

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.
Before the Honorable David P. Shaw
Administrative Law Judge

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In the Matter of)
) Video Deposition of:
CERTAIN FITNESS DEVICES,) DAVID ERICSON
STREAMING COMPONENTS)
THEREOF, AND SYSTEMS)
CONTAINING SAME,) Inv. No. 337-TA-1265

January 6, 2022

1:22 p.m.

LOCATION:

Regus
180 North University Avenue,
Suite 270
Provo, UT 84601

* * *

REPORTER:

Karen Christensen, RPR, RMR

Job:204542

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1	A P P E A R A N C E S	1	FOR THE OFFICE OF Aaron Rauh, Esq.
2	FOR THE COMPLAINANT AND G. Hopkins Guy, III, Esq.	2	UNFAIR IMPORT OFFICE OF UNFAIR IMPORT INVESTIGATIONS
3	DISH NETWORKS: Ali Dhanani, Esq.	2	INVESTIGATIONS: 500 E. St. SW
4	Stephen Maule, Esq.	3	(via Zoom) Washington, D.C. 20436
5	Jamie Lynn, Esq.	4	
6	Jim Hanft (in-house counsel)	5	VIDEOGRAPHER: Lance Harrison
7	BAKER BOTTS L.L.P.	6	
8	1001 Page Mill Road	7	
9	Palo Alto, CA 94304	8	I N D E X
10		9	EXAMINATION PAGE
11	FOR PELOTON: Stuart Rosenberg, Esq.	10	BY MR. GUY 6
12	(via Zoom) GIBSON, DUNN & CRUTCHER LLP	11	BY MR. ROSENBERG 45
13	1881 Page Mill Road	12	BY MR. BRAITHWAITE 63
14	Palo Alto, CA 94304	13	BY MR. GUY (Further Examination) 67
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16	FOR IFIT, INC.: Jared Braithwaite, Esq.	15	E X H I B I T S
17	FOLEY & LARDNER LLP	16	NUMBER DESCRIPTION PAGE
18	136 South Main Street,	17	Exhibit 1 Application for Subpoena Ad 8
19	Salt Lake City, UT 84101	18	Testificandum to David Ericson
20		19	Exhibit 2 David Ericson's CV 9
21	FOR BYU: Scott Halvorsen, Esq.	20	Exhibit 3 Copy of Move Media website page 24
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23	A-343-ASB	22	Exhibit 5 BYU Television web page 33
24	Provo, UT 84602	23	Exhibit 6 Document entitled PreLoad, Stream 40
25		24	Selection, Multiple Streams
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1	January 6, 2022 1:22 p.m.	1	the time. So I believe that's consistent with what Ali
2	P R O C E E D I N G S	2	and I had talked about previously.
3	VIDEOGRAPHER: Okay. We're on record. My	3	But, again, Scott Halvorsen representing BYU
4	name is Lance Harrison; I'm the videographer. The court	4	in Utah.
5	reporter is Karen Christensen. We represent TSG	5	MR. BRAITHWAITE: This is -- excuse me. This
6	Reporting. The time and date indicated on the video is	6	is Jared Braithwaite. I represent the respondents iFIT,
7	1:22 p.m. Mountain Standard Time, January 6th, year 2022.	7	Inc., formally known at ICON Health & Fitness, FreeMotion
8	This is the case of -- in the matter of	8	Fitness, and NordicTrack. I'm also in Utah.
9	Certain Fitness Devices, Streaming Components Thereof,	9	MR. ROSENBERG: This is Stuart Rosenberg for
10	and System -- Systems Containing Same, No. 337-TA-2165 in	10	respondent Peloton. I am appearing by Zoom.
11	the United States International Trade Commission,	11	MS. TERRELL: This is Emily Terrell for
12	Washington, D.C.	12	respondents Lululemon and Curioser. And I'm attending
13	Counsel will now please identify themselves.	13	via Zoom.
14	And if you're in Utah, state you're in Utah. If you're	14	MR. RAUH: This is Aaron Rauh of the Office
15	by Zoom, please state you're by Zoom.	15	of Unfair Import Investigations at the U.S. International
16	MR. GUY: Hopkins Guy with Baker Botts for	16	Trade Commission. I am attending by Zoom.
17	the complainant and DISH Networks. And I'm in Utah.	17	MR. GUY: We also have, for complainants, Ali
18	MR. HALVORSEN: Scott Halvorsen. I represent	18	Dhanani, Steve Maule.
19	BYU. I'm in Utah.	19	MR. ROSENBERG: Should we identify the other
20	Just to be clear on the record, I do not	20	folks who are on by Zoom?
21	represent -- Dave is not represented by me in this	21	MR. GUY: Yes. I was going to identify them
22	deposition -- Dave Ericson, that is. And our position is	22	quickly. Ali Dhanani; Steve Maule; in-house counsel, Jim
23	that his statements don't bind BYU and that the scope of	23	Hanft; and Jamie Lynn, all for complainant. I believe
24	the testimony shouldn't include reference to BYU or	24	that covers everyone. All right.
25	statements about BYU, as David was not employed at BYU at	25	

