UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AYLO FREESITES, LTD
Petitioner,
vs.
DISH TECHNOLOGIES, L.L.C.,
Patent Owner.

IPR2024-00940
Patent No. 11,991,234

_____

FUBOTV MEDIA, INC. & YANKA INDUSTRIES, INC.,
Petitioners,
vs.
DISH TECHNOLOGIES L.L.C.,
Patent Owner.

IPR2024-00917 (Patent 10,757,156 B2)
IPR2024-00918 (Patent 9,407,564 B2)
IPR2024-00919 (Patent 8,868,772 B2)

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Washington, D.C.
Thursday, May 8, 2025

Videotaped deposition of KEVIN JEFFAY, Ph.D., held at the law offices of Baker Botts, LLP, 700 K Street, N.W., Washington, D.C., beginning at 9:08 a.m., taken stenographically by Misty Klapper, Registered Merit Reporter, Certified Shorthand Reporter, Registered Professional Reporter, Realtime Systems Administrator and Notary Public.

fuboTV Media Inc.
Exhibit 1027
fuboTV v. Dish
IPR2024-00917, -00918, -00919
Ex. 1027-001

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C O N T E N T S

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E X H I B I T S

JEFFAY EXHIBITS:

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Exhibit 2	U.S. Patent No. 11,991,234	138

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P R O C E E D I N G S

VIDEO OPERATOR: Good morning. We are going on the record at 9:08 a.m. on Thursday, May 8th 2025 for the stenographically reported and videotaped deposition of Dr. Kevin Jeffay in the action Aylo Freesites, LTD and fuboTV Media, Inc. versus DISH Technologies.

My name is David Campbell, the videographer. And Misty Klapper is the court reporter. We are with Hudson Court Reporting.

This deposition is being held at Baker Botts, located at 700 K Street, Northwest, Washington, D.C. 20001.

All counsel will be noted on the stenographic record.

And with that, if the court reporter will please swear in the witness, we can proceed.

MS. REPORTER: One moment.

KEVIN JEFFAY, Ph.D.,

The witness herein, called for examination by the Petitioners, having been duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PETITIONERS

BY MR. SHENG:

Q. Good morning, Doctor. Could you --

A. Good morning.

Q. Could you please state your name for the record.

A. My name is Kevin Jeffay.

Q. And you've been deposed before, correct?

A. Yes.

Q. In fact, I deposed you about seven months ago.

Do you remember that?

A. In this very room, I think.

Q. Okay. So the same rules apply.

If you have any questions, let me know. Let your counsel know.

Okay?

A. Okay.

MR. SHENG: These are -- so these are premarked.

THE WITNESS: Thank you.

BY MR. SHENG:

Q. So, Doctor, this is Exhibit 2141. Do you recognize the document that I handed you?

A. Yes.

(Exhibit 2141-940, previously marked, was referred to.)

BY MR. SHENG:

Q. And this is at least one of the expert declarations you submitted in connection with the IPRs at issue today; is that correct?

A. Yes.

Q. And if you look at the bottom right-hand corner of the exhibit I just

handed you, you see that this document is in connection with IPR2024-00940.

Do you see that?

A. I see that.

Q. If I refer to this declaration by its last three digits and call it the 940 IP -- scratch that. Let me -- let me start over.

If I refer to the IPR by its last three digits and call it the 940 IPR, will you understand what I'm referring to?

A. I will try.

Q. The petitioner in the 940 IPR is Aylo Freesites, LTD.

Agree?

A. That's my understanding.

Q. The 940 IPR challenges Dish's U.S. Patent Number 11,991,234.

Agree?

A. Yes, that's my understanding.

Q. And if I refer to that patent as the '234 patent, will you understand what I'm

referring to?

A. Yes. That -- that I can do.

Q. Please turn to paragraph 3 of Exhibit 2 -- 2141 that's in front of you.

A. Okay.

Q. In paragraph 3 you identify the ABR patents that are at issue in these I -- IPRs.

Do you see that?

A. Yes.

Q. ABR stands for adaptive bitrate; is that correct?

A. Yes. That's how it's being used in this matter, as I understand it.

Q. In paragraph 3 you identify four IPRs that are at issue here today, each with their corresponding challenged patent.

Do you see that?

A. Yes.

Q. And the 940 IPR with its corresponding '234 patent is listed there.

Do you see that?

A. Yes.

Q. In addition to submitting an expert declaration in the 940 IPR, you submitted expert declarations in each of the other IPRs you identified in paragraph 3 of Exhibit 2141, correct?

A. I'm sorry, what was that exhibit? That's this declaration?

Q. Yes.

A. Yes, I submitted declarations in -- in each of these four IPRs.

Q. Is it true that you submitted substantively identical expert declarations in each of the four IPRs listed in paragraph 3 of Exhibit 2141?

A. That's my understanding.

Q. So the expert declaration that is marked as Exhibit 2141 for the 940 IPR is the same expert declaration you submitted in each of the other IPRs at issue today.

Agree?

A. In -- in terms of the -- the

numbered pages in here, I believe that is correct.

Q. And, again, the petitioner in the 940 IPR is Aylo Freesites, LTD.

Do you understand that?

A. In the 940, yes.

Q. So I represent Aylo today. I'll be asking you questions primarily directed to the expert declaration that relates to the '234 patent.

Do you understand that?

A. I do now.

Q. And then counsel for fubo and Yanka Industries -- scratch that.

fubo Media -- fuboTV Media and Yanka Industries are the petitioners in the other three IPRs.

Do you understand that?

A. Yes.

Q. So when I'm done with --

MS. REPORTER: Can you slow down?

MR. SHENG: Sure.

BY MR. SHENG:

Q. So when I'm done with my direct examination, I will turn it over to counsel for fubo and Yanka and she'll ask you questions related to the other IPRs.

Okay?

MR. WILSON: Objection, form.

THE WITNESS: I guess I can't say it's not okay.

BY MR. SHENG:

Q. Fair enough.

You agree that the ABR patents are all related, correct?

A. Yes.

Q. Can you turn to paragraph 5 of your expert declaration.

A. Okay.

Q. You agree that the specifications of the ABR patents are the same, with the exception of the '234 patent, which includes certain additional disclosures as a

continuation-in-part application, correct?

A. Yes, I agree.

Q. According to the last sentence of paragraph 5 of your declaration, you addressed claim elements and limitations that are recited across each of the ABR patents by citing to the '564 patent, correct?

A. Yes.

Q. And you also cite in your expert declaration and petition -- strike that.

And you also cite in your expert declaration the petition and exhibits in the 918 IPR, unless otherwise noted; is that correct?

A. Yes. That was the intent.

Q. So in the interest of time, for the claim elements and limitations that are the same across each of the ABR patents, can we agree that your testimony today applies equally to each patent, unless you note otherwise?

A. Sure. That works.

Q. Can you describe generally what your assignment was with respect to the IPRs at issue today.

A. Well, to review the petitions, the declaration of Dr. Houh that was submitted in support of those petitions and the prior art that was cited in those documents, and to form -- to share my opinions with DISH's counsel as to the merits of the arguments that were made in those documents.

Q. What did you do to prepare for today's deposition?

A. I reviewed the declaration and the prior art, the demonstratives that I developed and then had discussions with DISH's counsel.

Q. Did you meet with anyone in preparation for today's deposition?

A. Well, I -- as I said, I had discussions with DISH's counsel, so I met with them virtually, but those were the only

folks that I met with.

Q. How long did you meet with counsel virtually?

A. Oh, I don't know. We had two extended Zoom calls in total. Maybe ten hours.

Q. Ten hours total?

A. Yeah, I think so.

Q. And you mentioned that you reviewed your declaration.

Do you recall which declaration you reviewed?

A. No.

Q. You reviewed your declaration?

A. I -- I -- yes. I reviewed what is -- the way I view it, as the -- the numbered pages of this document. That's -- that's what I reviewed.

Q. Did you review -- did you review one declaration or all four declarations?

A. I just reviewed one.

Q. Do you recall which one?

A. No.

Q. And the reason you reviewed one and not all four is because they are substantively identical; is that fair?

A. Yes.

Q. How many times did you read your declaration cover to cover in preparation for today's deposition?

A. Well, that's usually not the way I work, but probably in terms of actually reading it from cover to cover, maybe twice.

Q. You testified that you also reviewed the declaration of Dr. Houh; is that correct?

A. Yes.

Q. How many times did you review the declaration of Dr. Houh cover to cover in preparation for today's deposition?

MR. WILSON: Objection, form.

THE WITNESS: I did not review it cover to cover in preparation for today's deposition.

BY MR. SHENG:

Q. You reviewed certain portions of Dr. Houh's declaration; is that correct?

A. Yes.

Q. Do you recall which portions you reviewed?

A. Not really. I mean, I was looking at it online, I mean, as in -- in soft copy, so I wasn't paying attention to the table of contents.

Q. Did counsel tell you which portions to review or did you decide on your own which portions to review?

A. Counsel gave me no instruction with regard to Dr. Houh's declaration.

Q. Okay. So which -- which portions -- what -- and you don't recall which portions of Dr. Houh's declaration you reviewed?

MR. WILSON: Objection, form.

THE WITNESS: Well, I'm -- in terms of its table of contents, no.

BY MR. SHENG:

Q. Do you remember the subject matter?

A. Yes.

Q. What was that?

A. I was reviewing the arguments that -- well, the alleged arguments that he made regarding the continuous playback limitations, as well as the arranging streamlets limitations and the multiple TCP connections limitations.

Q. If counsel gave you no instruction with regard to Dr. Houh's declaration, why did you choose to review those specific portions of the declaration in preparation for today's deposition?

A. Because I make statements in here about what Dr. Houh opined in his declaration and I wanted to go back and review those sections of his declaration.

Q. In preparing for today's deposition, did you review the ABR patents?

A. Yes.

Q. Which ones?

A. Primarily the '234 and the '564.

Q. How many times did you read the '234 patent cover to cover in preparation for today's deposition?

A. I -- I didn't read it cover to cover.

Q. Why not?

A. Because I read it several times. And as I say, it's substantially similar to the other patents.

Q. Can you describe for me some of the differences between the '234 patent and the '564 patent?

A. As I recall, the '234 patent, is that the one that has virtual timelines in it? I mean, I'd have to look at the patents to refresh my recollection, but that's -- I think that's the case.

Q. Sitting here right now, you cannot tell me whether or not the '234 patent

has virtual timelines in it?

A. I mean, I -- I -- I did not memorize the '234 patent, so I'm just giving you my best -- my best recollection, sitting here today.

Q. Did counsel give you instruction as to whether or not -- well, strike that.

Did counsel give you any instruction with regard to the '234 patent?

A. I'm not sure what you're asking.

Q. Did counsel give you any instruction as to which portions of the '234 patent you should review, yes or no?

A. No.

Q. Do you recall which portions of the '234 patent you reviewed?

A. I mean, if you -- if you're interested in what I reviewed, if you give me a copy of the patent, I'll show you what I reviewed.

Q. You're aware that both the Aylo petitioner and the fubo/Yanka petitioners

engaged Dr. Henry Houh to serve as their expert in their respective IPRs, correct?

A. I mean, I have some understanding of that.

Q. In preparation for today's deposition, did you review the transcript of Dr. Houh's deposition that took place in February of 2025?

A. No.

Q. Have you ever reviewed that deposition transcript, do you recall?

A. Yes.

Q. How much time did you spend drafting the declaration that's in front of you that's marked Exhibit 2141?

A. In terms of actually drafting it, I don't -- I don't think I can give you a -- a good estimate. That's -- that's not a number that I -- or that's not a metric that I keep in my head.

Q. Is it written down somewhere?

A. The only place it would be

memorialized is on the timesheet that I use for billing.

Q. Did you draft the expert declaration yourself?

A. I started the declaration. I mean, and I'm sure you'll recognize there's lots of various parts of this that come from other declarations that I've written.

And then I iterated with DISH's counsel.

Q. When you say there are various parts that came from other declarations, what do you mean?

A. Well, the background section, the section on level of skill. I think those are essentially the same as in previous declarations that I've submitted in matters related to the ABR -- IPR matters related to the ABR patents.

Q. Did counsel draft any portions of your expert declaration?

A. Certainly the legal standards

section I did not draft.

Q. Anything else?

A. That's the main one that I can think of.

Q. Can you describe for me your drafting process? And what I'm getting at is did you draft certain portions in the first instance, then have counsel review, or did counsel draft it in the first instance, just generally like that?

A. I would -- as I say, I would draft sections. I would give it to them for comments. They would edit. They would expand. I would review -- I would review the stuff they had expanded. They would review the stuff I had expanded on. And that process continued for several weeks and resulted in the document we have here.

Q. How many times did you review the draft of your expert declaration cover to cover before signing it?

A. I -- I -- that's not a metric I

have in my head.

Q. At least once?

A. Sure.

Q. Twice?

A. I mean, I couldn't say for certainty.

Q. Before you signed it, you confirmed that everything in your expert declaration was, to the best of your knowledge, accurate?

A. At the time I signed it, yes.

Q. As you sit here today, are you aware of anything in the expert declaration in front of you that needs to be corrected?

A. There are some pretty obvious typos that are in here and a -- one footnote that's in here that's really related to material that got deleted from the final version of the report. So it's kind of a dangling footnote.

Q. Which footnote is that?

A. I want to say it's footnote --

footnote 14 on page 102. So most of the -- there -- there are a few typos in this section. So we can talk about that and then I'd like to point out another one.

So footnote 14 on page 102 was referencing a version of the figure that is on 102 that was reworked. And so this footnote really no longer applies. It -- it's -- it was referencing a -- a different example that -- that I changed.

So as you'll notice, it's -- it's referencing a frame B-1. And, as you can see, there -- there is no B-1 in this -- in this example.

So that -- that footnote can just -- there's nothing wrong with it. It just doesn't make any sense. It can be deleted.

Q. Okay. I believe that this footnote appears in the section of your report related to one of fubo's patents, so I will let fubo's counsel address that

footnote.

Other than that footnote, are you aware of any other corrections that you need to make to your expert declaration?

A. Yeah. There is sort of an obvious typo on the previous two pages, page 100 in paragraph 164. The -- the first sentence says, Using the MPEG format rather than H.261 results in a similar problem that will like -- that will likewise not result in mistracking.

And the "not" is in error.

Q. Okay. And I think this is referring to a different patent --

A. Yep.

Q. -- so I'll let my colleague address that.

Other than those two, I guess, corrections, are you aware of anything that you wish to correct today?

A. I think those are the two -- I don't know how to describe them. Those --

those are two that struck me going through this again.

Q. Did counsel point those errors out to you or did you discover those errors on your own?

A. I discovered them on my own.

Q. And this was while you were preparing for today's deposition?

A. Correct.

Q. So prior to today's -- prior to preparing for today's deposition, you were not aware of those errors that you identified?

A. Correct.

Q. Can you turn to paragraph 36 of your expert declaration.

A. Okay.

Q. In paragraph 36 you state, The challenged patents are directed to alleviating the problems of reliability, efficiency and latency when video streaming over packet switched networks such as the

internet.

Do you see that?

A. I do.

Q. And you quote language from Exhibit 1001; is that correct?

A. Yes.

Q. That's Exhibit 1001 from the 918 IPR, correct?

A. I don't know.

Q. Well, we established earlier that in Exhibit 2141 you'd be citing to exhibits from the 918 IPR.

Do you remember that?

A. Yes.

Q. So if I represented to you that Exhibit 1001 from the 918 IPR is the '564 patent, would you have any reason to disagree with that?

A. No.

Q. And can -- and if we need to take a break, I'm happy to take a break, but can we establish -- can we agree that

Exhibit 1001 that's cited in paragraph 36 of your expert declaration is the '564 patent?

A. If -- you know, when -- for most of the time that I was working on this draft, these were actual patent cites. I mean, it said '564 patent and then at some point they got turned into exhibit numbers. So, I mean, that sounds right, and if you'll represent that Exhibit 1001 is the '564 patent, then I'm happy to accept that.

Q. Okay.

MR. SHENG: Counsel, any objection?

MR. WILSON: No objection.

MR. SHENG: Okay.

BY MR. SHENG:

Q. Earlier you testified that the specifications of the ABR patents are the same with the exception of the '234 patent.

Do you remember that?

A. Yes.

Q. Is it a problem that you are

citing the '564 patent to opine on what the '234 patent is directed to?

MR. WILSON: Objection, form.

THE WITNESS: Is it a problem. I don't think it's a problem.

BY MR. SHENG:

Q. Do you think it's proper to cite the '564 patent to opine on what the '234 patent is directed to?

MR. WILSON: Objection, form.

THE WITNESS: If you're asking me a legal question, I -- I have no idea what the answer is.

I would say given the relationship between these patents, I think -- and -- and the high-level nature of the statement that's being made here, I think this is a -- a perfectly fine -- this characterization would apply equally to the '234 patent.

BY MR. SHENG:

Q. But the '234 patent is different than the '564 patent, right?

A. In terms -- I mean, sure, it has -- it has -- it's -- it's not -- it -- it's not -- does not have an identical specification. But in terms of what it's generally directed to, this is a fair characterization of that.

Q. Is it a fair characterization because the language you quote from the '564 patent is also found in the '234 patent?

A. I don't recall if this exact language is in the '234 patent or not, but nonetheless, I think a fair read of the '234 patent would show that -- as I say, as a general matter, this is what it is directed to.

Q. Does it have anything to do with the fact that the two patents are related?

A. Does what have anything to do with?

Q. The fact that you're citing the '564 patent to describe what the '234 patent is related to -- is directed to.

A. Yes. It's due in part to the fact that these patents are related.

Q. Is it also due in part to the fact that the language is substantially similar between the two patents?

A. Much of the specification is -- in the two patents is substantially similar.

Q. On page 14 of your declaration you have a section titled Section III, The Challenged Patents.

Do you see that?

A. Yes.

Q. What was the general purpose of Section III?

A. Just to give an overview of the challenged patents.

Q. Section III of your expert declaration spans pages 14 to 22.

Do you see that?

A. That appears to be correct.

Q. And throughout Section III of your expert declaration you cite many times to Exhibit 1001 from the 918 IPR; is that fair?

A. 918 -- yes, that is fair.

Q. And, again, Exhibit 1001 from the 918 IPR is the '564 patent, correct?

A. Correct.

Q. And we established that the '564 patent and the '234 patent have different specifications, correct?

A. They have substantially similar specifications, but they're not identical.

Q. You cite the '564 patent throughout Section III of your expert declaration and your opinions in Section III are supposed to be applicable to the '234 patent, correct?

A. Correct.

Q. So I'm still trying to understand why it's appropriate to cite the '564 patent

when discussing the '234 patent.

Can you help me there, Doctor?

MR. WILSON: Objection, form.

THE WITNESS: Because what I'm citing here -- so the -- the concepts and the -- the points that are being made here apply to all of the challenged patents, including the '234.

BY MR. SHENG:

Q. But why? I'm trying to understand why.

A. Because -- because what I'm discussing in here is these concepts are in the '234 patent.

Q. When you say the concepts are in the '234 patent, do you mean that the concepts are described in the '234 patent?

A. I -- I mean, the disclosures of the '234 patents teach the points that are enumerated in this section.

Q. In paragraph 36 in the sentence

that carries over to page 15 there's a sentence that begins, The challenged patents describe these problems and needs in the art.

Do you see that?

A. Sorry. I -- I -- I see that. That doesn't -- yeah, the paragraph carries over, not the sentence.

Q. Apologies. The paragraph --

A. Yeah.

Q. -- carries over and you see the sentence that begins, The challenged patents describe these problems and needs in the art.

A. Yes.

Q. Is that --

A. Yes, I see that. Yes.

Q. Do all four of the ABR patents relate to the same problems and needs in the art?

A. They all describe the problems and the needs that I -- that I have enumerated in -- in the first half of paragraph 36.

