

Case IPR2024-00918
Patent No. 9,407,564

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FUBOTV MEDIA INC., YANKA INDUSTRIES, INC., WEBGROUP
CZECH REPUBLIC, A.S., and NKL ASSOCIATES, S.R.O.,¹
Petitioners,

v.

DISH TECHNOLOGIES L.L.C.,
Patent Owner.

IPR2024-00918

Patent No. 9,407,564

PATENT OWNER'S SUR-REPLY TO PETITIONERS' REPLY

¹ Webgroup Czech Republic, A.S. and NKL Associates, S.R.O. filed a petition in IPR2025-00347 and have been joined as parties to this proceeding. *See* Paper 54.

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***** Emphasis supplied 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	<i>DISH Techs. L.L.C. v. MG Premium Ltd</i> , 2:23-cv-00552, Dkt. 114 (D. Utah Aug. 15, 2024)
2010	Reexamination-op-stats (156 - 00917)
2011	Dave Marshall, <i>Compression: Video Compression (MPEG and others)</i> , 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, <i>DISH Techs. v. MG Premium Ltd et al.</i> , 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 <i>In re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same</i> , 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 <i>Aylo Freesites Ltd v. DISH Technologies L.L.C.</i> , IPR Nos. 2024-00043, -00044, -00045, -00046, -00146.
2102	Transcript of Deposition of David Ericson in <i>Aylo Freesites Ltd v. DISH Technologies L.L.C.</i> , 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 <i>In re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same</i> , Inv. No. 337-TA-1265 (taken Nov. 12, 2021)

2125	Declaration of E. Flaucher of Microsoft in <i>In re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same</i> , Inv. No. 337-TA-1265
2126	Declaration of Peter Ratcliffe
2127	Declaration of Mark Mitchell
2128	Deposition Testimony of Mark Mitchell in <i>In re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same</i> , 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 <i>In re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same</i> , Inv. No. 337-TA-1265 (taken Nov. 12, 2021)
2133	Leaning Demonstrative.mp4
2134	<i>Aylo Freesites Ltd v. DISH Technologies L.L.C.</i> , 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	[Expunged]
2147	[Expunged]
2148	Petitioner’s Reply (Paper 51) with Highlighting
2149	Supplemental Declaration of Dr. Henry Houh (EX1026) with Highlighting
2150	Deposition Transcript of Dr. Henry Houh, July 16, 2025

I. INTRODUCTION

This Petition is one of eight petitions based on Leaning (EX1004) filed simultaneously against DISH’s adaptive bitrate streaming patents. A total of 163 claims were challenged across the petitions, which were all prepared and filed just 25 days following the original² petitioner’s alleged “discover[y]” of Leaning. *See* IPR2024-00518, Paper 1 at 62-63. The decision to challenge such a large number of claims on an accelerated timeline culminated in a Petition that inadequately analyzes—or wholly omits—numerous limitations essential to patentability.

The Petition failed to address a limitation found in every Challenged Claim: “shift ... to achieve continuous playback.” The Petition asserts that Leaning “discloses” this limitation without any analysis or evidence. Pet., 36. As explained in DISH’s Response (Paper 27, “POR”), Leaning in fact discloses the opposite—interrupted, discontinuous playback. The Reply (Paper 51) does not defend the Petition’s original “disclosure” theory. Instead, Petitioners pivot to untimely claim construction and obviousness theories supported by a 140-page supplemental expert declaration. Even if the Board were to address these improper new arguments,³ they do not cure the Petition’s deficiencies.

² This Petition is a “copycat” of a petition first filed by Aylo Freesites Ltd (“Aylo”). Paper 4 (Motion for Joinder), 1.

³ *See* PO’s Motion to Strike (Paper 58).

First, Petitioners now contend that “continuous playback” is not limiting, despite failing to propose such a construction in their Petition and having known since before the Petition that the term was treated as limiting both during prosecution and before the ITC. Reply, 1. Although Petitioners attempt to rely on their expert, Dr. Houh, to justify this new construction, Dr. Houh previously testified before this Board that a POSITA would understand “continuous” to mean “substantially uninterrupted” (EX2150 (“Houh2 Tr.”), 149:23-150:12). This directly contradicts the position he takes here. EX1026, ¶32. Petitioners’ untimely construction, unsupported by the Challenged Patent’s intrinsic record, litigation history, or credible expert testimony, should be rejected.

Second, for the same “continuous playback” limitation, the Petition relied solely on one of Leaning’s embodiments without modification. *E.g.*, Pet., 36-39. The Reply pivots to a newly developed argument, proposing an entirely reengineered version of Leaning with numerous modifications that Petitioners’ expert admitted were first “piece[d] together” in his supplemental declaration. Houh2 Tr., 57:21-22. These new theories, pieced together from disparate embodiments and other changes appearing nowhere in Leaning, should not be considered. Reply, 3-10. *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369-70 (Fed. Cir. 2016) (affirming Board’s decision to “refus[e] the reply brief as improper under 37 C.F.R. § 42.23(b) because [petitioner] relied on an entirely new rationale to explain why

one of skill in the art would have been motivated to combine [references]”).

Regardless, these new obviousness arguments remain deficient. Petitioners never explain how a POSITA would have been motivated to make these modifications—much less with a reasonable expectation of success. That omission alone is fatal to Petitioners’ case. “An obviousness determination requires finding ... a reasonable expectation of success.” *Regents of Univ. of Cali. v. Broad Inst., Inc.*, 903 F.3d 1286, 1291 (Fed. Cir. 2018).

