Filed on behalf of: fuboTV Media LLC and Yanka Industries, Inc.

Entered: December 31, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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fuboTV Media LLC and Yanka Industries, Inc.,
Petitioners,

v.

DISH Technologies L.L.C.,
Patent Owner

IPR2024-00917
Patent 10,757,156

PETITIONERS' AUTHORIZED RESPONSE TO PATENT OWNER'S DIRECTOR REVIEW REQUEST

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Petitioners fuboTV Media LLC and Yanka Industries, Inc. (collectively, Petitioners) submit this Response to Patent Owner DISH Technologies L.L.C.'s (DISH) Request for Director Review (Paper 77, Req.). Because DISH cannot meet the high bar for Director Review, DISH's Request should be denied.

I. Legal Standard

Requests for Director Review of a final decision are "limited to decisions presenting (a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law." Dir. Review Process § 2.B. "[A] request for Director Review of a final decision is not an opportunity to raise issues related to the Board's decision on institution," including "how the Board exercised the Director's institution discretion." *Id.*

II. Background

DISH seeks to paint Petitioners as foreign entities engaged in untoward business models that are challenging U.S.-based innovation. Req. 1-2. But fuboTV—now majority-owned by Disney—is an American streaming network for professional sports. And Yanka Industries is an American company operating the renowned educational platform MasterClass. In September 2023, DISH sued fuboTV, Yanka, and others, asserting the '156 patent (and many others) apparently derived from preexisting technology DISH did not develop. *See* Req. 1.

In response to DISH asserting the '156 patent against 11 defendants in various

district court actions, 3 defendants filed IPR petitions. Petitioners—not third party Aylo Freesites Ltd. et al. ("Aylo")—jointly filed this petition on May 17, 2024, Paper 3 (Pet.). Aylo filed two IPR petitions on the '156 patent, both of which were denied institution. Paper 14 (ID) 3. Aylo then sought *ex parte* reexam of the '156 patent. ID 4. The Board instituted the current Petition and, on December 5, 2025, the Board issued its Final Written Decision finding all challenged claims unpatentable. Paper 76 (FWD) 96.

In 2021, DISH also asserted the '156 patent in the ITC, where validity was challenged, involving different art, evidence, and parties. EX1009 1-8, 184-99. The ITC relied on a presumption of nexus for secondary considerations based on respondents' concession that DISH's product (MOVE) met the claims where they asserted a prior public use of MOVE was invalidating—concessions not present here. *Id.* 211-13; FWD 58; Paper 71 (Tr.) 38:12-39:10; Paper 51 (Reply) 20.

III. The Present Petition Was Not an Improper Serial Attack

DISH contends that the raw number of challenges to its patents constitutes an "improper serial attack" and refers to "settled expectations" in passing. Req. 2-3. But DISH's arguments cannot be raised in this Request and are wrong on the merits. Here, Petitioners filed a single petition on the '156 patent in response to DISH's assertion of that patent against them in district court. That is far from improper.

First, DISH's arguments are outside the proper scope of this Request because

they relate to the decision to institute. *See Valve Corp. v. Elec. Scripting Prods., Inc.*, IPR2019-00062, Paper 11 at 8-15 (P.T.A.B. Apr. 2, 2019) (precedential) (discretionary denial factors); Interim Discretionary Process, § II.A & C (Oct. 3, 2025); Dir. Review Process, § 2.B (excluding "institution discretion" from review of FWDs). DISH ignores the Director's recent guidance that discretionary denial factors (e.g., "settled expectations") are not retroactive. *Id.* § II.A; Interim Processes for PTAB Workload Mgmt. (Mar. 26, 2025) at 3; FAQs for Interim Processes ¶ 5.

Second, even applying the discretionary denial framework, those factors weigh against reversal or termination. ID 26-28. Petitioners filed four years post-issuance and DISH had no strong settled expectations. Further, DISH asserted the '156 patent (as one of 12) against at least 11 defendants in separate district court actions. Resolving validity at the Office was a more efficient and effective use of agency resources and avoids litigating the same issues in parallel across multiple jurisdictions. *See Harbor Freight Tools USA Inc. v. Champion Power Equip., Inc.*, IPR2025-00805, Paper 20 (P.T.A.B. Sept. 19, 2025) ("resolving the dispute between the parties at the Office would be more efficient" where patentee sued "a large number of parties in a multitude of districts"). Indeed, multiple district court actions are stayed pending the outcome of this, other IPRs, and any appeals, reflecting the expectation that the Board's decisions will streamline issues for trial. *E.g.*, *DISH Techs. LLC v. fuboTV Media LLC*, No. 23-cv-986 (D. Del. Aug. 13, 2024), Dkt. 56.

