct?
20 MR. WILLIAMS: Well, if it's not co-extensive, then -- if the
21 success is based on something else, you know, we don't know what it is. I
22 mean, there's -- nothing has been pointed to. We're not aware of anything
23 else. It could be our documents show that the success, the secret, was the

1 streamlets. That was the invention. I mean, that is the invention. So I'm not
2 sure what other finding would be even possible. There really is nothing else
3 besides the streamlet and that's what our documents say. That's what our
4 expert has said when he did the analysis. The documents we're citing to, all
5 of these documents are talking about the Move product that had streamlets.
6 JUDGE DIRBA: Okay. So --
7 MR. WILLIAMS: And -- well, another thing we have --
8 JUDGE DIRBA: -- let me recap to make sure that I --
9 MR. WILLIAMS: Sure.
10 JUDGE DIRBA: -- understood your answer.
11 MR. WILLIAMS: Sure.
12 JUDGE DIRBA: It's your position that Patent Owner should have
13 an entitlement to presumption of nexus, right? And that will be something
14 that the Board addresses. And if we were to decide that the Move product is
15 not co-extensive with the claims, then your next position is that Petitioner
16 hasn't said -- hasn't proven to us why the Move product succeeded for some
17 different reason. In other words, you're saying, okay, if we drop into the
18 situation where there's no presumption of nexus, then really what the Board
19 should be doing is we should look at the Petitioner and say, hey, did the
20 Petitioner explain to us a different reason for why the Move product is
21 successful? Is that correct? Is that your position?
22 MR. WILLIAMS: I mean, I think it's part -- I think -- I mean, I
23 think that's the natural way this analysis is done, but I mean just to be clear,

1 you know, in the Patent Owner Response, we have this section on 53 to 54
2 that I just read part of into the record that explains how the products offered
3 by DISH embodied the claim invention. We cite numerous things, including
4 our expert declaration and other documents, including, you know, the
5 Exhibit 2011, which I have here on slide 86, which is, you know, the Move
6 document at the time that talks about, you know, how are we making this
7 work, what would, you know, our product is great, what is the key to it. The
8 first thing we say is it's the use of streamlets. The streamlets combined with
9 other concepts make this possible.
10 So you know, we think it's co-extensive. If the Patent Owner has
11 provided some alternative theory, you know, we respond to it. But I think
12 all of that is going to show, you know, where is this commercial success
13 coming from? It's coming from the streamlet. It's coming from the fact that
14 you've now taken this video, broken it up in this way so that now you can do
15 adaptive bit rate streaming.
16 JUDGE DIRBA: And your only evidence that the commercial
17 success is derived from the streamlets is that internal Move document that
18 you were talking about?
19 MR. WILLIAMS: No. I mean, I don't think that's necessarily true.
20 I mean, again, I just showed you documents from Level 3 talking about, you
21 know, it's obviously not the bandwidth. So they're telling us, you know --
22 that evidence is telling us things we know it's not. It’s not just natural
23 evolution of bandwidth because having more bandwidth wasn't helping

1 everyone else.
2 JUDGE DIRBA: Counsel, the question I keep trying to ask you is
3 what evidence do you have that it was the streamlets? Pointing me to
4 evidence that --
5 MR. WILLIAMS: Okay.
6 JUDGE DIRBA: -- says it's not the bandwidth is great, but that
7 doesn't answer my question. My question is, do you have any evidence of
8 commercial success or whatever that is directly tied to unique characteristics
9 of the claim in mention? For example, a streamlet. And I have not -- for
10 what it's worth, I have not seen you identify any such evidence.
11 MR. WILLIAMS: So other -- okay, so in terms of talking directly
12 about the streamlet itself, I don't know that I have any other --
13 JUDGE DIRBA: Or --
14 MR. WILLIAMS: -- evidence that mentions the streamlet besides
15 our own internal documents -- well, they were externally facing, as well,
16 right, talking about our product and why it was so good. But yes, I think it's
17 those documents and it's our expert's analysis are the two things I would
18 point to.
19 JUDGE DIRBA: Okay, thank you.
20 MR. WILLIAMS: Okay. Have I ran out of time? I'm just not sure
21 where I am now.
22 JUDGE HUDALLA: Yeah, I think, but we'll give you a little extra
23 time here. I --

