UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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fuboTV MEDIA INC. and YANKA INDUSTRIES, INC.,

Petitioners,

v.

DISH TECHNOLOGIES L.L.C.,

Patent Owner.

Case IPR2024-00918

Patent 9,407,564

PATENT OWNER'S MOTION TO STRIKE UNDER 37 C.F.R. § 42.23(b)

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*** Emphasis added throughout unless otherwise noted. ***

PATENT OWNER'S EXHIBIT LIST

Ex. No.	Description of Documents
2001	U.S. Patent App. Pub. No. 2004/0030547 by Leaning et al. ("Leaning US")
2002	Redline Comparison of Leaning and Leaning US
2003	Reserved
2004	Reserved
2005	Information Disclosure Statement entered in prosecution of U.S. Patent App. No. 18/069,450
2006	Notice of Allowance entered in prosecution of U.S. Patent App. No. 18/069,450
2007	337-TA-1265 ITC Investigation Commission Opinion
2008	Reserved
2009	*DISH Techs. L.L.C. v. MG Premium Ltd*, 2:23-cv-00552, Dkt. 114 (D. Utah Aug. 15, 2024)
2010	Reexamination-op-stats (156 - 00917)
2011	Dave Marshall, *Compression: Video Compression (MPEG and others)*, Cardiff University, http://users.cs.cf.ac.uk/Dave.Marshall/Multimedia_CM0340/PDF/11_CM0340_MPEG_Video.pdf
2012	ITU-T Recommendation H.261 1993
2013	ISO/IEC 11172-2:1993(en), Information technology — Coding of moving pictures and associated audio for digital storage media at up to about 1,5 Mbit/s — Part 2: Video
2014	U.S. Patent No. 6,002,440 ('440 Patent)
2015	ISO/IEC 11172-3:1993(en), Information technology — Coding of moving pictures and associated audio for digital storage media at up to about 1,5 Mbit/s — Part 3: Audio
2016	Reserved
2017	Reserved
2018	Reserved
2019	Reserved
2020	Declaration of Inventor Robert Drew Major
2021	MOVE Networks Streaming Media Technology
2022	MOVE Networks Technology Overview
2023	Sling TV Emmy Award (CX-1084)
2024	MOVE Awarded Fundamental Patent (CX-1122)

2025	MOVE Networks Article (CX-0013)
2026	OnHollywood 100 (CX-1078)
2027	OnHollywood 100 Winner (CX-1079)
2028	OnMedia 100 Winner (CX-1080)
2029	Red Herring Global 100 (CX-1081)
2030	MOVE Networks TechCrunchies Finalist (CX-1082)
2031	MOVE Networks Makes Web TV Watchable (CX-0046)
2032	ABC.com Makes Watching TV at Work Better (CX-1106)
2033	MOVE Networks, a next-gen content distribution platform (CX1134)
2034	Better than YouTube (CX-0045)
2035	Long-Form Video Gaining Viewers (CX-1115)
2036	Move Over Joost (CX-1125)
2037	Coming Faster Than You Think (CX-1110)
2038	WSJ Pushing to Bring TV to the Internet (CX-1128)
2039	CNN Level 3 Collaborates with MOVE (CX-1113)
2040	The Sport Page ESPN 360 (CX-1132)
2041	E-Mail 5/15/2007 (CX-1047C)
2042	E-Mail 6/16/2007 (CX-1049C)
2043	E-Mail 11/26/2007 (CX-1050C)
2044	ABC Big Move Away from Flash (CX-1116)
2045	Disney ABC Throws Down (CX-1130)
2046	The Lowdown on Apple (CX-1131)
2047	AOL and CBS Put Online HD (CX-1109)
2048	MOVE Quality Solution (CX-1121)
2049	ABC Becomes First Network HD Streamer (CX-1112)
2050	ABC.com to Stream HD Video (CX-1108)
2051	ABC Adds Full Screen Mode to Online Shows (CX-1104)
2052	MOVE Networks Releases Live Streaming (CX-1123)
2053	ABC Offering Full Screen Streaming HD (CX-1105)
2054	Level 3 Streams and Other News from SMW (CX-1114)
2055	Microsoft Unlocks Power of the Web (CX-1092)
2056	[Reserved]
2057	Disney Backs Video Start-Up (CX-1111)
2058	Here Comes More HD Video (CX-1077)
2059	E-Mail 1/20/2009 (CX-1146C)
2060	MOVE and Microsoft Term Sheet (CX-1051C)
2061	To the Ends of the Earth (CX-1074)

