1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

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4 - - - - - - - - - - - - - - x IPR2024-00917

5 FUBOTV MEDIA, INC., : PATENT 10,757,156

6 et al., : IPR2024-00918

7 Petitioners, : PATENT 9,407,564

8 v. : IPR2024-00919

9 DISH TECHNOLOGIES, LLC, : PATENT 8,868,772

10 Patent Owner. : IPR2024-00940

11 - - - - - - - - - - - - - - x PATENT 11,991,234

12 CONFERENCE CALL

13 Conducted Telephonically

14 Thursday, May 29, 2025

15 1:00 p.m.

16 BEFORE:

17 JUDGE JOHN A. HUDALLA

18 JUDGE KARL EASTHOM

19 JUDGE MICHELLE WORMMEESTER

20

21 Job No. 585974
Pages: 1 - 39

22 Reported by: Janet A. Hamilton, RDR

fuboTV Media Inc
Exhibit 1025
fuboTV v. Dish
IPR2024-00918

1 Transcript of proceedings in the
2 above-captioned matter, conducted telephonically
3 with all parties attending telephonically.
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9 Pursuant to Notice, before Janet A.
10 Hamilton, Notary Public for the State of Maryland.
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1 JUDGE HUDALLA: Good afternoon, everyone.
2 This is a conference call in IPR 2024-00940 as
3 well as IPR 2024-00917, 918 and 919. I'm Judge
4 Hudalla, and I have with me Judges Easthom and
5 Wormmeester.
6 Who do we have today from Petitioner Aylo?
7 MR. SHENG: Good morning, Your Honor. You
8 have Philip Sheng with the law firm Venable LLP,
9 and I'm joined today on the call with Ian
10 Paquette, Parker Zimmerman and Frank Gasparo who
11 are all counsel of record for Petitioner Aylo.
12 JUDGE HUDALLA: Okay. Thank you,
13 Mr. Sheng. Do you have a court reporter with you?
14 MR. SHENG: I believe we do. I believe
15 the Latham law firm was the one arranging that.
16 If counsel from Latham is online, if she could
17 confirm.
18 JUDGE HUDALLA: I'll ask her that in a
19 minute then.
20 THE REPORTER: Yes. This is the reporter
21 Jan.
22 JUDGE HUDALLA: Okay. Thank you. I'll

1 take appearances now from Petitioner fuboTV and
2 Yanka.
3 MS. RABENSTEIN: Good morning, Your Honor.
4 This is Rebecca Rabenstein from Latham & Watkins
5 on behalf of fuboTV and Yanka Industries. Also
6 attending here is Inge Osman, also of Latham, and
7 we're both counsel of record for Petitioner Fubo
8 and Yanka Industries.
9 JUDGE HUDALLA: And Miss Rabenstein, I
10 guess you have a court reporter with you there
11 today?
12 MS. RABENSTEIN: Yes, we do. Thank you
13 for speaking up. Thank you to the court reporter
14 for speaking up and confirming she is here.
15 JUDGE HUDALLA: Okay. I would ask, when
16 the transcript's available, can you have it filed
17 and I guess at least in your cases after it's
18 available and at the next exhibit number that's
19 available, and then I don't know if you can maybe
20 coordinate with Mr. Sheng to do the same in the
21 940 case.
22 MS. RABENSTEIN: Yes. We'll do so, Your

1 Honor.
2 JUDGE HUDALLA: Okay. Thank you. And
3 then who do we have today from Patent Owner Dish?
4 MR. WILLIAMS: Yes. Good morning, Your
5 Honor. This is Eliot Williams of Baker Botts.
6 Can you hear me okay?
7 JUDGE HUDALLA: I can.
8 MR. WILLIAMS: Okay. Great. I also have
9 backup counsel with me on the call: Hopkins Guy,
10 Jamie Lynn and I believe Andrew Wilson are all on
11 as well, all from Baker Botts.
12 JUDGE HUDALLA: Okay. Mr. Williams, you
13 are a little bit garbled. I do have to say you're
14 kind of coming in and out a little bit with the
15 audio.
16 MR. WILLIAMS: Okay. I could try calling
17 back in on the -- it may be my cell connection
18 here. Is this any better?
19 JUDGE HUDALLA: I think we'll go with it.
20 If we have trouble, we'll let you know. How about
21 that?
22 MR. WILLIAMS: All right. That would be