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1 DAVID ERICSON, 2 called as a witness by and on behalf of the complainant 3 and DISH, having been first duly sworn, was examined and 4 testified as follows: 5 EXAMINATION 6 BY MR. GUY: 7 Q. Will you state your full name for the record? 8 A. David Ray Ericson. 9 Q. Thank you, Mr. Ericson, for coming to today's 10 deposition. I'll try to make this as quickly -- occur as 11 quickly as possible. 12 Have you ever been deposed before? 13 A. I have. 14 Q. Do you know the basic procedures of the 15 deposition, that we have a court reporter and your 16 testimony is being recorded and also videotaped? 17 A. Generally, yes. 18 Q. All right. I'm going to ask you that you 19 wait and listen to my question. There may be objections 20 either on Zoom or in the room here. So, you know, please 21 pause and make sure that you -- that we don't talk over 22 one another. 23 A. Okay. 24 Q. All right. There may be objections; but, 25 generally speaking, you'll still answer. And I believe	1 that's it for the ground rules. 2 Is there any reason that you can't give 3 accurate testimony today? 4 A. No. 5 Q. Where do you currently reside? 6 A. Cedar Hills, Utah. 7 Q. And will you briefly give us your educational 8 background? 9 A. Sure. I have an undergraduate degree from 10 BYU in broadcast media management, communications. 11 Q. And when did you graduate or leave BYU? 12 A. I don't remember. Early '90s. I don't 13 remember, candidly. 14 Q. Can you give us a general background with the 15 type of work that you've done in the field? 16 A. Sure. 17 MR. ROSENBERG: Hop, I'm sorry to interrupt, 18 but we're all, on Zoom, having a very hard time hearing 19 particularly you and, a little bit, Mr. Ericson. Is 20 there anything we could do to amp up the volume or move 21 microphones? 22 VIDEOGRAPHER: That speaker is for them. 23 MR. GUY: Move that closer to you. 24 (A discussion was held off the record.) 25 MR. GUY: Stuart, can you hear me better?
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1 MR. ROSENBERG: Yes, I can. Thank you. 2 (A discussion was held off the record.) 3 MR. ROSENBERG: So I'm hearing a delay now 4 and an echo. 5 MR. GUY: Can you hear me now? How's that? 6 Stuart? 7 MR. ROSENBERG: Can you say one more, maybe, 8 complete sentence just to -- 9 MR. GUY: Sure. Test, test, test. Can you 10 hear me? 11 MR. ROSENBERG: It's coming in and out a lot, 12 unfortunately, but when you had the headset on, it was 13 crystal clear. I did hear a tiny echo in the back, but 14 it was at least clear. 15 (A discussion was held off the record.) 16 VIDEOGRAPHER: Back on the record. The time 17 is 1:30. 18 Q. (BY MR. GUY) All right. Have you generally 19 worked in the computer field? 20 A. Yes. 21 Q. All right. Let me go and get you -- you've 22 appeared here pursuant to a subpoena; is that correct? 23 A. Yes. 24 Q. And I'll show you what's been premarked as 25 Ericson Exhibit 1. It is an Application for Subpoena to	1 you. 2 And do you recognize that subpoena? 3 A. Yes. 4 Q. And you're appearing pursuant to that 5 subpoena today; is that correct? 6 A. Yes. 7 Q. Okay. Let me move on to Ericson Exhibit 2, 8 if you would put that to the side. 9 Can you identify what has been premarked as 10 Ericson Exhibit 2? 11 A. Yeah. It's my CV on LinkedIn. 12 Q. And with respect to Ericson Exhibit 2, is the 13 information in there pertaining to your time at Move 14 Networks, DISH, and briefly at EchoStar, accurate? 15 A. Yes, it is. 16 MR. ROSENBERG: Hop, I'm sorry to interrupt 17 again. I am not seeing the exhibits posted to the link 18 that was circulated. I only see an upload portal. Is 19 there a separate place we're supposed to look to download 20 the exhibits? 21 MR. GUY: Ali, can you download them? 22 MR. DHANANI: They're uploaded. Did you put 23 the download link in the chat? I believe that's a 24 separate link, right? 25 MR. GUY: Yeah. I have -- I've got the chat