2062	MOVE Gets Streaming Patent; Are Adobe & Apple Hosed? (CX1120)
2063	DISH's Motion for Preliminary Injunction, *DISH Techs. v. MG Premium Ltd et al.*, No. 2:23-cv-552-HCN-DAO, D.I. 19.
2064	Official Report of the One Hundred Seventy-fifth Semiannual General Conference, The Church of Jesus Christ of Latter-day Saints (Oct. 1, 2, 2005).
2065	Apple and MOVE NDA Agreement 11/15/2006 (CX-1137C)
2066	Apple and MOVE NDA Agreement (CX-1085C)
2067	E-Mail on 2/23/2009 (CX-1219C)
2068	Microsoft Invests in Net Video (CX-1087)
2069	MOVE Networks Publishing System (CX-1247C)
2070	Silverlight Shines (CX-1090)
2071	Exemplary Claim Chart Illustrating MOVE Networks' Use of Invention
2072	[Reserved]
2073	Excerpt of Deposition of David Ericson in *In re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same*, Inv. No. 337-TA-1265 (taken Jan. 6, 2022)
2074	MOVE Crosses the Hour Threshold
2075	Readies Online HD Shows as Streamlettes (CX-1107)
2076	Delivering a Better Viewing Experience
2077	MOVE Adaptive Stream
2078	Utah Valley Entrepreneurial Forum Hall of Fame 2013
2079	Utah Technology Hall of Fame 2005
2080	ABC TV New Player Rocks
2081	E-Mail 1/23/2008 (CX-1052C)
2082	ABC.com Streamlettes (CX-1133)
2083	MOVE Networks Newsroom (CX-1124)
2084	ABC.com Readies Online HD (CX-1135)
2085	Metrics Point to Maturation of Online (CX-1117)
2086	More Money Pouring Into Rich Media (CX-1118)
2087	MOVE Put Mass Back Into Mass Media (CX-1126)
2088	E-mail 2/25/2008 (CX-1053C)
2089	E-mail 5/14/2008 (CX-1055C)
2090	2010 EchoStar 10-K (CX-0052)
2091	E-Mail 8/26/2008 (CX-1059C)
2092	Microsoft Extends Vision (CX-1148)

2093	DISH's Motion to Terminate Against Peloton
2094	Joint Motion to Partially Terminate Against Mirror
2095	DISH Petition to Rescind Limited Exclusion Order Against iFit
2096	MOVE Networks Awarded Fundamental Patent (CX-1091)
2097	[Reserved]
2098	Default Protective Order
2099	Declaration of Gregory Smith
2100	Declaration of David Ericson
2101	Supplemental Declaration of David Ericson in *Aylo Freesites Ltd v. DISH Technologies L.L.C.*, IPR Nos. 2024-00043, -00044, -00045, -00046, -00146.
2102	Transcript of Deposition of David Ericson in *Aylo Freesites Ltd v. DISH Technologies L.L.C.*, IPR Nos. 2024-00043, -00044, -00045, -00046, -00146 (taken Sept. 19, 2024)
2103	Baseball Tests Online Broadcasts, NY Times (CX-1151)
2104	E-Mail 5/12/2007 (CX-1218C)
2105	E-Mail 5/25/2007 (CX-1198C)
2106	[Reserved]
2107	E-Mail 7/25/2008 (CX-1101C)
2108	E-Mail 6/2/2008 (CX-1056C)
2109	E-Mail 2/22/2008 (CX-1054C)
2110	E-Mail 7/22/2008 (CX-1057C)
2111	[Reserved]
2112	Video Support (CX-0103)
2113	Microsoft Announces New Support for Silverlight (CX-1093)
2114	Move Networks Powers Seven of Top Ten Online Broadcast TV Networks (CX-1201C)
2115	[Reserved]
2116	E-Mail 2/2/2009 (CX-1196C)
2117	E-Mail 2/13/2009 (CX-1197C)
2118	E-Mail 6/14/2007 (CX-1199C)
2119	E-Mail 4/21/2008 (CX-1200C)
2120	Display Commemorating BYU.tv Launch Using Move ABR Technology
2121	Fox Switches (Ericson Dep. Exhibit 1)
2122	Delivering a Better Viewing Experience (CX-1102)
2123	Declaration of MOVE President and CEO John Edwards
2124	Deposition Testimony of John Edwards in *In re Certain Fitness*