Even with all four modifications, Leaning still discloses playback interruptions at **every rate shift**, as discussed *infra* at §II.B.2. Further, Petitioners, and their expert’s, conclusory invocations of a POSITA’s general knowledge do not salvage their theory. Reply, 7-10. Such generic assertions are particularly improper given the strong objective indicia of non-obviousness, which cannot be dismissed here. Unlike in prior proceedings (the “Ogdon IPR’s”) the claims at issue here expressly recite the “multiple TCP connections” feature that the Board previously deemed a “critical unclaimed feature” when weighing objective indicia. *Aylo Freesites Ltd v. DISH Techs. L.L.C.*, IPR2024-00043, Paper 59 (FWD), at 45 (P.T.A.B. Apr. 14, 2025).

Far from curing the Petition’s defects, the Reply merely underscores them—confirming that Petitioners have failed to carry their burden on any Challenged Claim.

II. ARGUMENT

A. Petitioners' New Claim Construction Should be Rejected.

1. The Plain and Ordinary Meaning of “Continuous Playback” Requires Uninterrupted Playback Across Quality Shifts.

Petitioners cannot cure their failure to address the “continuous playback” limitation in the Petition⁴ by now arguing—for the first time in Reply—that this language is merely “aspirational,” thus not limiting. Reply, 1. That position is irreconcilable with Petitioners’ previous acknowledgment that this language was added by amendment *to overcome a prior art reference* during prosecution of the ’564 Patent’s parent, U.S. Patent No. 8,868,772 (“the ’772 Patent”). See IPR2024-00919, Paper 2, 8-9 (May 17, 2024) (admitting “Applicant...revised the claims, arguing Radford [reference] no longer anticipates or renders obvious the claims as amended because Radford does not disclose ... achieving *continuous playback*.”).

Nor can Petitioners abandon their original position that no claim terms required construction. Pet., 11. Both the Petition and Dr. Houh’s opening declaration

⁴ Dr. Houh also failed to address this limitation in his opening declaration, which parrots testimony he submitted in other proceedings where the claims did not recite “continuous playback.” See EX1003 in each of: IPR2024-00043, -00044, -00045, -00046, -00146.

adopted the plain and ordinary meaning of “continuous playback” and relied upon the ITC’s interpretation of that term, which was “***uninterrupted*** viewing of the content.” See Pet., 11-12 (citing “Claim Construction” section of the ITC’s FID (EX1009)); EX1003, ¶¶43-45 (same).

Petitioners’ belated attempt to abandon this plain meaning is thus procedurally and substantively improper.

2. Petitioners’ Construction Is Contrary to the Intrinsic and Extrinsic Evidence.

The plain language of the claims establishes that “continuous playback” is ***not*** “aspirational.” The claims expressly recite a “shift ... ***to achieve*** continuous playback.” In other words, “continuous playback” must be “achieve[d].” This is consistent with positions taken by applicant during prosecution of the ’772 Patent.

Applicant relied on the concept of “continuous playback” to distinguish over the “Radford” reference. In particular, applicant emphasized the amended claims required shifting quality “***to achieve continuous playback***” in contrast to Radford which was “marred by interruptions.” EX1018, 118. (emphasis original).⁵ These statements confirm that the amended language limits the claims. See *Personalized*

⁵ Petitioners argue that the distinction being made was between “automatic” and “manual” rate selection. Reply, 2. But that was a separate distinction made in the same Office Action response. EX1018, 118 (see first bullet).

Media Commc'ns, LLC v. Apple Inc., 952 F.3d 1336, 1341 (Fed. Cir. 2020) (“If an applicant argues that a claim feature ... distinguishes the invention from the prior art, the feature is more likely to be deemed limiting.”). In his initial declaration for the IPR against the '772 Patent, Petitioners’ expert acknowledges this: “Applicant conducted an interview and revised the claims, arguing Radford no longer anticipates or renders obvious the claims as amended because Radford does not disclose automatically and progressively requesting video portions, **achieving continuous playback**, or multiple TCP connections.” IPR2024-00919, EX1003, ¶38.

Petitioners’ reliance on *Bristol-Myers Squibb Co. v. Ben Venue Labs., Inc.*, 246 F.3d 1368 (Fed. Cir. 2001) to reach the opposite conclusion is misplaced. Reply, 1. That case turned on unique facts where the patent owner affirmatively treated “effective amount” as non-limiting. No such concession exists here.⁶

PO reads “continuous” as anyone would—*i.e.*, as excluding interruptions. *See, e.g.*, POR, 3, 9, 24. In other words, “continuous” is the opposite of “discontinuous.”

Courts have likewise construed “continuous” in video playback contexts as requiring “uninterrupted” sequencing for playback. *See, e.g., Nissim Corp. v. Clearplay, Inc.*, No. 04-21140-CIV, 2005 WL 6220714, at *3 (S.D. Fla. Mar. 7, 2005) (construing “continuous” as “playing ... in an uninterrupted sequence”).

⁶ Petitioners’ argument regarding the MOVE player is addressed below.

Indeed, PO's own expert applied exactly this meaning in another matter before this Board, as he admitted during cross-examination. Houh2 Tr., 149:23-150:12 (discussing Dr. Houh's prior testimony that "A POSITA would understand that data that is smooth and **continuous is substantially uninterrupted** because any interruption would cause disruption or jerkiness").

