

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DISNEY MEDIA & ENTERTAINMENT
DISTRIBUTION LLC,
Petitioner,

v.

DIGITAL MEDIA TECHNOLOGY HOLDINGS, LLC,
Patent Owner.

IPR2024-00736
Patent 7,574,725 B2

Record of Oral Hearing
Held: July 9, 2025

Before: JAMESON LEE, SHEILA F. MCSHANE, and
LISA A. MURRAY, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

BENJAMIN HABER, ESQUIRE
O'MELVENY & MYERS LLP
400 South Hope Street
Suite 1900
Los Angeles, CA 90071
(213) 430-8212
bhaber@omm.com

PATRIC REINBOLD, ESQUIRE
preinbold@omm.com

ON BEHALF OF THE PATENT OWNER:

ANTHONY H. HANDAL, ESQUIRE
Handal & Morofsky, LLC
420 Lexington Avenue
New York, NY 10170
(917) 880-0811
handal@handalglobal.com

MONAMI ROY, ESQUIRE
mroy@handalglobal.com

The above-entitled matter came on for hearing on July 9, 2025,
commencing at 1:00 p.m., via video teleconference.

P R O C E E D I N G S

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JUDGE MURRAY: We will hear argument now in case number IPR2024-00736, Disney Media & Entertainment Distribution, LLC v. Digital Media Technology Holdings, LLC, concerning U.S. Patent Number 7,574,725. I am Judge Lisa Murray presiding over this hearing from hearing room A in our Alexandria, Virginia headquarters. With me is my colleague, Judge Jameson Lee, and appearing by video link today is my colleague, Judge Sheila McShane. Would Counsel for the parties please introduce yourselves, starting with Petitioner?

MR. HABER: Good morning, Your Honors. Benjamin Haber for Petitioner, Disney Media & Entertainment Distribution. With me on the line is my colleague, Patric Reinbold. I also have some representatives from the client on the public line, as well.

JUDGE MURRAY: Thank you. And Patent Owner? Is Counsel for Patent Owner on the line? I think you're muted, sir.

MR. HANDAL: Oh, okay. My name is Tony Handal. I'm Counsel for the Patent Owner. I have with me my partner, Monami Roy, and we have a client representative also present.

JUDGE MURRAY: Thank you and welcome to the Board. I have a few housekeeping matters before we begin. First, because this is a virtual hearing, I'm going to ask each of you when you begin to speak to identify yourself clearly. Also, if you use any demonstratives, please mention each slide number as you refer to it so that it is reflected in the record. This is especially important in order to ensure that all of us, but especially Judge

1 McShane, can follow the proceeding, even if the video link is interrupted.

2 Next, is there going to be any confidential information disclosed at
3 the hearing today? Petitioner, will you have any?

4 MR. HABER: No, Your Honors.

5 JUDGE MURRAY: And Patent Owner?

6 MR. HANDAL: No, Your Honor.

7 JUDGE MURRAY: Okay. As you proceed, please remember that
8 this hearing is open to the public and a full transcript of it will become part
9 of the record. As you've both noted, there's a public audio line available for
10 this hearing, so if at any point you begin to veer into confidential
11 information, let me know first so that I can shut down the public line.

12 Finally, in our order dated June 4, 2025, each side was granted 45
13 minutes to argue. I understand, however, that the Petitioner has submitted a
14 LEAP request for this hearing and that that request has been granted.
15 Accordingly, the Petitioner will have up to 15 additional minutes to present
16 its argument for a total of 60 minutes. The Petitioner will argue first and
17 may reserve rebuttal time. The Patent Owner will have a total of 45 minutes
18 to argue and may request to reserve some of that time for a brief surrebuttal.
19 Petitioner's Counsel, how would you like to divide your time? Do you want
20 to reserve time for rebuttal?

21 MR. HABER: Yes, Your Honors. I'd like to reserve 20 minutes
22 for rebuttal, please.

23 JUDGE MURRAY: And will Mr. Reinbold be speaking first or
24 during rebuttal or at what point?

25 MR. HABER: So in our opening presentation, I'll be speaking first

1 and Mr. Reinbold will be speaking at the end of our opening presentation,
2 and then if there are any rebuttal points he needs to make, he'll also speak
3 during rebuttal.

4 JUDGE MURRAY: Understood. Thank you. And Mr. Handal,
5 do you want to reserve time for surrebuttal now or would you prefer to
6 decide after hearing the Petitioner's argument?

7 MR. HANDAL: I will decide after hearing the Petitioner's
8 argument and I may choose to go a little bit into my rebuttal time to cover
9 the points I want to cover on direct, so I would appreciate flexibility from
10 the Court in that respect.

11 JUDGE MURRAY: Okay.

12 MR. HANDAL: And by way of apology, I'm losing my voice, so
13 you'll see me going for some tea and periodically, my mom's Appalachian
14 antibiotic, also known as buckwheat honey. It seems to be keeping me
15 above water at this point, but we thank you for the indulgence. So if you see
16 me doing something, that's what's going on.

17 JUDGE MURRAY: Understood. Please bear in mind that you
18 have a total of 45 minutes today, so whatever you don't use in your initial
19 argument will be available for surrebuttal.

20 MR. HANDAL: Thank you, Your Honor.

21 JUDGE MURRAY: As you all know, IPRs are contested
22 proceedings and rely on your advocacy. The Petitioner bears the burden of
23 proving any proposition of unpatentability by a preponderance of the
24 evidence. Our role as judges is to assess your arguments in evidence and to
25 weigh them accordingly. We have read through the record for this

1 proceeding, and we are prepared to receive your oral argument.

2 Bear in mind, if you see us looking off to the side today, that's
3 because that's where you are on video in this room. It's not that we're staring
4 into space. We are listening attentively. With that, I will set the timer, and I
5 invite Petitioner's Counsel to begin.

6 MR. HABER: Thank you, Your Honor. I do have some
7 demonstratives, so let me just share my screen and confirm that everyone
8 can see the same screen. All right. Can you see my demonstrative screen?

9 JUDGE MURRAY: Yes, we do. Thank you.

10 MR. HABER: Okay, thank you. If I may proceed?

11 JUDGE MURRAY: Please do.

12 MR. HABER: Thank you. Benjamin Haber for Petitioner, Disney
13 Media & Entertainment Distribution. I'm going to be talking about the '725
14 patent today, which you'll hear during my presentation generally, Patent
15 Owner's arguments tend to mischaracterize the claims and the prior art, and
16 fundamentally, can't distinguish the claims from the prior art at issue in this
17 proceeding.

18 So I have on Slide 2 just a brief overview of what I'm going to be
19 talking about today. You'll find an overview of the alleged invention in the
20 prior art. I'll address a couple claim construction issues that the Patent
21 Owner has raised, and then there are two prior art grounds. My colleague,
22 Patric Reinbold, is our LEAP Practitioner today. He's going to address
23 secondary considerations and the motion to exclude.

24 So first, the alleged invention, as you can see on Slide 4, the '725
25 patent is directed to a system for marketing and distributing multimedia

1 content. The field of invention, as described by the patent, relates to the
2 marketing and distribution of multimedia material over a computer network
3 to exhibitors and broadcasters, and you can see the high-level structure of
4 the invention and number of the figures of the patents. On Slide 5, we have
5 Figure 1 of the patent on the right-hand side. On the left-hand side, we have
6 Claim 1. Claim 1 is a fairly long claim, so it is actually split between Claims
7 5 -- or Slides 5 and 6.

8 So in Figure 1, you have a multimedia producer, which produces
9 multimedia and distributes it to a central server. The central server is in
10 communication with various exhibitor purchasers of that multimedia content
11 through a communication network. In Figure 1, it is highlighted in green
12 there as cyberspace.

13 And so on Slide 6 in Figure 9, we have a little bit more details of
14 some of the structure. We have the server on the left colored in yellow and
15 the exhibitor on the right colored in blue and they are connected over this
16 cyberspace communications network. There's computer readable storage
17 media that stores the multimedia content on the server and then there's
18 another server on the exhibitor site that downloads and stores that
19 multimedia content and associated advertisements for presentation to an end
20 user.

21 So next, I want to just talk briefly about the prior art references that
22 we're going to be talking about today. So on Slide 8, we have the grounds
23 on which IPR has been instituted. There are four grounds. The first two
24 grounds rely on a reference referred to as Garfinkle as the primary reference,
25 combined with secondary reference, Kosten. The second two grounds rely

1 on Allen as the primary reference, also relying on secondary reference,
2 Kosten, and another reference, Budow.

3 JUDGE LEE: Mr. Haber --

4 MR. HABER: Yes.

5 JUDGE LEE: -- it's Judge Lee. Since you have Slide -- can you
6 go to Slide 9?

7 MR. HABER: Sure.

8 JUDGE LEE: My question is what is the meaning of exhibit --
9 even if we agree with you that it's not limited to showing in a public theater
10 like Patent Owner contends, so you still have the burden to show us that the
11 art shows the active exhibiting, right?

12 MR. HABER: Yes, that is correct.

13 JUDGE LEE: So but you haven't construed the term exhibiting.
14 From what I understand, it seems like based on your position, if I watch a
15 movie at home, then I have performed the activity of exhibiting and I'm an
16 exhibitor; is that right?

17 MR. HABER: So I think the exhibitor is the entity that does the
18 exhibiting and so that exhibitor provides multimedia content and the
19 exhibiting, as described in the claims, is showing that multimedia content.
20 And so there are various dependent claims that have extra limitations on the
21 type of that showing, whether it's public or whether it's in a movie theater,
22 but in Claim 1, just the term exhibiting, that broad term exhibiting, I think
23 the plain and ordinary meaning of exhibiting is showing, and so the exhibitor
24 shows the video content and the exhibiting that is required is showing that
25 video content to a viewer.

1 JUDGE LEE: So the short answer is yes, right? That's what I
2 understand from your briefs and your positions take a broad view. Any time
3 I -- such as that Slide 9, there's a video display in Figure 1 of Garfinkle.