1 great.
2 JUDGE HUDALLA: Okay. The purpose of
3 today's call is to discuss Petitioner in both
4 cases requesting I guess what amounts to
5 additional discovery related to a recent
6 deposition of Mr. Ratcliffe of British Telecom.
7 So why don't you start us off, Mr. Sheng, and tell
8 us what you're asking and why.
9 MR. SHENG: Thank you, Your Honor. I
10 think it would be helpful to provide some quick
11 background to frame the dispute here. As Your
12 Honors are aware, Dish submitted a declaration by
13 a British Telecom lawyer, a BT lawyer, that
14 purports that the video embodiment of the Leaning
15 prior art reference was never commercialized or
16 licensed. The declaration also purports that this
17 BT lawyer did an extensive search, that he looked
18 through all of BT archives, that he spoke to the
19 relevant folks at BT, and Dish uses this
20 declaration to argue, Your Honors, and this is a
21 direct quote from Dish's POR, Dish says: "It is
22 the most direct and probative indicium of

1 nonobviousness." So this is Dish's own words at
2 page 61 of its POR in the 940 IPR, and I think it
3 bears emphasis, Your Honor, that Dish is calling
4 it the most direct and probative indicium of
5 nonobviousness.
6 So, of course, given how much Dish has
7 elevated this declaration we felt we needed to
8 take it very seriously, and when we deposed
9 Mr. Ratcliffe, we were concerned by some of the
10 things we were hearing, and just to provide some
11 examples, Your Honors, Mr. Ratcliffe testified
12 that Dish did not explain why it was asking him to
13 do what he was doing. Dish instructed him to
14 focus on a single product called Voyager 2000. We
15 don't know why Dish did that, but it caused
16 Mr. Ratcliffe to ask the folks that he talked to
17 at BT to limit their searches to the Voyager 2000
18 product.
19 He testified he didn't ask them to run any
20 searches for things like video streaming or
21 adaptive bitrate streaming, and we know
22 Mr. Ratcliffe had multiple e-mail correspondence

1 with Dish regarding his investigation and what he
2 was asked to do, and he testified that he reviewed
3 those e-mails even to prepare for his deposition.
4 We also know that Dish drafted
5 Mr. Ratcliffe's declaration for him in the first
6 instance. So Dish essentially picked from
7 Mr. Ratcliffe's e-mails what it wanted to include
8 in his declaration, drafted it for him and
9 presented it to him. We know the draft
10 declaration went through at least four rounds of
11 edits, and these were substantive edits. For
12 example, Mr. Ratcliffe testified that an earlier
13 draft had said that BT never asserted Leaning
14 against another company, and Mr. Ratcliffe
15 testified that he had to correct that statement,
16 but instead of correcting the statement, Your
17 Honors, to say that BT had asserted Leaning
18 against another company Dish deleted the statement
19 from the declaration because presumably it didn't
20 support its narrative that BT did nothing with the
21 Leaning reference. So on that --
22 JUDGE HUDALLA: I'm sorry to interrupt

1 you. On that point you just mentioned there, you
2 actually have testimony from Mr. Ratcliffe stating
3 that; right?
4 MR. SHENG: Yes. I had asked him
5 specifically during the deposition, well, what do
6 you recall, you know, changing? And that was one
7 example he provided, and when I asked him could he
8 provide any others, and he either miss -- couldn't
9 remember or refused to open up his declaration and
10 share that testimony with me during the
11 deposition.
12 JUDGE HUDALLA: Okay. Please continue.
13 MR. SHENG: Yeah. So we have, you know,
14 all these questions surrounding this declaration
15 and facts that just seem inconsistent while Dish
16 is using this BT declaration as a sword in its POR
17 saying that it's the most direct and probative
18 indicium of nonobviousness.
19 Your Honor, I do want to make one other
20 point, and we appreciate the e-mail that the board
21 sent asking Dish to provide authority regarding
22 the relevance of this discovery to Dish's

1 secondary considerations argument. I just want to
2 make the point that the requested discovery is
3 relevant, not just to that, to Dish's secondary
4 considerations argument but also, you know, there
5 -- in our view there's no question that how the
6 assignee and named inventor described the
7 invention to others, to Dish especially in this
8 case, is highly relevant to Dish's arguments and
9 Aylo's arguments on the merits, and what I mean by
10 that is Dish's primary attacks on Leaning in these
11 IPRs is that Leaning allegedly teaches clearing
12 its buffer every time there's a rate change, and I
13 don't know if Your Honors are familiar with that
14 argument, but what Dish is saying is that every
15 time there's a rate change Leaning will clear its
16 buffer and audio or video will freeze for ten
17 seconds or more, and this results in a terrible
18 user experience. It will result in repeated
19 buffering. Users don't want it. It's no good.
20 Dish says it doesn't result in continuous
21 playback. So this is Dish's primary attack on
22 Leaning.