Q. Do all the challenged patents describe the same solutions to overcome the problems and needs in the art?

A. I mean, the specifications, as I say, are substantially similar. And so to the extent they don't describe exactly the same solutions, they describe substantially similar solutions.

Q. Are all the challenged patents primarily focused on the same subject matter?

A. Well, three of them, as I say, are essentially the -- the -- the same. They have the same specification. So those three do.

And the '234 is -- does have additional disclosures that are not in the other patents.

Q. So the ABR patents that have the same specification are directed to the same solutions, correct?

A. In terms of what's disclosed in the specification, yes.

Q. In your opinion, though, even the '234 patent is directed to the same solution, correct?

MR. WILSON: Objection, form.

THE WITNESS: For what problem?

BY MR. SHENG:

Q. All the problems that are described in the patents.

MR. WILSON: Objection, form.

THE WITNESS: For what I have described here in paragraph 36, that is correct. The specification of the '234 contemplates the same -- has effectively the same disclosures for solutions to the problems that are articulated in the first half of paragraph 36.

BY MR. SHENG:

Q. Can we agree that for the three patents that have identical specifications, they are directed to the same problem and disclose the same solutions to overcoming

those problems?

A. You -- I mean, I -- I will agree only with respect to the specification.

Q. What do you mean by that?

A. Just what I said.

Q. I don't -- I don't understand what you said.

A. I would agree that the specifications of the three patents that are identical, because they are identical, they contain the same disclosures and, therefore, those specifications are directed to the same problems and -- and describe the same solutions.

Q. Excellent.

In paragraph -- can we turn to paragraph 46, please.

A. Okay.

Q. In paragraph 46, about halfway through the paragraph, you identify six techniques of the challenged patents that are directed to achieving the stated goal of

continuous playback.

Do you see that?

A. Yes. And I'll mention here and in a couple pages later, as I'm sure you've observed, apparently I've -- I've only listed five and -- and this -- this repeats in a couple pages.

Q. Okay.

A. But, yes, I see what you're -- I see what you're pointing at.

Q. So that's another, I guess, typo in your report that you need to correct?

A. I -- I -- I -- I think -- I don't know. It -- it -- it -- it is a typo. I don't know this really rises to the level warranting correction. I mean, when you number things 1 through 5, I think it's clear you're only pointing to no fewer than five techniques.

Q. That's fair.

The first technique you list is switching between different bitrate

streamlets without filling a buffer first.

Do you see that?

A. I do.

Q. What do you mean by "without filling a buffer"?

A. Well, this is going to be important when it comes to talking about the prior art. But the point is that given the streamlet architecture in the ABR patents, you can immediately play a streamlet upon receipt.

So when you switch between different bitrates, when you get the first streamlet -- excuse me -- at the new bitrate and code it at the new bitrate, you can play it immediately.

So there -- there -- there need not be any delay between -- in playout as a result of switching bitrates.

Q. So are you saying that if we eliminated the buffer from DISH's invention, the invention could still achieve continuous

playback upon a rate switch?

MR. WILSON: Objection, form.

THE WITNESS: No. I mean, I -- I haven't -- I haven't considered that -- that issue. But this is not talking about a buffering requirement. It's really talking about a playout feature. And that is that you can immediately play out streamlets at a new bitrate as soon as possible. There's no -- with -- without any delay.

So -- and in particular, without any delay -- excuse me -- without any delay incurred by waiting for a buffer to fill.

BY MR. SHENG:

Q. Would the buffer fill with one streamlet in the scenario you're talking about with respect to the fast start capability?

MR. WILSON: Objection, form.

THE WITNESS: It -- it -- it -- that's going to depend on the size of the buffer that -- that you've chosen. But the point here is that this ability to play out immediately is not a function of buffering. It has nothing to do with buffering.

You can play out immediately once you have the streamlet at the new bitrate. So the time which you play it out is not tied to buffer occupancy.

BY MR. SHENG:

Q. Okay. So I just want to make sure I understand.

When the system receives that first streamlet, would that first streamlet be placed in the buffer or would it play out right away?

MR. WILSON: Objection, form.

THE WITNESS: You have the capability of doing either. And which

one you actually use is going to be a function of the state of the media player.

BY MR. SHENG:

Q. What do you mean "the state of the media player"?

A. How much, how full, what the buffer occupancy of the media player is when the streamlet at the new bitrate arrives.

Q. So it's possible that when the streamlet at the new bitrate -- when it arrives, it's possible that that streamlet will play immediately and forego being placed into the buffer, correct?

MR. WILSON: Objection, form.

THE WITNESS: If there was nothing in the buffer when the streamlet arrives, that is correct.

BY MR. SHENG:

Q. When you say nothing in the buffer, do you mean that the buffer's not full -- at full capacity?

A. No. I mean, yes, but that's not what I meant. I mean, that -- that is a true statement. It's not at full capacity.

But the point is that the ABR patents will play all streamlets in the order in which they are to be played corresponding to the original source media.

So if a streamlet arrives and there are other streamlets in the buffer, the new -- the streamlet at the new bitrate will take its place behind the existing streamlets and play in the playout order that it's supposed to.

However, if the buffer -- if you're -- if you're going to a lower bitrate, for example, because you couldn't sustain playout at a higher bitrate, it could be the case that the buffer -- because the buffer had been emptying faster than it was being replenished, if the new streamlet arrives and there's nothing -- and it's -- and in temporal order, it's ready to be played right

now, it will be played right now, even though there's nothing else in the buffer. You don't have to wait for the buffer to fill in order to play the streamlet at the new bitrate.

Q. So I think I understand what you're saying. Let's say the buffer's empty.

A. Um-hmm.

Q. You receive a streamlet at the higher rate. DISH's invention would enable that new streamlet to begin playing immediately, correct?

A. In my example I was talking about a lower rate, not a higher rate.

And the point is that it can be played in -- it will be played in order, in sequence order, and if playing in sequence order means that you're playing it when the buffer has -- is -- is less than completely full, including the case where the buffer is empty, the point is it will play -- it will play in the correct sequence as soon as

possible.

The -- the -- the point here is that when the streamlet will be played out has nothing to do with whether the buffer is full or empty. It just has to do with -- it -- it will be played out at the -- at the -- at the -- at the time at which it was meant to be played out.

Q. I guess I'm just trying to understand what's within, I guess, the scope of -- of DISH's invention here. And I'm -- and you -- you made a statement about being able to play without filling a buffer.

So the scenario that I'm thinking of is a user watching video at a certain bitrate. And let's assume the buffer is empty.

Okay?

A. Okay.

Q. And the network bandwidth increases to the point where you can switch to a higher bitrate. And so let's say DISH's

invention switches to the higher bitrate. The buffer is empty.

Would that first streamlet play immediately, such that there is continuous playback?

MR. WILSON: Objection, form.

THE WITNESS: Yeah, your -- your example is broken. I -- I don't think that scenario -- you -- you -- you seem to like to focus on upshifting. And given the way the ABR patents work, I don't see how you're going to be upshifting when the buffer is empty.

BY MR. SHENG:

Q. Let's say you're starting a video from the very beginning.

A. Okay.

Q. And you would agree that the -- you -- you start with an empty buffer, correct?

A. Correct.

Q. And the user starts the video. The first streamlet is transmitted from the server to the client.

A. Correct.

Q. Does that streamlet -- is that streamlet played immediately or does that streamlet get placed into the buffer?

MR. WILSON: Objection, form.

THE WITNESS: That streamlet can be played immediately. That's -- by design of their stream architecture, the media player has the capability to play that streamlet immediately.

BY MR. SHENG:

Q. Okay. So we've established that part of it.

Now, instead of the user starting the video from the very beginning -- let's say the user is already watching a video, is mid video.

Okay?

A. Okay.

Q. Or wants to jump to a different part of the video. Okay?

Does that first streamlet that comes in at the higher bitrate need to be placed in the buffer or can it -- and can that higher stream -- high bitrate streamlet be played immediately?

A. So --

MR. WILSON: Objection, form.

THE WITNESS: -- your questions are broken. You -- you -- you keep on inserting this notion of -- of -- of the higher bitrate without having established how you got to the higher bitrate.

BY MR. SHENG:

Q. Okay. Let me -- we'll -- we'll -- why don't we revisit that later and I can think about better way to approach it.

Okay?

A. That works.

Q. In paragraph 46 of your declaration, the third technique you refer to is using multiple TCP connections to request streamlets.

Do you see that?

A. I do.

Q. When you say "multiple," does that mean two or more?

A. That is how I'm -- I mean -- and -- and this isn't claim language here, so the extent "multiple" has particular interpretation claim language.

What I -- what I'm meaning here is, yes, two or more.

Q. What -- what -- well, you qualified that with -- with a reference to claim language. What -- what -- what -- what do you mean there?

A. Well, certain -- certain -- as you well know, certain terms in claim language, like "a" can mean one or more and "plurality" has to mean two or more and I

never keep those rules straight. So I don't recall there being any formal understanding of "multiple."

So I'm -- I'm just saying what was written here was meant to -- to imply more than one.

Q. Okay. So fair to say a person of ordinary skill in the art interpreting the words "multiple TCP connections" would understand multiple to mean two or more, fair?

A. I think of it as more than one, but I guess that's -- so if there's any difference between that and two or more, I'm not aware of it, but -- so I think that's fair.

Q. Okay. Let's go to paragraph 47 of your expert declaration.

In paragraph 47 you begin a section describing the Leaning reference.

Agree?

A. Yes, that's correct.

Q. And the Leaning reference, just for the record, is International Patent Application Publication WO 2002/049343.

See that?

A. I see that.

Q. Okay. Let's go to paragraph 48. I'd like to focus on the sentence in paragraph 48 that begins, actually, on the next page, page 24.

A. Okay.

Q. Page 24 at the top you say, Leaning describes the threshold that must be met in this regard as the playout time Tp, which is set at 10 seconds in Leaning's only example.

Do you see that?

A. I see that.

Q. So Leaning provides an example where the playout time Tp is set at 10 seconds, correct?

A. Yes.

Q. And that's just an example.

Agree?

A. The 10-second value is just an example.

Q. And I'm handing you what's been marked as Exhibit 1004.

A. Thank you.

(Exhibit fuboTV 1004, previously marked, was referred to.)

BY MR. SHENG:

Q. Exhibit 1004 is the Leaning reference.

Agree?

A. Yes.

Q. Did you review Leaning in preparation for today's deposition?

A. I did.

Q. Did you review it cover to cover?

A. I did.

Q. How many times?

A. Several.

Q. Let's turn to page 2, line 11. Let me know when you get to page 2 and

line 11.

A. Page 2, 11. Okay. I'm there.

Q. There's a sentence that begins, It is also assumed that the audio.

Do you see that?

A. I do.

Q. I'll read that sentence into the record.

It is also assumed that the audio signals have been recorded in compressed form using the ISO MPEG-1 Layer III standard, paren, the MP3 standard, close paren.

Do you see that?

A. I do.

Q. So Leaning teaches here that you can use the MP3 standard, correct?

A. Yes.

Q. Okay. The very next sentence of the one that I just read or the next statement says, However, it is not essential to use this particular format.

Do you see that?

A. I do.

Q. So what Leaning's teaching here is that you can use the MP3 standard, but it's not essential to use that particular format.

Agree?

A. That is certainly Leaning's opinion.

Q. Let's go to line 24 on the same page. Leaning says at line 24 -- do you see the sentence that begins, In these examples?

A. I do.

Q. Okay. I'll read that into the record.

It says, In these examples, the use of the hypertext transfer protocol is assumed. This is not essential, but is beneficial in allowing use of the authentication and security features, such as the Secure Sockets Layer provided by that protocol.

Did I read that correctly for the

most part?

A. I think you -- I think you read it exactly correctly.

Q. So Leaning says that the use of the hypertext transfer protocol is assumed, but not essential, right?

A. That's Leaning's opinion, yes.

Q. And you understand, then, that the -- where it says it's not essential, Leaning is teaching that it is not required, correct?

A. Correct. Leaning's not saying it's required.

Q. Okay. Turn to page 5 of Leaning. And I'd like to focus on -- well, actually, hold on.

Okay. On page 5 do you see that there are numbered paragraphs in Leaning, 3, 4, 5, 6, 7, 8, 9?

A. Yes, I see that.

Q. Okay. So paragraph 6 -- so I guess it's line 20 -- I guess I'll refer to

the line number.

A. Yeah.

Q. So page 5, line 20 of Leaning --

A. Okay.

Q. -- okay, Leaning says, The player program has a parameter called the playout time, Tp.

Do you see that?

A. I see that.

Q. Okay. And it goes on to state that In this example it is set at 10 seconds, but it could be made user selectable if desired.

Do you see that?

A. Yeah. It doesn't have the word "but," but other than that, it's -- you read it correctly.

Q. Fair enough.

We agree that Leaning teaches that the playout time Tp can be set at 10 seconds, but it could be made user selectable, right?

A. Correct.

Q. Because it's user selectable, Leaning's playout time Tp is not limited to 10 seconds.

Agree?

A. Yes.

Q. The user can set Leaning's playout time to five seconds.

Agree?

MR. WILSON: Objection, form.

MR. SHENG: What's the objection, Counselor?

MR. WILSON: Characterizing the teachings of Leaning.

BY MR. SHENG:

Q. Doctor, Leaning's playout time Tp can be set to 5 seconds.

Agree?

A. It says it can be user selectable. Beyond that, it really doesn't describe the interface, so we don't really know what options are available. But in

theory, it could be set to something other than 10 seconds.

Q. It's not your opinion today that Leaning's playout Tp -- Tp time can only be set at 10 seconds, correct?

A. Correct.

Q. Do you have any reason to dispute that Leaning's playout time Tp can be set to 5 seconds?

A. I -- I mean, in principle, no. I mean, we just don't know the range of settings that Leaning is contemplating.

Q. Did you study this issue?

A. Did I study what issue?

Q. What Leaning's playout time Tp can be set to, other than 10 seconds.

MR. WILSON: Objection, form.

THE WITNESS: Not -- not really. I mean, it -- I don't -- I didn't see any issue that turns on the possible settings for Tp. I mean, I -- in my analysis, I treated Tp as a

variable.

BY MR. SHENG:

Q. Okay. So in your analysis, you treated Leaning's playout time Tp as variable.

Can we agree that a user can set Leaning's playout time to 9 seconds?

A. So to be clear, I didn't say it was variable. I said it was a variable. And there's -- I mean, I -- in my declaration, I certainly reference Leaning's discussion of 10 seconds as an example to make some of the points that I have in the declaration concrete. But I'm not making any argument that relies -- that requires Tp to be set at 10 seconds.

So I acknowledge that Tp could be set to values other than 10 seconds.

Q. A user can set Leaning's playout time Tp to 9 seconds, agree?

A. You know, again, we don't know exactly the range that Leaning is

contemplating, but having studied Leaning, I don't see any reason why it couldn't be something like 9 seconds.

Q. What about 5 seconds?

A. Again, I -- I don't see any obvious reason why it couldn't be something like 5 seconds.

Q. What about 2 seconds?

A. 2 seconds, I think, since 2 seconds is -- so all these things are interrelated. 2 seconds is less than the subfile size. And so I don't know if -- it may be that having a buffer playout time that's less than the subfile size would cause some of the logic in Leaning's system to go a bit wonky.

So -- so I -- I don't know if -- if 2 seconds is a -- I'd -- I'd have to go back and review this to confirm that 2 seconds is a reasonable setting.

Q. You just testified that 2 seconds is less than the subfile size.

Isn't it true that Leaning teaches that the subfile size is variable as well?

A. Yes, but my only point is that these things are interrelated. So if now we're going to put two variables in play and talk about all the combinations and permutations of two variables, that's fine.

But if we're just talking about line 20 on page 5, can you change Tp, yes, you can change Tp.

But all of this discussion is within the context of a subfile size that was 4 seconds. And I'm just saying that, you know, it's not clear to me that it's sensible to have the playout time be less than the -- the duration of a subfile.

Q. What if the duration of the subfile was the same as the Tp time, so 4-second subfile and Tp equals 4?

MR. WILSON: Objection, form.

THE WITNESS: So for a subfile

size of 4 seconds and Tp equal to 4 seconds, just sitting here right now, I don't see any issue with that. There may be, but I just don't see it sitting here right now.

BY MR. SHENG:

Q. What if the subfile size was 4 seconds and Tp equals 3?

A. Well, again, now you're in the -- in the realm where the -- the duration of the buffer is smaller than the subfile size. And I'd have to go and restudy the logic here to confirm that that makes sense to do.

Q. Let's say the bandwidth -- the network bandwidth is optimal. Sitting here today, do you have an opinion as to whether or not Leaning's system would work if the subfile size was equal to 4 seconds and the Tp time was equal to 3 seconds?

MR. WILSON: Objection, form.

THE WITNESS: Well, before you even get to that, I don't know -- I

don't understand your characterization of the network.

BY MR. SHENG:

Q. Okay. Fair to say you -- you haven't investigated prior to today's deposition what Leaning's system -- whether Leaning's system would work if the subfile size was smaller than the -- I'm sorry. Let me -- let me -- let me strike that.

So prior to today's deposition, you did not investigate whether or not Leaning's system would work where the subfile size was greater than the Tp time, fair?

MR. WILSON: Objection, form.

THE WITNESS: Well, I've studied the logic in here. And off the top of my head, my recollection is that it's not going to work. But more directly to your point, no one has -- no one has posited that operational scenario for Leaning. So there was really nothing for me to dive deeper

into here.

BY MR. SHENG:

Q. What do you mean, you studied the logic in Leaning?

A. So Leaning gives a very detailed description of its audio playout process, its audio reception and playout process, and it's what Leaning calls its flow chart. And that's what I'm referring to as Leaning's logic.

So the -- the flow chart that he has in tabular forms on pages 9 through 11.

Q. Okay.

MR. SHENG: We've been going about an hour.

MR. WILSON: Yep.

MR. SHENG: Good for a break?

THE WITNESS: Sure.

MR. SHENG: Okay.

VIDEO OPERATOR: Off the record at 10:06.

(Thereupon, a brief recess was taken.)

VIDEO OPERATOR: Back on the record at 10:19.

BY MR. SHENG:

Q. Dr. Jeffay, did you speak with counsel regarding any -- regarding your deposition during the break?

A. I did not.

Q. No substantive discussions about -- no -- no discussions about substantively your testimony?

A. Nope.

Q. Could you please turn to page 10 of Leaning. Again, that's the document marked Exhibit 1004.

A. Okay. I'm there.

Q. And page 10 contains what you refer to in your report as pseudocode, right?

A. Yes, I think that's correct.

Q. Is the word pseudo -- "pseudocode" a word that you use often?

A. Yes, it's a common phrase.

Q. Is there another word for pseudocode that you have used in the past?

A. None that I can think of.

Q. What does pseudocode mean?

A. Well, pseudocode meant -- means that the code is -- is representative or reminiscent of actual -- of some code from an actual programming language, but it's not -- it's not actual code in a programming language.

And typically it's designed to be a little more human readable.

Q. Okay. So let's look at the pseudocode on page 10. And I'm looking at a row four rows from the bottom. Four rows from the bottom there is a line related to UserCommand Jump.

Do you see that?

A. I see that.

Q. The first line in that row says, If UserCommand equals Jump, j percentage,

then -- do you -- you see the line that I'm referring to?

A. Yes, I'm with you.

Q. What -- what does the command, the UserCommand Jump mean, Doctor?

MR. WILSON: Objection, form.

THE WITNESS: So I think what a person of skill would -- would understand is that at this stage in this pseudocode or what -- I think Leaning refers to it as a flow chart -- you're -- you've received input from the user. So -- and what a person of skill would understand is -- is that this input from the user is stored in this variable called UserCommand.

And so, here you're just simply testing whether the user -- whether the input from the user was a jump command.

BY MR. SHENG:

Q. If you turn to page 11 of Leaning, there's a subsection d around line 12.

Do you see that?