4 MR. HABER: Yes.

5 JUDGE LEE: The purchaser has a video display, so Garfinkle's
6 purchaser purchases a video on demand --

7 MR. HABER: Yep.

8 JUDGE LEE: -- and plays it on the purchaser's video display 26.
9 So when he does that, then he has performed the act of exhibiting, and he is
10 effectively an exhibitor then --

11 MR. HABER: I don't know --

12 JUDGE LEE: -- according to your position?

13 MR. HABER: -- that's exactly -- yeah, I don't think that's exactly
14 right. The viewer isn't the exhibitor. The user site 18, the controller of that
15 user site 18, that is providing the multimedia for display on 26 is the
16 exhibitor and the exhibiting happens when the user views the content, but
17 the exhibit is actually the -- it's not the viewer of the content. It's the
18 provider of that content.

19 JUDGE LEE: Isn't the -- the video display is not at the user site?

20 MR. HABER: The video display is at the user site.

21 JUDGE LEE: So --

22 MR. HABER: In Garfinkle. In Garfinkle, the video display is at
23 the user site.

24 JUDGE LEE: So the user is the one that plays the video, right?

25 MR. HABER: That's correct. The --

1 JUDGE LEE: In Garfinkle?

2 MR. HABER: -- user is the one that presses play, for example, but
3 the -- it's the --

4 JUDGE LEE: Right.

5 MR. HABER: It's the --

6 JUDGE LEE: So --

7 MR. HABER: By Garfinkle --

8 JUDGE LEE: So isn't that the -- isn't the purchaser also the
9 exhibitor then?

10 MR. HABER: I suppose you could think of it that way, that the
11 purchaser is exhibiting the content to themselves when he presses play, but
12 the way that I think we understand Garfinkle, that the entity that is kind of in
13 control of the user sites is the exhibitor. And it may be the case that --

14 JUDGE LEE: Oh, I see, but if I'm playing for myself, then I'm
15 simultaneously the exhibitor and the viewer?

16 MR. HABER: I think that could be true, certainly.

17 JUDGE LEE: Okay, so --

18 MR. HABER: But for --

19 JUDGE LEE: So that is your position, but why should we be
20 persuaded by it? That seems to be an extremely broad reading of the word
21 exhibiting. I mean, I don't normally refer to myself as I'm exhibiting a film
22 when I watch a movie at home.

23 MR. HABER: Yeah. So the situation I have in mind is I have a
24 streaming service at my house, I have Netflix, and I sit at my house and I
25 press play on it and I watch it, but Netflix is actually the exhibitor because

1 they're the one that is providing the content to me. And so when we look at
2 Garfinkle, that's kind of the situation that we have in mind. There is a video
3 display that's being displayed to the user, but the provider of that content is
4 actually the one that is, in our view, the exhibitor of Garfinkle.

5 JUDGE LEE: Well, okay. I shouldn't refer to myself, but let's just
6 look at Garfinkle. The user site is at the user's place, so why should we
7 understand the word "exhibiting" as any kind of a viewing that is called the
8 act of exhibiting?

9 MR. HABER: Well, so I think the plain and ordinary meaning of
10 the term exhibiting -- when I read that term, it's showing -- the exhibitor is
11 the one that is exhibiting, so they are doing something, they are showing the
12 video, and I think just in Claim 1, there's no particular limits on whether
13 that's a public showing or a private showing, for example. And so I think
14 Claim 1 uses the term exhibiting very broadly. There are more limited
15 dependent claims, like Claim 5, that talk about a specific type of exhibition
16 at a movie theater, but Claim 1 --

17 JUDGE LEE: What's the difference between this term here and
18 what we normally hear as an exhibition at a museum or a -- normally, the
19 plain and ordinary meaning of an exhibition is something that lasts for a set
20 period of time. It's not like on demand just once. It's available for a certain
21 period, right? An exhibition. So I don't know how to make the connection.
22 How do I get persuaded that the word exhibitor and exhibiting, it doesn't
23 relate to the ordinary understanding of an exhibition?

24 MR. HABER: So if the ordinary understanding of an exhibition is
25 some limited time playing, I think that that could be a fair reading. The

1 point is that Garfinkle alone is not being used to really meet all of the claim
2 elements. The actual exhibition step that we point to in the combination of
3 Garfinkle and Allen occurs -- or I'm sorry -- Garfinkle and Kosten, occurs
4 with Kosten. And Kosten, in the next slide, I think plainly has an exhibition,
5 and so the combination is the combination of Garfinkle, it's kind of
6 infrastructure with Kosten. And the exhibition in a theater in Kosten is what
7 satisfies the claim language of --

8 JUDGE LEE: Yeah. I understand that perfectly. I understand
9 that. I have no problem with Kosten. There is an exhibition. The movie
10 theater shows a movie for three weeks. There is an exhibition. But I don't
11 know if I can make the connection between Garfinkle and Kosten because if
12 I look at Garfinkle and I see no exhibition, and I wonder why your expert
13 can -- he seems to have made a conclusory opinion that in light of Garfinkle
14 and Kosten, one with ordinary skill in the art would've used Kosten's site for
15 Garfinkle's system. I think that's what he said. So --

16 MR. HABER: Yeah, that's --

17 JUDGE LEE: -- why would that be?

18 MR. HABER: Right. And so what Garfinkle discloses is a
19 particular infrastructure that has a server, it has multimedia, it has a
20 communication network to various user sites. One of the user sites that's
21 disclosed in Garfinkle is certainly a video on demand system, but there's
22 nothing about Garfinkle that limits its particular user sites to just that use.

23 And so Kosten is another particular user site. There is nothing
24 about Garfinkle that would preclude any sort of user site. It's sort of the
25 example that's provided in Garfinkle as a video on demand system, but all of

1 that is about displaying video and Kosten is simply another means to display
2 video, and specifically in a public movie theater, a public showing.

3 JUDGE LEE: Yes. Well, I can see it and I also don't see it
4 because it depends on what is this user site. If it's a single person at home,
5 then I can't make the connection, connect the dot, right? But if it's like a
6 school or a museum, then I can because Kosten is in the movie theater
7 environment, right? But what is the environment of Garfinkle? What is this
8 user site? Is this a single-family home, an apartment where there's nobody
9 but the owner there? Or can you enlighten us on that? What is the nature of
10 this user site in Garfinkle?

11 MR. HABER: Let me pull up Garfinkle. I just want to make sure
12 you can still see my screen. I'm skipping a little bit. Here's Garfinkle.

13 JUDGE LEE: I mean, if it's a single person in this room, then I
14 have a hard time saying it would've been obvious to use the movie theater as
15 the site for the system. Whereas if it's a school or a museum or a library,
16 then I certainly can see making the -- connecting the dots between the two
17 references.

18 MR. HABER: Yeah. So just -- yeah, I think what -- I don't think
19 that Kosten says that it is necessarily limited to a single person in a house. It
20 just says a user site. It doesn't say one way or the other what that user site
21 could be. It certainly could be someone's house, it could be a restaurant
22 showing video on demand to its customers, it could be a museum, it could be
23 a library, it could be anything.

24 I don't think that Kosten -- I don't think that Garfinkle limits
25 particular user sites. What the prior art shows is that there are a number of

1 potential sites that you might want to distribute video to, and one of skill in
2 the art would've understood that there are any number of user sites. And so
3 Kosten has a movie theater and when you go to -- for example, Allen --
4 Allen is another one that has a number of particular user sites. A local city,
5 regional server, a cable company, a broadcasting company.

6 The point is that the term user site in Garfinkle is very broad and
7 one of skill in the art would have understood that there are a number of user
8 sites that you might want to use this infrastructure for. And Kosten
9 specifically says why you would want to do it in a movie theater, and so to
10 the extent that there needs to be some linkage for why you would do this,
11 Kosten says why you would do it. You would do it to reduce distribution
12 costs.

13 JUDGE LEE: Can we not -- I'm sorry, let me interrupt you. Can
14 we not mix things up? Just tell me where in Garfinkle I should be looking at
15 to determine what Garfinkle thinks is a user site.

16 MR. HABER: Yeah. So --

17 JUDGE LEE: I looked and all I can find is a description about the
18 video display, like a CRT video display or an LCD video display, and that's
19 telling me it's in a very small environment. It's not there for a mass of
20 people to watch.

21 MR. HABER: Yeah, and so that is what Garfinkle says. Sorry,
22 there is -- it describes the type of display as CRT and LCD and I'm not sure
23 that I agree that that necessarily applies -- that it's not for a number of people
24 to watch because, for example, you can have a user display in a restaurant or
25 in a hotel lobby that has an LCD display that's displaying the content to a

1 number of people. And so the teaching from Kosten is broad. It's that you
2 have these potential user sites that have displays and that tells you how to
3 distribute multimedia content to those sites. And so --

4 JUDGE LEE: Okay, I just wanted to give you an opportunity
5 because I didn't find anything specific, but your position is very broad, so
6 I'm just giving you an opportunity to point me to something in Garfinkle that
7 would persuade me that the disclosure, as read by a POSITA, is broad. That
8 the user site contemplated in Garfinkle could be a museum, a library, or a
9 movie theater.

10 MR. HABER: Yeah. And so what I would point you to is the
11 general teaching of the types of displays that are displayed and I don't think
12 it's a fair reading of Garfinkle to say that a CRT video or an LCD video
13 display would only be in someone's house. There are various venues that are
14 open to the public that have those sorts of displays for a broad audience, so I
15 think the fact is that Garfinkle is broad and I think the teachings would be
16 understood broadly as any place where you would have video display,
17 including to members of the public.

18 JUDGE LEE: Thank you.

19 JUDGE MURRAY: Counsel, this is Judge Murray. I had a
20 question about Allen, which you mentioned a moment ago.

21 MR. HABER: Yes, Your Honor.

22 JUDGE MURRAY: You're relying on Allen's accounting and I'm
23 looking at Slide 11 of your demonstratives.

24 MR. HABER: Let me see if I can bring that up. Yes.

25 JUDGE MURRAY: So you're relying on Allen's accounting and

1 transaction engine to disclose the limitations of Claim 11, correct?