In arguing for reversal or termination based on discretionary factors, DISH largely ignores Petitioners' work and focuses on third party conduct of Aylo. But the Board already properly rejected DISH's effort to attribute Aylo's successive IPR activity to Petitioners, finding no "significant relationship"; Petitioners and Aylo are merely separate defendants accused of infringing the same patent. ID 28. There was no improper roadmapping either: Petitioners replicated one of the two parallel petitions Aylo filed before any Board decision issued. Paper 4, 1; *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19, 17, n.14 (P.T.A.B. Sept. 6, 2017) (roadmapping arises when using earlier Board decisions as guidance).

IV. The Board Was Correct and Reversal Is Unwarranted

Contrary to DISH's arguments (Req. 3-14), the FWD contains no abuse of discretion or error of law or material fact. Rather, the Board disagreed with DISH's arguments that misinterpreted the patent and Leaning's (EX1004) disclosure of "continuous playback" and rejected DISH's objective indicia arguments.

A. Leaning Discloses Continuous Playback

Instead of identifying reviewable error, DISH re-raises the same arguments from its POR, Sur-Reply, and argument; namely, that Leaning cannot disclose the "continuous playback" limitation because of the "Clear Buffer" step in an exemplary flowchart. Petitioners addressed—and the Board thoroughly considered—DISH's position and the Board concluded that DISH was incorrect. Req. 5-12.

As the Board found and DISH confirmed at argument, the "continuous playback" limitation is met at least when "two streamlets are played in order of ascending start time without interruption." FWD 7-13; Tr. 65:12-16. That is exactly what Leaning discloses. Pet. 35-37 (Leaning discloses "interruption … can be avoided"); Reply 3-6; Leaning 14:25-15:8. "[C]ontinuous playback" does not demand the range of additional requirements DISH sought to impose in its POR or now—improperly for the first time—in its Request. *Compare* Req. 4 (demanding "transition … without losing content, repeating content, or (most notably) freezing playback") *with* Paper 27 (POR) 9-11, 15; Reply 3-6 (addressing POR).

Nor does Leaning's inclusion of a "Clear Buffer" step in the flowchart erase Leaning's disclosures that "interruption can be avoided," including by *not* clearing the buffer, and that "sub-file boundaries are the same for each rate" such that no material is skipped. FWD 31 (quoting Leaning 12:16-18, 15:3-8 and citing Pet. 25, 36-37, 39), 33 (explaining DISH incorrectly relied on a different embodiment), 36-37 ("Leaning prefers to avoid interruptions"). The Board's agreement with Petitioners that Leaning discloses "continuous playback" and rejection of DISH's attempts to reinterpret Leaning does not rest on any new theories or error.

1. Petitioners Relied on the Same Disclosures Throughout and Simply Rebutted Patent Owner's Arguments

DISH asserts that the Board allowed Petitioners to shift invalidity theories in Reply. Req. 6-7. That is incorrect. The Board considered and properly rejected

these arguments in deciding DISH's motion to strike. FWD 89-92; *see also* Tr. 45:20-47:4, 54:6-55:7 (DISH acknowledging arguments in the Petition).

As Petitioners explained, and the Board confirmed, the Petition referred back to earlier continuous playback discussions in the sections addressing 1[B][2]-1[C]: "Leaning discloses adapting the successive determinations to shift the playback quality based on generated factors to achieve continuous playback." Pet. 37; *see also id.* 47; Reply 3; *Voice Tech Corp. v. Unified Pats., LLC*, 110 F.4th 1331, 1337-38 (Fed. Cir. 2024) (permitting internal cross-references in petitions). The Petition, Reply, and supporting declarations all cite to the same embodiment—referred to in Leaning as a "modification"—that does not require clearing the buffer. Pet. 36-37 (citing EX1004 15:3-8 ("with this modification … interruption can be avoided")); Reply 3-4 (citing Pet.); Paper 65 at 5-7. In this embodiment, the "first determination (i.e., whether the buffer is completely empty)" is omitted. Pet. 36-37 (citing EX1004 15:3-8); Reply 3-4 (citing Pet.). This argument was demonstrably not new.

Further, the Reply was directly responsive to DISH's POR argument that Leaning requires the "Clear Buffer" step, resulting in interrupted playback. POR 21-22. In response, Petitioners explained why, based on the exact same embodiment in Leaning from the Petition, that was wrong. At most, this constitutes an expansion on previously-raised arguments, which is proper. *Rembrandt Diagnostics LP v. Alere, Inc.*, 76 F.4th 1376, 1384 (Fed. Cir. 2023). The Board did not err in finding

that Petitioners' arguments were not new. FWD 31-32 (citing Pet.) 89-92.