A. Yes.

Q. Subsection d begins with the word "Jump".

Do you see that?

A. I do.

Q. Subsection d -- and you should feel free to review it -- subsection d on page 11 discusses the jump command in the pseudocode that we were discussing on the previous page, correct?

A. Well, no, not -- not really. I mean, what this is really doing is describing the -- the -- the jump command sort of semantically and in terms of the user interface. And then part of this is describing what the code will do.

Q. What do you mean, that

subsection d is describing the jump command sort of semantically?

A. It's saying what -- what it means from a user's perspective that -- it's going to indicate you're -- the user's going to try to indicate a part of the recording that they wish to jump to. And then it describes a possible user interface by which the jump command could be entered. And then it gives more details about an implementation.

Q. What do you mean, it gives more details about an implementation?

A. Well, it's giving -- it -- through -- it uses an example to sort of show what -- to -- to show how the jump command is interpreted, so that if you had this -- an audio file with 125 subfiles and the user moved a -- a cursor on a slider bar to indicate a jump to point 20 percent into the recording, that it would result in a request of the 26th subfile.

So it's using a -- an example of

how this would be implemented to explain the semantics of jump.

Q. You agree, then, that -- you agree, then, that subsection d on page 11 gives an example of how the jump command would be implemented, correct?

A. Yes, but -- but with the understanding that it's -- it's not giving code. It's -- it's sort of describing, I guess, what the -- the system would do. So it's an implementation -- it's describing an implementation in the sense of describing what the behavior of the system would be.

Q. So on page 11, lines 19 and 20, there is a -- there's a sentence that begins, We prefer.

Do you see that?

A. Yes.

Q. I'll read it into the record.

It says, We prefer, in the case of the jump, to suspend the coding and clear the buffer so that the new request is sent

immediately, but this is not actually essential.

Do you see that?

A. I do.

Q. Clearing the buffer after a jump command is not actually essential, correct?

A. That's what Leaning says. And -- but nonetheless, Leaning teaches to clear the buffer.

Q. I don't understand what you mean by that, Doctor. You just said that's what Leaning says, but nonetheless, Leaning teaches to clear the buffer.

A. Correct.

Q. Leaning teaches you can do either one, correct?

MR. WILSON: Objection, form.

THE WITNESS: No, not really. I mean, Leaning directly teaches to clear the buffer. But it says that that step is not essential. So it's not really -- it -- it doesn't provide

a method for not clearing the buffer.

The only method that's disclosed here is a method that implements jump in terms of clearing the buffer. But I think what a person of skill would understand is that if they had the skill, they could come up with a new method that's not clearing the buffer, but it's also not disclosed in Leaning.

BY MR. SHENG:

Q. Leaning directly teaches that clearing the buffer on a jump command is not actually essential, correct?

A. That's what Leaning says.

Q. If you can go to page 2 of Leaning.

A. Okay.

Q. Leaning page 2 on line 9 -- around 9 line there's -- line 9, there's a sentence that begins with, In this example.

Do you see that?

A. Yes.

Q. It says, In this example, the network is the internet or other packet network operating in accordance with the hypertext transfer protocol, paren, see RFCs 1945/2068 for details, close paren, though in principle other digital links or networks can be used.

Do you see that sentence that I just read?

A. I do.

Q. What is RFC 1945?

Do you know?

A. I think that is the RFC for HTTP/1.0.

Q. And what is the RFC for 2068?

Do you know?

A. I -- I don't recognize that number off the top of my head, but I think it's the RFC for HTTP/1. There were two RFCs for HTTP/1.1 and I think this is the second of them.

Q. I'll hand you this document. Actually, let me?

MR. SHENG: You know, we should mark this as Jeffay Exhibit 1.

(Jeffay Exhibit 1 was marked for identification.)

THE WITNESS: Thank you.

BY MR. SHENG:

Q. Dr. Jeffay, what I've marked as Jeffay Exhibit 1 is RFC 1945.

Do you see that?

A. I see that.

Q. And this is the RFC 1945 that's referenced in Leaning, correct?

A. Yes.

Q. On the first page there is an abstract.

Do you see that?

A. I do.

Q. And the very last sentence confirms that the RFC specification reflects common usage of the protocol referred to as

HTTP/1.0, correct?

A. I see that.

Q. Do you agree that Leaning discloses the use of HTTP/1.0?

A. At least in its reference to RFC 1945.

Q. What do you mean, at least in reference to RFC 1945?

A. I mean, I -- I think a person of skill just understands that this is -- that what's just being referred to -- so, again, I don't recall off the top of my head what 2068 is. But to the extent it's HTTP/1.1, I think Leaning is just basically referring -- is just giving references for the use of the common variants of HTTP. Sorry, the variants that were common at the time of Leaning.

Q. So let's go back to page 2, line 9 of Leaning. Leaning teaches that the network is the internet or other packet network operating in accordance with a hypertext transfer protocol. And it

specifically cites RFC 1945.

Agree?

A. Yes.

Q. Do you have any -- any reason to disagree with me that Leaning teaches the use of HTTP/1.0?

A. I think you're reading too much into its citation to 1945. I think it's just giving this as a reference for HTTP. I mean, there's -- yeah. I -- I -- I don't think Leaning is binding itself to HTTP/1.0.

Q. That's not my question. I'm not asking you whether Leaning binds itself to using HTTP/1.0. I'm asking you just, does Leaning teach using HTTP/1.0?

A. I think it teaches using HTTP, full stop. And, as support for using HTTP, it's referencing a document that happens to be for HTTP/1.0.

Q. Well, before even showing you the document I asked you what is RFC 1945. And you said it was HTTP -- it was the RFC for

HTTP/1.0, correct?

A. Correct.

Q. So it's your testimony today that where Leaning discloses using hypertext transfer protocol and provides a citation, a direct citation to RFC 1945, it's your testimony today that a person of skill in the art would not interpret this to mean that Leaning teaches that HTTP/1.0 could be used with its invention?

A. That's a different question. There -- there -- there's no question that HTTP/1.0 could be used with Leaning.

Q. Is there any question whether or not Leaning teaches using HTTP/1.0?

A. Again, my -- my view is that you're reading more into this than is there. It -- it absolutely cites this RFC.

I -- I guess what maybe is hard for you to appreciate is how common and pervasive cites to 1945 are. I mean, there are thousands of RFCs and yet this one I knew

off the top of my head. Right? And it's because this one is just so common.

And when people reference HTTP, they often cite to 1945. But it's not -- that's -- in particular at the time of Leaning, I don't think a person of skill would understand that -- that they're limiting themselves to HTTP/1.0.

Leaning is teaching the use of HTTP and this is the reference that they're citing. And, yes, this is a reference for 1.0. And, yes, 1.0 could be used with Leaning.

Q. Okay. You can put that document aside, Doctor.

I'm going to hand you a document that's previously been marked as Exhibit 2137.

A. Thank you.

(Exhibit 2137-940, previously marked, was referred to.)

BY MR. SHENG:

Q. And, Doctor, Exhibit 2137 appears to me to be the RFC for -- the RFC 2068.

Agree?

A. Yes.

Q. If you look at the last sentence in the abstract, you'll see that this RFC 2068 specification defines the protocol referred to as HTTP/1.1.

Do you see that?

A. I do.

Q. Do you agree that Leaning discloses the use of HTTP/1.1?

A. Yes.

Q. But you don't agree that Leaning discloses the use of HTTP/1.0? I guess I'm just trying to understand why you fought me so hard on HTTP/1.0, but your response to my question from just now was yes.

A. Because, as I say, what a person of ordinary skill in the art would understand, that at the time of Leaning, the

dominant version of HTTP was 1.1. 1.0 had been phased out for some -- for -- for some time. And -- and, in fact, I think there's another version of this RFC that came out either at the time of Leaning or just after it.

So the reason -- I'm not fighting you on it. It's just I -- what I was saying was you're reading too much into this. What Leaning discloses is the use of HTTP. And I think we can all agree on that.

At the time of Leaning, the dominant version of HTTP that was in use was 1.1. So that's why I say given the cite to the RFCs and the timing here, a person of skill would understand that, yes, Leaning's using HTTP and that the best interpretation of that is that when it refers to HTTP, it's referring to 1.1, because that's what the dominant version was at the time of Leaning.

Q. Okay. Turn to page 13 of Exhibit 2.

A. Is that the -- the second --

Q. Of -- of Jeffay Exhibit 2, yes.

I'm sorry, it's not -- I did not mark it as Exhibit 2. We're -- it's Exhibit 2137. Apologies.

A. That's fine.

Q. Turn to page 13 of Exhibit 2137.

A. Okay. Hang on.

13. Okay.

Q. And on page 13, the first sentence of the third paragraph states, HTTP communication usually takes place.

Do you see that sentence I'm referring to?

A. I do.

Q. Can you read that paragraph to yourself and let me know when you're done.

A. Okay.

Okay. I read it.

Q. Do you agree that HTTP communication usually takes place over TCP/IP connections?

A. Yes. That is by far and away the dominant use case.

Q. Let's turn to page 46 of Exhibit 2137.

A. 46. Okay.

Q. And the fourth paragraph from the top starts with, Clients that use.

Do you see that?

A. Yes.

Q. Can you read that paragraph to yourself and let me know when you're done.

A. Sure.

Okay. I read it.

Q. RFC 2068 discloses using persistent connections between a client and a given server, correct?

A. Yes.

Q. RFC 2068 discloses that a single user client could maintain two persistent connections with a server, correct?

A. Yes. That was true in 1997. And by the time of the revision to this RFC, I

think that had changed.

Q. Changed how?

A. I think at that point they were trying to limit the number of connections a browser could make to a server.

Q. Limit it to what number?

Do you know?

A. I -- I -- I don't recall the number.

Q. You can put that document away, Doctor.

Let's go back to your expert declaration, which is Exhibit 2141.

If you could turn to paragraph 117 for me.

A. Okay.

Q. And in paragraph 117 you begin a section titled Leaning Fails to Disclose Arranging Files/Streamlets.

Do you see that?

A. I do.

Q. And you provide a chart in

paragraph 117 showing the limitations with respect to the arranging limitation that appears in the ABR patents, correct?

A. Correct.

Q. Can you turn to page 1 -- paragraph 120.

A. Okay.

Q. And you can review paragraph 120 to yourself.

Let me know when you're done.

A. Okay.

Q. You distinguish Leaning on the grounds that Leaning's client requests streamlets individually, one at a time, in a predefined sequence, correct?

A. Correct. I say that.

Q. You argue that this creates a scenario where the streamlets are simply stored and played back by the client in the order in which they are received, correct?

A. Correct.

Q. And according to you, this does

not satisfy the arranging limitations, correct?

A. Correct.

Q. Is there a requirement in the ABR patents that a client request and receive from a server streamlets out of order, out of order of ascending playout time?

MR. WILSON: Objection, form.

THE WITNESS: Is -- is there a requirement that they receive things out of order? No. But in the ABR patents, the point is that they -- they're designed to deal with that scenario. And that's a scenario that just can't occur in Leaning.

BY MR. SHENG:

Q. The ABR patents are designed to deal with a scenario where streamlets are received from a server out of order, but it's not required; is that correct?

MR. WILSON: Objection, form.

THE WITNESS: The ABR patents

aren't making any requirements of the network because you can't make any requirements of -- of the network.

So when you make multiple requests in the ABR patents, you can't be guaranteed of the order in which those responses are going to be returned. So you have to be prepared to arrange the streamlets that you receive so that they can be played out in order.

BY MR. SHENG:

Q. Do the claims of the ABR patents cover a situation in which the streamlets are received one by one, in order of ascending playout time?

MR. WILSON: Objection to form.

THE WITNESS: Well, these -- these claims are methods, and so they have the steps of, for example, sequentially arranging.

And, yes, you can sequentially

arrange files, even if they are received in -- in order, because it -- it actually -- you know, it -- it teaches that you have to have the -- the -- the code, if you will, to perform that step.

BY MR. SHENG:

Q. You said that these claims are method claims and you understand that method claims, in order to practice a method claim, each and every step must be performed?

MR. WILSON: Objection.

THE WITNESS: That's my understanding.

BY MR. SHENG:

Q. And you testified that each of the claims require sequentially arranging files; is that correct?

A. I did not testify to that.

Q. I think you just -- I -- what I mean by "testify" is you -- you -- you said it a minute ago, that the claims require

sequentially arranging the streamlets.

A. That --

MR. WILSON: Objection, misstates testimony.

THE WITNESS: Yeah. I wasn't characterizing all the claims when I was making that statement. I was -- in that particular case, I was just reading from the language of the '772 patent.

BY MR. SHENG:

Q. Do the ABR patents -- strike that.

You would agree that the ABR patents do not require that the client receive streamlets in sequential predefined order?

MR. WILSON: Objection to form.

THE WITNESS: Sorry. They do -- the ABR patents do not require that the clients receive streamlets in sequential order?

BY MR. SHENG:

Q. Correct. That's my question.

A. Yes, that's part of what they contemplate, is that you don't -- they -- they will work even though you don't receive streamlets in sequential order.

Q. Well, my question is, if you do receive the streamlets in sequential order, is that outside the scope of the ABR patent claims?

MR. WILSON: Objection, form.

THE WITNESS: No, I don't think so. I mean, the -- the issue is not what order do [sic] they actually received in. The issue is what method do those -- does whatever product you're looking at, what method does it perform. What -- what are its capabilities and what does it actually do.

BY MR. SHENG:

Q. I don't understand why you're

referring to capabilities.

A. Because as -- the answer to your question is I -- I don't think you can assess whether a system is practicing a claim based on what -- what happens in -- in the network, what -- what order things arrive at the -- at -- at -- at -- at the -- at the playout device.

The issue for practicing the claims is do they have a method step of arranging the requested files in the order in which it's specified here of ascending playback, for example.

Q. Is it your testimony or is it your opinion that if a -- if a system receives the requested files in the order of ascending playback time, there's no arranging them?

MR. WILSON: Objection, form.

THE WITNESS: That's not my testimony.

BY MR. SHENG:

Q. You don't say that in your -- in your declaration?

A. No, I don't think I -- I -- where -- where do I make a statement like that? If I -- if I make a statement like that, I'd invite you to show me that, because I think you're probably misinterpreting what I've written.

Q. You can turn to paragraph 141 of your declaration.

A. Okay.

Q. I'll read 141 in -- in -- into the record.

This specific manner of constructing subfiles -- subfile requests used by Leaning dictates other requirements. Specifically, based on this, it is known that Leaning's user terminal necessarily requests subfiles individually, one at a time, in a predefined sequence, eliminating the need to arrange any subfiles at the user terminal.

This is true because the subfiles are already arranged.

Did I read that correctly?

A. Yes.

Q. So it's your -- your -- it's your opinion that Leaning, Leaning's client, requests subfiles individually, one at a time, in a predefined sequence, and this eliminates the need to arrange subfiles, correct?

A. Correct.

Q. So there's no arranging going on, in your opinion, when Leaning's user terminal requests subfiles individually, one at a time, in a predefined sequence, correct?

A. In Leaning. So what I'm saying here is that because Leaning will only ever request files one at a time and those files will only arrive one at a time in the order in which they were requested, Leaning has no need to do any arranging of -- of subfiles.

So this is because of the manner

in which Leaning is making requests, not based on, for example, some property of the network, as your previous questions were implying.

Q. Okay. So what I want to make clear is that we can agree that if a system is designed where a client necessarily requests subfiles individually, one at a time, in a predefined sequence, that does not meet the arranging limitations, correct?

MR. WILSON: Objection, form.

THE WITNESS: No. What I'm saying here is that this means Leaning has no need to arrange any of the subfiles. So there -- there's no -- there's no disclosure anywhere in Leaning of doing any arranging of subfiles. Okay?

And as further evidence of this, what I'm pointing out is that the way Leaning works, Leaning has no need. So at the end of the day, if

you want to understand whether something practices a limitation, you have to actually look at -- at -- at -- at -- at the code, at what -- at what its capabilities are.

Leaning has no capability that would require any arranging of subfiles. So there's no disclosure of arranging and it has no need to arrange is what this paragraph is about.

BY MR. SHENG:

Q. You -- you used the word "capabilities" again. I'm -- I'm getting hung up on the word "capabilities."

So a system -- let's say a system -- you -- you develop a system and you design it just like Leaning, where the user terminal necessarily requests subfiles individually, one at a time, in a predefined sequence. You would agree that that does not satisfy the arranging limitations, assuming

that you can't otherwise arrange streamlets that come out of order?

MR. WILSON: Objection, form.

THE WITNESS: I -- I -- I can't answer that -- that hypothetical. I mean, I don't -- I don't understand the system that you're referring to.

In this paragraph here, I'm only making a comment about Leaning. And this comment here is in support of the foregoing text that says, Leaning has no disclosure of arranging.

And here, I'm just trying to support that opinion by saying that the reason -- part of the reason Leaning has no disclosure of arranging is because it has no need to be arranging.

So I'm not -- I'm not talking about other -- other systems that I haven't -- that I haven't studied here. And I'm not stating a

requirement for what you have to have or not have for the arranging limitation.

This is just a statement about Leaning in support of the opinion that Leaning doesn't teach arranging subfiles.

BY MR. SHENG:

Q. Have you studied DISH's system?

A. Have I studied DISH's system?

Q. Yeah.

A. I -- no, I don't even know what DISH's system is.

Q. Have you studied the Move, the Move player?

A. Yes, I've --

Q. Okay. The Move player -- if the Move player, the client requests subfiles individually, one at a time, in a predefined sequence, would the Move player satisfy the arranging limitations?

A. I -- I --

MR. WILSON: Objection, form.

THE WITNESS: I -- I can't answer that question.

BY MR. SHENG:

Q. Why not?

A. I -- I would need more information about how the -- I -- I would want to look at the code for the Move player and see what it -- how it actually works.

Q. So if it was known that the Move player used a terminal, necessarily requests subfiles individually, one at a time, in a predefined sequence, you have no opinion whether or not the arranging limitations are met?

A. For -- I -- I haven't studied the Move player. So the Move player was a complex -- large complex piece of software. And I wouldn't be ready to offer an opinion about its practicing this limitation just based on this one-sentence characterization.

Q. Does the Move player request

subfiles individually, one at a time, in a sequence that's out of order of ascending playout time?

A. I -- I mean --

MR. WILSON: Objection, form.

THE WITNESS: -- I don't recall the Move player at that level of detail, sitting here today.

BY MR. SHENG:

Q. You don't know if the Move player practices the arranging limitation?

A. I believe it does.

Q. Do you know, sitting here today, whether the Move player requests subfiles individually, one at a time, in sequence of ascending playout time?

A. I -- I don't believe it does, because my recollection is that the Move player will make requests over multiple connections. So I -- my recollection sitting here today is that it -- it doesn't do what's described in paragraph 141.

Q. So it's your understanding that the Move player requests subfiles individually, one at a time, that's not in sequence of ascending playout time?

A. No. No. You're -- you're -- you're trying to mat this description onto this one sentence. And this sentence -- my recollection is this sentence does not characterize the Move player.

Q. I understand that.

Do you understand what I mean when I say request subfiles out of order?

A. I assume you mean you request subfile 4 before subfile 3.

Q. Yeah, out of order of ascending playout time.

A. Okay.

Q. All right. Does the Move player request subfiles from the server out of order?

A. I -- I don't recall the Move player to that level of detail, sitting here

today.

Q. You have no opinion, sitting here today, whether the Move player requests subfiles from a server out of order, correct?

A. As I said, I just don't recall the Move player at that level of detail.

Q. Does the Move player request subfiles from the server in -- in order of ascending playout time, in order?

MR. WILSON: Objection, form.

THE WITNESS: I mean, I -- I don't recall the exact algorithm that Move uses to request its streamlets.

BY MR. SHENG:

Q. Sitting here today, you have no opinion whether or not the Move player requests subfiles from the server in order of ascending playout time, correct?

MR. WILSON: Objection, asked and answered.