Petitioners adopt a fallback argument that the initial commercial embodiment of the claimed invention—the MOVE player—sometimes exhibited playback stalls in extreme circumstances. Reply, 2-3. While there is no evidence customers experienced stalls, this is irrelevant even if it were true. The claims do not require eliminating **all** interruptions under **every** conceivable scenario. Rather, they require a method/system of playback that automatically adjusts in response to network performance to **avoid** playback interruption. If that method/system sometimes succeeds, it is within the scope of the claims. *Cf. Broadcom Corp. v. Emulex Corp.*, 732 F.3d 1325, 1333 (Fed. Cir. 2013) ("It is well settled that an accused device that 'sometimes, but not always, embodies a claim[ed system] nonetheless infringes.'") (quoting *Bell Communications Research, Inc. v. Vitalink Commc'ns Corp.*, 55 F.3d 615, 622-623 (Fed. Cir. 1995) (finding same for method claims)). Regardless, as the objective evidence reveals, the MOVE player consistently wowed customers with its continuous playback, so the stalls relied upon by Petitioners are clearly outlier situations. POR, 49-50, 52-67.

By contrast, as explained below, Leaning’s process deliberately injects a buffer clearing/refilling function that always causes playback interruptions when rate shifting. EX1004, 10. Thus, Petitioners’ attempt to justify their untimely claim construction by challenging the functionality of the MOVE player is without merit.

B. Leaning Fails to Disclose or Render Obvious “Shifting ... to Achieve Continuous Playback.”

Petitioners’ theory of how Leaning meets the “continuous playback” limitation also has shifted drastically. Despite setting forth a single, conclusory sentence that “Leaning *discloses* ... continuous playback.” (Pet., 36)—Petitioners assert for the first time in Reply that Leaning renders the limitation obvious after four newly-minted modifications that, like their belated claim construction argument, should not be considered. Reply, 3-10. They also fail on the merits.

1. Leaning Does Not Disclose “Continuous Playback.”

Leaning expressly discloses interrupted, discontinuous playback at each rate shift. POR, 31. The Petition (Pet., 36-39) and Dr. Houh’s initial declaration (EX1003, ¶¶81-82) rely on Leaning’s “Stepup” and “Stepdown” procedures *without any proposed modification*. Leaning specifies that both procedures require “clearing” the playout buffer and waiting to “continue playing” until new content files are downloaded. POR, 21-23. Petitioners’ original “disclosure” theory fails.

2. Petitioners’ New Obviousness Theories Are Improper and Unpersuasive.

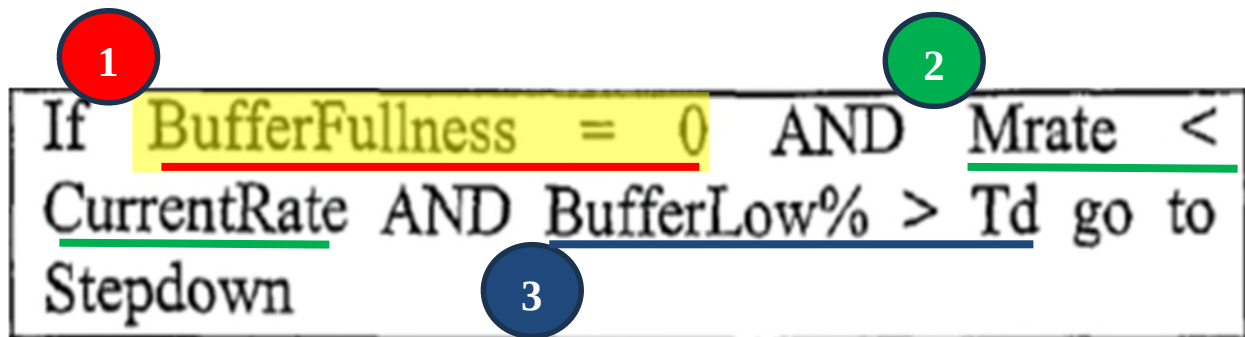
Petitioners’ Reply proposes at least four entirely new modifications to Leaning’s disclosed system, which, taken together, allegedly render obvious the “continuous playback” limitation. Reply, 3-10. None of these modifications were disclosed in the Petition. And all rest entirely on hindsight and attorney-driven logic filtered through Dr. Houh’s supplemental declaration. Even if considered, these modifications do not render the limitation obvious.

First, Petitioners’ analysis fails as a matter of law because Petitioners failed to show, or even argue, that a POSITA would have had a reasonable expectation of success in implementing any of its proposed modifications. *Intelligent Bio-Sys.*, 821 F.3d at 1367 (“Whether a person of ordinary skill in the art would have had a reasonable expectation of success is a question of fact that the Board must address in an obviousness determination.”). Indeed, Dr. Houh’s supplemental declaration⁷ analyzes a reasonable expectation of success only once, and then only with respect to a single dependent claim—claim 5. Petitioners’ failure to address a reasonable expectation of success cannot support a *prima facie* case of obviousness, much less satisfy their burden here.

⁷ The same supplemental declaration was filed in IPR2024-00917, -00918 and -00919.

Second, Petitioners’ newly-disclosed modifications to Leaning fail to eliminate Leaning’s playback discontinuities. While Petitioners’ new theories focus on deleting or removing the “clear buffer” instruction from Leaning’s downshift process and omitting the first of three downshift conditions (Reply, 3-4), they ignore the third condition, which results in playback disruptions regardless of whether the first condition is omitted (EX2124, ¶91).

Leaning’s sole disclosure of its three downshift conditions is annotated below, with the condition Petitioners seek to eliminate (number 1) shown highlighted:



EX1004, 10. But as Leaning explains, the third condition—BufferLow%>Td—requires the buffer to experience multiple “empties” when Td is set to Leaning’s “preferred default value.” EX1004, 8:27-9:2; EX2141, ¶91. Petitioners and their expert expressly rely on this distinct “buffer empty” condition in Leaning but never allege—let alone explain—how a POSITA could avoid it. Pet., 33, 35-36.

The new theories have other deficiencies as well, discussed below.

a. New Theory 1: “Avoid[ing]” the “Clear Buffer” Command.