2 MR. HABER: Yes, Your Honor. It is added to the combination
3 for the disclosure of Claim 11. That is true.

4 JUDGE MURRAY: Okay. So regarding Claim 11, the Patent
5 Owner argues that in the prior art, there's no collection, let alone
6 dissemination, of data on marketing efforts, and I would emphasize
7 marketing as opposed to sales. What is your best response to that argument?

8 MR. HABER: So I can skip ahead. I do have a couple of slides on
9 this. So you can see Allen is added to the combination here to collect that
10 marketing information. Allen -- Claim 11 requires collecting sales and
11 marketing data. Allen 109 accounts for transactions at the retail level. It
12 also collects customer demographic information in a database and that
13 demographic information is marketing information, and then that
14 information is kind of in the combination in the server of Garfinkle.

15 And it's specifically taught to be used by Kosten. Kosten teaches
16 the smart advertising networks to target digital trailers and ad bots based on
17 the demographic of their community, and so in the combination, Allen's
18 transaction engine collects that information, Kosten uses it, and it is
19 provided to Kosten in the combination through Garfinkle's central server that
20 the communication network transmits it to the lobby displays.

21 JUDGE MURRAY: Okay. And what slide are you on right now?

22 MR. HABER: This is Slide 34 showing the combination for
23 Ground 2.

24 JUDGE MURRAY: Do you agree that Claim 11 requires the
25 dissemination of data on marketing efforts?

1 MR. HABER: So Claim 11, I have it on Slide 35. So collect sales
2 and information from exhibit or receipts and provide sales and marketing
3 data to exhibitors. So I think Claim 11 does say that you have to provide
4 marketing data to exhibitors, and specifically, in the combination, that data
5 is provided to allow for Kosten to implement the smart advertising networks.
6 The smart advertising networks target trailers and other marketing
7 information based on the demographics of their community. And so that
8 information in the combination comes from the transaction mentioned
9 through Garfinkle's central station down to user site Kosten.

10 JUDGE MURRAY: So then where in Allen does it disclose
11 providing marketing information to exhibitors?

12 MR. HABER: So Allen talks about collecting the information. It
13 collects the customer demographic information. Allen says that it's stored in
14 a database. Allen doesn't say that it gets provided to the exhibitors, but in
15 the combination, we have an exhibitor that uses demographic information,
16 and so one of skill in the art would have understood that the information
17 that's collected and stored in the database of the central station would've
18 been provided to Kosten so that it can do its smart advertising function, that
19 is specifically calling for demographic information.

20 JUDGE MURRAY: And what about your Ground 3, Allen and
21 Budow? Where in that combination is disclosing marketing data to
22 exhibitors?

23 MR. HABER: In Allen and Budow? So in -- let me actually get to
24 the petition. This will be helpful. Petition. Sorry, let me just get to Claim
25 11. Sorry, hold on. That isn't what I wanted. Just one moment.

1 So Allen says at Column 11, lines 15 through 20 that the retail
2 outlets shall be able to monitor their own finances on a real-time basis.
3 Allen also says that the studios monitor their individual financial data, sales
4 results, and promotion results from the retail level on a real-time basis. And
5 so monitoring kind of the promotion results, that is the kind of suggestion in
6 Allen that that information should go back and forth to exhibitors.

7 JUDGE MURRAY: You lost me with the very end there. Where
8 does it say that the studios provide the information to the exhibitors?

9 MR. HABER: So it says the studios monitor their own individual
10 financial data sales results and promotion results, and so I think the fact that
11 the exhibitors are kind of monitoring what's happening implies that they
12 have access to this data that is being collected and stored in a database.
13 There's really no other reason to collect it, unless it's to enable the users to
14 have that information as they're monitoring their promotion results, for
15 example.

16 JUDGE MURRAY: So it's implied rather than explicitly provided
17 in either Allen or Budow; is that --

18 MR. HABER: I think it's --

19 JUDGE MURRAY: -- right?

20 MR. HABER: Right. I think it's -- I think one of skill in the art
21 would've understood from Allen that that is how that information would be
22 used, but Allen doesn't specifically disclose it -- the understanding of a
23 POSITA.

24 JUDGE MURRAY: I understand. Thank you.

25 JUDGE LEE: Mr. Haber, it's Judge Lee, again. I'd like to go back

1 to the combination of Kosten and the first reference. Because your expert
2 said he's using the movie theater according to -- from Kosten as the site for
3 the system of the first reference.

4 MR. HABER: Yes, Your Honor.

5 JUDGE LEE: And Claim 1 has this limitation about marketing
6 material, which is supposed to be shown at a place other than the first place
7 that received the material; is that right?

8 MR. HABER: It's supposed to be shown at a different place or a
9 different time.

10 JUDGE LEE: Right. So -- but what's the name of the first -- the
11 first reference doesn't have that.

12 MR. HABER: Garfinkle?

13 JUDGE LEE: Right? So if you -- yeah, Garfinkle doesn't have
14 that. So even if you use the movie theater for the system of Garfinkle, you
15 still don't have that limitation met.

16 MR. HABER: So I'm not sure that that's correct, Your Honor.
17 Garfinkle teaches -- let me get to our slide.

18 JUDGE LEE: Right. I mean, there are no two video displays in
19 Garfinkle. At the user site, there's just one and it doesn't --

20 MR. HABER: Right, so --

21 JUDGE LEE: -- talk about extracting some parts of the content
22 and show it at a different place or time.

23 MR. HABER: But I don't think that that's correct. Let me -- right.
24 So what Garfinkle teaches is that you can provide trailers and samples, and
25 those are stored in Garfinkle's catalog store. The catalog store has trailers

1 that can be provided and they are downloaded and stored at the user site --
2 the catalog store at the user site. And specifically, a trailer, I think all parties
3 agree, is shown at a different time than the actual content that it's marketing
4 for. It's shown before to generate interest in the content. So I don't think it's
5 correct to say that Garfinkle doesn't have information that is provided to a
6 user for showing at a different time.

7 JUDGE LEE: But where? Can you tell me where? I'll pull up
8 Garfinkle and --

9 MR. HABER: Right. So --

10 JUDGE LEE: -- show me where, if you can.

11 MR. HABER: -- Garfinkle -- let's see. Column 4, line 35 through
12 45. I have this on Slide 38. It talks about what is being stored in the catalog
13 store, catalog store 14. Catalog store 14 includes trailers to allow the user to
14 preview the product, and so you can add previews or coming attractions for
15 a particular movie and that is shown before the movie is shown. And so I
16 think also, Patent Owner agrees that showing a trailer is being shown at a
17 different time than the product, and so that requirement of Claim 1 is
18 actually taught by Garfinkle. And to the extent that the claim requires both
19 showing at a different time and a different place, that's taught by Kosten.

20 Both of those are taught by Kosten, because Kosten teaches to use
21 these lobby displays to show these trailers, and trailers are shown at a
22 different time because they're shown before a movie. And in Kosten, they're
23 shown in a different place. They're shown in a lobby, as opposed to the
24 screening room. And so I think it's important to note also that Patent Owner
25 seems to agree that trailers would be understood to be shown at a different

1 time from the time when the movie is being exhibited to customers, and
2 that's on Slide 31. And so Garfinkle does meet the element of showing kind
3 of preview material at a different time than multimedia material.

4 JUDGE LEE: Okay, thank you. But then on the exhibiting, your
5 response is just that it -- the term is just that broad according to its plain and
6 ordinary meaning? That any time you show something that's exhibiting it,
7 right?

8 MR. HABER: I think showing multimedia according to the patent
9 and according to the claim as exhibit -- I think that what the patent talks
10 about are these various exhibitors. You have a movie theater, you have a
11 television station, you have a satellite TV operator, you have a cable
12 television operator, you have a high school. All of these are exhibitors and
13 what they do is they show multimedia content. There's no particular
14 limitation on the amount of time that is shown or that it's only for a limited
15 period or a particular number of audience members. None of that is actually
16 described in the '725 patent, and so our position is exhibiting in Claim 1, is
17 the --

18 JUDGE LEE: I suppose it kind of makes sense if I think of it as --
19 if I show a movie for somebody else, then I'm an exhibitor.

20 MR. HABER: Yes. Yes, exactly, Your Honor. That's exactly
21 right. Let's say I'm a high school club and I want to show a particular movie
22 to someone, and I show it to them, then I have now exhibited that movie to
23 that person.

24 JUDGE LEE: So back to Garfinkle then. Where is that concept of
25 someone showing the multimedia for somebody else? I mean, why isn't

1 Garfinkle showing the same person, the same entity? Where is the concept
2 of an exhibitor who shows it -- shows the content for somebody else?

3 MR. HABER: So what Garfinkle says -- and I think we've flipped
4 through Garfinkle -- what it says is that there's a user site and there is a
5 display at the user site. It could be a CRT, it could be an LCD, and that's
6 what Garfinkle says. It doesn't say one way or the other, whether some other
7 person is showing that content to a user or the user is showing it to himself
8 or his family members. Garfinkle just doesn't say one way or the other. It's,
9 I think, a very broad teaching that you have multimedia, you need to
10 distribute it to a user site using hardware and then you show it. You show it
11 on a display. That display could be anywhere.

12 JUDGE LEE: I see. I have one more question about --

13 MR. HABER: Oh, and I did want to --

14 JUDGE LEE: -- your expert --

15 MR. HABER: I'm sorry.

16 JUDGE LEE: Your expert saying a movie projector -- showing a
17 movie in a theater is actually broadcasting. That's what he said. Is that
18 really your position?

19 MR. HABER: So I think the term broadcasting is a term that is
20 understood as providing content to a broad audience and I think you can
21 think of it that way, that showing movie in a screen to a broad general
22 audience could be broadcasting. I've been, for example, in public parks
23 when they show movies on big screens and they broadcast it to anyone that
24 wants to show up, and so you can think of the term broadcasting in that way
25 as just generally providing information on a screen to a broad general

1 audience.