THE WITNESS: Yeah. I mean, I don't know what more I can say. I --

I -- you're -- you're -- you know, this page was statements about Leaning. And you're now moving from Leaning to the Move player. And I don't recall the Move player's algorithm for making requests at that level of detail.

BY MR. SHENG:

Q. If the Move player requests subfiles from the server out of order, does that satisfy the arranging limitations?

A. The Move player satisfies the arranging limitation if it actually does arranging. So, I mean, I -- I can't answer your hypothetical because I'm not certain that the preamble of your question is correct.

Q. If the Move player requests subfiles from the server in order, in exact order of ascending playout time, is there arranging going on?

A. Again, if -- if -- if the Move

player has the code to practice the step of arranging, then it practices that limitation.

Q. So your -- it's your opinion -- hold on, let me wait till your testimony pops up here.

It's your opinion that if the Move player requests streamlets in the precise order of ascending playout time, it still practices the arranging limitation because it would have code to practice the step of arranging, correct?

A. No. You're -- you're twisting my answer.

My answer ignored -- my answer was -- had nothing to do with your question, because I was trying to say that what matters is what is the method that the Move player performs in terms of what it does when streamlets arrive.

That's the issue, does it do arranging. And you're trying to tie this to all sorts of scenarios about what are

requests and -- and -- and what happens. And I'm saying that the inquiry really is whether or not it has the code that's capable of -- that -- that performs the arranging step.

Q. If the Move player receives streamlets in order, is the method of arranging performed?

A. If the Move player has the code to do arranging, then it will do arranging in all scenarios, including the scenario where things are -- arrive in order.

But the fact that things arrive in order really has nothing to do with the inquiry.

Q. Can you arrange streamlets that are already in predefined sequence?

A. I don't -- I don't understand what you're asking.

Q. Well, let's say the limitation requires -- or -- strike that.

All right. Let's come back to that in a little bit.

A. Okay.

Q. Turn to paragraph 186 of your declaration, please.

A. Okay. I'm there.

Q. Paragraph 186 is under a heading that reads, Dr. Houh's Obviousness Opinions Are Foreclosed by Strong Objective Evidence of Nonobvious Identified by the ITC.

Do you see that?

A. Nonobviousness identified by the ITC.

Q. Nonobviousness, yes.

Do you see what I'm referring to?

A. Yes, I'm with you.

Q. And in the last sentence of paragraph 186 you state -- the last sentence -- it starts on page 115 and carries over. You state, Similarly, the Leaning IPRs and Dr. Houh fail to acknowledge or address the International Trade Commission's finding of the strong evidence of secondary considerations associated with the ABR

patents supported a finding of nonobviousness.

Do you see that?

A. I do.

Q. The ITC is a separate tribunal, correct?

A. Well, you're getting a little out of my wheelhouse, but generally I understand it's not part of the judicial branch. Is that right?

Q. Well, I -- I guess my point is the ITC is not part of the -- the -- the -- the United States Patent Office.

Agree?

A. I -- I think that's correct.

Q. Is it your understanding -- do you -- strike that.

Do you have an understanding as to whether or not the ITC's decision is binding on the Patent and Trial -- Patent Trial and Appeal Board?

A. I -- I -- I do not know.

Q. You have no understanding whether or not the ITC's decision is binding in these proceedings, correct?

A. I -- I -- I -- I don't know what the law is on whether or not the ITC's -- decisions the IT -- where and to what extent ITC determinations are binding.

Q. The title of this section, you say, Dr. Houh's obviousness opinions are foreclosed by the ITC's decision, fair?

A. No. I'm saying they're foreclosed by the evidence that's cited in here and that this was evidence that was identified by the ITC. So I'm -- I'm really referring to the strong objective evidence that exists.

Q. Okay. So let's go to paragraph 187 then. In paragraph 187 you state, I previously testified at length about the strength of this evidence in the 1265 investigation. The final initial determination in that investigation -- open

paren, as adopted in relevant part by the ITC in its written opinion, close paren, credited my testimony in finding the following.

Do you see that?

A. I do.

Q. It seems like to me, Doctor, you're -- you're -- you're arguing because the ITC agreed with you, that your evidence should be given significant weight.

Is that fair?

A. I'm -- I'm -- I'm this is just a statement that says, I have opined before on the same evidence and at least one fact-finding body agreed that the evidence was strong. And so the fact that Dr. Houh and the petitions ignore this to me is noteworthy, hence I note it.

Q. So you believe it's noteworthy -- noteworthy that another fact-finding body agreed with your position, correct?

A. They -- that they agreed that there was strong evidence of secondary

considerations.

Q. And that was your position in the ITC, correct?

A. Correct.

Q. So you believe it's noteworthy that another fact-finding body agreed with you -- agreed with your position in the ITC, correct?

A. It's not that they agreed with me. I mean, it -- this is not about me. This is about what the evidence shows. It's that they agreed with my analysis that there was strong evidence of secondary considerations.

And it's noteworthy in the sense that I don't see how someone challenging these patents can just ignore this.

Q. You don't see how someone challenging these patents can ignore the findings made by another -- another -- give me one second.

You don't see how someone

challenging these patents can ignore the findings of another fact-finding body.

Agree?

A. Yeah, I mean, as -- as -- as -- as an expert, given that DISH is arguing the existence of secondary considerations and that a fact-finding body, you know, a neutral fact-finding body has said that there's strong evidence of secondary considerations, I just personally don't see how you can just ignore this. Just seems to me that it should be addressed by the petition.

Q. What if the ITC disagreed with you? Would your position be the same?

A. If they disagreed with me?

Q. Yes.

A. Well, then, I -- no, my position would not -- not be the same. I mean, if -- if they disagreed with the testimony that I gave about evidence of secondary considerations, I mean, we'd be in a different world. I -- I don't -- I don't

know how to answer that question.

Q. Well, would the -- the -- the ITC -- if the ITC disagreed with you, would the significance of that decision be the same, but obviously for the other side?

MR. WILSON: Objection, form.

THE WITNESS: Well, I'm not opining on the significance in any legal sense, but I would bet it would be the case, if I was making the same arguments here that were made in the ITC and the ITC disagreed with those arguments, that Aylo would be trumpeting that.

BY MR. SHENG:

Q. How familiar are you with the ITC?

A. In -- in what sense?

Q. Do you know the composition of the ITC?

A. You mean at the -- the commissioners? I mean, how the commissioners

are --

Q. Well, why don't you just tell me. What's your understanding of the ITC?

A. That it's part of the executive branch; that they adjudicate trade disputes and they -- and a -- and a common trade dispute is -- is -- relates to patent infringement. And they have administrative law judges that hear, essentially, patent infringement and, I guess, invalidity cases and they make a -- an initial determination and then a final determination and then the commissioners decide whether or not action is going to be taken based on that determination.

Q. I lost my feed here. Could we --

MR. SHENG: Yeah, let's go off the record real quick.

VIDEO OPERATOR: Off the record at 11:10.

(Thereupon, a brief recess was taken.)

VIDEO OPERATOR: Back on the record at 11:22.

BY MR. SHENG:

Q. Doctor, did you discuss the substance of your testimony with counsel during the break?

A. I did not.

Q. Doctor, earlier we were talking about whether or not the Move player satisfied the arranging limitations of the claims.

Do you -- do you remember that?

A. Yes.

Q. And I remember you said something along the lines of whether or not the Move system practiced the Leaning limitations would depend on whether or not the system had the code for -- and I'm probably not getting this right, but the code for rearranging or arranging the streamlets in order.

Do you recall that generally?

A. Yeah. I mean, the point

generally I was making is that you have to have evidence of it. And in this report I cite evidence of it. But for this -- you were asking about specific scenarios in which the system would behave.

And for -- to answer those questions I was saying, you know, I would need to consider the code.

Q. Let -- let's be clear. You say that in this report I cite evidence of it.

Evidence of what?

A. That the Move player practices that element of the claims.

Q. Where in your report do you discuss the Move player practicing the arranging limitations of the claims?

A. I believe part of that is in the section where I talk about secondary considerations and show -- trying to show that the Move player is coextensive with the claims.

Q. Can you -- so your secondary

consideration section -- section, I believe, starts paragraph 186.

Can you flip to that, please.

A. Oh, we're here. Yes. That was -- sorry. It was open to it.

Yes, I'm -- I'm there.

Q. Could you turn to the section where you describe the Move player practicing the arranging limitations of the claim.

Doctor, just to manage my own expectations, are you reviewing paragraph by paragraph?

A. Yeah. Unfortunately, I don't have it broken out by subparagraphs --

Q. Okay. That -- that's fine.

A. -- so --

Q. Keep -- keep doing what you need to do. This is -- this is -- we -- we have time.

A. So apologies for the delay. It's -- it's a very long section. And, for better or worse, I don't have it broken down

into subsections, so I had to skim it all.

So I may have missed it, but just sitting here today, I'm not seeing a good disclosure.

I believe I also have -- provide evidence of practice in the claim chart that was submitted along with this report or my understanding it was submitted along with this report.

MS. REPORTER: Did you say "good disclosure"?

THE WITNESS: I think so.

BY MR. SHENG:

Q. So sitting here today, you don't see a disclosure in your actual declaration, but you think there might be evidence of practice in the claim chart that was submitted along with the report, correct?

A. I -- I said I don't see a good disclosure.

Q. Do you see -- do you see a bad disclosure?

A. I -- there are -- there -- there's stuff that suggests of it. Now, unfortunately, I lost my place.

Q. What's the best disclosure, Doctor, the best disclosure of the Move player practicing the arranging limitation of the claim?

A. The fact that as part of the commercial success, it showed that it provided continuous playout and the fact that it -- these -- I -- I cite the Move documents that describe its use of multiple connections.

So if you had multiple connections and you have continuous playout, that means something has to be arranging the receive streamlets in display order.

Q. What paragraph are you referring to? Is there a paragraph you're referring to?

A. Well, it's just -- it's -- the -- again, I -- I had one. I put my finger down

and I lost it.

But it's the disclosures in here that are citing the Move documents for its -- its upshifting and downshifting and use of multiple TCP connections.

Q. I'm going to -- I'm going to ask you to point me to a paragraph.

A. Okay.

Q. If that means we've got to do that --

A. Yeah.

Q. -- exercise again, it is what it is.

I'd like the best --

A. Sure.

Q. -- disclosure --

A. No, that's fair.

Q. -- of Move disclosing or practicing the arranging limitation.

A. So maybe the good one is -- well, if we look at paragraphs 198 and 199 on 123 and 124, it describes placing a streamlet

request, a GET request, over one or more network connections to receive the -- the streamlets; and the fact that they are -- there's an illustration at the top of 124 that shows the duration and alignment of streamlets.

So this is showing that you can use one or more connections, which implies you can have out-of-order arrivals, and the fact that ultimately things are played out in order. So that would indicate that there has to be some form of arranging in playout order.

So that's an example.

Q. You just said one or more connections, right?

A. I did.

Q. So it could be one connection, correct?

A. Or more.

Q. If it's one connection, though, does that -- is that -- does that mean that

there is no arranging?

A. No. I mean, again, whether or not there's arranging is a function of what the system is -- how the system is designed to operate. And the point here is that it can use more than one.

Q. But it could also use one connection, correct?

A. But it's going to use -- again, we'd have to go look at the code, but it's going to be doing the same receive processing, whether it's one or multiple connections.

Q. Yes or no, Doctor --

A. What?

Q. -- the Move player can use one single TCP connection?

A. I don't know if it -- if it -- if it can be operated in a mode where it will exclusively use one connection. I don't -- I don't -- you know, you're -- you're asking a very detailed question about the operation of

the media player and I don't recall that detail.

Q. Whether or not the Move player can use one TCP connection or more than one TCP connection is not a detail that you've opined on, correct?

A. I have opined that it can use more than one. And that's --

Q. Okay.

A. -- and that's part of the evidence that you're going to have to be able to arrange streamlets.

Q. You've opined that the Move player can use one or more TCP -- TCP connections, which means that it could also use one TCP connection, correct?

That's what one or more means, fair?

A. Sure. But -- but you're -- you're focusing on the one. I'm -- you -- you asked for evidence.

The evidence I'm saying here is

that the Move player can use more than one network connection. And that's the -- the -- that's part of the evidence for arranging, because when you use more than one network connection, you have to be able to deal with the fact that you can get out-of-order arrivals, and as the illustration on page 124 shows that you get playout in order.

Q. Did you draw the figure on page 124?

A. No, this is from one of the Move documents.

Q. The figure says Instant Start, No Buffering: Move Adaptive Streaming, correct?

A. Correct.

Q. What does "no buffering" mean?

A. It means instant start. It's -- it's a reference to the instant start that you can start playback as soon as you receive the first streamlet.

Q. In the Move player you can start playback as soon as you receive the first

streamlet without buffering, correct?

A. Without having to -- to receive more and buffer more streamlets. When you receive the first streamlet, you can start playback.

Q. So the answer to my question is yes?

A. Well, I was just phrasing it that way because I wasn't sure I understood your question.

Q. In the Move player you can start playback as soon as you receive the first streamlet with no buffering, correct?

A. Well, so I was just elaborating. I'm giving you my understanding of what you meant when you said no buffering.

Q. What does no buffering mean in the figure on page 124?

A. That you can have instant start; that you -- you don't have to wait to build up a buffer of streamlets before you start playout.

Q. And is that playout at the new rate?

A. Well, there's -- this -- the instant start, I think, is referring -- as I recall the document, is referring to the playout of the initial streamlet, the first streamlet in the stream. So it's -- instant start isn't related to adaptation.

Q. Is there a point in time when the arranging needs to occur? So, for example, a device requests streamlets from the server. And let's say the server does the arranging.

Does that satisfy the arranging limitation?

MR. WILSON: Objection, form.

THE WITNESS: I -- I don't know. I don't know. I don't understand your -- your question doesn't make sense to me.

BY MR. SHENG:

Q. Okay. So we're -- we're in a world where a device requests streamlets in

order. And the streamlets were placed in order by the server, okay, so the server has the logic of arranging the streamlets in order of ascending playout time.

Do -- do you follow what I'm saying?

A. No.

Q. Why not?

A. It makes no sense to me.

Q. Why?

A. You -- you make a request for -- for an object. The server returns that object. I -- I don't know what it means for the server to do arranging in your world.

Q. So if the client requests streamlets in order, they will be received in order from the server? Is that what you're saying?

MR. WILSON: Objection, form.

THE WITNESS: No, that's not what I'm saying.

BY MR. SHENG:

Q. Do you have an answer to my -- the -- the question, though? If the client requests streamlets in order from the server, will they be sent in order?

A. From the -- the server? Technically, you -- you -- you don't know. There -- there's no mechanism to ensure that that's the -- the case. But typically that was -- that's what's likely to happen. You're -- you're not guaranteed, but typically that's what you'd expect.

Q. That's the goal, fair?

A. The -- the -- the server has no goal. The server's goal is just to return what's requested.

Q. So if the client requests streamlets in order of ascending playout time, you agree that the server for the most part would send back the streamlets in that order, correct?

A. So this whole discussion is -- is

just -- is -- is -- is just broken.

So if you want to get into this level detail, you're going to have to tell me more about how you're envisioning the client is -- is requesting these streamlets in order.

Q. Let's use the Move player.

A. Okay.

Q. The Move player requests streamlets from the server in order of ascending playout time.

Would those streamlets be sent by the server in that order?

A. They -- they -- they may or they may not be. I mean, you -- you're -- you're not going to be able to know a priori.

Q. What -- what determines whether or not they are sent in order or not?

A. There -- there's all kinds of things that go wrong here. You're ignoring the fact that networks are famous for reordering transmissions. You can have

things that are called route flaps, where packets sent at one instance take one route to a destination, the next instance take another route and things arrive out -- out of order. So networks famously reorder things.

The server, in particular, if you're -- you know, all of the intelligence in the Move system is at the client. So the server isn't doing any fancy. It's just responding to requests.

And if you're making multiple requests on multiple connections, each of those connections is an independent connection. And the fact that you may make requests in a certain order doesn't mean you're going to get responses in that order.

So they can be -- you can get reordering in -- in that way.

In addition, the Move player talks about doing things like making redundant requests for a -- for purposes of fault tolerance. That's another mechanism

that can lead to out-of-order arrivals.

So, I mean, there -- there's all kinds of ways in which you can get -- which you can send requests in one order, but not receive the responses in a corresponding order.

Q. So let's say the Move player requests streamlets in order and, upon receipt, checks each streamlet it receives to ascertain whether it is marked with later time than the previous one for placing it into the buffer.

Is that arranging, Doctor?

A. I -- I don't -- I don't understand your -- I don't understand your analogy -- your question.

Q. Okay. So the -- the Move player is requesting streamlets from a server.

Okay? You with me?

A. Sure.

Q. Okay. The server transmits streamlets back to the client. And, upon

receipt by the client, the client checks each streamlet to ascertain whether the streamlet is marked with a later time or a timestamp than the previous one before placing it into the buffer.

Is that --

A. I --

Q. -- arranging?

A. I -- I -- I still don't understand your question.

Q. What part of my question did you not understand?

A. I don't understand what your timestamp is.

Q. Okay. System requests a streamlet from the Move player. Client requests a streamlet from the server. Server transmits streamlets back to the client. The client checks to see whether or not the streamlet is in order of ascending playout time. And if it's not, it does something to make it into the correct ascending playout

time.

Is that arranging?

MR. WILSON: Objection, form.

THE WITNESS: Yeah, I -- I -- I -- I mean, I just can't follow your -- your -- your question. You're -- you -- you've got all kinds of implicit assumptions about what's in the streamlets and -- and what -- and -- and using terminology like it's in ascending order.

I mean, relative to what? Right? You've got a receipt process. You've got a playout process. Those are independent. So I'm -- I'm just not following what you're trying to cook up here.

BY MR. SHENG:

Q. Okay. So let's say the streamlets are in ascending playout time. You have 1, 2, 3, 4.

Okay?

A. Where -- where are these streamlets?

Q. These streamlets are in the server.

A. Okay.

Q. Okay? 1, 2, 3, 4.

A. The server certainly has copies of all the streamlets.

Q. Yes, okay. So the server certainly has copies of all the streamlets. The streamlets are named 1, 2, 3, 4.

Okay? You with me?

A. Right. Sure.

Q. The client requests streamlets from the server in that order, 1, 2, 3, 4.

A. Okay.

Q. Okay? You with me?

Server sends back the streamlets and the client does some sort of check to see whether the files are 1, 2, 3, 4.

Is that sufficient to meet the arranging limitation?

A. If -- if -- if the client actually arranges them sequentially into playout order in its buffer, that is arranging the streamlets. If it affirmatively does that, that's -- that's arranging the streamlets.

Q. Does it have to be before placing it into the buffer or can it be after placing it in the buffer and before playout? Does that make sense?

MR. WILSON: Objection, form.

THE WITNESS: No, that doesn't really make sense to me.

BY MR. SHENG:

Q. So after a streamlet is placed in the buffer, it will then go from the buffer to the player before it's actually played out to the view -- to the user; is that correct?

A. I'm sorry. I -- I'm -- I apologize. I was looking at something else. I missed your question.

Q. It's okay. What were you looking

at?

A. I just wanted to look at this -- the claim language for the element of arranging.

Q. And why did you want to do that?

A. Because now you're asking me where does this arranging have to occur and I'm trying to see what the claims actually say about the arranging.

Q. Okay. Is -- is -- do -- do you see anything in the claims that requires the arranging to happen at a particular point in time?

A. I -- I would ask to get a copy of -- I guess since you're doing the '234, the '234 patent so I can see the -- the entirety of the claim language.

Q. Sure. So here's Exhibit 1001. And, again, this is from the 940 IPR and this is --

A. Okay.

Q. -- the '234 patent.

A. Okay.

MR. SHENG: And you know what, why don't we mark this, actually, as Jeffay Exhibit 3, just so we're not confused, because earlier we talk about a different Exhibit 1001.

