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Paper 22
Date: August 30, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AYLO FREESITES LTD and fuboTV MEDIA INC.,
Petitioner,

v.

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

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IPR2024-00043[1] (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]

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

HUDALLA, *Administrative Patent Judge*.

SUMMARY OF CONFERENCE CALL
Conduct of the Proceeding
*35 U.S.C. § 42.5*

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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] This paper will be entered in each case. The parties are not authorized to use this caption style for subsequent papers.

## I. BACKGROUND

A conference call in the above proceedings was held on August 29, 2024, among respective counsel for Petitioner and Patent Owner, and Judges Dang, Hudalla, and Dirba. Frank Gasparo, Ian Paquette, and Philip Sheng were present for Petitioner Aylo Freesites Ltd, and Inge Osman was present for Petitioner fuboTV Media Inc. Eliot Williams and Ali Dhanani were present for Patent Owner DISH Technologies L.L.C. The purpose of the call was to discuss (1) Petitioner's request for authorization to file motions for additional discovery; and (2) Patent Owner's recent motions to seal various exhibits related to its Patent Owner Responses.

## II. DISCUSSION

During the call, Petitioner sought authorization to file motions for additional discovery related to certain testimony and witness statements that some of Patent Owner's declarants (Dr. Kevin Jeffay, R. Drew Major, and David Ericson) had given in the related ITC Investigation. Petitioner specified the particular ITC investigation exhibits it was seeking: Dr. Jeffay (RX-0736C, RX-0738C, CX-0008C), Mr. Major (RX-0714C, RX-0715C, CX-0001C), and Mr. Ericson (EX-1171C). We expressed our view that Petitioner would likely be successful in meeting the "interests of justice" standard for additional discovery under 37 C.F.R. § 42.51(b)(2)(i) and the factors set forth in *Garmin International, Inc. v. Cuozzo Speed Technologies LLC*, IPR2012-00001, Paper 26 (PTAB Mar. 5, 2013) (precedential), given that Patent Owner is relying on the testimony of these declarants in a manner

similar to their testimony in the ITC (e.g., to support Patent Owner's arguments regarding secondary considerations of nonobviousness). Patent Owner agreed to perform a reasonable search for the enumerated ITC exhibits, though Patent Owner noted that some exhibits may have been destroyed at the end of the ITC Investigation under the terms of the ITC Protective Order. Patent Owner also noted that the ITC Protective Order may complicate production in these proceedings. Patent Owner will attempt to serve the requested ITC exhibits upon Petitioner subject to these concerns. The parties will provide a consolidated status email to the Board in one week updating us on the status of production.

The panel also discussed the status of Patent Owner's recent motion to seal (Paper 19), to which Petitioner has filed an opposition (Paper 23).[3] In order to resolve some of the issues presented in the motion, Patent Owner agreed to file a redacted, public version, within one week, of the Declaration of Dr. Kevin Jeffay in Support of the Patent Owner Response (Ex. 2006). Patent Owner also agreed to file a public version of the Move Networks document titled "The Next Generation Video Publishing System" (Ex. 2059) within a week, and will withdraw its motion to seal this document. Patent Owner additionally agreed to file a redacted, public version of Exhibit 2031 (an email that is quoted at page 57 of the Patent Owner Response). Patent Owner intends to file a reply in support of its motion to seal, and agreed to do so by an earlier deadline of September 9, 2024. In the reply brief, Patent

[3] References are made to IPR2024-00043. Similar papers and exhibits have been filed in the other proceedings.

IPR2024-00043 (Patent 11,677,798 B2)
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IPR2024-00146 (Patent 10,469,555 B2)

Owner intends to provide more detailed explanations about the above-mentioned developments regarding its designation of confidential information.

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