	Devices, Streaming Components Thereof, and Systems Containing Same, Inv. No. 337-TA-1265 (taken Nov. 12, 2021)
2125	Declaration of E. Flaucher of Microsoft in *In re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same*, Inv. No. 337-TA-1265
2126	Declaration of Peter Ratcliffe
2127	Declaration of Mark Mitchell
2128	Deposition Testimony of Mark Mitchell in *In re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same*, Inv. No. 337-TA-1265 (taken Nov. 12, 2021)
2129	Transcript of Deposition of Dr. Houh (February 6, 2025)
2130	Level 3 and Move 6.22.07 (CX-1071C)
2131	Request for Comments 8216, "HTTP Live Streaming," Pantos & May (2017 ed.)
2132	Deposition Testimony of Greg Smith in *In re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same*, Inv. No. 337-TA-1265 (taken Nov. 12, 2021)
2133	Leaning Demonstrative.mp4
2134	*Aylo Freesites Ltd v. DISH Technologies L.L.C.*, IPR2024-00940, Paper 1 (Petition 1 of 2).
2135	segment_cif_001.h261.mp4
2136	akiyo_cif_full.y4m.mp4
2137	Request for Comments 2068, "Hypertext Transfer Protocol – HTTP/1.1," Fielding et al. (Jan. 1997)
2138	Request for Comments 2616, "Hypertext Transfer Protocol – HTTP/1.1," Fielding et al. (June 1999)
2139	U.S. Patent No. 6,678,332 (Gardere et al.)
2140	BT turns on to TV, The Register (Nov. 2, 2001).
2141	Declaration of Dr. Kevin Jeffay ISO POR-IPR2024-00918 (Public)
2142	EchoStar Acquires Move
2143	Declaration of Peter Ratcliffe Esq
2144	[Reserved]
2145	[Reserved]
2146	Declaration of Parker Hancock
2147	Exhibit A to Hancock Declaration - Analysis of Declaration Sizes in IPR Petitioner Reply Briefs: A Multi-Stage Investigation
2148	Petitioner's Reply (Paper 51) with Highlighting
2149	Supplemental Declaration of Dr. Henry Houh (EX1026) with

	Highlighting

Patent Owner DISH Technologies L.L.C. ("PO") moves to strike the arguments, opinions, and evidence in Petitioner's Reply (Paper 54) ("Reply") and the Supplemental Declaration of Dr. Henry Houh (EX1026) ("Houh2") that easily could have been presented in Petitioner's original Petition. *See* 37 C.F.R. § 42.23(b). Tellingly, Dr. Houh's new declaration spans 140 pages, is nearly double the length of his original declaration, and is among the top 97% longest supplemental declarations ***ever*** filed in an *Inter Partes* Review proceeding, of which there have been only 1,264 such declarations total. EX2146 (citing EX2147). All of this additional expert opinion is needed to support a bevy of new invalidity theories in the Reply that seek to cure Petitioner's decision to ignore Claim 1's "continuous playback" limitation in its Petition for *Inter Partes* Review ("Pet.").