2 JUDGE MURRAY: Counsel, you've got about 27 minutes total.

3 MR. HABER: Okay.

4 JUDGE LEE: All right, thank you.

5 MR. HABER: And there is --

6 JUDGE LEE: Thank you.

7 MR. HABER: There is one other point that I want to make about
8 Garfinkle, and it is that Garfinkle discloses -- or at least mentions
9 educational course material. So that's at Column 4, line 53 through 55, and
10 so they talk about the various information that can be displayed, it can be
11 video product by category, drama, comedy, et cetera, movies, or educational
12 course material. And I think educational course material at least implies that
13 there's some larger audience for this material. It might be a class, it might be
14 a high school, it might be a larger group of interested members of the public.

15 JUDGE LEE: Thank you.

16 MR. HABER: And I did want to address this point. I think we
17 touched on it earlier, Your Honors, regarding the kind of two-tier marketing
18 that Patent Owner says is required by the claims. Patent Owner points to
19 claim element 1[d] -- if I have it right. Sorry, let me just get here -- as
20 requiring this first level of marketing, and I'll note that claim element 1[d] is
21 on the screen in Slide 9. It just says providing samples. It doesn't actually
22 say marketing, but as we talked about with Garfinkle, that teaching comes
23 from Garfinkle.

24 Garfinkle provides this catalog store 14 that provides trailers and
25 samples to the user sites, and then the user sites in Kosten have the particular

1 lobby displays that perform the local marketing. So to the extent the claims
2 even require this sort of two-tier structure that they make a lot of noise
3 about, it's disclosed by the combination of Garfinkle and Kosten. And
4 again, I think it's very important to -- when we talk about the reason for the
5 combination that we're making to not limit ourselves to just looking at
6 Garfinkle. Garfinkle has these broad user sites.

7 Kosten specifically says why you would want to have a
8 combination that looks like this, that adds for increased security, it adds for
9 reduced distribution costs. Specifically, to the movie theater implementation
10 why you would want to do this. I think unless Your Honors have any further
11 questions, I'm going to allow my colleague, Mr. Reinbold, his opportunity to
12 address secondary considerations and the motion to exclude. And I'll stop
13 sharing my screen so that Mr. Reinbold can do that.

14 MR. REINBOLD: Thank you, Mr. Haber. Good afternoon, Your
15 Honors. I am Patric Reinbold, Counsel for Petitioner. I will now discuss
16 Patent Owner's alleged secondary considerations of non-obviousness and
17 Petitioner's motion to exclude.

18 So to the extent that Patent Owner contends that the '725 patent's
19 claims are non-obvious due to secondary considerations, Patent Owner has
20 not properly evidenced skepticism by experts or any other secondary
21 consideration for that matter.

22 Patent Owner submitted a declaration, which is Exhibit 2109 from
23 Mr. Stiliadis, who is the named inventor of the '725 patent, and he attested
24 that his personal acquaintances, who happened to be executives at a single
25 film production laboratory called Deluxe Entertainment Services, thought

1 that the '725 patent was impractical.

2 However, Mr. Stiliadis' declaration merely states that those two
3 executives were not technical experts themselves, told him in conversation
4 that they did not believe his patent was practical or that it would be
5 commercially successful. Even Patent Owner's sur-reply doesn't contend
6 that these individuals are experts. Rather, Patent Owner merely contends
7 that the executives had access to technical experts, without contending that
8 the executives had ever spoken to these alleged unnamed technical experts
9 about the patent.

10 Indeed, in Mr. Stiliadis' declaration, he never says anything about
11 technical experts at all and in his deposition, he said that Deluxe would,
12 quote, "reach out" and they talked to people that are in the know and this is
13 how they make decisions. And Mr. Stiliadis never approached any company
14 other than Deluxe. For example, he never approached Technicolor about
15 this alleged invention, even though he noted that Technicolor was the largest
16 company in this industry and that he had begun working with Technicolor
17 after he had a falling out with Deluxe in 2003.

18 Also, despite Patent Owner's alleged skepticism, other industry
19 leaders were investing in digital cinema and having success. For example,
20 the system described in the Kosten reference was implemented in theaters in
21 January 1999, and then similar systems like that of Pacific Bell's Cinema of
22 the Future showed that others were having success in this field. And Mr.
23 Stiliadis conceded that he did not invent electronic delivery of movies or
24 even digital projection for that matter, and neither Mr. Stiliadis nor Patent
25 Owner has offered any evidence to tie this alleged skepticism of these two

1 executives and then the later success of digital film distributions, such as
2 with James Cameron's movie Avatar to the claims of the '725 patent.

3 During his deposition, Mr. Stiliadis conceded that when Deluxe
4 was even working with James Cameron on the movie Avatar they were not
5 practicing the alleged invention. Accordingly, the Board should not credit
6 Patent Owner's arguments related to secondary considerations of non-
7 obviousness.

8 JUDGE LEE: Mr. Reinbold, this is Judge Lee. But your slide says
9 there's actually no secondary consideration evidence, but then you went on
10 to talk about skepticism. Can you clarify that? Is there evidence of
11 skepticism in the industry about the invention or there isn't?

12 MR. REINBOLD: There's not, Your Honor. There is -- they make
13 no argument about skepticism. We were speculating based on Mr. Stiliadis'
14 declaration, which alleged secondary consideration about non-obviousness
15 Patent Owner was contending. However, there's no evidence of any
16 secondary considerations.

17 JUDGE LEE: Oh, you mean they didn't say -- you said the word --
18 I don't recall seeing that raised by Petitioner. What --

19 MR. REINBOLD: So --

20 JUDGE LEE: -- category of secondary consideration evidence did
21 they submit?

22 MR. REINBOLD: Patent Owner did not use any word or describe
23 a specific secondary consideration; however, the declaration seemed to be
24 implying that there was skepticism by experts.

25 JUDGE LEE: Oh, imply. I see, but when I read it, it seems to

1 admit that there is -- the people he talked to, the big distributor that was
2 mentioned in the declaration, realized there was cost savings, but
3 nonetheless, still rejected the invention. So I'm wondering, isn't cost savings
4 automatically a motivation to -- I remember a case called DyStar and
5 something like it and it means that -- let me see if I can -- any commercial
6 opportunity that might be enhanced would be a motivation. So if cost
7 savings is not disputed, then what else is -- what is there left in your
8 opponent's position?

9 MR. REINBOLD: Yeah, so DyStar is a motivation. It's just not a
10 secondary consideration of non-obviousness. So in this instance, I believe
11 Patent Owner used the term prejudice in the art to say that nobody was
12 pursuing this field of technology because of this alleged prejudice and that's
13 where we went down this path of discussing secondary considerations of
14 non-obviousness, and specifically skepticism of experts. However, Patent
15 Owner has not shown any evidence to tie any alleged skepticism or any
16 other secondary consideration for that matter to the challenged claims in this
17 case.

18 JUDGE LEE: Thank you very much.

19 MR. REINBOLD: Thank you, Your Honor. So next, I would like
20 to discuss Petitioner's motion to exclude, the declarations of Mr. Daniels,
21 which is Exhibit 2121, and Mr. Harris E. Tulchin, which is Exhibit 2131. So
22 Patent Owner relies on Mr. Daniels for analysis of prior art in comparison to
23 the challenged claims, and Patent Owner relies on Mr. Tulchin for his claim
24 construction positions, even though Patent Owner does not cite his
25 declaration or any evidence, to that matter, in the claim construction section

1 of Patent Owner's response.

2 But both of these declarations should be excluded because neither
3 Mr. Daniels nor Mr. Tulchin are persons of ordinary skill in the art under the
4 definition that the Board preliminarily adopted in its institution decision, nor
5 even under Patent Owner's proposed definition. Patent Owner adopted the
6 Board's definition, but added the engineering physics to the list of exemplary
7 degrees, but regardless of Patent Owner's revision, neither Mr. Tulchin, nor
8 Mr. Daniels meets the Board's or Patent Owner's definition.

9 For example, Mr. Tulchin readily admits that he doesn't have any
10 technical degree and Patent Owner doesn't dispute this fact. Indeed, in
11 Patent Owner's opposition to the motion to exclude, Patent Owner conceded
12 that Mr. Tulchin's declaration does not relate to any analysis through the lens
13 of an ordinary skilled artisan. Nonetheless, Patent Owner continues to argue
14 that Mr. Tulchin's testimony is relevant to the meaning of the various terms
15 and in the movie business, which is just contrary to the Phillips standard.

16 Specifically, Phillips explicitly states that the ordinary and
17 customary meaning of a claim term in question -- I'm sorry -- is the meaning
18 that the term would have to a person of ordinary skill in the art in question at
19 the time of the invention. Mr. Tulchin is not that ordinarily skilled artisan.
20 In fact, as evidenced in Mr. Tulchin's deposition, he was reading the claim
21 terms only in accordance with his experience in the entertainment business,
22 wholly independent from the context of the particular claim, and the '725
23 patent's specification, as required by Phillips.

24 Similarly, Mr. Daniels also fails to offer opinions on the
25 perspective of a person of ordinary skill in the art. Patent Owner contends

1 that Mr. Daniels' work has included being actively involved in the year 1998
2 in the invention of video pausing technology, which it contends related to
3 interactive television and a video pause button; however, Patent Owner is
4 not shown how this is one year of experience related to marketing and
5 distribution of multimedia material over a computer network, as required by
6 the Board's adopted level of skill.

7 And when asked about this work, Mr. Daniels said that he didn't
8 disclose it on his resume because he was restricted by contract and that the
9 experience was too distant and not relevant to his resume that he submitted
10 for this matter. Because neither Mr. Daniels, nor Mr. Tulchin have
11 sufficiently satisfied the level of skill preliminarily adopted in the Board's
12 institution decision, their opinions are irrelevant to any issues analyzed
13 through the lens of a person of ordinary skill in the art, such as claim
14 construction and technical analysis of prior art.

15 Finally, these declarations should be excluded because even if the
16 declarations were otherwise admissible, they pose a substantial risk of
17 confusing and misleading the Board. For example, Mr. Tulchin is
18 personally biased towards Patent Owner with a decades-long business
19 relationship that just cannot conceivably allow him to evaluate the '725
20 patent in an objective manner.