Petitioners argue that a POSITA would remove Leaning’s “clear buffer” instruction based on a passage from Leaning suggesting that sound cards may be run “continuously at the highest sampling rate envisaged.” Reply, 9 (citing EX1004, 14:25-15:8). But that passage does not support removing the “clear buffer” instruction—it relates solely to eliminating the requirement that the buffer be empty when downshifting, *i.e.*, the “BufferFullness=0” condition. EX1004, 15:7-8.⁸

Leaning explains that many sound cards require a reset to change sampling rates, which inherently causes playback to stop. EX1004, 6:10-11. Leaning proposes an alternative embodiment that always operates the sound card at the highest rate and up-sampling lower-rate audio content to match. EX1004, 14:25-15:8. Leaning discloses that the first of the three downshift conditions—“BufferFullness=0,” requiring the buffer be empty—“would be omitted” in that embodiment. *Id.* But Leaning makes clear that the “interruption” being avoided is solely the interruption due to underflow that occurs for the “BufferFullness=0” condition. It is not the

⁸ The “BufferFullness=0” condition is a distinct downshift condition from the “BufferLow%” condition addressed above. While the latter condition results in multiple discontinuities prior to initiating a downshift to ensure that the current “rate can not be sustained” (EX1004, 9:1-2), it does not require that the buffer be empty precisely when downshifting, as required by “BufferFullness=0.”

interruption that results from the act of downshifting itself (*i.e.*, clearing and refilling the buffer).

In fact, Leaning’s “clear buffer” command is indifferent to whether the sound cards need to be reset. This is borne out by the fact Leaning’s “clear buffer” command is described as being performed in an embodiment that uses a single, fixed sampling rate. EX1004, 12:23-26 (“[I]n this embodiment...the available data rates...***all use the same audio sampling rate...***”). This contradicts Petitioners’ theory that the “clear buffer” command is “avoided” by running the sound card at the same, high sampling rate. If that were true, there would be no reason for Leaning to require buffer clearing in a scenario where the sampling rate remains constant. In other words, Leaning’s discussion of running its sound card at the highest sampling rate is completely uncoupled from its discussion of clearing the buffer. And neither Petitioners nor Dr. Houh offer anything to support an inference the former eliminates the latter.

This interpretation is confirmed elsewhere. Leaning warns against using overly long sub-files, noting that they introduce “extra delay” when rate switching, because the entire file must be downloaded before playback can resume. EX1004,12:31-33. This again assumes an unavoidable pause during each rate change—one that is extended, not eliminated, by longer file lengths.

Finally, the teaching cited by Petitioners applies only to downshifts. Leaning

does not describe or propose any similar strategy for upshifting. Thus, even under Petitioners' reading, playback interruption is still present when upshifting.

b. New Theory 2: “Up-Sampling” Video.

Petitioners' second new obviousness theory alleges that Leaning's buffer-clearing behavior in *audio* could be avoided by applying the same “up-sampling” logic to *video*. Reply, 9-10. But that analogy is technically wrong. As Dr. Jeffay explains, video lacks a direct analog to audio sampling rates, and video playback involves far more complex encoding and hardware constraints. See EX2141, ¶¶89-90. Leaning's suggestion to up-sample audio to avoid a reset does not—and cannot—extend to video. Petitioners provide no explanation, and Dr. Houh offers no meaningful testimony, as to how a POSITA at the relevant time would have translated that technique to video.

c. New Theory 3: Altering T_P Threshold.

Petitioners' third new obviousness theory is to modify Leaning's “playout time,” or T_P , so that it is three seconds, instead of the 10-second value disclosed in Leaning and relied on in the Petition. Reply, 4-5. This, Petitioners argue, would eliminate delay in resuming playback after a shift. But it does not make playback continuous. Even with a reduced T_P , Leaning still requires downloading an entire sub-file before playback can resume. That pause—while the next file is retrieved and downloaded—introduces a temporal discontinuity in playback. Reducing T_P may

shorten the interruption, but it does not eliminate it. Thus, Petitioners' third new theory does nothing to overcome the core problem—Leaning's "clear buffer" interrupts playback at each shift because the buffer still needs to be filled. T_p adjustments do not change that.

To avoid the content-based interruptions that still remain, Petitioners stretch their reading of Leaning beyond credibility. For the first time in Reply, Petitioners argue that Leaning's "clear buffer" command does not actually clear (discard) the buffer contents, but simply waits until the buffered content finishes playing out. Reply, 5. This implausible reading is flatly contradicted by Leaning's own disclosures. For example, Leaning discloses clearing the buffer upon a user "jump" so that new content can be requested "immediately," without waiting for residual content to empty from the buffer. EX1004, 11:19-20, 12:31-33. Leaning also explicitly distinguishes between the command to "clear buffer" and a separate command to "play[] buffer contents." EX1004, 10.

Dr. Houh's supplemental declaration parrots this new theory without explanation EX1026, ¶80. But it contradicts his prior deposition testimony in this case, where he confirmed that "clear buffer" is performed in Leaning to ensure there is no "data *in the buffer*" when changing sampling rates, else it "sound[] kind of like when someone breath[e]s helium". EX2129, 97:24-98:24. There is no indication anywhere in Leaning that "clear" means "continue to play." Dr. Houh was right the

first time: “clear” means remove without playing.

d. New Theory 4: Modifying Video Codecs to Avoid Leaning’s Express “Mistracking” Issues.