Neither the claims of the '564 Patent nor the Leaning reference has changed. Yet, Petitioner now argues that "continuous playback" doesn't matter—it is non-limiting. Petitioner also asserts that it addressed this limitation from the beginning—a position belied by its need to cobble together different parts of Leaning never before cited and to introduce new obviousness modifications—supported by approximately 140 pages of new testimony from its expert—to retroactively fill in the voids in the Petition. Petitioner's failure to make a *prima facie* case of obviousness in its Petition is fatal, and the fact the POR identifies this fatal deficiency is not a legitimate basis for Petitioner to try to resuscitate its case with

entirely new invalidity rationales.

These new materials appear at pages 1-10, and 17-18 of Petitioner's Reply; §§ V.B, VII.A-C, VIII, and XII-XIII of Houh2 (shown through highlights in EX2148 and EX2149, respectively); and Exs. 1045, 1046, 1049, 1050, 1053, 1057, 1058, 1061, 1062, and 1063. They should be struck pursuant to 37 C.F.R. § 42.23(b)

I. APPLICABLE LAW

"Unlike district court litigation—where parties have greater freedom to revise and develop their arguments over time and in response to newly discovered material—the expedited nature of IPRs bring with it an obligation for petitioners to make their case in their petition to institute." *Intelligent Bio-Systems, Inc. v. Illumina Cambridge, Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016). A petitioner "may not submit new evidence or argument in reply that it could have presented earlier…." CTPG at 73 (*citing Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1077-78 (Fed. Cir. 2015)). "It is also improper for a reply to present … new expert testimony[] that could have been presented in a prior filing." *Id.* at 74. Petitioner attempts both here.

II. ARGUMENT

A. Petitioner's Belated Claim Construction Should Be Struck.

Now realizing the Petition completely ignored Claim 1's "continuous playback" limitation, Petitioner argues for the first time in Reply that this is "aspirational, ***not limiting***, language." Reply, 1. This argument not only contradicts Petitioner's prior assertion that "no constructions are necessary" (Pet., 14), it thumbs

its nose at the well-settled edict that judges "must give meaning to ***all the words*** in [a patent's] claims," *Exxon Chemical Patents, Inv. v. Lubrizol Corp.*, 64 F.3d 1553, 1557 (Fed. Cir. 1995), and that a construction that reads limitations out of a claim "would be contrary to the principle that ***claim language should not*** [***be***] ***treated as meaningless***," *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 951 (Fed. Cir. 2006). At a minimum, Petitioner was obligated to make that argument in its Petition.

Particularly troubling in this regard is Petitioner's recognition in a petition filed in a related patent on the same day that the "continuous playback" limitation was added by amendment in that patent and ***relied upon to overcome a prior art reference*** during the prosecution of that related patent. *See* IPR2024-00919, Paper 3, 8-9 (May 17, 2024) ("Applicant … revised the claims, arguing [prior art reference] Radford no longer anticipates or renders obvious the claims as amended because Radford does not disclose … achieving ***continuous playback***.").[1] As shown in the below quote from the '772 prosecution history (IPR2024-00917, EX1002, 118), PO made this fact clear by emphasizing the "continuous playback" limitation when distinguishing over that reference.

[1] Although Petitioner made this argument as to U.S. Patent No. 8,868,772, which is the subject of co-pending IPR2024-00919, that patent is related to and shares many common terms with the '564 Patent. And it is "well established" that "common terms must be interpreted consistently" between such patents. *SlightSound Tech., LLC v. Apple Inc.*, 809 F.3d 1307, 1316 (Fed. Cir. 2015) (internal citations omitted).