1 MR. WILLIAMS: Okay.
2 JUDGE HUDALLA: -- think we've pretty much covered the field
3 on secondary considerations.
4 MR. WILLIAMS: Yeah, yeah, yeah.
5 JUDGE HUDALLA: I do want you to address a little bit about the
6 motion to exclude and I will start the conversation by asking you about the
7 supplemental evidence at Exhibits 2090 and 2092. Now, you heard me ask
8 Petitioner's Counsel in the first part of the hearing about that and as I
9 understand it, the Ericson declaration at Exhibit 2090 was supplemental
10 evidence responding to an objection for I think it was Exhibit 2063. Now,
11 am I right about that?
12 MR. WILLIAMS: I'm trying to remember the exhibit numbers
13 you're saying, but you're talking about -- I mean, the sequence was we had
14 some testimony from the ITC from Ericson, Mr. Ericson. That was objected
15 to, so we served a declaration in response to supplemental evidence. He was
16 deposed and so there's a cross-examination transcript that was made of that
17 deposition based on that declaration.
18 JUDGE HUDALLA: Okay. And then ultimately, Petitioner did
19 not move to exclude the ITC transcript from Ericson, is that right?
20 MR. WILLIAMS: Correct.
21 JUDGE HUDALLA: Okay. So with that background, why do you
22 think it is allowable for you to file Exhibits 2090 and 2092 into the case?
23 And then I think you've cited them in some instances, as well.

1 MR. WILLIAMS: Yeah. Can you just remind me which is which
2 because it sounds like maybe you have them open and I don't remember
3 which one 2090 is or is it --
4 JUDGE HUDALLA: Okay.
5 MR. WILLIAMS: -- 2092?
6 JUDGE HUDALLA: So basically, 2090 is the supplemental
7 evidence that's in --
8 MR. WILLIAMS: Okay.
9 JUDGE HUDALLA: -- the Ericson declaration and 2092 is the
10 Ericson transcript. And my point is --
11 MR. WILLIAMS: Yeah.
12 JUDGE HUDALLA: -- I'm wondering what basis do you think
13 you can bring that information into the case given that the --
14 MR. WILLIAMS: Right.
15 JUDGE HUDALLA: -- objection was not matured into a motion
16 to exclude?
17 MR. WILLIAMS: Yeah. So let me just start with the declaration
18 itself of Ericson. So that was fair of the supplemental evidence in response
19 to the objections we got, which included an objection about authenticity of
20 some of the emails and so that document, I think, supports the authenticity of
21 those emails, as well, the declaration. So that's why that -- that would be one
22 reason why we think that is appropriate to be filed in response to the motion
23 to exclude those emails.

1 The cross-examination testimony went into more detail about that
2 and, you know, I'll concede it's a little bit ambiguous what the Board's rules
3 mean here and whether the cross-examination should also be considered
4 supplemental evidence since it was taken in response to the service of the
5 supplemental evidence. Otherwise, the deposition wouldn't have been
6 appropriate at all because he wouldn't -- which was, I think, the point of the
7 objection originally is that, you know, it wasn't clear if they could depose
8 Mr. Ericson or not based on the document we actually submitted, which is
9 why they got a declaration and it led to their deposition of him. But having
10 done that, having taken his deposition, you know, it did elucidate some
11 additional information than he provided in his declaration, so we felt the
12 Board should have the complete record.
13 I mean, if you conclude that it's not admissible, you know, that's
14 fine. I don't think we have a strong disagreement about that, but we thought
15 it was important to get the complete record in front of the Board while they
16 considered these issues of admissibility.
17 JUDGE HUDALLA: Okay. Well, just to be clear, I mean, you
18 know, this isn't a matter of whether we think it's great evidence or not. It's a
19 matter of, you know, our objection process, our motion to exclude process,
20 is meant to winnow down the issues, and in this case, the issue went away,
21 so that's why I'm asking you these questions. I want to be sure about that the
22 --
23 MR. WILLIAMS: Well, yeah. And some of the issue went away.