1 You know, we're going to argue, of course,
2 that Dish's interpretation of Leaning is way off,
3 and you'll see those arguments in our reply, but
4 more fundamentally, while Dish has argued that
5 Leaning's streaming solutions doesn't work,
6 Mr. Ratcliffe, on the other hand, is testifying
7 that BT commercialized certain embodiments to
8 Leaning, that BT licensed Leaning to other
9 companies as part of portfolio licenses, and that
10 BT even asserted Leaning against other companies,
11 and these facts are inconsistent with Dish's
12 positions on the merits.
13 And finally, Your Honor, I'll just mention
14 on top of that we learned from the deposition that
15 Dish is in contact with the named inventor
16 himself, Mr. Anthony Leaning, and has discussed
17 the invention with Mr. Leaning himself. So what
18 did Mr. Leaning say about clearing the buffer?
19 You know, Dish went to great lengths to submit a
20 declaration from a BT lawyer, instructed him to
21 talk to certain folks, talked to Mr. Leaning's
22 manager, discussed his discussions with

1 Mr. Leaning's manager, but what we don't have is
2 any declaration or any, anything at all regarding
3 Dish's discussions with Mr. Leaning. What we got,
4 Your Honor, again, was a carefully wordsmithed
5 declaration drafted by Dish and, you know, we, you
6 know, respectfully believe that the requested
7 discovery is warranted either as routine discovery
8 because it's inconsistent with positions, with
9 positions advanced by Dish or additional discovery
10 because it would be in the interest of justice.
11 JUDGE HUDALLA: Mr. Sheng, could I ask you
12 a couple questions about that? You just went
13 through a few things that you said were
14 inconsistent with the merits. You seem to know a
15 lot about that already, and I guess it makes me
16 think, well, what more did they need, what more
17 did Petitioner need to prove its case? I mean you
18 seem to have the contrary evidence already to the
19 extent you're going to make those arguments. I
20 guess could you respond to that?
21 MR. SHENG: Sure. Our contrary evidence
22 would be, you know, based on our reading of

1 Leaning would be based on what our expert believes
2 Leaning teaches. What we don't have is what the
3 assignee and the named inventor himself has said
4 about the invention. Dish has that information
5 but we don't, Your Honor. So, you know, is it
6 true that we feel we have the necessary
7 information to prove our case? Absolutely, but
8 again, Your Honor, it seems to us that Dish is
9 using the BT declaration as a sword yet, you know,
10 it is not having to disclose or produce the
11 underlying information.
12 JUDGE HUDALLA: And let me ask you, have
13 you made any effort to reach out to Mr. Leaning?
14 There's nothing preventing you from trying to
15 obtain discovery from him, right?
16 MR. SHENG: Yes, Your Honor. I can
17 represent that our firm, Venable firm, we tried
18 looking for Mr. Leaning, and we couldn't find
19 contact information for him. I asked
20 Mr. Ratcliffe during the deposition to please
21 provide Mr. Leaning's contact information to me.
22 He initially refused saying that it was

1 confidential. Then he -- then he said that he
2 might not even have it, and then he said he --
3 yeah, he said he might not even have it.
4 So, yes, Your Honor, we did look for
5 Mr. Leaning, and we did ask Mr. Ratcliffe for his
6 contact information, and he wasn't able to provide
7 it to us.
8 JUDGE HUDALLA: Have you asked Baker Botts
9 for the contact information?
10 MR. SHENG: We haven't asked, no, Your
11 Honor. We weren't aware that they had the
12 information until the deposition. Just based on
13 the correspondence that has since, you know,
14 happened since the deposition I'd be surprised
15 that they'd be willing to give it to us, but no,
16 we haven't asked.
17 JUDGE HUDALLA: Okay. And then one last
18 thing. How do you know that Dish has this other
19 information? You know, kind of the insinuation
20 here is that they're hiding stuff from you. I
21 guess why or how do you think that they have this
22 other information about potential