21 Specifically, he admitted that he's made hundreds of thousands of
22 dollars as Mr. Stiliadis' personal entertainment lawyer over 20 years or more
23 and his bias is further apparent from his results-driven and objectively
24 unreasonable interpretations of the claim terms. Indeed, he didn't even
25 thoroughly read the '725 patent, tried to avoid answering any technical

1 questions about it in his deposition, and then even when he did testify
2 regarding the technology, his answers contradicted the plain language of the
3 patent.

4 Mr. Daniels is also personally biased toward Patent Owner. He
5 admitted to a decades-long personal relationship with Patent Owner's
6 Counsel, the same Counsel that prosecuted the '725 patent, and he does not
7 evaluate the '725 patent in an objective manner. For example, he did a very
8 superficial review of the key technical issues.

9 In his deposition, he admitted that he did not review the petition at
10 issue in this proceeding, nor did he thoroughly review the supporting
11 declaration of Dr. Houh. He also failed to address some of the specific
12 embodiments of prior art relied on in the petition, so it's unclear how Mr.
13 Daniels could properly understand the specific grounds challenging the '725
14 patent and the proposed combinations without thoroughly reviewing
15 Petitioner's positions.

16 JUDGE MURRAY: Counsel, you're about eight minutes into your
17 rebuttal time.

18 MR. REINBOLD: Thank you. Thank you, Your Honor. Unless
19 Your Honors have any questions at this time, I think we'd like to reserve the
20 remaining time for rebuttal.

21 JUDGE MURRAY: Thank you.

22 MR. HABER: Yes, Your Honor. That's right. I think we'll
23 reserve 12 minutes, I think.

24 JUDGE MURRAY: Twelve minutes and four seconds.

25 MR. HABER: All right, sounds good.

1 JUDGE MURRAY: Thank you, Counsel. Mr. Handal, would you
2 like to reserve time for surrebuttal?

3 MR. HANDAL: I'm going to try to reserve 15 minutes of my time
4 for rebuttal. Hopefully, I won't eat into it too much.

5 JUDGE MURRAY: All right. Mr. Handal, please proceed.

6 MR. HANDAL: Okay, thank you. The '725 specification defines
7 the application of the invention to film distribution. It says, "Distributors
8 through film markets, catalogue sales and long established relationships
9 between purchasers and sellers, sell films." None of the Board-cited
10 patents -- the three cited patents and the fourth reference have anything to do
11 with this.

12 What we've got here is strictly a hindsight reconstruction of the
13 invention, using the prior art as a parts bin and there were quite a few
14 questions about the aptness of that prior art, in so far as it certainly doesn't
15 show the two-tiered system of the present invention, which is recited in the
16 claims with communication of information to the exhibitor, communication
17 of the files during marketing activities, to television stations and
18 publications, and the like, by the theaters. There's nothing of this in the
19 studied art.

20 The Petitioner's contention that exhibition means to show is way
21 too broad and I mean, that would mean turning on a television set and
22 watching your favorite sitcom would be an exhibition. It's not consistent
23 with what the patent describes, which is this distribution as it's understood in
24 the movie industry.

25 JUDGE MURRAY: Mr. Handal, first of all, I see that we don't

1 have video. If you'd like to proceed with audio only, that's fine. If you
2 would like video, then perhaps we could get that up on the screen.

3 MR. HANDAL: Okay. I'm not sure why. I can see myself.

4 JUDGE MURRAY: I see. You're behind me. Thank you.

5 Apologies, Mr. Handal. Please continue.

6 MR. HANDAL: Okay, Your Honor. I'm glad I'm not the only one
7 that is having some computer issues today. Okay. The Board noted that
8 exhibition is usually for a period of time. It's a public thing, it goes on.
9 That's the ordinary meaning of exhibition. Kosten does show exhibition, but
10 that's all it shows. There's standalone advertising that -- Kosten controls that
11 advertising. It is not controlled by the exhibitor. There was talk here that
12 we can bring some of this prior art in because they mentioned that there's a
13 library. Well, if a patron is in a library and is a VOD customer in a library,
14 that doesn't make it an exhibition. Now, libraries may put on exhibitions,
15 I'm sure they do, but that does not make it -- make what's happening with a
16 VOD customer an exhibition.

17 It seems to me there's absolutely nothing that the Petitioner
18 contends to meet the limitation in the claims of collecting information from
19 exhibitors and distributing it to exhibitors. We pretty much had an
20 admission to that effect.

21 JUDGE MCSHANE: Mr. Handal, this is Judge McShane. I'm
22 sorry to interrupt, but just a quick one. I'm looking at your response in this
23 case and your proposed construction of the term exhibition is a public
24 showing, okay? So we can -- you obviously have a disagreement as to
25 whether showing something in a library is public or not, but I'm trying to

1 grapple with, if you're exhibiting something, what other word are we going
2 to use except showing, and that's the word you used, too, as well, in your
3 proposed definition of the term -- construction of the term.

4 MR. HANDAL: Well, I think we go to Mr. Tulchin, who says
5 exhibition is a public showing. That's certainly in every dictionary I
6 consulted on the subject. So I think that's my proposal on exhibition.

7 JUDGE MCSHANE: Okay.

8 MR. HANDAL: I don't --

9 JUDGE MCSHANE: Okay, okay. So the issue is to whether
10 something is public or not public. That's basically your crux of your
11 argument, right?

12 MR. HANDAL: Yes, Your Honor, and it --

13 JUDGE MCSHANE: Okay.

14 MR. HANDAL: We talk in the 1[g] about showing in a public
15 theater to a number of individuals or to a broadcast exhibitor and those are
16 both public, and that's not what's going on with a VOD customer sitting in a
17 library and demanding a video and watching it. That's not -- that customer is
18 certainly not an exhibitor and he's not involved in any marketing, and he has
19 no control over any of the advertising that might've been sent to the library
20 showing the material. And there are these (INDISCERNIBLE)
21 interpretations saying, well, the advertising is being shown at a different
22 time because it's -- I guess it's not explicitly said -- but because it's shown at
23 a different time than the movie is on the screen, but it's not a different time.
24 It's the same time. It's while the VOD user is there ordering the movie.

25 Likewise, there's an attempt to show that the billboard is a different

1 place. Well, who decided the fact that the billboard is under control of the
2 satellite operator? That's very clear. He's doing scheduling and content
3 control. Put that aside, the billboard is the same place as the theater. He's in
4 the theater. The whole point is you want to get the customer back in the
5 theater. So you show the trailer for the movie and it's being played perhaps
6 at the theater in two or three weeks, or you show it at a different place, for
7 example, on a television station.

8 And that is -- that brings the consumer back into the theater, or
9 perhaps into the theater for the first time, but that's my view on that. We
10 think it's pretty clear. We think the art is strictly hindsight reconstruction.
11 There are missing elements like collection and dissemination of marketing
12 information. The Petitioner points to sales information and tries to call that
13 marketing information. Both sales and marketing are very different things.
14 You do your marketing and that creates sales, so try to smear them together
15 doesn't work.

16 What the Petitioner has said in particular is that the credit card
17 information is collected in Allen and that mentions a whole bunch of things
18 which are typical with a credit card, address, name, et cetera, and that
19 obviously entails information. Now, there is some mention, to be fair, of a
20 product and -- my memory is failing a bit here -- but I think payment terms
21 or collection terms, or frequency, or words like that, but Allen doesn't go
22 anywhere with those references, and that particular sentence also ends with a
23 statement respecting the collection schedule, I believe, is what it refers to,
24 which is a clear reference, again, to sales information. Not marketing
25 information.

1 In the patent, the Patent Owner -- I'm sorry, in the patent, the
2 operator of the website presents marketing materials to the potential
3 purchaser exhibitor. The exhibitor makes a selection. That affiliation is
4 recorded in the statistics database and then the Patent Owner collects sales
5 information from the exhibitor. The orders are associated with the
6 exhibitor's identification. So when the sales come in, they can be correlated,
7 and the effectiveness of the materials can be assessed.

8 So what we've got is the Patent Owner collecting that information
9 and in Claim 11, disseminating it to the exhibitors, back to the exhibitors.
10 So we've got sort of an information loop with the information being
11 collected at the time of order of advertising, sending the advertising to the
12 exhibitors, the exhibitors taking the advertising, and sending it to television
13 stations, publications, whatever.

14 The exhibitors making sales, the exhibitors reporting the sales back
15 to the operator of the website, and the website then taking the information
16 from all the exhibitors, which is obviously greatly augmented from what any
17 individual exhibitor can create, and also augmented by the information
18 which was recorded in the statistics database by the website operator and
19 puts that information back to the exhibitors. There is nothing of the sort in
20 any of the prior art.

21 JUDGE MCSHANE: Well, on that one, Mr. Handal -- this is
22 Judge McShane, again. Allen does disclose that what it's tracking is the
23 historical user profile information. Wouldn't that suggest that that's --
24 wouldn't that be the type of information one would want to track for
25 marketing purposes?

1 MR. HANDAL: Your Honor --

2 JUDGE MCSHANE: Yeah.

3 MR. HANDAL: -- I think -- I do understand what you're saying. I
4 think you're adding something to what's disclosed. It may be used for many
5 other purposes. It may be used to determine credit, it may be used -- I mean,
6 especially these days with AI all over the place, it really opens our minds to
7 the possibilities that people are thinking about, and that information can be
8 used indirectly to achieve many different things.

9 I mean, the Patent Owner is really sort of adding stuff that isn't
10 there. Like one of the things I heard Petitioner say -- I'm sorry, the
11 Petitioner is adding things that aren't there. The Petitioner said, well, why
12 would we collect the information if it wasn't to do marketing. With respect,
13 you know, the information being referred to there was the studio collecting
14 information to determine success. So what would you do with that
15 information? You can do anything with that information.

16 An unpatentability argument is not a wish in the blanks exercise.
17 Now, what does he wish in? He wishes in -- the Petitioner wishes in, well,
18 that's going to be used for marketing. That's going to be -- no, that's adding
19 stuff that's not there. He could use the information about his success to go to
20 his bank as support to get a loan. I mean, it could go -- it could be anything
21 and we're just filling in -- the Petitioner is just filling in the blanks, willy
22 nilly, to make the reference do what he needs it to do, but he's not giving this
23 Board any evidence. He's not giving them a reference which says it's being
24 used for marketing. I don't think there's anything relating to marketing in
25 any of the references that have been cited.

