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

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AYLO FREESITES, LTD and
fuboTV MEDIA, INC., and
YANKA INDUSTRIES, INC.,
Petitioners,
vs.
DISH TECHNOLOGIES, L.L.C.,
Patent Owner.

_____

IPR2024-00043 (Patent 11,677,798)
IPR2024-00044 (Patent 11,470,138)
IPR2024-00045 (Patent 10,469,544)
IPR2024-00046 (Patent 10,951,680)
IPR202400146 (Patent 10,469,555)
IPR202400918 (Patent 9,407,564)

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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.

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1 C O N T E N T S

WITNESS:	EXAMINATION BY:	PAGE:
Kevin Jeffay, Ph.D.	Mr. Sheng	9, 256
	Ms. Osman	153, 259
	Mr. Wilson	248

9 E X H I B I T S

10 JEFFAY EXHIBITS:

NO.:	DESCRIPTION:	PAGE:
Exhibit 1	RFC 1945, Hypertext Transfer Protocol, HTTP/1.0	78
Exhibit 2	U.S. Patent No. 11,991,234	138

1 E X H I B I T S (CONTINUED)

2 PREVIOUSLY MARKED EXHIBITS REFERRED TO:

NO.:	DESCRIPTION:	PAGE:
Exhibit 1001-919	U.S. Patent No. 8,868,772	231
Exhibit fubo 1004	International Publication No. WO 02/49343	56
Exhibit 1009	Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond, 9/9/22	176
Exhibit 2022	Technical Overview of Move Networks Implementation	201
Exhibit 2048	Article, Move Networks and the Quality Solution, 5/11/21	193
Exhibit 2071-917	Claim chart (917 IPR)	252
Exhibit 2071-918	Claim chart (918 IPR)	250
Exhibit 2071-919	Claim chart (919 IPR)	249
Exhibit 2071-940	Claim chart (940 IPR)	252

22

1 E X H I B I T S (CONTINUED)

2 PREVIOUSLY MARKED EXHIBITS REFERRED TO (CONTINUED):

NO.:	DESCRIPTION:	PAGE:
Exhibit 2130	Letter, Lepard to Edwards dated 6/22/07, Re: Non-binding indication of interest, with attachment	220
Exhibit 2137-940	RFC 2068, Hypertext Transfer Protocol, HTTP/1.1	82
Exhibit 2141-917	Declaration of Dr. Kevin Jeffay in Support of Patent Response (917 IPR)	154
Exhibit 2141-918	Declaration of Dr. Kevin Jeffay in Support of Patent Response (918 IPR)	166
Exhibit 2141-919	Declaration of Dr. Kevin Jeffay in Support of Patent Response (919 IPR)	169

1 E X H I B I T S (CONTINUED)

2 PREVIOUSLY MARKED EXHIBITS REFERRED TO (CONTINUED):

3 NO.:	DESCRIPTION:	PAGE:
4 Exhibit 2141-940	Declaration of Dr. Kevin Jeffay in Support of Patent Owner Response (940 IPR)	10

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1 P R O C E E D I N G S

2 VIDEO OPERATOR: Good morning.

3 We are going on the record at

4 9:08 a.m. on Thursday, May 8th 2025

5 for the stenographically reported and

6 videotaped deposition of Dr. Kevin

7 Jeffay in the action Aylo Freesites,

8 LTD and fuboTV Media, Inc. versus DISH

9 Technologies.

10 My name is David Campbell, the

11 videographer. And Misty Klapper is

12 the court reporter. We are with

13 Hudson Court Reporting.

14 This deposition is being held

15 at Baker Botts, located at 700 K

16 Street, Northwest, Washington, D.C.

17 20001.

18 All counsel will be noted on

19 the stenographic record.

20 And with that, if the court

21 reporter will please swear in the

22 witness, we can proceed.

1 MS. REPORTER: One moment.
2 KEVIN JEFFAY, Ph.D.,
3 The witness herein, called for
4 examination by the Petitioners, having been
5 duly sworn, was examined and testified as
6 follows:
7 EXAMINATION BY COUNSEL FOR PETITIONERS
8 BY MR. SHENG:
9 Q. Good morning, Doctor. Could
10 you --
11 A. Good morning.
12 Q. Could you please state your name
13 for the record.
14 A. My name is Kevin Jeffay.
15 Q. And you've been deposed before,
16 correct?
17 A. Yes.
18 Q. In fact, I deposed you about
19 seven months ago.
20 Do you remember that?
21 A. In this very room, I think.
22 Q. Okay. So the same rules apply.