1 commercialization that they're not, you know, that
2 they haven't put to the fore?
3 MR. SHENG: Your Honor, that's a great
4 question. I mean at the end of the day, you know,
5 we don't know. We don't know. You know, only
6 Dish knows at the end of the day but, Your Honor,
7 I mean all the hallmarks are there. I mean during
8 the deposition Mr. Ratcliffe had his laptop with
9 him. I asked Mr. Ratcliffe during the deposition
10 could you please pull up, you know, the e-mails
11 that you sent Baker with your drafts, and counsel
12 for Dish, you know, jumped out of his seat and
13 lodged a very lengthy objection, and the witness
14 who was not represented, he was there by himself,
15 a third party witness, was sort of a deer in
16 headlights, and he said, you know, look, I'm not
17 going to produce -- I'm not going to send it to
18 you until the board or the court, he wasn't sure
19 who was going to be presiding over this, he said
20 he's not going to send it to us until, you know,
21 the issue was decided.
22 I mentioned, Your Honor, just the examples

1 that we had, you know, the draft declaration that
2 went through four iterations back and forth, and I
3 mentioned the assertion, you know, whether BT ever
4 asserted Leaning, and the fact that he testified,
5 Mr. Ratcliffe testified that, you know, hey, I had
6 to change that because we did assert Leaning, and
7 then there was nothing about asserting Leaning in
8 the declaration, but rather, that this was the
9 final declaration said that, you know, there was
10 no commercialization. And so that was just one
11 example. The other example, Your Honor, is the
12 Voyager 2000, you know, limiting his search to a
13 specific product and then touting in the
14 declaration that no evidence whatsoever that
15 Leaning was commercialized. We find that
16 inconsistent in our view.
17 JUDGE HUDALLA: Can I ask you about that?
18 MR. SHENG: Sure.
19 JUDGE HUDALLA: You mention in your e-mail
20 another product I guess or a service called
21 Voyager 2100 and Fastnets. Do you have
22 information tending to show that maybe those

1 different systems were commercialized by BT?
2 MR. SHENG: Absolutely with respect to
3 Fastnets, Your Honor. The Voyager 2100 product
4 was brought up. That was brought up by Fubo's
5 counsel, and I believe it was brought up just to
6 show that, you know, Voyager 2000 went through
7 many iterations. I think there was a Voyager 2200
8 after that, you know, the 2000, 2100 and so forth.
9 The Fastnets product specifically, Your Honor, I
10 asked Mr. Ratcliffe specifically about that
11 product during his deposition. We introduced
12 exhibits that clearly show, clearly show Fastnets
13 was an adaptive bitrate streaming product that
14 Mr. Ratcliffe had not considered, had never even
15 heard of before, but it clearly discusses -- the
16 exhibits that we put in front of them clearly show
17 that Fastnets was an adaptive bitrate streaming
18 system that would have, I'll say streamlets or
19 have, you know, sub-files that you would switch
20 between different bitrates depending on bandwidth.
21 JUDGE HUDALLA: And whatever information
22 about that you don't feel is sufficient to make

1 your case, it sounds like.
2 MR. SHENG: Which case though? I mean
3 certain --
4 JUDGE HUDALLA: To refute the secondary
5 considerations argument that we're talking about
6 today.
7 MR. SHENG: I mean I don't want to
8 negotiate input, Your Honor, but certainly we
9 believe that it's sufficient that, you know, we
10 feel Mr. Ratcliffe's investigation and, you know,
11 to, you know, counter what Dish has called the
12 direct and most probative indicium of
13 nonobviousness we feel like the underlying, the
14 requested discovery would be necessary.
15 JUDGE HUDALLA: Okay. Why don't I turn
16 then to Miss Rabenstein. Did you have anything
17 else you'd want to add on top of what Mr. Sheng
18 said or do you want to make any other comments
19 before I talk to Dish about this?
20 MS. RABENSTEIN: Yes, I would like to,
21 Your Honor, please. I'd actually like to pick up
22 on the question about, that you had about what is