1 And the references, except for Kosten, they all deal with VOD.
2 They deal with cassette manufacturers. Cassette manufacturer, cassette and
3 manufacturer. There was argument that the advertising material that's
4 transmitted to Allen's cassette manufacturer, to fulfil that element, they point
5 to a cassette package. I never thought of a cassette package as advertising,
6 but it's a cassette package. It's not advertising and it can't be used to locally
7 market the film, which the VOD -- which the kiosk customer is buying at
8 Allen.

9 It's just stretching, stretching, and it reminded of what examiner
10 Bill Murray told me when I became an examiner in the 1960s. He said, you
11 don't use your ingenuity in making a rejection. You use the evidence. You
12 can't change the evidence, you can't make the evidence, you just cite the
13 evidence for what it shows and not for what you want it to show. And I
14 think the Petitioner here is really trying to push the evidence beyond what it
15 really shows.

16 JUDGE MURRAY: Counsel, this is Judge Murray. Could you
17 explain to me why the text and pictures on a cassette package would not be
18 used for marketing? If you were in a Blockbuster back in 2009, why would
19 that not be marketing material?

20 MR. HANDAL: Okay. What's happening is there's a kiosk and
21 the kiosk receives a download of a movie. The kiosk grabs a blank cassette,
22 presumably from a stack like a jukebox, takes that blank cassette, uses a
23 high-speed VCR to record the movie onto the blank cassette, then it prints a
24 label that gets stuck onto the cassette -- or let's say somehow it put --
25 associated with the cassette. I assume it's glued onto it. And then the

1 cassette pops out of the kiosk and the buyer takes the cassette, puts it in his
2 pocket, goes home, and watches the movie. He's not going to be marketing
3 the movie. He's an end user of the cassette.

4 There's nothing in the reference which says that the user takes the
5 cassette and then puts it on the shelf of his store down the street and uses it
6 to market the cassette by showing it publicly. That's all not there. He just
7 takes the cassette with the artwork glued to it -- and that's what it's called,
8 artwork, in the reference -- and he takes it home. Am I responsive, Your
9 Honor?

10 JUDGE MURRAY: Partially. What is the purpose of the artwork
11 on the cassette then?

12 MR. HANDAL: Well, I believe the artwork and cassettes
13 generally just identify the movie, so when it's -- when you've got it in your
14 box of cassettes and you go searching for the movie, you look at the artwork,
15 you recognize the film from the artwork, and then you play the movie which
16 you want to play.

17 JUDGE MURRAY: Okay, thank you.

18 MR. HANDAL: Your Honor, I can't see the time too easily, but I
19 think I pretty much --

20 JUDGE MURRAY: You have --

21 MR. HANDAL: -- covered the main points that I wanted to cover
22 here. Oh, as far as the experts are concerned, let me address that. Mr.
23 Daniels did develop a video pausing button which he testified he sold to a
24 major global company, but he couldn't identify the company because it was
25 confidential. As a matter of fact, the company was Microsoft. I can say that

1 because Microsoft took its patent -- it's of record in the patent office, and
2 they recorded that information.

3 So he was the inventor there and he also ran the company. He was
4 certainly familiar with the business, so I think as far as terms of being a
5 POSITA. All that I hear from the Petitioner is that he had a degree in
6 engineering physics. I think that's close enough to a POSITA, what is
7 defined as a POSITA, and within the fair meaning of what the Board
8 suggested was a POSITA during the hearing.

9 As far as Mr. Tulchin is concerned, I think the Petitioner overreads
10 Phillips. Phillips only says that the ordinary and customary meaning of a
11 claim term is the meaning that the claim term would have to a person of
12 ordinary skill in the art. That's what Phillips says, but that doesn't mean that
13 helpful evidence about what POSITAs understand can only be had from or
14 known to a POSITA. Mr. Tulchin testified that he did interface with
15 technical people and spoke their language, and I think he can certainly
16 testify to what these terms that he testified about, which are all non-technical
17 and all related to the film business.

18 And as far as expertise in the film business goes, Dr. Houh has no
19 expertise in the film business, no experience in the film business, no
20 experience that I can see in relating to videos that I noticed and it seems to
21 be a little strained in his testimony. For example, calling it a camera -- a
22 projector a broadcasting device, and also, he gave testimony -- give me one
23 moment.

24 He spoke about the -- and it's in the Petitioner's dec -- he talked
25 about, at paragraph 139 of his declaration, about the storage of the

1 information and he said it was stored at the user site, but if you look at the
2 spec of the patent that he relied on, it's a big -- it's in the -- again, in the
3 Petitioner's dec. There's a big box that says basically the cloud and then
4 there's another box that says user sites, and the storage he referred to was in
5 the cloud, not in the user site, so he's wrong in paragraph 139.

6 There was also an assertion that Kosten had seen some investment
7 here today. That was evidence that wasn't produced by the Petitioner until
8 the actual cross-examination of the examination of our expert witness, Mr.
9 Daniels. We agree with the Board that Garfinkle shows a small CRT display
10 and that's not really suitable for an exhibition, and this compares with the
11 language in the claims, which talk about either broadcast exhibition or a
12 public theater with a number of individuals. So that does not meet the
13 claims.

14 Kosten certainly does show a public theater, but that's all he shows.
15 Just a public theater receiving a movie over satellite. The lobby marketing
16 system is a standalone -- it's not controlled by the theater owner. It does not
17 enable marketing at all.

18 There was also an argument in the slides, although it wasn't
19 mentioned, that claim differentiation was provided by -- with respect to
20 Claim 5 where it says that exhibition of multimedia material is the public
21 showing of a motion picture, and the argument, as I recall it, was that well, it
22 says public showing, so there must be something different between
23 exhibitor -- exhibition of public showing -- and exhibition can't mean public
24 showing. But the claim says public showing of a motion picture and a
25 motion picture is not mentioned in Claim 1, and that provides claim

1 differentiation. And the argument that Claim 5 takes the public out of
2 exhibition is a specious argument.

3 And then with respect to Petitioner's Slide 24, that particular slide
4 shows Garfinkle with a product store and a catalog store, and that sort of
5 grafted out to the system and that is making no sense at all because
6 Cyberstar is in control and transmitting in real time. Cyberstar is doing the
7 advertising and Cyberstar has the video servers and the scheduling server,
8 and so information about the product and the catalog store elements, which
9 include trailers, being grafted on to Garfinkle, make no sense.

10 JUDGE MURRAY: Counsel, this is Judge Murray. Why do you
11 say that the Cyberstar video server and scheduling server are controlled by
12 the studio when Kosten clearly shows them located in the theater?

13 MR. HANDAL: Well, Kosten is -- and Mr. Daniels opined on the
14 fact that Kosten is somewhat confused in several respects -- but they're
15 called Cyberstar video servers, they talk about Cyberstar scheduling servers.
16 I guess they could put them in the theater and keep them, and they'd still be
17 Cyberstar servers and still control them themselves. Maybe they put it in the
18 theaters because they don't have to transmit the data very reliably if they
19 keep some data at the theater and then all they have to do is transmit control
20 signals, which are very low in information content and would be more
21 reliably transferred. I think that's a fair reading of what's involved there.
22 The other thing I'd like to --

23 JUDGE MURRAY: What --

24 MR. HANDAL: -- address -- yes, Your Honor?

25 JUDGE MURRAY: Counsel, what is your evidence for that

1 theory?

2 MR. HANDAL: My evidence of what, Your Honor? I'm having
3 trouble hearing you.

4 JUDGE MURRAY: I'm sorry. What is your evidence for that
5 theory that the studio is controlling the Cyberstar video server in the theater?

6 MR. HANDAL: Well, they call them Cyberstar video servers and
7 they call them Cyberstar scheduling servers, and there's nothing that says
8 that they're in any way associated with the theater. However, the evidence is
9 they're Cyberstar servers. So the evidence is only an association with
10 Cyberstar and that's the only association or control that's shown. So I'd say
11 you weigh the evidence, Cyberstar's name, the theater is not even discussed,
12 and that's pretty much -- I think their argument is all one-sided.

13 JUDGE MURRAY: Counsel, if someone has an Apple iPhone,
14 does that mean that Apple controls the movies that are stored on that
15 iPhone?

16 MR. HANDAL: Of course not. Of course not, but I think if we
17 looked in the Apple user's manual that there's all sorts of information about
18 the user controlling what's going on in his iPhone, and that's just absent from
19 Kosten. I mean, it's possible, but it's not disclosed. I mean, to be fair, it's
20 possible, but it's not disclosed. And I think if you read the article overall and
21 consider it as a whole, it's very clear that Cyberstar is pretty much -- it is
22 running the show. They're controlling everything and they're transmitting --
23 everything is being done in real-time by Cyberstar, and there's absolutely no
24 discussion respecting the theater doing any of those things, and that's what is
25 required for that element to be found in that reference, I believe.

1 JUDGE MURRAY: All right. Counsel, I don't want to eat into
2 your surrebuttal time. I have just one other question for you. In page 68 of
3 your response brief, you argued that none of the art shows a two-tier
4 marketing system. How are you --

5 MR. HANDAL: Yes.

6 JUDGE MURRAY: -- defining a two-tier marketing system and
7 where in the claims is such a system required?

8 MR. HANDAL: Okay. Well, it's a two-tier communication
9 system and if I said marketing system, that's maybe not the best words. But
10 basically, the information -- well, it is marketing. I mean, we're sending --
11 the website operator is sending samples of advertising to the theaters, the
12 theaters are placing their orders. That's the first tier. The theaters then send
13 the advertising to television stations, publications, and so forth. That's the
14 second tier. And I think my brief is specific on claim language. I'll try to
15 find it here quickly.

16 So the first tier would be shown, for example, by Claim 1[d],
17 providing samples of the correlated information to potential purchasers.
18 And then the second tier would be in paragraph -- I think it's 1[f]. It talks
19 about enabling marketing by the theaters. So that would be that.