Petitioners’ fourth new obviousness theory proposes modifying Leaning to use either (1) “Motion JPEG2000” or (2) some unidentified alternative codec that purportedly “hold[s] the group of pictures/frames for each sub-file constant across the encoding at different bitrates.” Reply, 6-7. These concepts appear nowhere in Leaning or the Petition. Nor does either address Leaning’s express disclosure of “serious mistracking” and other “complex[ities]” inherent in video streaming. EX1004, 16:20-30. These are all deficiencies Petitioners attempt to cure for the first time in Reply with untimely and speculative arguments. Each of these new theories fails on the merits.

Leaning never disclosed Motion JPEG2000 for good reason: the Motion JPEG2000 format was not a practical option for streaming applications, like Leaning’s, that required delivery of content over low-bandwidth channels. See EX2141 (Jeffay), ¶147. As Petitioners’ own belated exhibit explains, Motion JPEG2000 had “a lower coding efficiency” than common video coding standards of the time, like the MPEG format disclosed in Leaning. EX1046, 1. The compression achieved by JPEG2000 was more than six times worse than MPEG (*i.e.*, $\frac{100:1}{16:1} =$

6.25).⁹ EX1053, 2. A POSITA would have had no reason to use a less efficient format that creates larger files. And neither Petitioners nor Dr. Houh articulate such a reason. *See* Reply 5-6, EX1026(Houh2), ¶92.

Dr. Houh’s conclusory assertion that a POSITA would have known how to hold GOP (Group of Pictures) structures constant across encodings (EX1026, ¶94) also is unsupported. Dr. Houh offers no citation to any contemporaneous reference, technical publication, or prior art suggesting that this was common practice or even feasible at the relevant time.¹⁰ Instead, he relies on vague appeals to general video

⁹ One of the reasons for this is explained in EX2014, which is incorporated by reference in Leaning and explains that the “intra-frames” that JPEG2000 uses for **every** frame “increase[] the average bitrate per picture.” EX2141, ¶157 (citing EX2014, 1:42-52).

¹⁰ Dr. Houh’s supplemental declaration relies on modern software to retroactively engineer a solution to Leaning’s “serious mistracking” issue (EX1026, ¶¶116-120), but he fails to explain how or why the advanced tools or commands used would have been obvious to a POSITA in 2004. Dr. Houh’s own definition of a POSITA is someone with just two years of “networking” experience (EX1003, ¶42)—a background unrelated to the advanced video encoding techniques he claims were known. Dr. Houh also faults Dr. Jeffay’s demonstration of mistracking because Jeffay allegedly “produce[d] a file with only a single I-frame.” EX1026, ¶116. But that is exactly what Leaning states and is consistent with H.261. EX1004, 16:24-31;

coding knowledge. *Id.* That is not enough to establish a *prima facie* case of obviousness. See *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016) (“Conclusory expert testimony does not qualify as substantial evidence.”).

C. Leaning Fails to Disclose or Render Obvious the Claimed Use of a Plurality of TCP Connections.

As explained in the POR, Leaning discloses requesting subfiles over a single persistent connection—not the adaptive architecture equipped to handle network failures involving multiple TCP connections as required by Claims 2, 9, and 11. POR, 31-35; EX2141 (Jeffay Decl.), ¶¶106-110.

In Reply, Petitioners argue that Leaning’s sole error-handling process “has nothing to do with TCP.” Reply, 11-12. This concedes DISH’s point. The fact that Leaning fails to disclose any mechanism for responding to TCP errors by issuing requests over a “plurality of TCP connections” demonstrates that Leaning fails to disclose the limitation.

Incredibly, Petitioners and Dr. Houh argue that the functionality for issuing multiple TCP connections is inherent in the “TCP protocol” itself. Reply, 12-13 (citing EX1026, ¶¶126-134). But in the Ogdon IPRs, Dr. Houh identified the exact

EX2014, 1:53-2:3. Dr. Houh’s simulation, which inserts I-frames at regular intervals, directly contradicts Leaning’s disclosures.

same functionality as a “critical” feature purportedly missing from DISH’s commercial embodiment—not inherent in the TCP protocol itself as he now argues. *See, e.g.*, IPR2024-00043, EX1028, ¶74 (alleging MOVEs “use of multiple TCP connections” established a “critical unclaimed feature.”). Dr. Houh’s contradictory opinions are not to be trusted.

Instead, as Dr. Jeffay testified, a POSITA would understand Leaning’s reference to HTTP to mean HTTP 1.1, since it was the primary standard for internet traffic at the relevant time, and HTTP 1.1 used “persistent” TCP connections by default—i.e., a single TCP connection from client to server. EX2141, ¶¶108-110. A POSITA therefore would **not** have found it obvious to use multiple TCP connections as claimed, particularly given Leaning’s disclosure of sequential downloads over HTTP. *Id.*

D. Leaning Fails to Disclose or Render Obvious Initially Requesting Low Quality Files For Instant Playback (Claim 7).

Petitioners argue that Leaning inherently discloses initially requesting low quality files because Leaning’s example index file happens to list the second-highest available rate first. Reply, 13-14. This is both legally and factually erroneous.

As the Federal Circuit has explained, “[a]nticipation by inherent disclosure is appropriate only when the reference discloses prior art that must necessarily include the unstated limitation.” *Transclean Corp. v. Bridgewood Servs., Inc.*, 290 F.3d 1364,

1373 (Fed. Cir. 2002). Leaning contains no disclosure—explicit or inherent—of selecting a specific version of available content for faster startup, much less a “low quality” version.

Moreover, Leaning discloses selecting not the lowest quality version, but the fourth-lowest quality out of a set of five (*i.e.*, the second “best” quality). EX1004, Fig. 3. Thus, it is not a “low quality one of the different copies” as claimed. And Petitioners offer no evidence that Leaning’s seemingly random-ordered listing of bitrates reflects a choice to prioritize startup latency.