1 it about the specific information that we're
2 requesting here for this discovery and what
3 evidence do we have that we need this specific
4 thing.
5 One thing I'll note, and it didn't come
6 up, it wasn't necessarily quoted in either party's
7 e-mail, so apologies for that, but Mr. Ratcliffe
8 testified that in the e-mails that he saw from
9 Mr. Leaning and Dish's counsel that there was an
10 explanation. Mr. Leaning was explaining how they
11 were commercializing the Leaning reference, and
12 that at the time they were working on that his
13 department, as happens normally at BT, was being
14 disbanded, so there was a lot of activity going
15 on, and so he couldn't -- Mr. Ratcliffe couldn't
16 remember the specifics about this. He said this
17 is just going on my memory, I'm not really sure,
18 but there's clearly evidence in his e-mails where
19 Mr. Leaning was giving an explanation as to why
20 perhaps, you know, even assuming Dish's assertion
21 that Leaning was not commercializing the video,
22 even assuming that's true, there appears to be

1 that there's an explanation for Mr. Leaning in
2 that e-mail as to, you know, why that might not
3 have been commercialized, and it would have had
4 nothing to do with the technology. It may have
5 had to do with internal reorganization and events
6 occurring within BT, and so that's why we're --
7 that's one of the reasons why we are searching for
8 these particular communications, right, and
9 there's no other way that we can get that. We
10 know they exist. Mr. Ratcliffe said it was there,
11 and he would not show us the e-mails during the
12 deposition, and he could not remember exactly what
13 was there. He said this is my recollection, this
14 is what I recall; but those details could be
15 there, and it would refute and be inconsistent
16 with Dish's point that there was something wrong
17 about the disclosure or insufficient about the
18 disclosure of Leaning that led to it not being
19 commercialized.
20 JUDGE HUDALLA: Have you made any -- has
21 the Latham firm tried to reach out and obtain
22 discovery from Mr. Leaning?

1 MS. RABENSTEIN: I don't believe we have,
2 sir.
3 JUDGE HUDALLA: Okay. Because, you know,
4 to be honest, all this insinuations or all these
5 insinuations about Mr. Leaning, it seems strange
6 to me that, you know, neither of you has reached
7 out to try to get him directly.
8 MR. SHENG: Well, we tried. The Venable
9 firm tried. We tried finding him.
10 JUDGE HUDALLA: Okay.
11 MR. SHENG: He's in the UK, I believe, is
12 what Mr. Ratcliffe said.
13 JUDGE HUDALLA: Okay.
14 MS. RABENSTEIN: Your Honor, we have
15 another concern here, too, and it's why we're
16 asking for these particular documents underscoring
17 the communications between Baker Botts, Dish's
18 counsel here and Mr. Ratcliffe and Mr. Leaning,
19 which is, you know, they have -- Dish's counsel
20 has taken such diametrically opposed things while
21 clearly it seems that they have this information,
22 they have this knowledge that there likely was

1 commercialization, and they really are using a
2 sword here to say we're just going to say there's
3 no commercialization here, but Mr. Ratcliffe was
4 pushing back on that, as we know from his
5 deposition, and we know that there's additional
6 information that they had that just said that
7 there was commercialization going on or that the
8 reason there was no commercialization might be due
9 to something other than the technology, and so
10 we're concerned that there's a bit of a duty of
11 candor issue here in terms of Dish having this
12 information and yet withholding it and selectively
13 carefully crafting a declaration that they wrote
14 for Mr. Ratcliffe and then arguing, you know,
15 without letting the board know that, you know
16 what, it's not as crystal clear based on what
17 Mr. Ratcliffe said in his deposition that there
18 was no commercialization here. And so the scope
19 of Dish's counsel's knowledge of, you know, what
20 Mr. Ratcliffe was pushing back and whether there
21 really was commercialization is important for us
22 to know here.