> In contrast, claim 20 recites, as part of "automatically and progressively requesting," regularly generating performance factors indicative of the current ability to sustain the streaming of the video using different ones of the copies, and making the successive determinations to shift the playback quality based on the performance factors **to achieve continuous playback of the video** using portions of the highest quality one of the copies determined sustainable at that time". As such, Radford fails to disclose at least this limitation.

Thus, Petitioner knew this limitation was highly relevant. Arguing it is non-limiting in Reply is nothing short of extraordinary (and disingenuous).

Also extraordinary is Petitioner's suggestion that PO's reading of "continuous playback" is somehow new or unexpected. PO reads "continuous" as anyone would—*i.e.*, as excluding disruptions, interruptions, and delays. *See, e.g.*, POR, 8 ("Leaning lauds the benefits of clearing its buffer and ***interrupting*** playback" while "the Challenged Patents specify avoiding the exact type of ***delay*** inherent in prior art buffering techniques like Leaning's."), 14 ("The Challenged Patent discloses ***avoiding disruptions*** and achieving continuous playback …."), 28 ("Leaning … cannot disclose 'shifting … to achieve continuous playback' if it actually ***disrupts*** playback at every shift."). In other words, "continuous" is the opposite of "discontinuous." The International Trade Commission ("ITC") applied a similar meaning in the same pages of the same claim construction ruling that Petitioner relies upon in its Petition. Pet., 14 (citing EX1009, 61-64).

In that ruling, the ITC's Chief Administrative Law Judge ("ALJ") provided a

clear interpretation of the plain and ordinary meaning of "continuous playback" and how it was "concede[d], at least in concept, [that] a person of skill may have understood what it means to 'achieve continuous playback' (***uninterrupted*** viewing of the content)." EX1009, 63. The Chief ALJ also held that "continuous playback" is achieved by "shifting" between streamlets of different quality, which also is consistent with PO's plain and ordinary meaning of the "continuous playback" limitation. *Compare* EX1009, 59 ("[T]he phrase '***continuous playback*** of the video' is the goal sought through the '***determinations to shift***' playback quality")[2] *with* POR, 7 ("All the Challenged Claims subject to the objective evidence of non-obviousness analysis here require ***shifting*** between a plurality of streams '***to achieve continuous playback***.'"). Petitioner relied on the exact portion of the ITC's claim construction ruling where this discussion appears in the Petition and, therefore, cannot feign surprise to see an identical, plain and ordinary reading of "continuous playback" in the POR.

Because any deviation from the plain and ordinary meaning of a term could and should have been addressed in the Petition, Petitioner's new claim construction arguments at Reply, 1-3, Houh2, §V.B, and Exhibit 1045 should be struck.

B. Petitioner's Untimely Modification to Leaning to Avoid

[2] The "goal" language in this quote does nothing to diminish that "continuous playback/presentation" is limiting. That "goal" must be "achieve[d]" to practice the claims, as the claims expressly recite, and as the PO made clear when it distinguished over the prior art on those grounds. EX1002, 118.

Performing its "Clear Buffer" Command Should Be Struck.

Petitioner tacitly admits its Petition failed to address the "continuous playback" recited in limitation 1[E] by pointing, in its Reply, to arguments for entirely different limitations—specifically, limitations 1[C] and 1[D]. Reply, 3 (citing Houh2, §§V.B, VII). Petitioner pivots from its express reliance on Leaning's "flowchart showing successive determinations to shift up or shift down" with respect to limitation 1[E] (Pet., 29, 32-33) and its mandate that a playback-disrupting "Clear Buffer" command be executed (EX1009, 9-11). Instead, Petitioner now argues that Leaning's performance of the "Clear Buffer" command is "not necessary/desirable during a rate shift." Reply, 4. But Petitioner goes well beyond its discussion of limitations 1[C] and 1[D], citing for the first time a purportedly obvious "further modification" of Leaning's audio rate-shifting process in which the sound card is run "at the highest rate envisaged" and the sub-files are "***up-sampled***" to this highest rate before placement in the buffer. *Id.* (citing EX1009, 14:25-31; Houh2, §VII.C). According to Petitioner, this "allows lower-rate recordings to be played without changing hardware settings or interrupting playback." *Id.*

Contrary to Petitioner's assertion, neither this newly-cited passage from Leaning (EX1009, 14:25-31) nor this "further modification" of Leaning is "cited and relied upon in the Petition"—not ***anywhere***. Reply, 4. And the assertion that such a modification would eliminate playback disruptions is derived solely from Dr.