Regarding “instant playback,” Petitioners argue elsewhere that “Leaning discloses pre-requesting files (sub-files) before playback,” while at the same time admitting that playback does not begin “until the contents of the buffer reach or exceed a threshold T_p .” Pet., 45. This form of delayed playback is not “instant,” nor does it evince a teaching to request low-quality files first.

E. Leaning Fails to Disclose or Render Obvious Upshifting According to Amount of Contiguously Available Files (Claim 5)

Petitioners assert that Leaning discloses this limitation through Step J1A’s condition that “BufferFullness $>T_p$.” Reply, 15. But as discussed above in §II.B.2.c, Petitioners have now reinterpreted T_p in Reply to mean that “a single sub-file would meet the T_p requirement.” Reply, 4. Under that interpretation, the system would upshift when only *one* sub-file is available, which falls short of the claimed

requirement to assess whether *multiple contiguous files* are available. Petitioner fails to square its revised interpretation of Leaning’s “ T_p ” with its theory here.

Moreover, Leaning’s “Stepup” condition is met when “ $MRate > NextRate$ AND $NextRate <= 0$,” which turns solely on rate comparisons—not on the availability of a sequence of files. EX1004, 10. The buffer check at J1A merely controls entry into a playback step (J3) and is not part of the Stepup condition, which is evaluated separately.

Moreover, under Petitioners’ interpretation, step J1A would also be a “pre-condition” to Stepdown, as well as regular playback—covering every mode of operation. Petitioners’ interpretation improperly strips the limitation of meaning.

F. Leaning Fails to Disclose or Render Obvious Pre-Requesting Files (Claim 6)

Petitioners rely on Leaning’s process of “repeat[edly] ... requesting, receiving, decoding, and storing sub-files until the contents of the buffer reach or exceed a threshold T_p ,” as allegedly disclosing this limitation. Pet. 45-46; Reply, 17. But the iterative file-request process Petitioners rely on would not occur when “a single sub-file would meet the T_p requirement,” as Petitioner now contends. Reply, 4.

As a fallback, Petitioners allege in Reply that “POSITAs would have been motivated to configure Leaning” to achieve this undisclosed limitation. Reply, 18. This is legally insufficient—the law requires a specific rationale for making the

proposed modification, grounded in the teachings of the references and supported by evidence of a reasonable expectation of success. *Virtek Vision v. Assembly Guidance*, 97 F.4th 882, 888 (Fed. Cir. 2024). (holding “[t]hat is an error as a matter of law. It does not suffice to simply be known. A reason for combining must exist.”). Petitioners’ reliance on the general knowledge of a POSITA is insufficient.

G. Leaning and Gamble Fail to Render Obvious “requesting sub-parts of the files over different ... connections” (Claims 9 & 11).

The POR demonstrated that Leaning fails to disclose or suggest requesting files—whether Leaning’s “subfiles” or subparts of those subfiles—over a plurality of TCP connections. POR, 43-45. Gamble fails to cure Leaning’s deficiencies because Gamble’s data transfer is initiated and controlled by a server without any client “requesting” specific “sub-parts” over multiple connections, as claimed. POR, 44-45 (citing EX2141, ¶¶174-175). In Reply, Petitioners rely on Gamble’s disclosure that transmitting client 104 can “initiate a standard TCP connection sequence,” as somehow meeting this element. Reply, 18-19. This confuses the role of Gamble’s transmitting client 104. Although described as a “client,” Gamble’s **transmitting** client 104 **sends** data to the server, which in turn transmits the data to a different client (*i.e.*, receiving client 106). EX1020, Fig. 3, ¶[0036]. Thus, Gamble fails to teach a downstream client that places “requests” to server 104 for sub-parts over multiple connections, as Claims 9 and 11 require. And Petitioners fail to

provide any basis for why a POSITA would have been motivated to apply Gamble’s peer-to-peer (P2P)-based teachings to Leaning’s client-server architecture.

H. Objective Indicia of Nonobviousness.

1. Petitioners’ New Objective Indicia Arguments Are Untimely and Should Be Disregarded.

“[T]he PTAB has cautioned petitioners in prior proceedings that **known** evidence of secondary considerations should be addressed in the Petition.” *Aardevo N. Am., LLC v. Agventure B.V.*, IPR2025-00136, Paper 9, 32 (P.T.A.B. May 1, 2025). Petitioners and Dr. Houh¹¹ were fully aware of such evidence here—they cite the ITC ruling upholding **this very patent** based on strong objective indicia of non-obviousness tied to the success of the MOVE player. Pet., 60-61(citing EX1003, ¶¶21, 54, 84; EX1009, 212-217). Yet, the Petition barely mentions secondary considerations. *Compare* Pet., 60-63 *with* Reply, 20-27.

Petitioners’ contention that different evidence was before the ITC is false. Reply, 20. Every relevant exhibit Petitioners identify as allegedly missing from this proceeding was submitted to the Board, as shown below:

Evidence Petitioners Allege was Before ITC But “not in this proceeding”	Corresponding Exhibit Number in This Proceeding
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¹¹ Just one month prior to his initial declaration, Dr. Houh testified that he understood that secondary considerations were required to be considered and did so. *See Microchip Tech. Inc. v. Aptive Techs. AG*, IPR2024-00228, EX2001 ¶22.