2. DISH Continues to Ignore Leaning's Disclosures and Makes New Arguments in its Request

Ignoring that the Board found Leaning does not require a "Clear Buffer" step and relied on Leaning's disclosures that interruption is avoided, DISH rehashes its "Clear Buffer" theory with new attorney argument. Req. 7-9. DISH's new theory does not alter the Board's conclusions, is late-raised, and is wrong.

The Board found Leaning discloses continuous playback without buffer clearing based on Leaning's express statements, e.g., in an alternative embodiment in which "interruption can be avoided" by omitting the "buffer is empty" condition and "anticipat[ing] underflow and avoid[ing] it in the majority of cases." FWD 31. Further, the Board quoted Leaning's teaching that "[i]n the case of rate switching, it is, if not actually essential, highly desirable that the sub-file boundaries are the same for each rate," which is not possible if content is discarded, as DISH asserts. FWD 31; *supra* at 4-7. The Board referred to Leaning's disclosures regarding not resetting the sound card only when summarizing Petitioners' positions. FWD 30, 35-36.

In its Request, DISH ignores the Board's reasoning and argues Leaning's alternative embodiment only avoids certain interruptions but introduces other, optional interruptions. Req. 7-8. It asserts that: "[t]he avoided interruption is one that would occur *after* the buffered data is supplied to the soundcard" and the "Clear Buffer" commands are still implemented "during buffer refill." Req. 7-8 (emphasis

added). This theory is new and wrong. *See* POR 20-22; Paper 66 (POSR) 9-15.

Leaning teaches an alternative embodiment—that it calls a "modification"—that avoids interruptions, including by not clearing the buffer. Leaning 8:17-32, 15:3-8 ("interruption can be avoided" and "it is preferable to employ a criterion which anticipates underflow and avoids it"); FWD 33 ("Leaning does not in most cases contemplate a buffer empty at all, let alone multiple buffer empties"). Implementing *any* clear buffer step is, at most, optional. Leaning 12:16-18 ("it is, if not actually essential, highly desirable that the sub-file boundaries are the same for each rate, so that the first sub-file received for a new rate continues from the same point in the recording"), 18:19-23 (if "freezing of the picture" is "subjectively acceptable … one would probably choose to clear the buffer"); Reply 3-6.

DISH newly argues that removing the "Clear Buffer" steps requires "complete reengineering of Leaning." Req. 9. But Leaning teaches avoiding these interruptions, *supra* at 5, and prior art is presumed enabled, as uncontested by DISH.

3. There Is No Contradictory Testimony

Next, trying to fit this case into *Interactive Commc'ns Int'l, Inc. v. Blackhawk Network Inc.*, DISH asserts the Board relied on contradictory expert testimony. IPR2024-00465, Paper 40 at 3-4 (P.T.A.B. Oct. 9, 2025). DISH is wrong. The cited testimony is not contradictory and was not central to Petitioners' or the Board's analysis. Dr. Houh explained that "part of the reason for clearing the buffer is that

the [sound] card is being reset," EX2129 97:6-9, describing "some of the conventional sound cards at the time" where changing sampling rates results in "an octave lower or an octave higher," *id.* 98:3-99:11. But Dr. Houh also explained that "in Leaning a [POSA] would recognize it is not necessary to clear the buffer," *id.* 99:4-11, and that video cards (unlike sound cards) do not need a reset, *id.* 100:4-15.

Dr. Houh's supplemental declaration and later testimony are consistent. In response to arguments from DISH and its expert (Dr. Jeffay) that clearing the buffer is mandatory, Dr. Houh explained that, even if true (it is not), a skilled artisan would not discard data that was already received and decoded. EX1026 ¶¶ 80, 153. It would make more sense to let the buffer empty by playing the files. *Id.* ¶¶ 80, 153; *see also* EX2150 111:15-20 ("in a situation where a card would be reset, a [POSA] would understand from Leaning that this clearing the buffer actually refers to playing out the sub-files in the buffer, not discarding them"), 113:20-115:24 (similar and confirming this is "under Dr. Jeffay's thinking," but "not the correct interpretation of Leaning"), 165:16-168:11 (same), 160:8-161:9 (addressing a separate argument made by Dr. Jeffay that "is not in the context of where different rates are being switched to"). There is no contradiction in Dr. Houh's testimony.