So if we could mark his copy as Jeffay -- I think we're on Exhibit 2 actually, Jeffay -- no -- yeah, Jeffay Exhibit 2.

(Jeffay Exhibit 2 was marked for identification.)

BY MR. SHENG:

Q. Okay. Doctor, you have --

A. Okay. Now I have it.

Q. Okay. I think the question is whether or not the claim language requires the arranging to occur at any particular time.

A. Okay. Could you ask your question again?

Q. Sure. Is there any language in

the claims that would require the arranging to occur at any particular point in time?

A. You're basically asking a question that I haven't considered. And reading this claim language now, I would need some time to go off and consider this. It's -- it's -- it's a long enough claim, it's a complicated enough claim that -- as I say, you're asking a -- me a question I haven't considered and I would need some time to consider that.

Q. Okay. So in my scenario that I -- well, the scenario that I want to ask you about is where the client requests streamlets from the server. Server sends back the streamlets and, prior to placing those streamlets into the buffer, the client arranges them in sequential order. You have not considered whether or not the timing of that before -- when I say timing, it's a terrible question, but I'm just trying to orient us here. Okay?

So, like, what I'm trying to distinguish between is doing the arranging before placing it in the buffer versus doing the arranging after you put it in the buffer and before sending it to the player.

Does that -- does that make sense? Does my question make sense to you?

Before placing the buffer versus after placing the buffer.

A. Well, I mean, I would say from a technical standpoint, I don't think it makes sense because if you're saying -- or I don't understand -- your -- your scenario doesn't -- doesn't make sense to me because I don't know what it would mean to arrange before you put it into the buffer.

Q. Okay. So we -- we -- we agree that when a client requests streamlets from the server, that it retrieves the streamlets and places them in a buffer, correct?

A. We're -- we're talking about Move here?

Q. Sure.

A. Yes.

Q. And I believe your opinion is that after the streamlets are placed into the buffer, there is a -- a -- a -- logic or I -- I think the patents refer to it as a staging module -- that after the streamlets are placed into the buffer, then there is a staging module that arranges the streamlets in the correct order.

Does that -- does that conform to your understanding?

A. Well --

MR. WILSON: Objection, form.

THE WITNESS: -- so you said -- you started this with it is my opinion and I haven't offered any opinion --

BY MR. SHENG:

Q. Okay.

A. -- on -- on -- on any of that.

But I do agree that the patents teach the use of a staging module to do the

arranging.

Q. And the staging module does the arranging after the streamlets are placed into the buffer, correct?

MR. WILSON: Objection, form.

THE WITNESS: Well, there's multiple buffers here. So I don't know which -- you're going to have to be more specific.

BY MR. SHENG:

Q. Well, which buffers are you talking about? I -- I thought we were only talking about one buffer.

A. You're only talking about -- I mean, the -- the staging module is -- is -- is -- is effectively a buffer.

Q. Okay. Fair enough. Fair enough. Okay.

Before -- in the Move player, is the arranging done after the streamlets have been placed into the buffer? And by "buffer" I mean -- hold on -- maybe -- maybe we should

do this in -- in reference to a figure.

So let's go to Figure 7 of the '234 patent. Let me know when you get there.

A. Okay. I'm there.

Q. So when I've been referring to buffer, I've been referring to the streamlet cache module and -- and the streamlet cache 704, 710.

Okay?

A. Yeah, and just not to be critical, but in the art we just call it a cache.

Q. Cache. Fair enough.

The -- so my question to you is, in the Move player -- or as shown in Figure 7, the arranging occurs after the streamlets are already placed into the streamlet cache 710, correct?

MR. WILSON: Objection, form.

BY MR. SHENG:

Q. Let me ask again just to clean it up.

My question to you is, as shown in Figure 7, the arranging occurs after the streamlets have been placed into the streamlet cache 710, correct?

A. Okay.

Yes. So I think the answer to your question is -- is yes, that when the streamlets arrive, they first go into the cache.

Q. Okay. So my question, then, is, after the system -- after the client requests streamlets in order of ascending playout time from the server, if the client checks upon receipt that each streamlet is in the proper order before being placed into the streamlet cache, does that satisfy the arranging limitation?

MR. WILSON: Objection, form.

THE WITNESS: Again, I -- I don't understand the operation that you're -- you're describing. It -- it -- it makes no sense to me.

BY MR. SHENG:

Q. Why -- why doesn't it make sense?

A. Because you're -- you're saying before you have looked at anything that you've received, you're making some determination about whether or not it's in order.

Q. Before -- what -- what I'm saying is before the streamlets are placed into the streamlet cache, that the system arranges them in order of 1, 2, 3, 4, just like is shown in Figure 7.

A. There's no them there. Right? You receive a streamlet. You have one streamlet.

Q. Um-hmm.

A. You don't arrange it with anything. I mean, you --

Q. Well --

A. -- you -- you -- you have -- you've just received a streamlet. There's nothing to arrange it with.

Q. Okay. Let me ask it this way:

System requests streamlets -- if a system receives -- strike that.

If a system requests streamlets in order and, upon receipt of that one streamlet, as you pointed out, checks to see if that streamlet is marked 1, 2, 3, 4, in order compared to the previous streamlets it has received, if it does that check before placing it in the -- the buffer, is that arranging?

MR. WILSON: Objection, form.

THE WITNESS: I mean, I -- I -- I don't know. But in your example, nothing has been arranged.

BY MR. SHENG:

Q. I -- I feel like I'm asking it so clearly. I'm -- I'm -- I'm getting --

A. What --

Q. -- frustrated. You're doing a great job here to --

A. What -- what was arranged?

Q. Okay.

A. You just described a check.

Q. Right. So it checks to see if it is in the order of ascending playout time compared to a streamlet that was previously put into the buffer.

Okay? You with -- you with me there?

A. Sure.

Q. Okay. And let's say that streamlet is not in the correct order and let's say it just discards it and requests the actual one that's in -- that comes in -- comes in next.

A. Okay.

Q. Is that -- and then actually does get the correct streamlet and puts it in the buffer.

Is that arranging?

MR. WILSON: Objection, form.

THE WITNESS: I -- I'm not seeing any arranging here in your --

in your -- in your scenario. If -- if people are walking through the door --

BY MR. SHENG:

Q. Um-hmm.

A. -- and I'm trying to determine are they coming in the door in alphabetical order and -- and then once they come in the door, they go in the cache, how has there been any arranging?

BY MR. SHENG:

Q. Okay.

A. You're -- you're -- you're focusing on a test on some comparison and I'm just saying a simple comparison, I don't see how that constitutes arrangement.

Q. Let's use your example of people walking through the door. Okay?

You get an assignment to say you need to arrange the people who walk in the door in alphabetical order. Okay? And you -- the first person comes in. You let him in. The second person comes in and you

see oh, well, that person is -- has a -- a name that's -- maybe alphabetical order's not -- let's strike that.

Let's -- let's use height. Can we use height, arrange them in -- in -- in order of height?

A. This is -- this is -- your --

Q. Okay. Let's try it.

A. Your example's going to break down either way, so ...

Q. Let's try it. Okay. Entertain me here, okay, Doc?

A. Happy to.

Q. Okay. So your assignment is to arrange people in order of height, okay?

A. Okay.

Q. First person or streamlet comes in.

A. Okay.

Q. You say okay, go into the cache. All right? Second person comes in and you say wait, hold on, you're shorter than the

person or the streamlet I just let in, so I'm getting rid of you and you toss it aside. And the next person comes in and then you say okay, yes, you are taller than the person who came in before me, you get to come in and, you know, line up.

Is that arranging?

A. Okay.

MR. WILSON: Objection, form.

THE WITNESS: There's so much wrong here.

So first of all, you threw somebody out, right?

BY MR. SHENG:

Q. Okay.

A. You threw out data. That --

Q. Okay.

A. That doesn't happen in -- in -- you know, unless you re- -- rerequest it, that doesn't happen in -- in the Move system.

The second is you never described any arrangement. You just described who

you're letting in the door and -- and -- and the criteria that you're using to allow people into the door. That's all you described. That's all I heard you describe.

BY MR. SHENG:

Q. So that -- that check -- well, you -- you -- you -- you -- you criticize the -- the -- the analogy by saying that I was casting people aside. So instead of casting people aside, you tell them come back later. You rerequest it. Okay?

So -- so no one's is being cast aside. You're just -- no? That -- that -- that -- that --

A. This is so --

Q. All right. Fair enough, Doc.

Well, Dr. Jeffay, that's -- thank you for your time. I don't have any more questions on direct.

MR. SHENG: Timing-wise, it's 12:10. Defer to counsel for -- for fubo if we should take a -- if now

is a good time to take a quick break for lunch -- or we can take a lunch break since it's around lunchtime.

THE WITNESS: Don't look at me.

MR. WILSON: Ready for lunch?

THE WITNESS: Sure. I mean --

VIDEO OPERATOR: I'll take us off the record at 12:08.

(Thereupon, at 12:08 p.m. EDT, a lunch recess was taken.)

AFTERNOON SESSION (1:10 p.m. EDT)

VIDEO OPERATOR: Back on the record at 1:10.

EXAMINATION BY COUNSEL FOR PETITIONERS fuboTV MEDIA, INC. AND YANKA INDUSTRIES, INC.

BY MS. OSMAN:

Q. Good afternoon, Dr. Jeffay. How are you?

A. I'm well.

Q. How was lunch?

A. Very quick.

Q. Well, I -- I'll introduce myself. My name is Inge Osman. I am representing fuboTV and Yanka Industries, also known as MasterClass, doing business as MasterClass.

A. Oh, okay. Interesting.

Q. Yep.

Did you talk to your counsel about -- about the deposition today during lunch?

A. No, I didn't talk to them at all.

Q. Okay. Okay. Great.

Well, I know you have your declaration in front of you, but I'm going to hand you another declaration. This is the declaration in the '156 patent, IPR, the IPR number ends in 00917.

A. Thank you.

MS. REPORTER: Do you not want it marked?

MS. OSMAN: It's already been marked. This is Exhibit 2141 in the IPR ending in the numbers 00917.

(Exhibit 2141-917, previously marked, was referred to.)

BY MS. OSMAN:

Q. Okay. Dr. Jeffay, could you please turn to paragraph 49. Excuse me.

A. 49. Okay. I'm there.

Q. Okay. So I'd actually like to direct you to the very next page, page 25. It's the end of paragraph 49. And the last sentence in that paragraph I'll -- I'll read into the record.

It says, A POSITA would understand that suspending decoding and clearing the buffer also would advantageously allow a new request -- oh, I'm sorry. Excuse me. It's the sentence before. So I'll start again.

And with respect to jumps, Leaning explains that we prefer to suspend decoding and clear the buffer so that the new request is sent immediately.

Is that right? Did I read that correctly?

A. I think you did.

Q. Okay. But that's not the whole sentence in Leaning, is it?

A. No. I mean, you're talking about what I quoted here?

Q. Yeah.

A. Yeah, I think that's probably right.

Q. Right. And we know it's not the whole sentence because there's that ellipses

that you included there, right?

A. Oh, yes. Sure.

Q. Okay. I -- I'm going to hand you Leaning.

A. Okay.

Q. And that's Exhibit 1004. Okay.

A. I mean, I --

Q. You already have it. Okay. Great. So I'm not --

A. I mean, I'm happy to get a new copy, but --

Q. No, you don't need to have another copy.

Okay. So you have Leaning in front of you. If you'll please turn to page 11. And this is -- I'd like to direct you to lines 19 through 20.

A. Okay. Hang on.

19 through 20. Okay.

Q. I just want to compare the sentence that you quoted to the sentence in Leaning. So are -- let me know when you're

at lines 19 through 20.

A. I'm there.

Q. Okay. So the sentence in Leaning says, We prefer, in the case of a -- of the jump, to suspend decoding and clear the buffer so that the new request is sent immediately, but this is not actually essential.

So in your declaration you -- that ellipses refers to this first part of the sentence, which says, in the case of the jump; is that right? That's the part that was excluded?

A. Yes.

Q. And then you also excluded the last clause in the sentence, but this is not actually essential; is that right?

A. Sure.

Q. So you omitted the last clause of the sentence?

A. I'm sorry?

Q. You omitted the last clause of

that sentence; is that right?

A. I -- I just quoted what -- what I quoted. I didn't explicitly omit this last sentence, this last bit.

Q. But you didn't include it in your declaration, did you?

A. Correct.

Q. Okay. Okay. Could you please turn in your declaration to paragraph 133.

A. Okay.

Q. Okay. So I'll direct you to sort of the second half of paragraph 133. Here you quote parts of that same sentence in Leaning again. You say, As also explained supra, and you cite a particular section, Leaning emphasizes its buffer clearing step, explaining with respect to the jump process that, We prefer, in the case of the jump, to suspend decoding and clear the buffer so that the new request for a subfile is sent immediately.

Is that right?

A. You -- I think you read that correctly.

Q. Okay. And, again, when you're quoting Leaning here too, you omitted that final clause in Leaning; is that right?

A. I mean, I didn't explicitly omit it. I just quoted the part that I -- I quoted here because this is just explaining what Leaning prefers.

Q. But you would agree you did not include that final clause in that statement?

A. Sure.

Q. And that final -- final clause says, but this is not actually essential.

Is that correct?

A. Correct.

Q. Okay. If you'll turn, please, to paragraph 191 in your declaration.

A. 191.

Okay.

Q. Okay. So in paragraph 191 you opine that Move -- Move's system, which

includes novel and nonobvious elements, such as the Move Media Player --

MS. REPORTER: I'm sorry. Again.

MS. OSMAN: Too fast? Sorry. I'll start again.

BY MS. OSMAN:

Q. I'm reading, Dr. Jeffay, part of your declaration. And I'm at paragraph 191. This is the second sentence in this paragraph and it -- and it says, As I explain below, MOVE Networks' system, which includes novel and nonobvious elements, such as the Move Media Player, embodies the limitations present in the challenged claims.

Did I read that correctly?

A. I believe you did.

Q. Okay. And then in support of that statement, you cite to Exhibit 2071, the '156 patent, claim 13, and it's a chart.

Is that right?

A. Yes. This is also evidence

that's being supported -- being provided and supported that sentence.

Q. Okay. And what is -- what is this? What is Exhibit 2071?

A. My recollection is, it's a -- a claim chart that shows how the Move system practiced claim 13.

Q. Okay. And who prepared that claim chart?

A. I don't remember who -- who provided the initial version of it. I do not remember who -- who -- I don't recall who drafted that, the first draft.

Q. Did you have anything to do with the preparation of that claim chart?

A. I think so. I mean, do you have a copy of it that I could review?

Q. Sure. This is Exhibit 2071 in IPR2024-00917.

A. Thank you.

Okay. What's your question?

Q. Okay. Does that refresh your

recollection as to who prepared this claim chart?

A. No, not really. I mean, I've done so many charts over the course of all these IPRs that I don't -- I -- I can't say for certain for this specific chart who made the first draft of it.

Q. I didn't ask you who wrote the first draft. I'm asking if you prepared or who prepared this claim chart.

A. Well, but, I mean, that's -- that's sort of what I'm saying. I mean, all the things I've worked on, somebody, typically me, makes the first draft and then we iterate on it. And I just don't recall the genesis of this exhibit.

Q. Dr. Jeffay, it sounds like you're telling me that you don't remember if you had anything to do with the preparation of this claim chart.

Is that right?

A. I think what I said was I don't

recall the genesis of it, which I think is a fundamentally different statement than not having anything to do with it.

Q. So I don't understand your answer. So let me ask my question again and then you can answer again.

Who prepared this claim chart?

A. I had a hand -- I'm almost certain I had a hand in preparing this. I just don't recall who came up with the initial version of the draft. And in any event, this is certainly something that I reviewed and was comfortable with at the time.

Q. So you have seen this claim chart before?

A. Yes.

Q. And when you say you had a hand in preparing it, what does that mean?

A. I'm sure that at a minimum, I provided edits and feedback on it.

Q. But you don't recall doing so,

sitting here today?

A. I don't recall this specific chart, only because I have worked on so many charts in -- in this case. And at -- at a certain point they all sort of blur because they're all -- a huge number of them cite -- make the same argument, cite the same evidence, so ...

Q. Okay. Well, would you agree with me that this is a claim chart for claim 13 of the '156 patent?

A. Yes.

Q. And it doesn't include any other claims of the '156 patent?

A. I think that is correct. Yes, that is correct.

Q. Have you prepared any other claim charts that would map any other claims of the '156 patent to the Move player?

A. Well, the report and all the exhibits speak for themselves, but I don't recall all the claims that were charted

sitting here today.

Q. So would you agree that sitting here today, you don't know of any other claim charts that you've prepared that would map any other claims of the '156 patent to the Move Media Player?

A. Sure. Sitting here today, that's the case.

Q. Okay. Do you know which claims of the '156 patent are challenged in the 00917 IPR?

A. I don't know that off the top of my head.

Q. Okay. But this -- you agree this claim chart only -- only analyzes claim 13?

A. I think we've covered that.

Q. That's a yes?

A. Yes, we've covered that and yes, I think I previously told you that, yes, this covers claim 13.

Q. Okay. Thank you. You can -- you can set that aside.

I'm going to hand you another declaration. So give me a moment, please.

This is Exhibit 2141 in IPR2024-00918.

Dr. Jeffay.

A. Oh, sorry. Thank you.

(Exhibit 2141-918, previously marked, was referred to.)

BY MS. OSMAN:

Q. If you'll please -- do you recognize this document?

A. Yes.

Q. This is your -- this is your declaration in the -00918 IPR; is that right?

A. Yes, that's what it appears to be.

Q. Okay. Can you please turn to paragraph 191 in your declaration.

A. Okay. I'm there.

Q. Okay. This paragraph is very similar to the one that we just looked at. And if you look at the second sentence in

this paragraph, it starts with the words, As I explain below, Move -- and I'll -- I'll just read the sentence.

Move Networks' system, which includes novel and nonobvious elements such as the Move Media Player, embodies the limitations present in the challenged claims. And then there's a See also cite.

Do you see that there?

A. I do.

Q. And it cites to Exhibit 2071 and in parentheses, the '156 patent claim 13 chart.

Is that right?

A. I think you read that correctly.

Q. Okay. This -- this declaration is not directed to the '156 patent, is it?

A. No, this is, what, the '564? Yeah --

Q. Okay.

A. -- the '564 patent.

Q. Okay. So is that a clerical

error or are you relying on the '156 patent claim chart to support this statement?

A. Well, I think I'm relying on the '156 chart, because the elements of -- there's commonality between the elements of the claims across several of the patents.

Q. Okay. And you're relying on this chart on one claim, claim 13, and the '156 patent claim chart; is that right?

A. Yes.

Q. Okay. And that's despite the fact that the '564 patent has different claims, correct?

A. Correct.

Q. Okay. Do you know what claims are asserted or challenged in the '564 patent?

A. I -- I don't.

Q. You don't know?

A. I don't have that off the top of my head.

Q. Okay. But -- but certainly,

claim 13 of the '156 patent is not among those challenged in the patent challenge in the '564 IPR?

A. I mean, it's obviously not a claim of the '564 patent, but as I say, my recollection is there's significant overlap between the elements of this claim and claims in the other patents.

Q. Okay. Okay. You can set that declaration aside.

I'm going to hand you one more declaration. This declaration is from -- this -- it's Exhibit 2141 in IPR2024-00919. And this IPR is -- is related to the '772 patent.

Here's your declaration.

A. Thank you.

(Exhibit 2141-919, previously marked, was referred to.)

BY MS. OSMAN:

Q. Dr. Jeffay, you recognize this document as your declaration in the 00919

IPR?

A. I do.

Q. Okay. Can you please turn again to paragraph 191 in this declaration.

A. 191. Okay. I'm there.

Q. Okay. This paragraph is, again, I think nearly identical to the one we just looked at in the prior two declarations. And it -- and it includes that same sentence that I've read to you twice now and the same cite, the See also Exhibit 2071 and, in parentheses, '156 patent claim 13 chart.