1 JUDGE HUDALLA: Okay. Anything else then
2 before I talk to Patent Owner's counsel then, Miss
3 Rabenstein?
4 MS. RABENSTEIN: No, Your Honor. Thank
5 you.
6 JUDGE HUDALLA: Okay. All right. We'll
7 turn now to Mr. Williams. Would you like to
8 respond to both of the Petitioners' counsel?
9 MR. WILLIAMS: Sure. How are you hearing
10 me? Is that okay?
11 JUDGE HUDALLA: Yes, thank you.
12 MR. WILLIAMS: Okay. Great. Yeah. I
13 guess several things. I'm not going to take this
14 line by line. I think I'll start with the main
15 point which is, you know, the citation to this
16 declaration and how it's being used in the Patent
17 Owner's response is very clear, and it has to do
18 with commercialization of this video teachings of
19 Leaning. There is absolutely nothing that we are
20 in possession of or know of that calls into
21 question or is inconsistent with any of the
22 arguments that are made in the Patent Owner

1 response about the video teachings of Leaning and
2 have heard nothing from either Petitioners'
3 counsel that would suggest that they know of
4 anything that we have possession of that's
5 inconsistent with those positions. Of course, if
6 we did have anything that was inconsistent with
7 those positions, it would have been produced.
8 JUDGE HUDALLA: Let me ask you a question
9 then, Mr. Williams, a direct question. Do you
10 have any, any information about BT commercializing
11 the audio technology in Leaning?
12 MR. WILLIAMS: The information about audio
13 commercialization is, as I recall, mentioned in
14 some correspondence that we had, yes, but that, of
15 course, is not the point that we've cited this
16 evidence for in the POR.
17 I also believe that it's mentioned in
18 Mr. Ratcliffe's declaration. I don't think there
19 was any attempt to hide the ball about audio
20 commercialization. It's just irrelevant to the
21 point we were making in the POR.
22 JUDGE HUDALLA: Okay. Sorry to interrupt.

1 Please continue.
2 MR. WILLIAMS: Yeah. So in any event, so
3 as I said, that information, if we had it, would
4 have obviously been produced as routine discovery.
5 It just doesn't exist, and again, this is I think
6 a fishing expedition for Petitioners' counsel
7 trying to find, you know, anything that might
8 suggest that they've got, you know, some new
9 argument that may be helpful to them, but that's
10 not what IPR discovery is about. This isn't
11 district court discovery obviously. We have the
12 Darwin factors to apply here, and there just
13 frankly is no showing that there's anything useful
14 that would be uncovered by this discovery that
15 they're seeking.
16 The other thing is, you know, they have
17 taken a three-and-a-half-hour deposition of this
18 declarant. It's an 11-paragraph declaration.
19 It's very simple. It says --
20 (The reporter requested clarification.)
21 MR. WILLIAMS: Yeah, sorry. I forgot
22 there was a court reporter. I'll slow down.

1 Yeah. So there was a three-and-a-half-hour
2 deposition of this declarant where all of these
3 pieces of information were tested at great length.
4 I think you've already heard the testimony that
5 Petitioner has received during that deposition,
6 and, you know, they're obviously free to make
7 whatever use of it they would like, but they've
8 already got -- anything that's going to be helpful
9 to them, you know, they already have.
10 Now, you know, as to why they haven't
11 reached out to the inventors or been unsuccessful
12 reaching out to the inventors at BT I could only
13 speculate. I don't know. But, you know, we
14 obviously did that research ourselves, and we --
15 it resulted in a declaration from the declarant
16 that we have.
17 So, you know, there's nothing -- there's
18 no ball that's being hidden here. They got
19 everything that they need to make the argument
20 they need to make.
21 JUDGE HUDALLA: Would you --
22 MR. WILLIAMS: You know, there wouldn't

1 be -- kind of the main point is that this
2 discovery here is just not in the interest of
3 justice, especially with the Darwin factors.
4 Sorry, Your Honor. Go ahead.
5 JUDGE HUDALLA: Would you be willing to
6 share Mr. Leaning's contact information with
7 Petitioners' counsel?
8 MR. WILLIAMS: I mean the contact
9 information we have for Mr. Leaning is his public
10 physical address. I don't -- it's not
11 confidential, but I do believe, you know, we could
12 we could provide the Petitioners' counsel
13 Mr. Leaning's public address that we have, yes.
14 JUDGE HUDALLA: Okay. Now I guess -- I
15 guess my -- here's my concern for Petitioners'
16 counsel. It is that we are getting into something
17 that's not in really our control or our purview
18 here at the board. We're getting into more of a
19 district court style discovery. You have kind of
20 curated the information, you know, as far as
21 coming forward with this declaration, and so
22 they're in the boat of trying to have to refute it