20 And I just want to add one final thing, which is to say that Kosten
21 teaches exhibitor control of marketing as contended by Petitioner with
22 reference to its Slide 24, you've really got to add a box that says modem to
23 the Slide 24 exhibit. You've got to add a box that says modem coupling
24 advertising to exhibitors. It's not there. You've got to add that box. You've
25 got to add another box that says exhibitor advertising control. It's not there.

1 And he never clarifies anything about the scheduling, which I mentioned
2 before.

3 So I mean, again, we're combining things that shouldn't be
4 combined because it would combine the VOD system with billboard
5 advertising systems, with a theater, and they're all separate things. They're
6 all separate things. And then we're putting in controls that aren't disclosed
7 and so forth. So I'll reserve the balance of my time for rebuttal, Your Honor.

8 JUDGE MURRAY: Thank you, Mr. Handal. You'll have 12
9 minutes and 40 seconds.

10 JUDGE LEE: It's Judge Lee. I do have a question, Mr. Handal.
11 It's about this issue about secondary considerations. Can you clarify that for
12 all of us because I don't really see secondary considerations as being raised.
13 And in your sur-reply, you have a caption called secondary considerations,
14 but nothing really in the paragraph that follows, so can you clarify?

15 MR. HANDAL: Well, I think that the Petition is right when he
16 said the issue has been raised with respect to secondary considerations and
17 the rejection by the executors at Deluxe of the Patent Owner's system.
18 Evidence is the prejudice in the art and their statement in particular that they
19 didn't believe it was reliable, I think was tactically unfeasible. That was the
20 words they used. And that prejudice in the art is such that people wouldn't
21 think about doing it, let alone getting to the other -- getting beyond that
22 obstacle.

23 Getting to the other side of the wall and saying, hey, we can do this
24 on the internet, and look what we can do. We can transmit files directly to
25 television stations, we can collect information from the exhibitors, we can

1 take that information back, we can collect information as we send the
2 trailers, we can gauge the success, then we can distribute that to all the
3 distributors.

4 We can do all these great things, but you never get there if you
5 don't even want to look at a system that's literally given to them on a silver
6 platter. And there's some talk about the fact that they're friends. That
7 doesn't mean anything, but it does. Because they're friends, Mr. Stiliadis got
8 to meet them, but even though --

9 JUDGE LEE: Well --

10 MR. HANDAL: -- they were friends --

11 JUDGE LEE: -- that's not very helpful. Let me be more specific.
12 What exactly is the reason for the so-called rejection of your idea?

13 MR. HANDAL: I don't understand Your Honor's question,
14 perhaps.

15 JUDGE LEE: I mean, do they think it would not work or there's a
16 technical problem, or it's just that commercially, it won't make any money?

17 MR. HANDAL: Well, I think even the Petitioner says it was going
18 to make money, and Kosten says it would make money. The words, as I
19 recall from the declaration, was that it was technically not feasible. That
20 was their concern, so I mean, that relates to, I think, what Your Honor is
21 asking about. So --

22 JUDGE LEE: I don't think he said it wouldn't work, but let's
23 assume that he said something along that line, but why isn't this hearsay? I
24 mean, they didn't testify. All we have is you say that they said, so --

25 MR. HANDAL: Yes.

1 JUDGE LEE: -- and you're submitting it for the truth of the matter
2 that they actually -- that it actually wouldn't work. I'm assuming that.

3 MR. HANDAL: No.

4 JUDGE LEE: So --

5 MR. HANDAL: In fact --

6 JUDGE LEE: -- why is that not --

7 MR. HANDAL: -- it's --

8 JUDGE LEE: -- inadmissible hearsay?

9 MR. HANDAL: That statement is not true. We're not submitting
10 it for the truth. It's not hearsay because it's a present sense impression.
11 They're confronted with this new system, they say they've got access to the
12 best minds, it's technically not feasible. That's a present sense impression.
13 That's an exception to the hearsay rule. Thank you for asking the question,
14 Your Honor.

15 JUDGE LEE: All right. Thank you very much.

16 MR. HANDAL: Thank you, Your Honor.

17 JUDGE MURRAY: Okay. Petitioner's Counsel, do you have any
18 rebuttal?

19 MR. HABER: Yes, Your Honor. I'd like to just make a few
20 points. Let me share my screen again. So first, I want to start with Kosten
21 and a couple -- respond directly to a couple of points that the opposing
22 Counsel made. Opposing Counsel said that there would need to be a modem
23 in Kosten in order for this to work properly, and there is. In the middle of
24 Kosten's figure, there is identified there a modem for accounting and so
25 specifically, this enables the communication that I was talking about with

1 the teaching of Allen regarding sales and marketing information. There's a
2 modem that communicates that information back and forth.

3 Also, there is storage. There's this cylinder here which is identified
4 as a kind of well-understood storage facility. Information is routed to
5 various screens. It's projected to a theater screen, there may be multiple
6 screens, it's projected to screens in the lobby for the lobby displays. Patent
7 Owner also makes the argument that this is not done under the control of the
8 theater. I think based on the naming of these particular components, I think
9 that is not the correct way to read these references.

10 One identified as the Cyberstar video server is directly located in
11 the theater, and then Kosten also says that exhibitors project the file, which
12 is received on their network server, stored -- so it's specifically stored -- and
13 then routed to individual screens of their choice. And so the exhibitor
14 chooses what screens to display and then routes it to that screen. And so the
15 idea that this is somehow not under the control of the exhibitor, the movie
16 theater exhibitor in Kosten, I think is just not a reasonable way to understand
17 what the reference is teaching.

18 And then I also wanted to talk about motivations here because we
19 had some discussions about what Garfinkle teaches and I think Garfinkle has
20 a very broad disclosure that you can distribute information, specifically
21 video content, multimedia content. This says that you can do it over a
22 satellite network. It says that you can do it for educational purposes, for
23 purposes outside of an individual that is just sitting in a house.

24 And then we also have Kosten. Kosten has very particular
25 teachings of exactly why you would want to do this. Kosten says that you

1 can -- a system like Kosten can reduce film distribution costs by as much as
2 75 percent. So Kosten itself teaches exactly why you would want to build
3 and implement a system just like what's shown in the reference.

4 And then one of skill in the art looking at Kosten and looking at
5 Garfinkle, which shows a very, very similar architecture, with a server
6 distribution to an end user, kind of the technical implementation details,
7 that's why one of skill in the art would make the combinations because the
8 combinations would work very well together. You would implement all of
9 the benefits that are taught specifically by Kosten and then you would get
10 the combination that Dr. Houh presented, which looks exactly like what is
11 shown on Slide -- let me just pull up my slides -- on Slide 24.

12 And that combination, there's no hindsight reconstruction, and that
13 combination is specifically drawn out by the references themselves. You
14 have a kind of theater that does the projection, that does marketing, that kind
15 of simplifies and reduces costs of film distribution in Kosten, and you have a
16 reference, Garfinkle, that also teaches that you have large video -- you have
17 a large data catalog of video, that you need to get to users. So these systems
18 would work hand-in-hand together to implement exactly what Garfinkle and
19 Kosten seem to envision.

20 I wanted to come back to this term exhibitor, and the dispute seems
21 to be -- it's not entirely clear what Patent Owner's position is as to what an
22 exhibitor is. They argue that an exhibitor is a movie theater, and I think --
23 and a movie theater certainly could be an exhibitor, but the patent
24 specifically talks about other types of exhibitors. You can have a television
25 station, you can have a satellite television operator, you can have a cable

1 television operator, you can even have a high school.

2 There's nothing in any of these types of exhibitors that require
3 some sort of fixed timing for an exhibition -- an exhibition has to be a one
4 weeklong period. You could have a television show that runs forever. I
5 Love Lucy has been on TV since the 60s. It's just -- it's a particular showing
6 of multimedia content to a user. That's what an exhibition is, and we know,
7 one, that there's no timing requirement and we know, two, that it can't be
8 limited to an exhibition in a movie theater because we have the example
9 that's shown in the patent, a high school, 1[e].

10 So there are envisioned, by the patent and by the prior art,
11 exhibitors that are not movie theaters. And all of the art that has been
12 presented are different types of entities that will be showing content, will be
13 showing it in public forums, and will be showing it to a user, and will be
14 doing the exhibition as claimed by the patent.

15 Now, I wanted to go back to Kosten. One minute. I can do that.
16 Get this out of the way. Kosten, I think, very clearly shows marketing
17 efforts. I struggle with understanding exactly why Patent Owner believes
18 that what's shown in Kosten is not marketing. These lobby displays are
19 screens that are going to show, for example, advertising. Going to show, for
20 example, trailers, and they are being shown in a location that is different
21 than the theater screen. It's not in the lobby.

22 It's advertising and marketing as local as you can get, to patrons of
23 the movie theater, upcoming showings and upcoming screenings,
24 potentially, or advertising for other things that are available to the movie
25 theater, and it is being done at a different time. You're advertising for a

1 future showing, for example. And so they call these static billboards, but I
2 just don't think that that is a reasonable way that you can understand what's
3 being disclosed by Kosten.

4 You have video content being downloaded at the Cyberstar server,
5 being stored and routed to other screens, including a theater screen and
6 including the screens of these smart lobby displays, and so I don't think that
7 there's a reasonable way to understand what's happening in Kosten as
8 anything other than the marketing -- the local marketing and selling that is
9 described by the claims.

10 JUDGE LEE: Mr. Haber, it's Judge --

11 MR. HABER: Yes.

12 JUDGE LEE: -- Lee. I have a question about Claim 11.

13 MR. HABER: Yes.

14 JUDGE LEE: There are two parts to Claim 11. The first has to do
15 with automatically collecting something and then the second half is
16 providing sales and marketing data. Are those two related? In other words,
17 does the providing have to be providing the stuff that was previously
18 automatically collected, or are these two entirely separate and can be entirely
19 unrelated to each other?