1 Yeah, I mean, the issue about his testimony went away. I agree with that,
2 but there's still these pending issues in the motion to exclude based on the
3 authenticity of the emails that he's familiar with.
4 JUDGE HUDALLA: Okay. So on that point, where in the record
5 can we see that this Ericson declaration, Exhibit 2090, was served as
6 supplemental evidence in response to the objections to the emails because
7 I'm not aware of that in the record.
8 MR. WILLIAMS: That's a fair point. I mean, I don't know. That
9 might not be in the record. It would've been an email exchange with
10 Counsels, Your Honor.
11 JUDGE HUDALLA: Okay. So why don't we -- we'll ask
12 Petitioner's Counsel about that on rebuttal here, but please be prepared on
13 surrebuttal to address that, as well.
14 MR. WILLIAMS: Okay. Yeah, I'll see if we can track that down.
15 I'll do my best.
16 JUDGE HUDALLA: Okay. And I do have one last question
17 about the motion to exclude. The 2006 Emmy issue --
18 MR. WILLIAMS: Um-hum.
19 JUDGE HUDALLA: -- that was never cited in the Patent Owner
20 response. You never mentioned the 2006 Emmy?
21 MR. WILLIAMS: I believe that's correct. I mean --
22 JUDGE HUDALLA: Okay.
23 MR. WILLIAMS: -- we absolutely do mention an Emmy, but I

1 think you're right. It's -- the one we talk about at that point is not the 2006
2 Emmy.
3 JUDGE HUDALLA: Okay. And so I guess I'm struggling to see
4 the reason why you think it's allowable in a sur-reply to bring in new
5 evidence of a --
6 MR. WILLIAMS: Oh.
7 JUDGE HUDALLA: -- different Emmy?
8 MR. WILLIAMS: Yeah. That -- yeah, I mean, I think largely, it
9 was to impeach Dr. Houh, who had asserted the Emmy had nothing to do
10 with, you know, Move or the accused product.
11 JUDGE HUDALLA: Okay.
12 MR. WILLIAMS: That's how that came up in -- I mean, you
13 know, it came up in response to an argument that was made by Petitioner
14 and their reply and their expert, so that's how we got there.
15 JUDGE HUDALLA: Okay. I'm not sure I agree with that
16 characterization, but we at least know your position, so --
17 MR. WILLIAMS: Okay.
18 JUDGE HUDALLA: -- I appreciate that. And I don't know --
19 MR. WILLIAMS: Let me just make one more point. I'm sorry.
20 There was a question about the ITC record, and we can talk about it more,
21 but I just wanted to be clear. I think the intent here was to make sure you
22 had -- and you can see the public version of the ITC decision, all the exhibits
23 that are talked about there are in this record and you can match them up

1 because we kept the original exhibit numbers from the ITC on those
2 documents. I just wanted to make that point before I was done.
3 JUDGE HUDALLA: Okay. And I don't know if my fellow panel
4 members have any other questions?
5 JUDGE DIRBA: I do have one question. So Mr. Williams, are
6 you representing to us that we have the same record as the ITC did?
7 MR. WILLIAMS: Well, the record as to secondary
8 considerations; is that what you're asking?
9 JUDGE DIRBA: As to secondary considerations.
10 MR. WILLIAMS: There would have been -- I think the answer is
11 no, solely because there was one other declarant in the ITC that is not a
12 declarant here, who was a Move witness, but again, I don't -- the
13 commission's decision didn't rely on that testimony in the decision, in the
14 determination.
15 JUDGE DIRBA: Okay.
16 MR. WILLIAMS: But everything else is the same.
17 JUDGE HUDALLA: Okay, thank you. So with that, we'll give
18 you a very brief sur-rebuttal at the end, Mr. Williams, because we've gone
19 well past your time. Why don't we go ahead then and turn to Mr. Gasparo?
20 I think I had you at 17 minutes.
21 MR. GASPARO: Thank you, Your Honors. So I believe you're
22 going to have some follow-up -- at least one follow-up question from Mr.
23 Paquette. I have no substantive rebuttal. I did want to I think answer a