Do you see that there?

MR. WILSON: Objection.

Counsel, you're asking him questions about an exhibit but not showing it to him.

MS. OSMAN: Counselor --

MR. WILSON: Can you --

MS. OSMAN: -- that's coaching.

You're restricted to objection, form.

Thank you.

MR. WILSON: That's the objection.

MS. OSMAN: Okay. Keep -- keep it to objection, form, please.

BY MS. OSMAN:

Q. Dr. Jeffay, do you see that there?

A. I -- I see the text that you read.

Q. Okay. And so, again, your opinion in this declaration is that the Move Networks system embodies limitations present in the challenged claims. And you're relying on Exhibit 2071, which is related to the '156 patent claim 13 chart; is that correct?

A. That's my recollection.

Q. Okay. And that is despite, again, the fact that this declaration is related to the '772 patent, correct?

A. Correct.

Q. And claim 13 of the '156 patent is not in the '772 patent, correct?

A. The literal claim itself, that is true.

Q. Okay. And do you recall which claims of the '772 patent are challenged in this IPR?

A. Not off the top of my head.

Q. Okay. But -- but certainly those claims -- those challenged claims do not include claim 13 of the '156 patent?

MR. WILSON: Objection. It's the same objection.

THE WITNESS: So if I understand your question, you're asking me in the -- in the 919 IPR, there's -- it's only claims -- it's not claims of the '156 patent?

BY MS. OSMAN:

Q. Correct.

A. I think that is correct.

Q. Okay. Thank you. You can set that aside. Oh, you know, actually, please keep that declaration. I'll have more

questions and we can use this one.

A. Fine.

Q. Could you turn to paragraph 210 in that same declaration that's in front of you.

A. Okay.

Q. Can you take a moment to read that paragraph.

A. Okay.

Q. And I'm focusing on that very last sentence, in which -- my understanding is that you're opining that there are novel claim elements that are practiced by Sling TV; is that correct?

A. Yes.

Q. Did you provide a claim chart mapping any claim elements to Sling TV?

A. Well, the report and the exhibit speak for themselves, but I don't -- I don't recall that sitting here today.

Q. Okay. Can you please turn to paragraph 217 of your declaration.

A. Okay.

Q. And this is a long paragraph. I will direct you to the -- sort of the bottom of this paragraph. And it -- it -- I think it is the last sentence, but it's a -- a longer sentence. It starts with the words More recently.

A. Okay. I found that.

Q. Okay. Just take a look at that sentence for a moment.

A. Okay. I've reviewed it.

Q. Okay. So in this sentence you say, Sling TV, which I understand the ITC found to practice claims of the challenged '564 and '156 patents; is that right?

A. That's what I wrote.

Q. Okay. And you cite to Exhibit 1009; is that correct?

A. Yes.

Q. Okay. So you're relying on the ITC's findings with regard to Sling TV practicing claims; is that correct?

A. I wouldn't say I'm -- I'm relying on it. I'm just commenting on it.

Q. Did you provide a claim chart mapping any challenged claims to Sling TV?

A. Again, the report and the exhibits speak for themselves, but I don't recall a claim chart for Sling TV.

Q. Okay. So what's your basis for saying that the Sling TV practices the claims of the challenged patents?

A. Well, it's all the references that I provide in this section for Sling TV.

Q. Okay. And one of those references is the ITC decision; is that correct?

A. Sure.

Q. Okay.

A. That's -- that's one of them.

Q. I'm going to hand you another exhibit. This is Exhibit 1009, Dr. Jeffay.

A. Thank you.

(Exhibit 1009, previously marked, was referred to.)

BY MS. OSMAN:

Q. Dr. Jeffay, do you recognize this document?

A. I mean, it looks somewhat -- I don't actually recognize it just sitting here today, but I assume this is something that I've reviewed at some point.

Q. But you don't remember reviewing it?

A. No, I just don't recognize the document because I think this was something I probably looked at in soft copy and never in a printed-out form like this.

Q. But you agree that this is Exhibit 1009 that's cited in your declaration?

A. I don't have any reason to dispute that.

Q. Okay. And if you could look at the first page of this document, what is this

document?

A. This is the initial determination on violation of Section 337 and recommended determination on remedy and bond by the chief ALJ, Judge Cheney.

Q. Okay. And which patents does this determination, initial determination, relate to?

A. So as I recall or as it's listed here, it's the '564 patent, the '156 and then two others that I don't think we're talking about here, the '554, or what's -- what we've previously called the '554 and the '555 patent.

Q. Okay. But this decision does not relate to the '772 patent; is that right?

A. I mean, the document speaks for itself, but I think that is probably correct.

Q. Okay. And it also does not relate to the '234 patent; is that right?

A. That is probably correct.

Q. Okay. Can you please turn to

page 101 of this document.

A. Okay.

Q. You're faster than I am.

A. Just lucky.

Q. Okay. So I'm going to direct you to that -- the bottom of this page in subsection B, entitled Domestic Industry and in parentheses Technical Prong.

Do you see that there?

A. I do.

Q. Okay. And there in the opinion it states, DISH contends that the DISH set-top boxes and the Sling TV apps practice independent claim 1 of the '564 patent.

And then if you turn to the very next page --

A. Okay.

Q. -- is -- there's an analysis of claim 1 there.

Do you see that?

A. I do.

Q. Okay. Does this decision relate

to the 55 -- the '156 patent?

A. This decision, what specifically --

Q. Strike that. Let me --

A. -- are you referring to?

Q. That -- that was a bad question. Let me -- let me rephrase.

Does this analysis -- does this analysis relate to the '156 patent?

A. I mean, the analysis that's here starting on page 102 seems to relate to the '564 patent and I don't recall if the ALJ specifically walked through the elements of the claim of the '156 patent, but to the extent that they're substantially similar limitations, in theory, the ALJ's analysis would carry over for those limitations as well.

Q. Okay. Well, I'm asking you what the ALJ specifically found here. You cited to pages -- in your report you cited to pages 101 through 112. So please take a look

at those pages. And what I'd like to know when you're done taking a look is if the ALJ's analysis in the section that you cited identifies any claim from the '156 patent or not.

A. Okay.

So just quickly skimming this and, hopefully, without having missed anything, I don't see any reference to the '156 patent.

Q. Okay. That's correct. That's -- that's what I've seen too.

So the ALJ's analysis that you cited in support of your statement that Sling TV is -- practices the claims actually is only related to the '564 patent; is that correct?

A. I guess as a literal matter, that's true. But as I mentioned, to the extent there's overlapping claim limitations, in theory his analysis would apply.

Q. But that's not what I asked you.

My -- my question is, the ALJ's analysis was only related to the '564 patent, that -- he only analyzed claim 1 of the '564 patent; is that right?

MR. WILSON: Objection, misstates testimony.

MS. OSMAN: Counsel, you're --

MR. WILSON: I'm sorry.

MS. OSMAN: -- restricted to form. Please keep it to form.

THE WITNESS: Could you just ask the question again?

BY MS. OSMAN:

Q. Of course.

My question for you was, the ALJ's analysis was restricted to claim 1 of the '564 patent; is that correct?

A. In these 12 pages, that appears -- again, unless I missed something, that appears to be correct.

Q. Okay. And these 12 pages, that's what you cited in -- in your declaration in

support of your statement. And I'll read the statement.

It says, Sling TV, which I understand the ITC found to practice the claims of the challenged '564 and '156 patents.

Correct?

A. I was -- you -- I was -- wasn't tracking you in real time, but I think you read that correct.

Q. Okay. Thank you. Okay. Well, let's -- let's look at the ITC's decision. If you could look at page 102, this is related to claim 1 of the '564 patent.

A. Okay.

Q. You see in subsection a is the first limitation. And he calls it -- the ALJ refers to it in parentheses as 1pre.

A. I see that.

Q. In that section the ALJ says, Respondents do not contest that use of the DISH set-top boxes and the Sling Fire App

satisfy this limitation.

Do you see that there?

A. Yes.

Q. So the ALJ noted that this limitation was not contested, correct?

A. I think that's a fair read of that.

Q. Okay. If you turn to the very next limitation, this one in parentheses -- it's -- it's 1a.

Again, if you look at the second sentence, the ALJ says, Respondents do not contest that use of DISH set-top boxes and the Sling Fire App satisfy this limitation.

Is that correct?

A. That's -- that's what the ALJ appears to have written.

Q. Okay. So the ALJ is finding these limitations as disclosed, but they're uncontested, correct?

A. I'm sorry. He's -- the ALJ is finding these as disclosed but not contested?

Q. The -- let me strike that question.

A. Okay. Thank you.

Q. You're correct. It was poorly worded.

The ALJ is finding that the Sling Fire App satisfies these limitations, but there is no -- but respondents conceded that these were satisfied; is that right?

MR. WILSON: Objection, form.

THE WITNESS: Well, to the extent that I'm parsing this right, I think that appears to be correct. The ALJ is making those two statements.

BY MS. OSMAN:

Q. Okay. If you could please turn to page 104.

A. Okay.

Q. I'm going to direct you to subsection d. And this is, in parentheses, limitation 1c.

Again --

A. Okay.

Q. -- the second sentence there states, Respondents do not contest that the use of the DISH set-top boxes and the Sling Fire App satisfies this limitation.

Do you see that there?

A. I do.

Q. So -- so this is another limitation where respondents conceded that Sling Fire App satisfies the limitation, correct?

MR. WILSON: Objection, form.

THE WITNESS: It seems that that is at least the case.

BY MS. OSMAN:

Q. Okay. If you'll turn, please, to page 105.

A. I'm sorry, I missed it. 100 --

Q. Sorry. Turn, please, to 105 --

A. Okay.

Q. -- the very next page.

A. Perfect.

Q. I'll direct you to subsection e --

A. Okay.

Q. -- limitation, in parentheses, 1d.

That second sentence reads, again, Respondents do not contest that use of the DISH set-top boxes and the Sling Fire App satisfies this limitation.

Do you see that there?

A. I'm sorry, I -- I was in the wrong section.

Q. Sure.

A. I see the response.

Yes, I see that.

Q. Okay. And I think this makes four uncontested limitations.

Do you agree with that? You can go back and count.

A. It is what it is, but --

Q. One, two --

A. One, two --

Q. -- three, four.

A. I think you have counted correctly.

Q. Okay. And then if you'll turn to page 106.

A. Okay.

Q. This is subsection g. In parentheses, the ALJ said f for this limitation. And you see that same language again, Respondents do not contest that the Sling Fire App satisfies this limitation, right?

A. That same language appears there.

Q. Okay. So this is uncontested limitation number five.

A. It's at least uncontested.

Q. Okay. And then if you'll turn to page 107, subsection i --

A. Subsection i.

Q. It's at the bottom of page 107.

Do you see that?

A. I -- oh, sorry. Sorry. I was

doing 1i.

Q. No.

A. Yes, I see that.

Q. Yeah. And this is in parentheses. 1h the ALJ has called this limitation?

A. I -- I see that.

Q. Okay. And you see that same sentence, Respondents do not contest; is that right?

A. That same sentence does appear here as well.

Q. Okay. And this is the sixth uncontested limitation?

A. Sure.

Q. Okay. So in finding that the Sling Fire TV app satisfied the limitations of claim 1 of the '564 patent, the ALJ was relying on respondent's concessions; is that correct?

MR. WILSON: Objection, form.

THE WITNESS: I don't know,

just quickly reviewing this, the extent to which he's exclusively relying on that.

BY MS. OSMAN:

Q. In each of these subsections that we just walked through, was there any other reason given for why the ALJ found these limitations were satisfied?

MR. WILSON: Objection, form.

THE WITNESS: Well, he's citing other documents and I don't recall what evidence is in those documents.

BY MS. OSMAN:

Q. You're correct. We don't have access to those documents in these proceedings.

A. Okay. Well, I'm -- I'm just saying he's citing to other documents and I -- I -- I can't, you know, fully analyze your -- your question because he is citing to other documents and I don't know to what extent he's -- what -- what's in those

documents and whether or not part of his -- his statement that -- for example, for limitation 1h at the bottom of page 107 when he says the use of DISH set-top boxes and the Sling Fire App meets this limitation, I don't know to what extent is he relying exclusively on respondent's concession or on additional evidence that was presented in these other documents that he's referring to.

Q. But certainly respondent's concession was at least important enough to include in the initial determination; is that correct?

MR. WILSON: Objection, form.

THE WITNESS: I mean, he certainly included it, therefore, I assume he felt it was important to include it.

BY MS. OSMAN:

Q. And there were six different concessions in this one claim?

MR. WILSON: Objection, asked

and answered.

MS. OSMAN: Counsel, you really need to stick to form. That's the PTAB's rules. You have to stick to -- your objections have to be just form.

MR. WILSON: I'd hardly say that asked and answered is --

MS. OSMAN: Asked and answered is --

MR. WILSON: -- a speaking objection --

MS. OSMAN: -- not okay. Research it. It's not okay. Just form.

THE WITNESS: Yeah. I -- in any event, I think we established -- or -- or I trusted that you had counted correctly to 6.

BY MS. OSMAN:

Q. Okay. Okay. You can put the ITC's decision away. Thank you. Let's go back to your declaration, please.

A. Okay. Just give me a sec.

Okay.

Q. Okay. Would you please turn to paragraph 216 of your declaration.

A. Okay.

Q. Okay. So I'll direct you to the very last sentence in this paragraph. Will you take a look at that, please.

A. Okay.

Q. Okay. So I'm going to read this in the record just so that we have it. The sentence says, The key, one article writes, is in Move's plugin because it puts the end-user environment control. It can determine the best end user experience, intelligently ensuring fluidity of playback.

Is that correct?

A. I think you read that correctly.

Q. And there's no cite here, but I'm going to show you Exhibit 2048, because that's where this quote came from.

So give me one moment. I will

give you that exhibit.

A. Okay.

Q. Okay. This is Exhibit -- this is Exhibit 2048. Sorry.

A. Thank you.

(Exhibit 2048, previously marked, was referred to.)

BY MS. OSMAN:

Q. Have you seen this before, Dr. Jeffay?

A. This looks familiar.

Q. Okay. Do you want to take a moment to take a look at it?

A. Please. Just let me --

Q. Sure.

A. -- read it quick.

Okay.

Q. Okay. In that sentence that we just looked at in your declaration -- again, we were looking at the bottom of paragraph 216 in your declaration -- that's quoting this exhibit; isn't that right?

Do you see where that came from in the exhibit?

A. Yes.

Q. Yeah, the -- the sentence starts with, But the key is the plug -- is in the plugin.

A. Yes.

Q. Do you see that there?

Okay. And if we look at the full sentence in the article, Exhibit 2048 that's in front of you, it -- it actually says, But the key is in the plugin, comma, which manages delivery, assembles and renders the stream and offers DRM, geotargeting and extremely in-depth reporting.

Do you see that?

A. Yes.

Q. But you didn't identify any of those functions of the plugin in your statement in your declaration, did you?

A. Sure. That's fair.

Q. Okay. So there are a number of

different functions that you excluded. And the first one is managing delivery, then assembling the stream and rendering the stream, offering DRM.

What's DRM?

A. Digital rights management.

Q. And digital rights management, that's not in the challenged claims, is it?

A. No, I don't believe so.

Q. Okay. And then another function you exclude is geotargeting.

Do you see that there?

A. Yes.

Q. And geotargeting is not in the challenged claims either, is it?

A. No, I don't believe so.

Q. Okay. And then also extremely in-depth reporting.

Do you see that there?

A. I do.

Q. Is extremely in-depth reporting in the -- in the challenged claims?

A. I'm not sure what exactly this is referring to when it says extremely in-depth reporting. But for just a -- a layperson's read of this, I don't think this is part of the claims.

Q. You would agree that the challenged claims don't say anything about any kind of reporting; is that right?

A. Well, I mean, reporting -- the -- the -- the claims involve a form of -- how can I say this -- of kind of metric accumulation and -- and reporting between the components of the player for purposes of -- of adaptation. But I don't know that that's what this is referring to.

Q. Well, let's keep reading in this article. If you look down a couple paragraphs there's a sentence that starts with, The final element.

Do you see that?

A. Yes.

Q. Okay. So the sentence says, The

final element in Move's technology is reporting. And, again, this is where having a client side plugin is a tremendous advantage. So this article is identifying this reporting feature as a tremendous advantage; is that right?

MR. WILSON: Objection, form.

THE WITNESS: I mean, it certainly has the words "tremendous advantage." But I think -- I think you have to take it in context.

BY MS. OSMAN:

Q. I'm not asking what you think. I'm asking this article is identifying Move technology's reporting as a tremendous advantage. That's what the article says, isn't it?

MR. WILSON: Objection, form.

THE WITNESS: There is a context to this. And in that context it certainly says that -- that Move's reporting is a tremendous advantage.

BY MS. OSMAN:

Q. Okay. And then the next sentence says, Everything viewed in a Move Networks player is tracked. They track where viewers are, what they have watched and how long, the bitrate and when people scrolled back or forward in a given program. All this is more reliable and specific than tracking provided by most CDNs and content management systems, which make it extremely valuable to networks and advertisers.

Is that right?

A. I think you read that correctly.

Q. Okay. Is that kind of reporting claimed in any of the challenged claims?

A. I don't believe so.

Q. But this kind of reporting, according to this article, is extremely valuable to networks and advertisers; is that correct?

A. Within the context of this person's article, that is what they are

representing.

Q. So you don't agree with this article?

A. No. What I'm saying here is you can't remove this from the -- the context of this -- of this particular report. I mean, the -- this -- and -- and all I'm saying here is that the starting point here is how well Move works and -- and what it's able to do that others had not been able to do.

And once you've established that, then you can look at sort of the secondary issues of tracking and -- and -- and things like this. But none of this would be possible or none of this would be talked about had the -- the plugin not been successful and an advance over the state of the art.

Q. But this article doesn't refer to them as secondary. In fact, it says that the reporting is a tremendous advantage; isn't that right? You might not agree, but that's

what the article says, correct?

MR. WILSON: Objection, form.

THE WITNESS: The article clearly says that. All I'm saying is that there's a context to these statements. And you have to appreciate that context in order to understand the impact of these statements.

BY MS. OSMAN:

Q. And the article also says that this reporting is extremely valuable to networks and advertisers; is that right?

MR. WILSON: Objection, form.

THE WITNESS: Again, in the context of this article, that's what it says.

BY MS. OSMAN:

Q. Okay. Let me give you another exhibit. You can put this one aside for now.

A. Okay.

Q. This is Exhibit 2022.

A. Thank you.

MS. OSMAN: Counsel.

(Exhibit 2022, previously marked, was referred to.)

BY MS. OSMAN:

Q. Have you seen this document before, Dr. Jeffay?

A. Yes.

Q. Okay. And what is it?

A. This is a -- a document that I understand Move would share with potential customers. And it's called Technical Overview of Move Networks Implementation.

Q. This is a document that was written by Move Networks?

A. I believe that's the case.

Q. Okay. And you rely on this document in your declaration, don't you?

A. I'm sure I probably cite to this.

Q. Well, I'll represent that you do cite to it quite a lot.

A. Thank you. I was going to say

the -- the -- the problem is the figures are so common --

Q. Yes.

A. -- between them, but, yes, I'm sure I do cite to this.

Q. Okay.

Okay. Can you please turn to page 27 of this document.

A. Got it.

Q. So we just talked about the importance of advertising. And on page 27 of this Move Networks document there's a section entitled, Programming and Ad Traffic Interface, in parentheses, Move Publish.

Do you see that?

A. I do.

Q. In the second paragraph in this section it starts with the words, Core to the Move Networks video platform is the ability to insert advertisements dynamically as pre- and post-role commercials, as well as replacement commercials in linear

programming.

Is that right?