1 with very limited options to do that.
2 Now, I agree with you, they've had a
3 three-and-a-half-hour deposition to talk to
4 Mr. Ratcliffe, but they haven't had discussions
5 with Mr. Leaning which I guess you apparently
6 have. Is that right?
7 MR. WILLIAMS: I don't believe we've ever
8 had a substantive discussion with Mr. Leaning. He
9 referred us to Mr. Ratcliffe, to the best of my
10 recollection.
11 JUDGE HUDALLA: Okay. So you've never
12 talked to him on the phone?
13 MR. WILLIAMS: No, but we -- we -- I think
14 the testimony that you're referring to was the
15 discussion we had with the other inventor,
16 Mr. Whiting.
17 JUDGE HUDALLA: Okay. Maybe I'm mistaken
18 but I believe in the deposition transcript that I
19 reviewed or skimmed there was a mention that there
20 was an e-mail or at least an e-mail correspondence
21 with Mr. Leaning or at least some attempt to
22 correspond with him via e-mail. Is that something

1 that you've been doing?
2 MR. WILLIAMS: No, no. We've never had an
3 e-mail correspondence with Mr. Leaning, nor phone
4 call.
5 JUDGE HUDALLA: Okay. So you --
6 MS. RABENSTEIN: Your Honor, if I could
7 help, I have the transcript cite for that.
8 JUDGE HUDALLA: Oh, please, go ahead.
9 MS. RABENSTEIN: It's at page 92 of
10 Mr. Ratcliffe's deposition starting at line 19.
11 The question is: "And it is your recollection
12 that Mr. Leaning told Baker Botts that the audio
13 embodiment of the invention was commercialized; is
14 that correct?"
15 Mr. Guy objected to form, and the answer
16 is: "Yes. There was something in the
17 correspondence around the audio. He was
18 definitely saying video wasn't, but audio was some
19 part of trial because they were working at the
20 time for BT conferencing, and then the project
21 team that they were part of which Mike Whiting
22 would have led got disbanded, as is often the case

1 with BT. We move people around all the time, and
2 from recollection he was explaining just what was
3 happening at the time of the disbanding around
4 this, his, you know, his invention. I read it,
5 you know, months ago, so rather than it wasn't one
6 of the e-mails that I read in preparation for
7 today's deposition."
8 JUDGE HUDALLA: Okay. Thank you for that,
9 Miss Rabenstein.
10 So, Mr. Williams, I mean, doesn't the,
11 what she just read, seem a bit contrary that there
12 was at least some contact or do you think maybe
13 he's referring in the deposition testimony to
14 contact with the BT lawyer, Mr. Ratcliffe? Is
15 that what you're suspecting there?
16 MR. WILLIAMS: I think Mr. Ratcliffe
17 probably either misheard or confused which of the
18 two inventors was being asked about. If that
19 answer was -- if the question had been asked about
20 Mr. Whiting, that answer would have made a lot of
21 sense to me.
22 JUDGE HUDALLA: Okay. And have you had

1 any contact with Mr. Whiting then?
2 MR. WILLIAMS: Yes.
3 JUDGE HUDALLA: Okay. And he hasn't been
4 retained or anything as like a consultant or
5 expert or anything between, or by your firm or
6 maybe by the firm that's handling the district
7 court case; is that right?
8 MR. WILLIAMS: No. As far as I know, no
9 one at my firm or anyone else associated with this
10 litigation has retained any of these witnesses,
11 whether it's Whiting or Leaning or Mr. Ratcliffe.
12 JUDGE HUDALLA: Okay. All right. Let me
13 briefly go back to Petitioners' counsel. Let's go
14 with Mr. Sheng. Do you have anything else before
15 we deliberate a little bit about this?
16 MR. SHENG: Yes. I just want to mention,
17 Your Honor, you brought up district court
18 litigation and, you know, we're getting into
19 district court type discovery, and I just want to
20 respectfully disagree somewhat on that. You know,
21 this is a very limited discovery. You know, it's
22 in response to, direct response to a declaration