1 question that you may have had about where in the record we have a
2 particular position. I think there was a question of where do we have
3 support for Petitioner's position that Ogdon teaches the same video encoded
4 into different qualities and I just wanted to direct Your Honors to the
5 Petition, pages 22 to 25, and Dr. Houh's declaration at Exhibit 1003,
6 paragraph 65. So I am -- oh, did I forget one?
7 MR. PAQUETTE: It's the '138.
8 MR. GASPARO: I'm sorry?
9 MR. PAQUETTE: It's the '138.
10 MR. GASPARO: Oh, that's -- I'm sorry. That's for the '138 patent
11 and petition, so -- but as an example where Dr. Houh says that. So I --
12 again, I have no substantive rebuttal. Unless Your Honors have any
13 substantive questions for me, I was going to turn it over to Mr. Paquette.
14 JUDGE HUDALLA: That would be fine. Thank you.
15 MR. GASPARO: Thank you, Your Honors.
16 MR. PAQUETTE: Hello, Your Honors. Just to follow-up on the
17 secondary considerations point you raised, regarding the criticality of HTTP
18 and ordinary web servers, and not using expensive special media servers, if
19 you look at, for example, the '138 Patent Owner Response at 42, there's a
20 quote there that says, quote, "The benefit of this functionality allows for the
21 use of standard web servers, not expensive media servers." And at Page 61
22 of the POR, '138 POR, for example, it says Move was a, quote, "Leader in
23 HTTP based streaming."

1 Additional examples we have, Petitioner's expert, Dr. Jeffay, in
2 Exhibit 2006 of his '138 Patent declaration said that he was, quote,
3 "Impressed," particularly by the use of HTTP in the patents. Also, we have
4 testimony from DISH's inventor, Mr. Major, at page 145, lines 13 to 20,
5 where he describes the use of ordinary web servers as a core feature. And if
6 Your Honors may have questions about the email issue, but just to answer
7 what I think the question might be is we did not understand Patent Owner to
8 be serving that supplemental evidence in response to the email issue because
9 Mr. Ericson is not a party to any of the emails that we move to exclude, so I
10 don't understand how he would have personal knowledge of these emails.
11 JUDGE DIRBA: Was there any discussion during his deposition
12 transcript of any of those emails?
13 MR. PAQUETTE: I do not recall offhand. I don't -- I understood
14 the purpose of the declaration and deposition was to be based on his
15 testimony he gave with the ITC, which we ultimately did not move to
16 exclude, so the point is, essentially, all the supplemental evidence is moot.
17 JUDGE HUDALLA: Maybe afterward, we -- after we talk, we
18 might actually ask the parties to potentially put into the record the
19 correspondence that went along with the supplemental evidence. That might
20 help us to discern what that was actually addressing, but we'll talk about that
21 afterward and let you know.
22 MR. PAQUETTE: Sounds good. Thanks, Your Honor. I think
23 this concludes our remarks for Petitioner.