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1 A. Yes, we would have done that. 2 Q. And do you recall whether or not QVT or 3 virtual timelines were available at that time? 4 A. That -- I don't recall if it was used for 5 General Conference, but that's around the time that QVT 6 was being tested for production use. 7 Q. Do you recall whether there was an 8 October 2007 LDS General Conference? 9 A. Yes, there was. 10 Q. Do you know whether it was used at that time? 11 A. Likely. 12 Q. That's the QVT and virtual timeline? 13 A. Likely be used at that time. 14 Q. Were -- and you were still at the company 15 when EchoStar purchased the assets of Move Networks? 16 A. I was. 17 Q. And did you receive any -- any payout of 18 that -- as a result of that purchase? 19 A. No. 20 Q. Now, you've continued to work in the 21 streaming field since leaving EchoStar; is that correct? 22 A. I have. 23 Q. In your experience and years with video 24 streaming, do you have any view as to whether HLS uses 25 the technology that was developed at Move?	1 MR. ROSENBERG: Objection. Beyond the scope. 2 Calls for an expert conclusion. 3 Q. (BY MR. GUY) You can answer. 4 A. In my estimation, it is -- it is very similar 5 to what Move had developed and was using as a proposed 6 standard. It's a very similar proposed standard to what 7 we developed. Let me put it that way. 8 Q. Do you have any understanding of an HL -- 9 what is an HLS manifest file? 10 A. I do. 11 Q. And do you see any similarities between the 12 HLS manifest file and the QVT file? 13 MR. ROSENBERG: Objection. Beyond the scope. 14 Calls for an expert conclusion. 15 THE WITNESS: Depending on how you use a 16 manifest file, it could be analogous or somewhat 17 analogous to a QVT. The manifest file -- the first 18 manifest file you would call an HLS would be more closely 19 related to what I refer to as a QMX, the index of the 20 segments underneath, a way of time indexing the video 21 encoded segments. What we used to refer to as QSS is 22 commonly referred to as a segmented transport stream 23 today. 24 Q. (BY MR. GUY) Do you believe that the master 25 manifest file described in the HLS standard is
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1 essentially the same as a QVT file that was developed at 2 Move Networks? 3 MR. ROSENBERG: Objection. Beyond the scope. 4 Calls for an expert conclusion. 5 THE WITNESS: My answer would be in function, 6 it's similar. It's a way of indexing multiple manifest 7 files. 8 MR. GUY: Okay. Why don't we take our first 9 break -- our first official nontechnical breakdown break, 10 and I'll see if I have any further questions? 11 VIDEOGRAPHER: Going off record. The time is 12 2:34. 13 (A recess was taken.) 14 VIDEOGRAPHER: Back on the record. The time 15 is 2:44. 16 Q. (BY MR. GUY) I'm going to hand you what has 17 been premarked as Ericson Exhibit 7. 18 MR. ROSENBERG: Was there a six that I 19 missed? 20 MR. HALVORSEN: There is no 6. 21 MR. GUY: There is no 6. I haven't put -- I 22 haven't put 6 in. 23 MR. DHANANI: This is 6. 24 We can mark it 6, if you want, Hop. 25 MR. GUY: All right. Let's do 6. Let me	1 take this tab off. 2 THE WITNESS: Do you want me to take it off 3 my copy too? 4 MR. GUY: I'll swap with you. 5 Q. (BY MR. GUY) All right. You have before you 6 what has been marked as Ericson Exhibit 6. It's a 7 document bearing Bates numbers DISH 337-TA-1265, 8 No. 00108698 through 108712. 9 And I'll ask you whether or not you recognize 10 this as the type of document that you received in your 11 role as vice president of operations at Move regarding 12 project status. 13 A. Yes. 14 Q. And in this particular case, is this a 15 document dealing with the development of QVT? 16 MR. ROSENBERG: Objection. Leading. 17 THE WITNESS: Give me one second. 18 Yes. It looks like that. 19 Q. (BY MR. GUY) And the document is dated 20 May 10th, 2006. 21 If you'll review the document, is 22 this -- does this document, in your mind, reflect the 23 status of the development of the QVT as of that date? 24 A. Yes, I believe it does. I have no reason to 25 believe it doesn't. That was about the time we were