Houh's post-Petition *ipse dixit* pronouncements. Reply, 4 (citing EX1022, §VII.C, EX2129, 95:4-97:23). In other words, Petitioner points for the first time to a different section of Leaning (14:25-31) and its expert uses that section for the first time to develop an entirely new obviousness modification of Leaning (where Leaning's "Clear Buffer" step is "not necessary") based on newly-asserted knowledge in the art ("…a POSITA would understand…"). "Shifting arguments in this fashion is foreclosed by statute, [Federal Circuit] precedent, and Board guidelines." *Wasica Fin. GmbH v. Cont'l Auto. Sys., Inc.*, 853 F.3d 1272, 1286–87 (Fed. Cir. 2017). Petitioner's new arguments and opinions, which appear at Reply, 3-5 and Houh2, §VII, should therefore be struck.

C. Petitioner's Other Untimely Theories Should Be Struck.

1. Changing Playout Time (T_P) + "Playing Out" Contents

One of Petitioner's new theories requires (1) the extrapolation of a new playout time (T_P), ***in combination*** with (2) a nonsensical interpretation of Leaning in which "Clear Buffer" is read to mean waiting for the buffer to clear on its own, rather than actively clearing the buffer, as Leaning expressly teaches. EX1004, 11:19-20. The former is needed to address temporal discontinuities, while the latter is needed to address content-based discontinuities. Both are entirely new and inconsistent with Petitioner's prior positions.

a) Extrapolating an Out-of-Range Playout Time (T_P)

Petitioner extrapolates a T_P that would fundamentally alter the way Leaning's

buffer operates. Petitioner's new T_P would cause Leaning's buffer to store only one sub-file before beginning playback, rather than storing three sub-files (*i.e.*, 3 x four-second subfiles must be stored to satisfy Buffer Fullness > 10 seconds), as described in Leaning's exemplary embodiment. Reply, 5. This allegedly avoids ***temporal*** discontinuities by allowing playback to begin immediately, rather than waiting for three sub-files to load into the buffer first. *Compare id. with* POR, 16-20.

Petitioner's new, 3-second T_P appears nowhere in Leaning or the Petition. Instead, Petitioner purports to calculate it from Leaning's reference to 4-second sub-files and the possibility that "sub-file size can be 130% of T_P." Reply, 5 (citing EX1004, 12:33-34). But a 4-second sub-file is ***more than*** 130% of a 3-second T_P (*i.e.*, $\frac{4\ sec.}{3\ sec.}$ x 100 yields 133.33%). Moreover, loading only a single, 4-second sub-file is inconsistent with Petitioner's own prior argument that Leaning's "player program … requests, receives, decodes and stores [a] ***second subfile***" and "repeats this process until the contents of the buffer reach or exceed … T_P" with T_P "set at ***10 seconds***." Pet., 30. Petitioner's new and contradictory arguments in this regard appear at Reply, 4-6 and Houh2, §§VII.A, C and should be struck.

b) Decoding, as Opposed to Clearing, the Buffer

Despite heavily relying on the "Stepup" function in Leaning's flowchart, the Petition does not address the "Clear Buffer" command central to this function, or how it might be modified to eliminate or avoid playback disruptions. Pet., 36-39.