Furthermore, DISH identifies no reliance by the Board on that testimony. Req. 10 (citing FWD 48-49, not citing or referring to the foregoing). Dr. Houh's testimony was therefore neither contradictory nor material to the outcome.

4. DISH's Arguments About JPEG2000 Are Irrelevant

DISH next contends that the Board improperly determined that DISH "d[id] not appear to dispute" Petitioners' argument that there are no "further implications" for intra-frame coded video, where every frame is independently coded and does not depend on other frames. Req. 10-11. The Board was right.

That portion of the FWD addresses DISH's argument that Leaning does not readily apply to video because there are "further implications," including "mistracking." FWD 38-39; POR 25-26; Reply 6-9. But, as Petitioners pointed out, and the Board acknowledged, this misinterprets Leaning. That passage explains file partitioning can be used in the context of "switching or jumps" in video. Leaning 16:17-18. If "each frame of a picture is coded independently [(*intra*-frame coded)], it is sufficient that a sub-file contains a whole number of frames of a picture." *Id.* 16:18-20. The risk of "mistracking" arises only in the context of certain "*inter*-frame coding systems" that "do not provide for the frequent, regular inclusion of intra-frames." *Id.* 16:24-31 (emphasis added). The Board noted that DISH "d[id] not appear to dispute Petitioner on this point" because DISH made the same argument: that "mistracking arises for video, but not audio, because each frame of an audio file is *independently* decodable," i.e., *intra*-frame coded. FWD 41 (quoting POR 28).

The arguments DISH identifies in its Request that the Board purportedly disregarded, relate only to the quality of the JPEG2000 coding format. POSR 16-17.

But the JPEG2000 coding format was identified only as an example of the intra-frame coding that DISH ignored in Leaning. DISH's arguments related to JPEG2000 do not erase (or dispute) Leaning's express teaching or DISH's own admission that mistracking is irrelevant to intra-frame coded media, like JPEG2000.

5. The Board Did Not Supply Any New Theories

DISH contends that the Board relied on two new theories. Req. 11-12. Both, however, were properly raised and neither was a basis for the Board's FWD.

a. The Board Relied on "Bridging Subfiles" Only to Address DISH's Misinterpretation of Leaning

DISH contends the Board raised a new argument by relying on Leaning's disclosure of "bridging subfiles" to rebut DISH's incorrect assertion that the risk of "serious mistracking" renders Leaning inapplicable to video. Req. 11-12; FWD 38-40, 45-46. The Board did no such thing. The Board rejected DISH's mistracking argument because it was undisputed that there would be no mistracking for intra-frame videos. FWD 40-41; *supra* at 10-11. In its decision, the Board replicated Petitioners' arguments—Leaning acknowledges "further implications" for video but *also teaches how to address them*. FWD 39-40 (quoting Reply 9). Petitioners cited Leaning's teachings of how to avoid mistracking, including through bridging. Reply 9. Petitioners did not (nor needed to) rely on bridging to demonstrate Leaning disclosed the "continuous playback" limitation because it relied on Leaning's other teachings of how to avoid mistracking, as confirmed during the hearing. Tr. 98:1-6;

see also id. 34:10-35:6 (discussing Leaning avoiding mistracking, including through bridging). As Petitioners explained, Leaning's bridging disclosure nonetheless remained "important because it shows that Leaning is expressly considering that during a rate shift, clearing the buffer may not be subjectively acceptable." *Id.* 97:23-98:6; *see also* Reply 9 (citing to Leaning's discussion of bridging). The Board likewise cited those passages to rebut DISH's mistracking arguments and there is no error. FWD 38-40 ("[DISH]'s concern about mistracking therefore does not adequately undermine Petitioner's showing for limitation 1D."), 46-47 (similar).

Unlike in *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016), the Board's finding results from DISH's misreading of Leaning and disregard of Leaning's disclosure. And, DISH had the opportunity to address Petitioners' counter-arguments in a Sur-Reply and at argument. POSR 16-18; Tr. 91:12-92:19.

b. The Board Cited to "T_d=0%" in Response to DISH's Improper Sur-Reply Argument

DISH also contends the Board added that the Step Down Threshold (T_d) can be set to 0%. Req. 12. But this arose in response to DISH's improper argument; and, in any event, did not form a basis for the Board's unpatentability conclusions. DISH raised, in passing for the first time in its Sur-Reply, that "BufferLow% > T_d" in Leaning's flowchart "requires the buffer to experience 'multiple empties.'" POSR 11. Petitioners' only opportunity to respond was at argument where they identified DISH's position as improperly late-raised. Tr. 98:20-99:15. Petitioners also

explained that, on the merits, requiring multiple buffer empties was "unsupported" because "TD is a threshold, and you can set the threshold to whatever you'd like." *Id.* The Board asked DISH to respond, *id.* 105:15-109:21, and was within its rights to disagree. *Intell. Ventures II LLC v. Ericsson Inc.*, 686 F. App'x 900, 905-06 (Fed. Cir. 2017) (*In re Magnum* did not apply where the Board questioned counsel).