A. I think you read that correctly.

Q. Okay. So Move Networks is identifying and describing its advertising ability as core to its platform; is that correct?

A. Yeah, it's a little unclear the context of -- of core, but it's certainly saying that it -- it has -- it has this ability and it -- and it uses the word "core."

Q. So you just told me that this advertising, the advantage to advertising, was secondary, but Move Networks is describing it as core to its platform; is that right?

A. I don't think I said the word "secondary."

Q. Maybe I'm misquoting you, but I recall you said secondary.

A. Different topic --

Q. Go ahead.

A. -- several answers ago.

Q. Okay. But this document describes it is not secondary, but core advertising its ability -- strike that.

This document describes Move Networks' platform's ability to insert advertisements as core to its platform; is that right?

A. Sure. But I think all this is saying is -- is that, you know, it's -- it's a -- its essential feature. It's -- it's integrated into the heart of the -- the -- the platform.

Q. Okay. If you could look at the very next paragraph, this discusses DRM, digital rights management; is that right?

A. Yes.

Q. So the Move player included embedded DRM heavy encryption; is that right?

A. That's what it says.

Q. Okay. And this allowed for

specific rules to obtain permission to play specific content?

A. Yes. There's -- yeah, this is a traditional DRM authentication process.

Q. And that's one of the functionalities that we were just looking at in that past -- in the last exhibit; is that right?

MR. WILSON: Objection, form.

THE WITNESS: In the last exhibit I just mentioned DRM. This is certainly a specific instance of -- of DRM. I don't know to what extent the other document was contemplating some other aspect of D -- DRM.

BY MS. OSMAN:

Q. Okay. If you'll turn, please, to page 29.

A. Okay.

Q. The last document we were looking at --

A. Okay.

Q. Last document we were looking at also talked about reporting.

A. Yes.

Q. This provides -- it looks like this provides a list of the data types that be -- can be collected and reported; is that correct?

A. Yes.

Q. And so the Move player allowed for customized reporting, right?

MR. WILSON: Objection, form.

THE WITNESS: I'm not sure what all you're sweeping in when you say allowed for. I think this is what was collected and then some downstream processing could probably generate these customized reports.

BY MS. OSMAN:

Q. Let me reframe my question.

The Move network enabled users to have a customized report; is that correct?

A. The Move system could -- I'm just

tripping up on your word, "users." I don't -- I don't believe all of this was -- any of this was made available to users.

Q. I'm just going to read what this document actually says. It says --

A. Okay.

Q. -- The following is a list of data types collected and provided within the log files and a brief description of each element, which are available in customized report forms and analysis.

Correct?

A. I think you read that perfectly.

Q. So this is -- this allows customized reporting, correct?

MR. WILSON: Objection, form.

MS. OSMAN: What's the objection?

MR. WILSON: Vague, ambiguous.

THE WITNESS: So I -- I think what this fairly says is these are the data types that are collected and

that -- whether it's -- we -- we don't know -- I can't tell -- I don't recall from this whether it's part of the player or not. But one way or another, based on what is collected, you can get customized reports.

BY MS. OSMAN:

Q. Okay. And then if you look at some of these -- some of these options for reporting, you'll see one of them, sort of in the top half of the page, is called stallCount.

Do you see that?

A. Yes.

Q. What is stallCount?

A. A count --

Q. Dr. Jeffay, why are you laughing?

A. Just -- it's -- it's just always humorous to me how the -- how people try and describe this to a general audience, the fact that it -- that they refer to it as a blip. That's all. That's just kind of humorous to

me.

So a stallCount for them is -- I assume what they mean is -- is they're counting when any kind of blip occurs during play.

Q. Okay. And what is a blip?

A. No idea.

Q. Okay.

A. I mean, blip is not a -- a term of art, which is why I was kind of chuckling at it.

Q. Okay. And what is a stall?

A. So a stall -- well, so their stall is basically when any kind of blip occurs during play.

Q. But you don't know what a blip is?

A. No. Blip is not a term of art.

Q. Okay. So you have no idea what a stall count is?

A. I'm sorry?

Q. You have no idea, sitting here

today, what a stallCount is?

A. I'm assuming it's -- it's a count of some form of anomaly.

Q. What kind of anomaly?

A. Blips.

Q. But you don't know what a blip is?

A. No. And I don't know that this document defines what a blip -- you know, what's the -- the full range of what could constitute a blip.

Q. Okay. Well, let's look at the very next kind of data that can be analyzed. It's called mindur.

Do you see that?

A. I do.

Q. What is mindur?

A. It says it is the minimum duration of all stalls user experienced.

Q. Okay. Does that give you any more information about what a stall is?

A. No.

Q. No?

A. Because it's clearly -- I'm assuming it's just going to refer to the previous metric for its conception of a stall.

Q. But you would agree that a stall at least has a duration, correct?

A. Yes, I would agree.

Q. Okay. And then if you look at the next metric, it's A-V-G dur.

Do you see that?

A. I do.

Q. What is an A-V-G dur?

A. It says it is the average duration of all the stalls users experienced.

Q. Okay. Does this give you any more insight into what a stall is?

A. No.

Q. So still no idea what a stall could be?

A. It's a blip.

Q. But you don't know what a blip

is?

A. I -- I don't know the metes and bounds of what a blip is as far as Move Networks was concerned.

Q. Have you ever heard the word "blip" used in this context before?

A. In what context?

Q. In a networking context before.

A. I don't think so.

Q. It's never been used before?

A. Well, I just don't have any definite recollection of it.

Q. Okay. And do you -- have you ever used the word "blip" before?

A. I doubt it.

Q. Okay. So you've never used or heard blip before today?

A. No. I mean, usually, you know, we use terms that clearly indicate what they are as opposed to a blip, which God only knows what a blip is.

Q. Okay.

A. Or, like I say, what's -- what's a blip, what's not a blip.

Q. Okay. So sitting here today, your testimony is you have no idea what a blip is?

A. I -- what I said was I don't know what the metes and bounds of a blip are.

Q. Well, that sounds like you do have an idea of what a blip is.

A. I could imagine what might be a blip, but I don't know if that's what the Move folks consider a blip or not, because a blip is not a term of art and I don't think it's defined in this document. And it's clearly, you know, really something that's meant to just colloquially convey that some anomaly has occurred.

Q. You said you could imagine what might be a blip. What might be a blip?

A. A -- a blip could be something that causes the video to freeze.

Q. Okay. So a blip could be

something that causes a delay?

A. Causes a?

Q. Delay.

A. A delay in what sense?

Q. In the streaming.

MR. WILSON: Objection -- yeah, objection, form.

THE WITNESS: So a -- a delay in what? A delay in the video doesn't mean anything to me.

BY MS. OSMAN:

Q. Okay. You just said a blip could be something that causes a video to stream -- to freeze; is that right?

A. I -- I think that that's something I -- that -- that is a type of anomaly that I could imagine one would want to track. And whether or not Move considers that a blip or not, I don't know.

Q. Okay. But that in your mind could be a kind of a blip, correct?

A. It could --

MR. WILSON: Objection, form.

THE WITNESS: What I said was it could be a type of anomaly that you'd want to track. And whether or not Move considers that a blip, I do not know.

BY MS. OSMAN:

Q. Okay. And if a video is freezing, then some of these other analytics make sense, min duration, min duration of a freeze might make sense; is that right?

A. Yes.

Q. Okay. And then the next one that we talked about, A-V-G dur, the average duration of all the stalls users experienced?

A. Sure.

Q. That would also make sense?

A. That would make sense.

Q. Okay. Let's look at the next one. It's maxdur. What is maxdur?

A. It is the maximum duration of all the stalls users experienced.

Q. And if we're talking about freezes in video, that, too, would make sense, correct?

A. Yes.

Q. Okay. Likewise, the next one, enddurstall, what is that?

A. It's the value 1 if the user exited the browser during a stall and 0zero if not.

Q. And if a stall is the video freezing, again, that would make sense, correct?

A. If the video -- well, there's other issues here. I'm -- I'm not sure what -- what exactly they're referring to as if the user exited the browser.

Q. Okay. Well, let's skip down to one of the other analytical -- analytics. One of them is A-V-G delay.

Do you see that one there?

A. Okay.

Q. What is A-V-G delay?

A. It's the average duration for the content to resume -- to -- sorry -- to resume playing after a stall.

Q. So what does that mean if a stall is frozen -- the video has frozen?

A. The average duration for the content to resume playing after the video first froze.

Q. Okay. And then the next analytic is maxdelay.

Do you see that there?

A. Yes.

Q. And what is that?

A. Max duration for the content to resume playing after a stall.

Q. And what does that mean if a stall is the video froze?

A. If the stall was the video freezing, it says it's a record of the longest time it took the content to resume playing after the freeze.

Q. Is it fair to say that the Move

Media Player was reporting on interruptions in playback?

A. It's certainly generating statistics on these blip events. And these blips are clearly anomalous things, so -- you know, that's the best I can do.

Q. So the Move Media Player is reporting on discontinuities in the playback?

MR. WILSON: Objection, form.

THE WITNESS: Again, you know, that's not what this says and I don't know fully what's -- what Move is characterizing as a blip.

BY MS. OSMAN:

Q. But you said one thing a blip could be is freezing the video, correct?

A. Could be.

Q. What else could a blip be?

A. I mean, I -- I don't know. I mean, I haven't -- I haven't sat here and considered all the things that Move might have thought of as a blip.

Q. But sitting here today, you can't think of any other thing that a blip could be?

A. I -- I -- I don't know what Move -- this is a difficult exercise because I don't know what Move considers a blip. And blip, as I say, is a -- it's not -- it's -- it's -- it's not a term of art. The -- I gave you the first thing that came to mind.

Q. And sitting here today, you can't think of anything else that would be a blip?

A. No.

Q. Okay. If you could please -- you can put this aside. Let's turn back to your declaration.

I'd like to look at paragraph 274.

A. 274. Okay. It's not okay.

Now okay.

Q. Okay. Maybe just read -- read the paragraph and then I'll ask you questions.

A. Okay.

Okay.

Q. Okay. So I want to direct your attention to the final sentence in this paragraph where you say, Level 3 praised the ability of Move's ABR technology to automatically upshift and downshift video content to provide continuous video playback at the highest quality profile possible.

Is that right?

A. I think you read that correctly.

Q. Okay. And you cite Exhibit 2130 and you describe it as E-mail regarding nonbinding indication of interest, right?

A. Yes.

Q. Okay. I'd like to look at that exhibit, so give me a moment to pull it out.

A. Okay.

Q. Okay. This is Exhibit 2130.

A. Okay. Thank you.

MS. OSMAN: Counsel.

(Exhibit 2130, previously marked, was referred to.)

BY MS. OSMAN:

Q. Have you seen this document before?

A. I do not recognize it sitting here today, but I'm sure this is something I looked at at some point.

Q. What is this document?

A. This appears to be a letter from Mr. Lepard of L3 to Mr. Edwards, CEO of Move, that was sent via E-mail.

Q. Okay. The quoted language that I just read you from your declaration doesn't appear in this letter on page 1 of this document, does it?

You can take a moment and read the letter if it's helpful.

A. Sure.

Yeah, that appears to be correct.

Q. Okay. In fact, this -- the first page of this document doesn't say anything

about continuous video playback at all, does it?

A. Not specifically, no.

Q. Okay. This E-mail is a nonbinding indication of interest Level 3, which was evaluating a potential investment in Move; is that right?

A. I believe that is correct.

Q. And the letter states that The attached term sheet is based on certain assumptions made by Level 3 and certain information provided by Move.

Do you see where I'm reading? That's the --

A. I do.

Q. Okay. And then it goes on to say, the accuracy of which Level 3 will need to confirm.

Is that right?

A. That's what it says.

Q. Okay. So that quote that you cited at paragraph 274 of your declaration

doesn't appear on the first page and you don't have a cite in your declaration.

But if you turn to page 54 of the document, you'll see that language. So if you could please turn to page 54.

A. Okay.

Q. And this language appears in that last paragraph on the bottom of the page.

A. Okay.

Q. So you'll see it's called Move Media Player. And then it describes the Move Media Player.

A. I see that.

Q. And -- and will you confirm that this -- that is where this language came from, the automatically upshift and downshift?

Do you see that?

Let me make sure it's here. Yep, it's -- it's --

A. Yeah.

Q. -- 4. It's the very last

sentence --

A. Yeah.

Q. -- on this page.

A. Certainly the language -- certainly the quoted language appears to match the bottom of page 54.

Q. Okay. And if you turn back to page 53, which is the beginning of this section, what is this section?

A. This section is called -- well, I don't know what you're -- what -- what you're looking for here, the -- the high level?

Q. Yeah, the -- the high level. I just want to understand.

What is this that we're reading from?

A. This is Exhibit A, which is described as Description of Services/Development Work.

Q. And those services/development work were to be provided by Move Networks; is that correct?

A. This is describing things that Move will do.

Q. Okay. This is a description of services/development work of services to be provided by Move Networks, correct?

A. Oh, yes. Right. There's the title. Yes.

Yes, that's the title, Move -- that's the subtitle, Move Media Services Provided by Move Networks.

Q. It's not a description of Move Networks by Level 3, is it?

A. I don't know that to be true.

Q. Well, in your declaration you describe that quote as Level 3 praising the ability of Move's ABR technology.

Did I read that correctly?

A. Yes, you read that correctly.

Q. How do you know this is Level 3 praising Move?

A. Because this is being sent by Level 3, by this executive at Level 3.

Q. And in that paragraph that we read a few moments ago, this E-mail or this letter says, The attached term sheet is based on certain assumptions made by Level 3 and certain information provided by Move, the accuracy of which Level 3 will need to confirm.

Is that correct?

A. Yeah. That sentence is there.

Q. Okay. And so this Exhibit A, are you still taking the position that this is Level 3 praising Move?

A. I mean, I don't know how to answer that. I mean, it says what it says. And it's a positive statement. It certainly is based on assumptions that Level 3 is making, but you can praise based on assumptions or, said another way, it wasn't Level 3's assumption that this was terrible and it didn't work. So, I mean, this is all in a document that was sent by -- by Level 3. I'm just taking it at -- at face value and

it's saying positive things about Move.

Q. Is there any indication that Level 3 drafted this Exhibit A?

A. Other than the fact that it's an -- an E-mail being sent by Level 3?

Q. Would it surprise you if Move Networks drafted the Description of Services/Development Work that it was to perform?

A. I -- I -- I -- I don't know.

Q. Okay.

A. I mean --

Q. You don't know if it would surprise you?

A. There's very little about these sorts of contractual agreements that would surprise me.

Q. So you don't actually know who drafted this Exhibit A that you quoted, do you?

A. It has no authorship, but it is in a -- it -- it is a document being sent by

Level 3. And I assume Level 3 wouldn't be sending back to Move documents that Move had authored.

Q. I mean, certainly in contracts, you sent contracts back and forth even if you have -- the other side drafted and you're signing, right?

A. I -- you know, I -- I -- I -- I don't know.

Q. But there's no evidence that you can point to sitting here today that Level 3 drafted this section, correct?

A. Other than the fact that this is being sent by Level 3.

Q. And it's possible that this is Move media describing its own capabilities, correct?

A. I don't know the extent to which that's possible or not.

Q. Why do you say you don't know to the extent to which that's possible?

A. I don't know how to explain it.

I mean, I just don't know.

Q. You just don't know who drafted this, correct?

MR. WILSON: Objection, form.

THE WITNESS: It's my assumption that it was drafted by Level 3 because it's being sent by Level 3. You know, the -- the document doesn't specifically have a -- a particular indication of the author, so all we know is that it was sent by Level 3 to Move.

BY MS. OSMAN:

Q. Okay. But if this was drafted by Move and not Level 3, then it's not Level 3 praising Move, is it?

A. I don't know that I necessarily agree with that. I mean, these are terms ultimately that Level 3 is, in theory, going to agree to, you know, subject to confirmation. So it's not something they disagree with.

Q. Well, we don't know that based on this document, do we? Level 3 says they will need to confirm.

A. It's -- we know --

MR. WILSON: Objection, form.

THE WITNESS: We know that it's based on certain assumptions they've made. So at this point in whatever these are, the negotiations, what -- however you want to characterize it, Move is sending a document that has laudatory statements -- sorry, Level 3 is sending a document that has laudatory statements about Move.

If this was something that they disagreed with, I can't imagine they would be sending it. So I -- I -- I really don't see -- I think the statement in my declaration is a fair statement.

BY MS. OSMAN:

Q. Okay. And you have no other

basis for believing that this Exhibit A was drafted by Level 3, other than the fact that Level 3 sent the E-mail? There's no other reason you -- you draw that conclusion?

A. I think that is -- is correct. And I'll -- I'll point out that even if Move drafted it, Level 3 is not refuting anything that's said in there.

Q. No. Okay. You can set that aside.

Okay. I'm going to hand you another exhibit. Dr. Jeffay, this is Exhibit 1001.

(Exhibit 1001-919 was marked for identification.)

BY MS. OSMAN:

Q. And it is in the IPR2024-00919 proceeding. It's the '772 patent.

Dr. Jeffay, do you recognize this document?

A. I do.

Q. Okay. I assume you've seen this

multiple times?

A. Yes.

MR. WILSON: Counsel, I think we've been going about an hour. Is this --

MS. OSMAN: I'm almost done. Can we just keep going? It won't be too much longer if you're okay, Dr. Jeffay.

THE WITNESS: I mean, if you're almost done, let's just keep going.

MS. OSMAN: I'm almost done.

You guys want to give me another ten minutes maybe? I won't be long.

THE WITNESS: Unless you guys are going to keel over dead or --

MS. OSMAN: If you want to --

THE WITNESS: -- the court reporter --

MS. OSMAN: -- take a break now we can.

THE WITNESS: It doesn't matter to me.

MS. OSMAN: You guys just want to break for ten and come back? Will that be better?

THE WITNESS: I think maybe to be -- we'll -- we'll --

MS. OSMAN: Okay.

THE WITNESS: We'll blame it on the court reporter.

MS. OSMAN: Okay. Sure.

VIDEO OPERATOR: Off the record at 2:25.

(Thereupon, a brief recess was taken.)

VIDEO OPERATOR: Back on the record at 2:41.

BY MS. OSMAN:

Q. Good afternoon, Dr. Jeffay.

How are you?

A. I'm well.

Q. Did you talk to your attorneys

during the break?

A. I did.

Q. Did you discuss anything related to this deposition?

A. Nope.

Q. Anything related to the substance of these -- of these IPRs?

A. Nope.

Q. Okay. Great.

Right before our break I'd handed you Exhibit 1001 in the -- in IPR2024-0019 [sic]. And this is a copy of the '772 patent; is that right?

A. That is correct.

Q. Okay. And you -- and you recognize this document, I assume?

A. Yes.

Q. Okay. If you'll please turn -- oh, and you -- and you agree -- I think you -- I think Mr. Sheng already asked you about the '156 and the '564 patents. Those have the identical specification as the '772

patent that's in front of you?

A. Yes, I believe that is correct.

Q. And the '234 patent you agree has a very similar specification; is that right?

A. Correct.

Q. Okay. If you'll turn, please, to column 6 --

A. Six.

Q. -- lines -- starting at line 38 in column 6.

A. Okay.

Q. Okay. So I'm directing your attention to the paragraph that starts with the words Figure 2a.

Can you take a look at that, please.

A. Okay.

Q. Let me know when you're done.

A. Okay.

Q. Okay. This paragraph is talking about content file 200; is that right?

A. Yes.

Q. And it describes content file 200 as -- as including uncompressed video and audio, correct?

A. That is one option that it may -- that it teaches that it may comprise.

Q. And it also teaches that content file 200 may be compressed; is that correct?

A. Correct.

Q. And it provides Examples of a compressed content file 200 include, but are not -- but are not limited to DivX, Windows Media Video 9 and a few other examples; is that right?