Petitioner nevertheless argues in its Reply that executing the "Clear Buffer" command would result in the contents of the buffer being ***read*** (*i.e.*, "decoded" and "play[ed] until it empties"), rather than being ***cleared*** (*i.e.*, "emptied, flushed, erased, *etc.*"). Reply, 5; *cf.* EX2141, ¶ 49. According to Petitioner, this avoids the ***content-based*** discontinuities that PO identifies as resulting from Leaning's "Clear Buffer" command. *Compare* Reply, 5 *with* POR, 20-22. This argument also is unexpected. It contradicts Dr. Houh's prior, unequivocal testimony that one would ***clear*** the contents of the buffer in Leaning's audio rate-shifting process because the sound card would be "reset" during a rate shift, which would cause the content already in the buffer to sound distorted if ***read*** out at the new rate instead of being cleared. EX2129, 98:3-14 ("[T]he reason to ***clear the buffer*** is that if the data in the buffer were at … a different sampling rate … and the sampling rate was changed …, you would either get an octave lower or octave higher."). Petitioner's new and contradictory arguments in this regard appear at Reply, 5-6, 9 and Houh2, §§VII.C, VIII.A, and XII-XIII and should be struck.

2. Using Previously-Undisclosed Encoding Techniques.

For the first time in Reply, Petitioner attempts to address the "further implications [*i.e.*, serious problems]" Leaning describes when its ***audio*** rate-shifting process is modified for ***video***. Reply, 6. First, Petitioner introduces a new file format (Motion JPEG2000) to argue that Leaning's sub-files could be "coded

independently" using that format. *Id.* Second, Petitioner argues that Leaning's sub-files could be further modified by either encoding the first frame with an "I-Frame" or using some unspecified "principle" purportedly "'described in' ***another patent***." *Id.*, 7, 9. Third, Petitioner ***reverses*** Leaning's process for "encoding … ***then*** partition[ing]" sub-files (EX1009, 6:21-26) based on a bare-bones assertion that a POSITA would understand how "encoding-***after***-partitioning" would work. *Id.*, 8.

Each of these significant and complicated modifications to Leaning is entirely new to the Reply. Nowhere are Motion JPEG2000, "I-Frames," or "encoding-after-partitioning" mentioned in the Petition. Instead, these theories are created from whole cloth using Dr. Houh's unbridled new declaration and a series of exhibits introduced by Dr. Houh for this purpose—specifically, EX1046 for its discussion of Motion JPEG2000 and EX1049, EX1057, EX1058, EX1061, EX1062, and EX1063 for their discussion of I-Frames. These exhibits and the corresponding arguments and opinions they allegedly support appear at Reply, 6-9 and Houh2, §§VIII.A-B. All should be struck.

III. CONCLUSION

The Board should strike the highlighted portions of pages 1-10, and 17-18 of Petitioner's Reply (EX2148), sections §§V.B, VII.A-C, VIII, XII-XIII, of Houh2 (EX2149); and the entirety of Exs. 1045, 1046, 1049, 1050, 1053, 1057, 1058, 1061, 1062, and 1063.

Dated: July 7, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4), the undersigned certifies that on July 7, 2025, a complete and entire copy of the **PATENT OWNER'S MOTION TO STRIKE UNDER 37 C.F.R. § 42.23(b)** was provided via email to the Petitioner by serving the correspondence email addresses of record as follows:

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APPENDIX OF ARGUMENTS IN CO-PENDING IPR PROCEEDINGS

Argument / IPR Proceeding	Pages of Motion			
	IPR2024-917	IPR2024-918	IPR2024-919	IPR2024-940
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Changing Playout Time (T_P) + "Playing Out" Contents	7-9	7-9	7-9	7-9
Using Previously-Undisclosed Encoding Techniques	9-10	9-10	9-10	NA
Modifying Leaning to "Arrange" Based on "Play Time"	NA	NA	NA	9-10
Modifying Leaning to Address "B-Frames"	10	NA	NA	NA
Petitioner's Belated Invalidity Theories Are Not Excused by an Alleged "New" Claim Construction	NA	NA	NA	10