Further, in addressing this late-raised argument, the Board noted that, it relied on Petitioners "alternative embodiment" in Leaning for the "continuous playback" limitation, rendering this argument irrelevant. FWD 33.

B. The Board Did Not Err in Rejecting DISH's Objective Evidence

First, DISH contends the Board erred in finding no presumption of nexus because the Board did not sufficiently explain why it reached a different conclusion from the ITC for four of 18 challenged claims. Req. 13. But the Board provided 30 pages of analysis, addressing the ITC's findings throughout. Specifically, the Board explained that, contrary to DISH's assertion, this record differs from the ITC record—DISH could have replicated that record before the Office, but did not. FWD 52 n.18; Tr. 39:11-40:5. Further, the ITC did not consider DISH's later inconsistent positions on critical unclaimed features (FWD 58-59), certain ITC findings addressed different patents (*id.*), and the ITC found no evidence of copying (*id.* 73-74). The Board also correctly noted that the ITC's nexus "finding was premised on the [ITC] respondents' concession" that MOVE practiced the claims (*id.* 58; *see also*

EX1009 212)—a concession not present here. DISH's suggestion that Petitioners "never contested" that the MOVE player practiced the claims, Req. 13, is demonstrably false. Tr. 38:12-39:10; Reply 20 ("no such concession exists here"). And there was no finding of direct nexus, as DISH contends. EX1009 211-17; *contra* Req. 13.

Second, DISH argues the Board improperly shifted its identified critical unclaimed feature from "multiple TCP connections" in a prior IPR to "multiple parallel TCP connections" here. Req. 14. That mischaracterizes both IPRs. In the prior IPR, the Board agreed that another patent (U.S. Pat. No. 10,225,304, not at issue in either IPR) claimed "multiple parallel TCP connections," and rejected DISH's assertion that the challenged claims were "drawn to multiple TCP connections" because they "do not include any limitations directed to TCP." IPR2024-00043, Paper 62 at 45-46. Here, where some claims recite multiple TCP connections, the Board focused on the challenged claims' lack of "multiple *parallel* TCP connections." FWD 55-57. Both conclusions are consistent and correct.

Even so, as the concurrence acknowledges, DISH "is not entitled to a presumption of nexus" for many other reasons, including because it "cannot credibly maintain that it is entitled to a presumption of nexus to the same products … across nine patents and 120 claims having different scope while citing to substantially the same alleged evidence of secondary considerations." FWD 98-99.

V. Aylo Is Not an RPI and DISH Was Not Entitled to Discovery

RPI considerations relate to institution, *Power Integrations, Inc. v. Semiconductor Components Indus., LLC*, 926 F.3d 1306, 1315-16 (Fed. Cir. 2019), and DISH's argument is improper in this Request, *supra* at 2-3; RPI Memo. 1.

Further, as the Board found, DISH's "mere allegation of collusion" does not justify RPI discovery. EX3100 (citing *Garmin Int'l v. Cuozzo Speed Techs LLC*, IPR2012-00001, Paper 26 (P.T.A.B. Mar. 5, 2013) (precedential)). And DISH's characterization of Dr. Houh's deposition preparation is wrong: he met jointly with Petitioners and Aylo due to overlapping issues in IPRs for related patents (for a joint deposition DISH agreed to), but only counsel for Petitioners prepared Dr. Houh on issues relating to this IPR. EX3100 3; EX2129 21:15-24. Petitioners and Aylo also presented materially different arguments in reply and the supporting declarations, and separately defended Dr. Houh in both depositions. *Compare* Reply *and* EX1026 *with* IPR2024-00940, Paper 45; EX2150. There is no corporate relationship, overlapping personnel or counsel, payment of legal fees, funding, or direction. *See Corning Optical Commc'ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68 (P.T.A.B. Aug. 18, 2015) (precedential). The Board did not err.

VI. Conclusion

Because DISH does not identify any abuse of discretion or error of law or material fact, DISH's Request should be denied.

Respectfully submitted,

Dated: December 31, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 31st day of December, 2025, a true and correct copy of the foregoing **Petitioners' Authorized Response to Patent Owner's Director Review Request** was served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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