(Reply, 20)	
CX-0001C (Direct Witness Statement of Drew Major)	Same evidence submitted through Declaration of Drew Major (EX2020); Petitioners deposed Mr. Major (EX1032).
RX-0001C (Respondents’ Witness Statement)	Statement Concerns Confidential Infringement, Not Validity.
CX-0008C (Rebuttal Witness Statement of Kevin Jeffay, PhD.)	Same evidence submitted through Declaration of Kevin Jeffay, PhD. EX2141; Petitioners deposed Dr. Jeffay (EX1027).
CX-1096C (Move Networks Streaming Overview)	EX2022 (Same Document)
CX-0005C (Direct Witness Statement of Greg Smith)	Same evidence submitted through Declaration of Greg Smith (EX2099); Petitioners deposed Mr. Smith. Paper 39.
CX1061C (Microsoft Unlocks the Power of the Web)	EX2055 (Same Document)
CX-1134 (MOVE, a Next-Gen Content Distribution Platform)	EX2033 (Same Document)

The Board should give no weight to Petitioner’s reply evidence that should have been presented with its Petition.

2. The Facts Here Warrant the Presumption of Nexus.

The ITC found that “the Move Media Player embodies the claimed invention” and thus “DISH is entitled to a presumption that the commercial success of the MOVE system is due to the patented features of the invention.” EX1009, 212 (citing *WBIP*, 829 F.3d at 1329). Petitioners cite the Board’s contrary finding in the Ogdon

IPRs, but the Board’s reasoning there does not apply to these claims. Reply, 20. In *Ogdon*, the Board found no nexus because the claims lacked certain allegedly “critical” but “unclaimed features”—specifically, “multiple TCP connections” and “HTTP requests.” IPR2024-00043, Paper 59, 41-59. Every Challenged Claim here expressly recites those features. The only rationale for denying nexus in *Ogdon* is therefore inapplicable. Consistent with the ITC’s finding, the presumption of nexus should apply here.

3. Petitioners’ New “Unclaimed Features” Arguments Are Unavailing.

In Reply, Petitioners raise new arguments identifying alleged “critical unclaimed features,” including (a) Digital Rights Management (DRM), (b) geo-targeting, (c) in-depth reporting, and (d) ad-insertion. Reply, 23. But these features were not “critical” to MOVE’s player. DRM, for example was a standard requirement of any system that streamed “secur[e] content,” not a feature that defined the Move player’s performance or success. EX2102, 165:1-4; *see also* EX2069, 14. The same is true of other features cited by Petitioners, which are ancillary tools for analytics, compliance, or monetization, not essential components

of the player's operation. *See, e.g.*, EX2069, 13, 18-19; EX2102, 166:4-14.¹²

Indeed, the MOVE player performed continuous playback performance without many of these features. For example, it successfully streamed high-profile events like the 2008 Democratic National Convention and the October 2005 General Conference for the LDS Church without DRM. *See* EXs. 2061, 2064, 2091. These facts confirm that the MOVE player's commercial success derived from its playback capabilities, not peripheral features.

Moreover, Petitioners do not argue that these new allegedly "critical unclaimed features" are claimed in a different patent, nor do Petitioners provide any evidence explaining how such features would have affected the MOVE player's relevant operation. Its argument is mere speculation. *Quanergy Sys., Inc. v. Velodyne Lidar USA, Inc.*, 24 F.4th 1406, 1418 (Fed. Cir. 2022) ("argument alone" is insufficient to rebut nexus).

4. There Is a Nexus to the MOVE Product's Unique Combination of Features.

Petitioners next attempt to dissect the MOVE player into individual features and dismiss each as known in the prior art. Reply, at 24-26. But that is not the

¹² When MOVE partnered with Microsoft to deliver the 2008 Democratic National Convention, MOVE's player ***did not provide*** DRM, customizable navigation, and ad-insertion—Microsoft's Silverlight did. EX2068.

standard. The Federal Circuit has made clear, when a patent claim involves a “combination of prior art elements, ... it is the claimed combination ***as a whole***”—not any single element—“that serves as a nexus for the objective evidence.” *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1330 (Fed. Cir. 2016) (citing *Rambus Inc. v. Rea*, 731 F.3d 1248, 1257 (Fed. Cir. 2013)). As WBIP further explains, “the fact that an isolated feature may be present in the prior art may not render irrelevant objective indicia of non-obviousness of that feature in the claimed combination.”). *Id.* at 1331.

As explained in §IV of the POR and below, the MOVE player’s commercial success, industry acclaim, and widespread adoption were not driven by any single feature in isolation, but by the patented combination. The record is replete with undisputed evidence that both Sling TV and the MOVE player:

- practiced the claimed invention in the same manner (*see, e.g.*, EX1030, 72:12-22),
- extended customer viewing patterns (*e.g.*, EXs 2034-2036),
- surprised industry players with a product that was “leaps and bounds” ahead of existing solutions (EX2127, ¶4 (*quoting* EX2128, 90:17-91:6); *see also* EXs 2034, 2036, 2091, 2120, 2125), and
- earned substantial industry awards (EXs 2023-2024, 2026-2030).

The record also shows that the MOVE player:

- addressed the longstanding need for continuous playback of content (*e.g.*, EXs. 2021, 2022, 2033-2047, 2058, 2077, 2080, 2125),

- received widespread praise from ordinary users **and** industry leaders (*e.g.*, EXs. 2023-2034, 2036, 2048, 2051-2052, 2070, 2080, 2091),
- inspired the adoption of “remarkably similar” ABR streaming technologies by others in the industry (*e.g.*, EXs. 2046, 2062, 2065-2067; EXs. 1030(Ericsson), 153:6-20, 156:7-157:19, 159:10-19; 1032(Mitchell), 84:14-20; 85:2-20),
- successfully delivered historic and flagship programs to millions of viewers worldwide (*e.g.*, EXs. 2032-2034, 2040, 2050, 2061, 2064, 2070, 2091, 2114, 2121); and
- achieved significant commercial success through partnerships, licenses, such as the \$75 Million license by Peloton after the ITC Investigation (EX2141, ¶[247]), investments, and demand (*e.g.*, EXs. 2024, 2032-2035, 2038-2040, 2045-2058, 2068, 2070, 2075, 2086-2087, 2092-2095, 2090, 2121, 2143). *See Ancora Techs., Inc. v. Roku, Inc.*, 140 F.4th 1351, 1363 (Fed. Cir. 2025) (“[W]hen it comes to licenses, clear evidence that substantial license fees were paid for licenses to a specific patent late in a litigation should be given the significance that their magnitude deserves.”).