1 JUDGE HUDALLA: Okay. Thank you, Mr. Paquette. We will
2 turn back to you, Mr. Williams. Why don't we try to keep it fairly short
3 since we blew through all of your time? But you have some time for sur-
4 rebuttal.
5 MR. WILLIAMS: Okay. Thank you. Can you hear me okay,
6 Your Honor?
7 JUDGE HUDALLA: Yes.
8 MR. WILLIAMS: Okay. Just making sure I wasn't muted
9 somehow. Okay. I don't have much to cover, so it should be short, but I
10 mean, just going back to the secondary -- or the objective indicia evidence.
11 You know, the declaration testimony that we rely on there at pages 52 and
12 53 of Dr. Jeffay do, you know, go into, I think, a great detail about the
13 objective indicia evidence that he has to support nexus. There are numerous
14 documents. I mean, if you look in his declaration -- let's see, we have it here
15 and I can share it. I think it would be helpful. Okay.
16 Yeah, this -- so for instance in paragraph 192, I'm showing Dr.
17 Jeffay's declaration, he goes through and analyzes the nexus evidence
18 available, including, you know, the -- what was called in these exhibits the
19 trick, which is delivering videos as a standard web object in small bits. I
20 mean, this is the streamlet we're talking about. This is the key to the
21 invention is breaking up the whole movie into these timeline portions. So I
22 do think there actually is some other, you know, evidence just besides our
23 own expert's analysis and it was contemporaneous. It did specifically tie the

1 feature, you know, streamlets here to the success and, you know, the
2 notoriety of this technology.
3 Again, I think the question we got sort of hung up about a little bit
4 at column 2 of Ogdon, talking about providing video and audio portions,
5 again, doesn't -- never says that the video portions are streamed via the
6 internet. It just says the slides include portions having video and the clients
7 can download those slides, but again, keep in mind the way Ogdon works is
8 the human presenter, you know, would be deciding which of these videos
9 got displayed, how it's not streaming since those things could be skipped and
10 rearranged, as we talked about.
11 There's, you know, infinite flexibility in Ogdon and there's no
12 suggestion that you would necessarily play these forward in the way the
13 claims require. Other than that, I mean, my, you know, the punchline, I
14 think, of the presentation today for us is that Ogdon has a completely
15 different way of conveying content than what the claimed inventions are
16 trying to cover. It teaches you to stop trying to stream video. Instead, to do
17 this replacement technique.
18 It never gets you to the idea and the combination that Patent Owner
19 is -- sorry, the Petitioner is proposing to get there, would require you to use a
20 technique from Allen, that Allen -- in exactly the way Allen tells you not to
21 use it, teaching away from the claim mentioned. I think that coupled with
22 the other missing features I talked about, you know, there's no streamlet
23 request, there really is no live video, the virtual timelines are missing,

1 coupled with the objective -- strong objective evidence that, you know, once
2 this market -- once this product was available to the market, almost
3 everybody in the industry began copying it because everyone realized this is
4 the way to do streaming, just shows that what, you know, might have
5 appeared to be obvious was clearly not and instead, it's hindsight.
6 So in view of that, we don't think Petitioner has carried its burden
7 of showing the challenged claims are unpatentable. So unless the Board had
8 any questions about anything else -- I mean, I heard your comment about the
9 correspondents on the motion to exclude, Your Honor, and, you know, we'll
10 look forward to any order you have. I couldn't find it in the short time I had
11 between my presentations here.
12 JUDGE HUDALLA: Okay. Well, thank you. This concludes the
13 hearing. We appreciate Counsel's presentations today. That helped -- that
14 was helpful for us. The case is now submitted and we are adjourned. I do
15 ask, though, that Counsel say on the line, please, to see if our Court Reporter
16 has any questions for you. But as I said, we are adjourned. Thank you.
17 (Whereupon, the above-entitled matter went off the record at 12:15
18 p.m.)

IPR2024-00043 (Patent 11,677,798 B2)
IPR2024-00044 (Patent 11,470,138 B2)
IPR2024-00045 (Patent 10,469,554 B2)
IPR2024-00046 (Patent 10,951,680 B2)
IPR2024-00146 (Patent 10,469,555 B2)

PETITIONER SIDE - IPR2024-00043 (original)

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IPR2024-00046 (Patent 10,951,680 B2)
IPR2024-00146 (Patent 10,469,555 B2)

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