1 that was submitted and again heavily relied on,
2 heavily elevated in these proceedings. So it's
3 not like we're issuing broad discovery requests or
4 interrogatories. We're asking for a very specific
5 set of, you know, documents that could easily, you
6 know, would take very little time for Dish to
7 collect the correspondence with one or I guess
8 just, I guess two now, two recipients.
9 And then also just wanted to note. So in
10 addition to what counsel, what counsel for Fubo
11 read into the record there was also testimony by
12 Mr. Ratcliffe that he wasn't aware of any
13 correspondence between Baker and Mr. Whiting. He
14 seemed quite certain that the e-mail he got was
15 from Mr. Leaning. So this just adds to, you know,
16 the atmosphere of just sort of uncertainty and
17 credibility surrounding Mr. Ratcliffe.
18 JUDGE HUDALLA: Okay. And Miss
19 Rabenstein, would you like to have a comment
20 before we go off and discuss this a bit?
21 MS. RABENSTEIN: Just one small comment,
22 Your Honor, and that's we've discussed that, you

1 know, we had 3.5 hours to depose Mr. Ratcliffe.
2 That was a limit. There was -- originally Dish's
3 counsel did not want to make him available for
4 that long, and so ultimately that was agreed-upon
5 limit. So it's not like we had a full seven hours
6 that we could have deposed him.
7 JUDGE HUDALLA: Okay. Do you feel like
8 you were pressed for time on that? I mean that's
9 the implication there.
10 MS. RABENSTEIN: Well, I think the point
11 is Dish's counsel is implying that, you know, we
12 had a fulsome, you know, three-and-a-half hours
13 that we were able to depose him for, and if we
14 really needed more information we could have
15 continued that deposition, and I just wanted to
16 make clear for the record that we actually
17 couldn't. We used the full time with that limit
18 there.
19 The additional point being, you know, he
20 couldn't recall some of these communications. He
21 was giving us the rough statements as to what he
22 recalled from the communications that were seen to

1 go to Baker Botts, and so that's why we need the
2 additional discovery beyond the deposition.
3 JUDGE HUDALLA: Okay. Any last comment
4 from you, Mr. Williams?
5 MR. WILLIAMS: No, other than I think
6 you're -- I know you asked Petitioners' counsel if
7 they attempted to contact Mr. Leaning. I don't
8 know if they attempted to contact Mr. Whiting.
9 All I would say is that kind of information, you
10 know, we don't control these witnesses. We've not
11 told them not to cooperate, and certainly if
12 Petitioners' counsel was interested in any of the
13 testimony, they've known since February that we
14 were relying on this declaration and could have
15 gone about trying to find this information
16 themselves. So I think that's the only other
17 thing I wanted to add.
18 JUDGE HUDALLA: Okay. Well, if you all
19 would hold the line for a moment, I'm going to
20 discuss this with my colleagues and will get back
21 to you in a moment.
22 MS. RABENSTEIN: Thank you, Your Honor.

1 MR. SHENG: Thank you, Your Honor.
2 (Brief pause)
3 JUDGE HUDALLA: Okay. Thank you,
4 everyone, for holding the line. We've decided
5 we're just going to take this call under
6 advisement today. We'll be back to you with a
7 ruling probably early next week on the discovery
8 matter.
9 So with that, Mr. Sheng, do you have any
10 questions at this time?
11 MR. SHENG: No. It wasn't clear to me, or
12 just one quick question. Earlier there was a
13 question about sharing contact information. Was
14 there a ruling on that or where did we land on
15 that?
16 JUDGE HUDALLA: No ruling at this moment.
17 I mean I think it's quite likely we would say to
18 do that but nothing at this moment.
19 MR. SHENG: Very good.
20 JUDGE HUDALLA: Miss Rabenstein, any
21 comments from you?
22 MS. RABENSTEIN: No additional comments

1 from me. Thank you, Your Honor.
2 JUDGE HUDALLA: And Mr. Williams, anything
3 else from you?
4 MR. WILLIAMS: None at this time, Your
5 Honor.
6 JUDGE HUDALLA: I just wanted to say for
7 the record that at some point during the
8 proceedings here Judge Dang has also joined us for
9 purposes of the record, but with that I thank you
10 all for your time, and we are adjourned.
11 MS. RABENSTEIN: Thank you, Your Honor.
12 MR. WILLIAMS: Thank you, Your Honor.
13 (Off the record at 1:34 p.m.)
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1 CERTIFICATE OF REPORTER
2
3 I, Janet A. Hamilton, the officer before
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11 this case and have no interest, financial or
12 otherwise, in its outcome.
13 IN WITNESS WHEREOF, I have hereunto set my
14 hand and affixed my notarial seal this 30th day of
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