A. Yes, that is correct.

Q. What is DivX?

A. DivX --

Q. Why are you laughing, Dr. Jeffay?

A. DivX is -- there's a company called DivX that is not this DivX that is currently off suing everybody under the sun.

Q. Okay.

A. DivX at the time of this writing

was a company that made a particular -- I think -- I think they would view themselves as a codec company.

Q. Um-hmm. When the sentence says a compressed content file 200 includes, but is not limited to, DivX, what does the sentence mean by that?

A. You -- you read that fast. You're saying the sentence examples of a compressed content file 200 include, but are not limited to, DivX. I think if -- if that's correct, I think what it's saying is -- they're -- they're talking about a file that would have been compressed with a DivX technology codec.

Q. Okay. And is that an encoded video stream?

A. The result of that, yes. Well, it's not a stream. It's a -- it's a file.

Q. Okay. But it's an encoded video file?

A. Yes.

Q. Okay.

A. That would be considered an encoded video file.

Q. Likewise, Windows Media Video 9, the product of that would also be an encoded video file?

A. Correct.

Q. Okay. And then if you'll look down in this same column -- I just want you to skip paragraph -- the next paragraph, although you can read it if you'd like to, but I want to direct your attention to the paragraph starting at column 6, line 58, starts with the words Figure 2c is a schematic block diagram.

A. Okay.

Q. Do you see that?

And I just want to direct you to the first two sentences there. You don't have to read the whole paragraph.

A. Okay.

Q. Okay. Oh, and then actually, the

next -- the next sentence. It also says, As used herein, streamlet refers to any size portion of content file 200.

See that there?

A. I do.

Q. So content file 200 we just established could be an encoded video file. And then this paragraph says that stream 210 is divided into a plurality of streamlets. Each streamlet refers to any size portion of content file 200.

So content file 200 is then divided into a number of streamlets; is that right?

A. Well, no. I mean, I -- I -- I don't know how precise you're -- you're trying to be here, but I think what this says is that you -- you have a content file and a -- a streamlet is some portion of that or it represents a -- a portion of that.

Q. Okay. And then it's saying that the content file 200 can be divided into

these streamlets; is that right?

A. No, I don't think it says that.

Q. What's being divided into streamlets? Might be --

A. Well --

Q. It might be helpful to look at Figure 2. So there's 2a, b and c, just because that's what's being referred to here, if you want -- if -- if helpful.

A. Sure.

Yeah. I mean, all -- all of this is -- I mean, Figure 2 is -- is fine. I -- I think the idea is that you have a content file, it can be compressed or uncompressed, and a streamlet is a portion of that content file.

Q. Okay. So you agree, then, that the content file is divided into streamlets?

A. Some representation of the content file is going to be divided into streamlets.

Q. What do you mean by some

representation of the content file is divided into streamlets?

A. Just that I don't think this is saying that literally the content file is divided into streamlets.

Q. What might happen to the content file before it's divided into streamlets?

MR. WILSON: Objection, form.

THE WITNESS: What might happen to the content file.

What I'm saying is the -- the -- this teaching here doesn't require that you simply take the content file as it exists and chop it up into streamlets. I mean, each streamlet does have to represent a portion of the content file.

BY MS. OSMAN:

Q. So are you saying that you could have the content file, have some steps in between and then divide it up into streamlets?

A. No, that's -- no, I'm -- I'm not saying that you get any extra information or anything like that in it.

Q. I'm not sure I understand. Are you saying the content file is not divided into streamlets?

A. The way I view it is the content of the content file is divided into streamlets, such that ultimately each streamlet refers to some sized portion of the content file.

Q. How is that different from saying the content file is divided into streamlets?

A. Because it's implying that you -- when you say it that way, you're implying that a content file, as delivered by a -- what's the phrase they use -- publisher, that that content file can't be modified, can't be processed in any way.

Q. Okay. So first you might process the content file by compressing it and then divide it?

MR. WILSON: Objection, form.

THE WITNESS: Or you could divide it and then encode it.

BY MS. OSMAN:

Q. Could you compress it and then divide the content file?

A. I don't think that is the way -- I mean, I -- I don't know if that's excluded here, but -- but that's not, I think, the general approach that's taught in the patent.

Q. So it's your position that the '772 patent does not disclose compressing a content file and then dividing it into streamlets?

A. No, I -- I think a fair read of it is that is something that's contemplated in the spec --

Q. So it does disclose?

A. -- as -- as -- as -- as an option.

Q. Where is it contemplated in the specification as an option?

MR. WILSON: Objection, form.

THE WITNESS: In these two paragraphs you could -- it -- it's at least in these two paragraphs that we've been talking about in column 6.

BY MS. OSMAN:

Q. Okay. So the specification contemplates compressing a content file and then dividing it into streamlets?

A. That is something that is consistent with the teachings here in column 6.

Q. Okay. And would someone of skill in the art at the time of these alleged inventions have known how to compress a content file and then divide it into streamlets?

A. I guess it's going to be -- it's going to depend on the codec that they use.

Q. Would they -- would a person of skill in the art have known how to select a codec so that they could compress a content

file and then divide it into streamlets?

A. How could they select a codec.

Sure.

Q. Okay.

A. They would select a codec for which they -- the bit stream would be amenable to that -- the -- the format on disk for the stored file would be amenable to that.

Q. And would a skilled artisan have known how to segment a content file into streamlets so that a decoder could properly decode the received files?

MR. WILSON: Objection, form.

THE WITNESS: If they designed it that way. I mean, you -- you can't -- all these pieces have to work together. You -- you have to use a codec that's amenable to that. So -- so you can't -- you can't -- so the -- to -- so the general answer to your question is no, a skilled artisan

would not know how to -- to do that for an arbitrary codec.

They could design from scratch a system that did this using an -- an -- I can't say the word -- an amenable codac -- codec. I think that's right.

BY MS. OSMAN:

Q. So a person of ordinary skill reading this disclosure in the '772 patent wouldn't have known how to implement it?

A. No, that's -- no, I -- I disagree with that statement.

Q. I thought you just told me that a person of ordinary skill would not have known how to segment a content file or divide it into streamlets, such that a decoder would be able to properly decode the file.

A. I think the transcript's going to represent that's not what I said.

Q. Can you repeat what you said?

A. What I said is you -- that --

that you can't -- a person of skill would not know how to do this for an arbitrary codec. That you have to use a codec that is amenable to the segmentation process.

Q. But you would agree that a person of ordinary skill in the art would know how to select a codec to use the segmentation process; is that correct?

A. They would be aware of codecs that -- for which the segmentation process -- that would be amenable to segmenting the resulting file.

Q. Okay. That's all I have.

Thank you, Dr. Jeffay.

MR. WILSON: Short break?

MS. OSMAN: I tender the witness.

VIDEO OPERATOR: Off the record at 2:55.

(Thereupon, a brief recess was taken.)

VIDEO OPERATOR: Back on the

record at 3:30.

EXAMINATION BY COUNSEL FOR PATENT OWNER

BY MR. WILSON:

Q. Dr. Jeffay, if you turn to Exhibit 2141 in case number -- the 919 IPR.

Do you have that in front of you?

A. Let's see. The 919 -- yes, that's what's in front of me.

Q. Can you turn to paragraph 191.

A. Okay, I'm there.

Q. Do you recall you were -- you testified -- strike that.

You recall that you were asked about an Exhibit 2071 in this paragraph?

A. Yes.

Q. Do you recall you testified that you thought you submitted a claim chart charting claim 13 of the '156 patent in all four cases that we've been discussing today?

Do you recall that?

MR. SHENG: Objection, form.

THE WITNESS: Yes, that sounds

familiar.

BY MR. WILSON:

Q. I'm going to hand you what's previously been marked as Exhibit 2071 in the 919 IPR.

(Exhibit 2071-919, previously marked, was referred to.)

BY MR. WILSON:

Q. Take a look at that.

A. Oh, yes. Okay.

Q. Does this document refresh your recollection as to what claim chart you submitted in the 919 IPR case?

A. Yeah, it -- it refreshes my -- my recollection that certain of -- certain -- most of the exhibits had -- were the same across all the declarations, but some of them had the same number but were actually different documents. And this is an example of one.

So there was a 2071 in all the declarations, but they were different charts.

Q. I understand. And -- and what is this chart?

A. This is a claim chart for the '772 patent, which is the subject of the 919 IPR.

Q. And does it appear to chart the limitations of claim 1 of this patent?

MR. SHENG: Leading.

THE WITNESS: Yeah, I think it's obvious on its face -- well, that -- that's what it's titled. And that is, in fact, what it does.

BY MR. WILSON:

Q. Thank you.

I'm going to hand you what's previously been marked as 2071 in the 918 IPR now.

(Exhibit 2071-918, previously marked, was referred to.)

BY MR. WILSON:

Q. And does this document refresh your recollection as to what claim chart you

submitted in the 918 IPR?

MR. SHENG: Objection, form.

THE WITNESS: Yes. Again, this is the same exhibit number, but it's a different -- it's -- it's an -- it's a different document than -- or -- or this document was -- Exhibit 2071 was an exhibit to all the declarations. It was not the same actual document in -- in each declaration it was a unique document. And this is the 2071 for the declaration on the '564 patent.

BY MR. WILSON:

Q. And what is this Exhibit 2071? What does this show?

A. It's the claim chart for mapping -- showing how the Move products practice claim 8 of the '564 patent.

How -- it's -- it's a document showing how the Move products and services practiced claim 8 of the '564 patent.

Q. Okay. I'm going to hand you what's previously been marked as Exhibit 2071 in the 917 case.

(Exhibit 2071-917, previously marked, was referred to.)

BY MR. WILSON:

Q. I think we can skip that one.

I'm -- I'm going to hand you now what's previously been marked as Exhibit 2071 in the 940 case.

A. Okay.

(Exhibit 2071-940, previously marked, was referred to.)

BY MR. WILSON:

Q. And -- and same question, does this document refresh your recollection as to what claim chart you submitted in the 940 case?

A. Yes. I submitted -- Exhibit 2071 in the 940 case was a claim chart mapping claim 1 to the Move products and services.

Q. Thank you.

If you turn to -- back to your declaration, Exhibit 2141 in the 919 IPR case, if you turn to paragraph 217 now.

And once you're there, if you flip to page 141, second page of that paragraph, 217 --

A. Okay.

Q. -- do you recall you were asked about support for your statement that the ITC found that Sling TV practices claims of the '156 patent?

A. Yes.

Q. And in this paragraph you cite to Exhibit 1009, pages 101 to 112.

Do you see that?

A. Yes.

Q. I believe you have a copy of this handy, but if you turn now to Exhibit 1009 to those same pages starting at 101 and just let me know when you're there.

A. Okay. 101. Let me get rid of these.

101. I'm there.

Q. What is this section starting with the -- the numeral B on page 101? What is this section describing?

MR. SHENG: Objection, leading.

THE WITNESS: This --

MR. SHENG: The buildup to that -- this whole paragraph, the whole line of questioning here is leading.

THE WITNESS: This section here is the ALJ's analysis of the technical prong of the domestic industry for the '564 patent.

BY MR. WILSON:

Q. And if you turn to page 129 of Exhibit 1009 and let me know when you're there.

A. I'm there.

Q. And take a look through that section, beginning at page 129.

A. Okay.

Q. And I'll ask you this:

Does -- does that section refresh your recollection about support for your statement about the ITC's determination about Sling TV with regard to the '156 patent?

MR. SHENG: Same objection. It's leading.

THE WITNESS: Yeah, this is the ALJ's analysis. The section starting on page 129 is the ALJ's analysis of the technical prong for domestic industry for the '156 patent.

BY MR. WILSON:

Q. And what products is the ALJ talking about here?

A. He's talking about the DISH set-top boxes and the Sling Fire App.

Q. And does the ALJ reach a conclusion regarding the domestic industry as to those products as to the '156 patent?

MR. SHENG: Leading.

THE WITNESS: If we go to the

end of his analysis -- wrong one.

The ALJ has its conclusion on page 134, where he wrote, I find that each limitation of claim 1 of the '156 patent is met at least when DISH's customers use the DISH set-top boxes and the Sling Fire App in their intended and authorized manner and that DISH has satisfied the technical prong of the domestic industry requirement for claim 1 of the '156 patent.

BY MR. WILSON:

Q. Thank you, Dr. Jeffay.

MR. WILSON: Pass the witness.

FURTHER EXAMINATION BY COUNSEL FOR PETITIONER AYLO FREESITES LTD

BY MR. SHENG:

Q. Dr. Jeffay, do you have in front of you still Exhibit 2071 from the 919 IPR?

A. For the 919, yes.

Q. Well, let's -- let's actually use

the one that's most relevant to the Aylo petitioner, and that's the -- the -- the Exhibit 2171 for the 940 IPR.

Do you have that?

A. Yes. I have that right in front.

Q. Prior to counsel introducing this exhibit during this deposition, when was the last time you saw this document?

A. For the '234 I reviewed this probably last weekend.

Q. Did you review it during the break?

A. No.

Q. Did you review any of the claim charts that were shown to you by counsel -- prior to them being introduced in this deposition, were you shown those claim charts during the break?

A. No.

Q. The Exhibit 2071 for the '234 patent, can you pull that one out again.

A. Yes. I have it right in front.

Q. This claim chart maps the Move products and services to claim 1 of the '234 patent, correct?

A. Correct.

Q. You don't map the Move products and services to any other claim of the '234 patent, other than claim 1 of the '234 patent, correct?

A. That is correct.

Q. And you rely on this claim chart for the '234 patent to show that the Move product and services practice the limitations of the '234 patent, fair?

A. Yes.

Q. Claim 1 of the '234 patent does not recite the words "continuous playback," correct?

A. I believe that is correct.

Q. Is it your opinion that claim 1 of the '234 patent does not require continuous playback?

A. Claim 1 does not require, I

think, that -- continuous playback, I think that is correct.

MR. SHENG: Ms. Osman, do you have any questions?

MS. OSMAN: I do have a couple more questions.

MR. SHENG: Okay. Do you want to take a two-minute break and then we can switch the mics?

THE WITNESS: Sure.

MR. SHENG: Okay.

VIDEO OPERATOR: Okay. Off the record at 3:42.

(Thereupon, a brief recess was taken.)

VIDEO OPERATOR: Back on the record at 3:43.

FURTHER EXAMINATION BY COUNSEL FOR PETITIONERS fuboTV MEDIA, INC. AND YANKA INDUSTRIES, INC.

BY MS. OSMAN:

Q. Okay. Dr. Jeffay, I think you

have still in front of you Exhibit 2071 from IPR 00918; is that right?

A. I do.

Q. This is the claim chart for the '564 patent mapping claim 8; is that right?

A. Yes.

Q. This claim chart maps claim 8 of the '564 patent to the Move Media Player; is that right?

A. To what I'm characterizing is the Move system.

Q. Okay.

A. Yes.

Q. The Move system, yes?

A. Yes, claim 8.

Q. And it doesn't map any other claim, right?

A. That is correct.

Q. Did you provide any other claim charts mapping any claim to the Move -- any claim of the '564 patent to the Move Media Player?

A. Other than this exhibit, I don't believe so.

Q. Did you draft this exhibit?

A. Again, I don't recall the process by which these charts were developed because I've worked on so many charts mapping claims to Move's system.

Q. Before this redirect, when was the last time you saw this document?

A. For the '564 I couldn't tell you.

Q. Okay. So you don't remember the last time you saw this claim chart?

A. Correct.

Q. Okay. You can set that one aside.

I'd like you to pick up Exhibit 2071, this time for the 00919 IPR.

A. Okay.

Q. This is related to the '772 patent.

A. Okay.

Q. This is a claim chart mapping the

'772 patent claim 1 to Move's media player; is that correct?

A. Yes.

Q. Does it map any other claim of the '772 patent to Move's media player?

A. No.

Q. No. Are you aware of any other claim charts mapping any claim to Move's media player?

A. Certainly sitting here today, I don't recall any other chart.

Q. You didn't submit any other charts mapping any claim of the '772 patent to Move's media player?

A. Well, the report and the exhibits speak for themselves, but I don't recall submitting any other chart.

Q. Do you remember who created this chart?

A. Originally, no.

Q. Did you prepare this chart?

A. Again, I -- I've worked on so

many charts that I can't -- and this was done so long ago that I can't recollect the process by which this came into being.

Q. Before this redirect examination today, when's the last time you remember seeing this chart?

A. This one I also looked at, I think, over the weekend.

Q. Okay. Did you talk about the substance of your testimony during the break before redirect with your attorneys?

A. Did I talk about the substance during the break before redirect, just the -- just generally points about the ITC decision document and the fact that there were multiple 2071 exhibits.

Q. Can you tell me exactly what you talked about with regard to the ITC document.

MR. WILSON: Objection, privileged.

THE WITNESS: Do I answer?

MR. WILSON: No.

THE WITNESS: I'm sorry? Oh, okay.

BY MS. OSMAN:

Q. You're going to follow your attorney's guidance and not answer that question?

A. Well, he's -- he's not my attorney, but I will follow his guidance.

Q. You did discuss the substance of your testimony before redirect?

A. Not really the -- the substance, but the -- the -- as I say, just the -- the fact that there were multiple 2071 exhibits.

Q. Did you discuss corrections that you needed to make to your testimony before redirect?

MR. WILSON: Objection, privileged.

MS. OSMAN: He's already said that he discussed the ITC decision and that there were multiple 2071 exhibits. It's already in the record.

BY MS. OSMAN:

Q. Did you discuss corrections that needed to be made to your testimony?

MR. WILSON: Objection, privileged.

MR. SHENG: I -- I also just want to lodge an objection.

Jamie, you can't be telling Mr. Wilson what to be doing during this deposition.

MR. LYNN: There's two attorneys on your side.

MR. SHENG: I'm not telling Ms. Osman what kind of questions to ask --

MR. LYNN: There's a precedential opinion. We're allowed to speak to him about the substance --

(Crosstalk)

MS. REPORTER: I'm sorry, I can't hear you.

MR. LYNN: Sure.

There's a PTAB precedential decision that you're allowed to discuss the substance of the testimony with the witness before redirect.

MS. OSMAN: It doesn't say the substance is privileged. Doesn't say those discussions are privileged. It's during the deposition.

MR. LYNN: You're not -- you're not permitted to get into that.

MS. OSMAN: You know, if you want to give him a privilege objection, go ahead and do that.

MR. LYNN: And we have.

BY MS. OSMAN:

Q. Dr. Jeffay, did you discuss corrections that needed to be made to your testimony before your redirect?

MR. WILSON: Objection, privileged.

MS. OSMAN: Are you instructing him not to answer?

MR. WILSON: Yes.

BY MS. OSMAN:

Q. Dr. Jeffay, are you going to follow that instruction?

A. I guess I am.

Q. Okay. I have no further questions.

Thank you.

VIDEO OPERATOR: Anybody else?

MR. WILSON: No recross, no.

VIDEO OPERATOR: Okay. If that is everything, off the record on May 8th 2025 at 3:49.

(Thereupon, signature having not been waived, at 3:49 p.m. EDT the deposition concluded.)

CERTIFICATE OF DEPONENT

I, KEVIN JEFFAY, do hereby certify that I have read the foregoing pages, which contain a correct transcript of the answers given by me to the questions propounded to me herein, except for changes, if any, duly noted on the enclosed errata sheet.

_____

KEVIN JEFFAY

Sworn and subscribed to before me this ___ day of _____, 2025.

My commission expires: _____

Notary Public: _____

CASE: Aylo Freesites, Ltd, et al. v. DISH Technologies, L.L.C.

DEPOSITION OF: Kevin Jeffay, Ph.D.

TAKEN: May 8, 2025

PAGE	LINE	ERROR	CORRECTION	REASON

_____

KEVIN JEFFAY

CERTIFICATE OF NOTARY

I, MISTY KLAPPER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in shorthand and thereafter reduced to typewriting by me; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

_____

Misty Klapper, RMR, CSR, RPR, RSA
and Notary Public

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