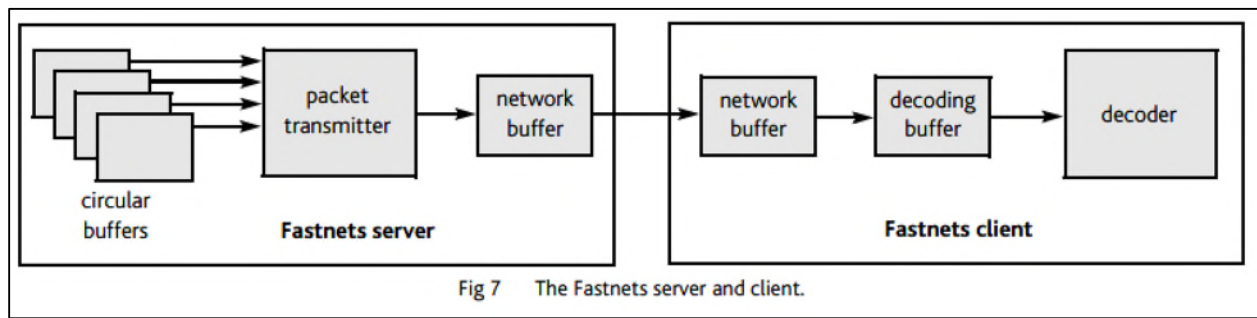
Petitioners’ argument that the MOVE’s **player could potentially** have experienced “stalls” or “blip[s]” is a red-herring. Reply, 21. As discussed *supra* at §II.A.2, that MOVE’s player could theoretically exhibit playback stalls in **extreme** circumstances such as network issues or acts of nature (EX1034(Mitchell), 53:16-22; 56:3-6, 71:3-10; EX1030(Ericson), 219:5-12) does not mean that the player did not normally practice the challenged claims. The evidence shows that the MOVE

Player did practice the claims and was designed for continuous playback, and its real-world success, industry recognition, and technical achievements are directly attributable to the patented invention. EX1032(Major), 40:16-41:17, 54:22-56:6, 63:1-10, 127:16-128:1; EX1030(Ericson), 113:20-114:25, 217:8-217:22, 218:23-220:19; 165:12-166:2 (“ensure the continuous playback”); EX2127, ¶4.

5. Petitioners’ Reliance on “FastNets” Confirms Leaning Does Not Render the Claims Obvious.

Petitioners claim that British Telecom (“BT”) commercialized Leaning through a product called “FastNets.” Reply, 26-27. But Petitioner’s own evidence shows FastNets does not employ Leaning’s teachings, and, regardless, the record lacks any evidence that BT actually commercialized it.

Leaning discloses a pull-based architecture, where the client device decides to switch streams by requesting particular subfiles from a server. EX1004, 2:16-18. By contrast, FastNets used a server-driven “push” architecture, flipping the core “pull” functionality from Leaning on its head. EX1041, Figure 7; EX1036, 2. The push-based architecture of FastNets places logic and decision-making authority in intelligent servers, as opposed to the client devices that simply receive and decode content:



EX1041, Figure 7; *see also* EX1036, 2 (describing server-side intelligence).¹³ As Dr. Jeffay explains, these push systems were “disfavored” because the “intelligent” servers could not achieve the same quality of experience as pull-based systems. EX2141, ¶223.

It is telling that BT promoted FastNets—a push system—between 2003 and 2007, years after possessing Leaning’s pull-based disclosure. *E.g.*, EX1036, EX1041. BT had both paths in hand yet pursued only the one that contradicts Petitioners’ “obviousness” theories. As in *Santarus, Inc. v. Par Pharm., Inc.*, 694 F.3d 1344 (Fed. Cir. 2012), this divergence “teaches away” from the patented invention and demonstrates industry skepticism by suggesting that Leaning’s path was unproductive or infeasible. *Id.*, 1354 (“A reference teaches away when it suggests that the line of development flowing from the reference’s disclosure is unlikely to

¹³ Petitioners attempt to discredit the testimony of BT’s declarant because he did not “search for” FastNets when preparing for his deposition. Reply, 26. But his testimony remains unassailed—FastNets was not Leaning.

be productive of the result sought by the applicant.”).

FastNets underscores that even Leaning’s assignee found its approach unworkable. That commercial reality is powerful, objective evidence in support of patentability.

Respectfully Submitted,

July 25, 2025

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CERTIFICATE OF COMPLIANCE WITH 37 C.F.R. § 42.24

I hereby certify that this Patent Owner's Sur-Reply to Petitioners' Reply complies with the word count limitation of 37 C.F.R. § 42.24(c)(4) because the Patent Owner's Sur-Reply to Petitioners' Reply contains 5,598 words using Microsoft Word's counting feature, excluding the cover page, signature block, and the parts of the Patent Owner's Sur-Reply to Petitioners' Reply exempted by 37 C.F.R. § 42.24(c).

Date: July 25, 2025

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CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. §42.6, the undersigned certifies that on July 25, 2025, a complete and entire copy of the **PATENT OWNER'S SUR-REPLY TO PETITIONERS' REPLY** was served upon the following, by ELECTRONIC MAIL:

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Case IPR2024-00918
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