Page 66 1 Would -- would the QMX files -- would a QVT 2 take QMX files and put them together in sequence, or was 3 -- was there ever a situation in which the QVT would jump 4 back and forth between multiple QMX files in the middle 5 of the QMX files? 6 MR. GUY: Objection. Speculation. Vague as 7 to time. 8 THE WITNESS: So -- so based on how somebody 9 would use a QVT once it was developed, it allowed various 10 states of functionality. So it allowed in its file to 11 reference multiple QMX files, and -- because it had 12 multiple QMX files within its file, right? So it -- it 13 was a file that contained these references, then there 14 was various sets of logic that could be applied to move 15 from one file to another file in sequence. And -- and 16 you could programatically determine that sequence in the 17 file itself. 18 That's what the QVT did, was let you 19 programatically determine the sequence of how you wanted 20 to call different QMX files. 21 MR. BRAITHWAITE: Understood. I believe that 22 answers all of my questions. Thank you. 23 THE WITNESS: You're welcome. 24 MR. GUY: Anyone else? 25 MR. ROSENBERG: Aaron, you're on. I just	Page 67 1 want to make sure you're aware. 2 MR. RAUH: Yeah. Sorry. No questions at the 3 time pending any redirect. 4 MR. GUY: I just have one question, if I 5 could, unless there's another respondent who wishes to 6 ask questions. 7 Emily? 8 MS. TERRELL: No questions from here. 9 FURTHER EXAMINATION 10 BY MR. GUY: 11 Q. Going back to Exhibit 3, you referred to -- 12 that's Ericson Exhibit 3 -- you referred to the small 13 blue box that's in -- that's the series of thumbnails in 14 that menu. 15 A. Um-hmm. 16 Q. Counsel repeatedly attempted to suggest to 17 you that that was a playlist. I believe you repeatedly 18 stated that that is a list of individual files. Is that 19 correct? 20 A. Yes. Yes. 21 Q. And there was nothing in that blue box that 22 you could click on that will play all of those items in 23 that list; is that correct? 24 A. The standard technology at the time, as I 25 recall, would have made that impossible.
Page 68 1 MR. GUY: Okay. Thank you. No further 2 questions. 3 MR. ROSENBERG: Nothing further from me. 4 MR. BRAITHWAITE: Nothing further from iFIT. 5 MR. RAUH: Nothing from us. 6 MR. GUY: All right. 7 THE WITNESS: Are we done? 8 VIDEOGRAPHER: Do you want to read and sign, 9 or do you want to go off the record? 10 MR. GUY: Yeah. 11 You have the right to review your transcript 12 and then add any corrections and then sign it at that 13 time. I would recommend you do that, but it's up to you. 14 I'm not your attorney. 15 THE WITNESS: Okay. All right. 16 VIDEOGRAPHER: This concludes the deposition. 17 The time is 3:27. 18 MR. ROSENBERG: Thank you, Mr. Ericson. 19 THE WITNESS: Thank you. 20 (The deposition was concluded at 3:27 p.m.)	Page 69 C E R T I F I C A T E 1 2 STATE OF UTAH) 3 :ss 4 COUNTY OF SALT LAKE) 5 THIS IS TO CERTIFY that the foregoing deposition 6 was taken before me, KAREN CHRISTENSEN, Registered 7 Professional Reporter, Registered Merit Reporter in and 8 for the State of Utah. 9 That the said witness was by me, before 10 examination, duly sworn to testify the truth, the whole 11 truth and nothing but the truth in said cause. 12 That the testimony of said witness was reported 13 by me in Stenotype and thereafter caused by me to be 14 transcribed into typewriting, and that a full, true and 15 correct transcription of said testimony so taken and 16 transcribed is set forth in the foregoing pages and said 17 witness deposed and said as in the foregoing annexed 18 deposition. 19 I further certify that I am not of kin or 20 otherwise associated with any of the parties to said 21 cause of action, and that I am not interested in the 22 event thereof. 23 24 WITNESS MY HAND at Salt Lake City, Utah. 25 Date: January 7, 2022 <i>Karen Christensen</i> KAREN CHRISTENSEN, RPR, RMR

1 Case: In the Matter of certain Fitness Devices
 2 Case No: 337-TA-1265
 3 Reported by: Karen Christensen, RPR, RMR
 4 Date Taken: January 6, 2022

WITNESS CERTIFICATE

5 I, DAVID ERICSON, HEREBY DECLARE:
 6 That I am the witness in the foregoing
 7 transcript; that I have read the transcript and know the
 8 contents thereof; that with these corrections I have
 9 noted, this transcript truly and accurately reflects my
 10 testimony.

PAGE/LINE	CHANGE/CORRECTION	REASON
10	—/—	—
11	—/—	—
12	—/—	—
13	—/—	—
14	—/—	—
15	—/—	—

16 I, DAVID ERICSON, deponent herein, do hereby
 17 certify and declare under penalty of perjury the within
 18 and foregoing transcription to be true and correct.

19 _____
 20 DAVID ERICSON, Deponent

21 STATE OF _____)
 22 :
 23 COUNTY OF _____)

24 SUBSCRIBED and SWORN to by DAVID ERICSON
 25 at _____ this _____ day
 of _____, 2022.

 Notary Public