20 MR. HABER: So just looking at Claim 11, what it says is
21 collecting sales information from exhibitor recipients, and so the sales
22 information has to come from exhibitor recipients, and then --

23 JUDGE LEE: And then it says providing sales and marketing data.
24 So there's collecting and then there's providing.

25 MR. HABER: Right.

1 JUDGE LEE: Do these have to be related? In other words, what's
2 provided has to be what was automatically collected, or these two have no
3 relationship and you can meet them entirely separately, even if what's
4 provided is not related to what was collected?

5 MR. HABER: Yeah. And I think the way that this would be read
6 is that the sales information that's provided refers back to the sales
7 information that's collected, right? Providing sales information, I think,
8 refers back to the previous instance of collecting sales information and then
9 it says providing marketing data. I don't think it necessarily has to be based
10 on the same sales data. It just has to be provided along with the sales data.

11 I think it could be based on the same sales data, but I don't think it
12 necessarily has to be. You have to provide sales data. I think that refers
13 back to what you collected and then you have to also provide marketing
14 data. I don't think they necessarily have to be derived from the same source.

15 JUDGE LEE: So the quick answer is they don't have to be related.
16 It can be entirely separate?

17 MR. HABER: I think that's right.

18 JUDGE LEE: Okay.

19 MR. HABER: They could be related, but they don't have to be.
20 And what's --

21 JUDGE LEE: Thank you.

22 MR. HABER: And what's disclosed in Allen, I think they are
23 actually related. You collect accounts and transaction level information at
24 the retail level. You collect customer demographic information. That
25 customer demographic information is then marketing data and I think in

1 Allen, it's likely derived from the same information, but I think there's
2 nothing in the claim that necessarily requires that. And then when you get to
3 the way that it's used in the combination, it's that exact demographic
4 information that is now provided to Kosten.

5 Again, so what Kosten is using is the demographic information
6 that was previously collected by Allen, which was based on sales and then
7 other information at the retail level, and then it's being used -- providing
8 back to Kosten to do its marketing of digital trailers and smart advertising.

9 JUDGE LEE: So -- and then the trailer in Garfinkle can be
10 marketing data, is what you're saying, right? And then it's displayed at
11 Kosten's lobby; is that right?

12 MR. HABER: Correct. So I think the trailers that are being
13 provided by Garfinkle are then used as advertising information and sales
14 information to be displayed at Kosten's smart advertising networks, and the
15 particular --

16 JUDGE LEE: And did you use that as marketing data for Claim
17 11?

18 MR. HABER: I believe so. I'd have to go back and look. The
19 data that's being --

20 JUDGE LEE: Okay.

21 MR. HABER: -- (CROSSTALK) in Kosten --

22 JUDGE LEE: Right. How about the last phrase in Claim 11?
23 Based upon information from said exhibitors. How is that met if we treat the
24 trailers from Garfinkle as this marketing data?

25 MR. HABER: Right. And so what I would say is that in the

1 combination, which you have is Allen that is collecting the information from
2 the exhibitors. And so what is being collected from Allen is based on
3 transactions at the retail level, likes, clicks, purchases, et cetera, and so all of
4 that is being collected at the retail level, stored at Garfinkle in a database,
5 and then provided back to the end user so that they can use that for their
6 future advertising efforts.

7 JUDGE LEE: Okay, thank you.

8 MR. HABER: I'm trying to see. I think I might have a couple
9 minutes left. I can't really read the time.

10 JUDGE MURRAY: Fifty seconds.

11 MR. HABER: Fifty seconds, all right. I was going to kick it back
12 over to Patric, but I probably don't have enough time. So the one thing that I
13 would say on this issue of secondary considerations, we don't think that
14 there are any reasonable secondary considerations that are raised. We tried
15 to interpret what they were saying. We did the best we could to respond to
16 what we thought they were presenting. I don't think they clearly presented
17 any meaningful secondary consideration evidence. With that, I think I will
18 give back my four seconds.

19 JUDGE MURRAY: Thank you, Counsel. Patent Owner's Counsel
20 for sur-rebuttal? We can see you.

21 MR. HANDAL: Yes. Thank you, Your Honor. So there is a
22 mention of an account of a modem for accounting in Kosten, but that's not a
23 modem for transmitting advertising. It's not a modem for transmitting the
24 film to another party. So that really doesn't anticipate that aspect of it.
25 There is a reference to screens of their choice, but that's taken out of context.

1 In particular, if we look at Kosten's second column in an open system, the
2 studio, or a distributor, partners of the studio then controls online film
3 management system, selecting the time and location for which each movie
4 should be sent over the satellite system.

5 The technology for encryption is also managed by the studio,
6 giving them unique security options at all points of distribution. Exhibitors
7 then simply project the file, which is received on their network server, stored
8 and routed to individual screens of their choice, so the exhibit --
9 everything -- that paragraph says the studio controls everything and then the
10 exhibitor simply is left to just take what he's gotten, but apparently he can
11 pick the screen that it goes on.

12 He's operating a theater. He can pick the screen he wants to put it
13 on, but even that is -- here's what it says. Routed to integral screens of their
14 choice, that's also controlled because it must be, quote, "within the
15 boundaries of distribution agreements", already set up between the studios
16 and theater owners.

17 So that's sort of opposite the point what that Petitioner mentioned
18 before. The Petitioner tries to point out the word "exhibitors" to include
19 non-public situations and they referred to, I believe, it's Figure 1 in our
20 patent, which shows other -- different users, including libraries and I think a
21 high school or something like this. They're saying it's -- all of those things
22 are exhibitors.

23 Well, the patent attorneys put in all kinds of disclosure into the
24 specification. Sometimes, they try to get a priority date. They may have in
25 mind a future patent, but the claim is what counts. So those things that are

1 trying to be used there are really unclaimed subject matter that can't stretch
2 the word exhibitor beyond its ordinary meaning of public exhibition or
3 something akin to that. I would like -- if the Court has any questions, I'd be
4 happy to answer them.

5 JUDGE LEE: Yeah. Mr. Handal, it's Judge Lee. I think I found
6 the testimony of Mr. -- the inventor here. He said, with respect to Townsend
7 and Dravinski, he said that they were convinced of the impracticality of
8 digital file transfer in the context of the feature film business, where
9 reliability and high resolution were required. That's what he said, but there's
10 nothing more than that, but what I'm struggling with is, isn't digital
11 technology, digital files reliable?

12 And high resolution -- I remember times when we had Polaroid
13 film, and they were replaced by digital cameras because we have high
14 resolution in digital camera technology -- digital files. So I'm not
15 understanding this statement where people thought digital file transfer was --
16 you're suggesting it's not reliable and is not prone to high resolution. Can
17 you explain what am I missing from the testimony?

18 MR. HANDAL: Well, as I recall the experiences we've all had in
19 that 2000 timeframe, words and things like that went through pretty reliably,
20 small pictures went through reliably, but when files got big, they couldn't
21 attach, they would go through and they'd get all -- you'd get -- be watching
22 video and it'd be getting scrambled.

23 And I think that very generally, a high resolution and large files,
24 like a whole movie, that's a lot of information and it's pretty reasonable that
25 they thought it -- they had the experiences we all had. At that time, it's not

1 unreasonable that they would view it as technically unfeasible. I'm not sure
2 that I could point to more in the declaration other than the understanding of
3 the declaration as somebody who was actually around at the time and
4 downloading files. Have I been helpful, Your Honor, or could I be more
5 specific?

6 JUDGE LEE: Yeah. What about this impracticality? Can you
7 explain a little bit on that? What was impractical?

8 MR. HANDAL: I think what it relates to is the fact that when you
9 had video coming down, it always got jumbled and hesitated and did funny
10 stuff, and I think if you -- if it's just one person who's sitting, watching a
11 screen on a computer, that's one thing, but if it's a room -- a theater full of
12 patrons -- 10 seconds of interruption could be -- or jumbled download could
13 be -- everybody would be looking at each other or looking -- it would be
14 pretty disruptive, I think.

15 JUDGE LEE: Okay, thank you.

16 JUDGE MURRAY: Counsel, this is Judge Murray. You've
17 construed storing as electronically saving on a non-volatile storage element.
18 Where in the claims do you find that storage must be on a non-volatile
19 storage element?

20 MR. HANDAL: Okay. This specification describes only hard
21 drives. It does not refer to volatile storage. There's no reason to include
22 volatile storage and the volatile storage that is referred to by the Petitioner is
23 storage which is not under the control of the purchaser. It's all involuntary
24 stuff going on inside the computer and so it doesn't meet the limitations of
25 the claim of enabling local marketing of the movie.

1 JUDGE MURRAY: So it's in the specification rather than in the
2 claims?

3 MR. HANDAL: Yeah. Reading the claims in light of the
4 specification, there's absolutely no reference of volatile storage and at least
5 one and perhaps several -- almost surely several references to hard drives,
6 which are non-volatile. So I think the spec only supports the reading of that
7 term as being a hard drive or a non-volatile storage of another kind.

8 JUDGE MURRAY: Thank you. Judge McShane, Judge Lee, do
9 you have anything? Any further questions?

10 JUDGE MCSHANE: Nothing from me. Thank you.

11 JUDGE MURRAY: All right. Counsel, I believe your time is
12 expired at this point. Thank you very much.

13 MR. HABER: Thank you, Your Honors.

14 JUDGE MURRAY: This concludes the arguments for this case.
15 I'd like to thank Counsel for both parties for their attendance and
16 presentations today. I especially appreciate the level of preparedness of
17 Counsel and your good command of the record, which was very helpful for
18 the Board. We will take everything under advisement and we'll issue a final
19 written decision as dictated by the schedule. This hearing is adjourned.

20 (Whereupon, the above-entitled matter went off the record at 1:53
21 p.m.)

IPR2024-00736
Patent 7,574,725 B2

PETITIONER:

Xin-Yi Zhou
William M. Fink
Benjamin Haber
Patric Reinbold
O'MELVENY & MYERS LLP
vzhou@omm.com
tfink@omm.com
bhaber@omm.com
preinbold@omm.com

PATENT OWNER:

Anthony H. Handal
Monami Roy
HANDAL & MOROFSKY LLC
handal@handalglobal.com
mroy@handalglobal.com