1 If you have any questions, let me know. Let
2 your counsel know.
3 Okay?
4 A. Okay.
5 MR. SHENG: These are -- so
6 these are premarked.
7 THE WITNESS: Thank you.
8 BY MR. SHENG:
9 Q. So, Doctor, this is Exhibit 2141.
10 Do you recognize the document
11 that I handed you?
12 A. Yes.
13 (Exhibit 2141-940, previously
14 marked, was referred to.)
15 BY MR. SHENG:
16 Q. And this is at least one of the
17 expert declarations you submitted in
18 connection with the IPRs at issue today; is
19 that correct?
20 A. Yes.
21 Q. And if you look at the bottom
22 right-hand corner of the exhibit I just

1 handed you, you see that this document is in
2 connection with IPR2024-00940.
3 Do you see that?
4 A. I see that.
5 Q. If I refer to this declaration by
6 its last three digits and call it the 940
7 IP -- scratch that. Let me -- let me start
8 over.
9 If I refer to the IPR by its last
10 three digits and call it the 940 IPR, will
11 you understand what I'm referring to?
12 A. I will try.
13 Q. The petitioner in the 940 IPR is
14 Aylo Freesites, LTD.
15 Agree?
16 A. That's my understanding.
17 Q. The 940 IPR challenges Dish's
18 U.S. Patent Number 11,991,234.
19 Agree?
20 A. Yes, that's my understanding.
21 Q. And if I refer to that patent as
22 the '234 patent, will you understand what I'm

1 referring to?
2 A. Yes. That -- that I can do.
3 Q. Please turn to paragraph 3 of
4 Exhibit 2 -- 2141 that's in front of you.
5 A. Okay.
6 Q. In paragraph 3 you identify the
7 ABR patents that are at issue in these I --
8 IPRs.
9 Do you see that?
10 A. Yes.
11 Q. ABR stands for adaptive bitrate;
12 is that correct?
13 A. Yes. That's how it's being used
14 in this matter, as I understand it.
15 Q. In paragraph 3 you identify four
16 IPRs that are at issue here today, each with
17 their corresponding challenged patent.
18 Do you see that?
19 A. Yes.
20 Q. And the 940 IPR with its
21 corresponding '234 patent is listed there.
22 Do you see that?

1 A. Yes.
2 Q. In addition to submitting an
3 expert declaration in the 940 IPR, you
4 submitted expert declarations in each of the
5 other IPRs you identified in paragraph 3 of
6 Exhibit 2141, correct?
7 A. I'm sorry, what was that exhibit?
8 That's this declaration?
9 Q. Yes.
10 A. Yes, I submitted declarations
11 in -- in each of these four IPRs.
12 Q. Is it true that you submitted
13 substantively identical expert declarations
14 in each of the four IPRs listed in
15 paragraph 3 of Exhibit 2141?
16 A. That's my understanding.
17 Q. So the expert declaration that is
18 marked as Exhibit 2141 for the 940 IPR is the
19 same expert declaration you submitted in each
20 of the other IPRs at issue today.
21 Agree?
22 A. In -- in terms of the -- the

1 numbered pages in here, I believe that is
2 correct.
3 Q. And, again, the petitioner in the
4 940 IPR is Aylo Freesites, LTD.
5 Do you understand that?
6 A. In the 940, yes.
7 Q. So I represent Aylo today. I'll
8 be asking you questions primarily directed to
9 the expert declaration that relates to the
10 '234 patent.
11 Do you understand that?
12 A. I do now.
13 Q. And then counsel for fubo and
14 Yanka Industries -- scratch that.
15 fubo Media -- fuboTV Media and
16 Yanka Industries are the petitioners in the
17 other three IPRs.
18 Do you understand that?
19 A. Yes.
20 Q. So when I'm done with --
21 MS. REPORTER: Can you slow
22 down?

1 MR. SHENG: Sure.
2 BY MR. SHENG:
3 Q. So when I'm done with my direct
4 examination, I will turn it over to counsel
5 for fubo and Yanka and she'll ask you
6 questions related to the other IPRs.
7 Okay?
8 MR. WILSON: Objection, form.
9 THE WITNESS: I guess I can't
10 say it's not okay.
11 BY MR. SHENG:
12 Q. Fair enough.
13 You agree that the ABR patents
14 are all related, correct?
15 A. Yes.
16 Q. Can you turn to paragraph 5 of
17 your expert declaration.
18 A. Okay.
19 Q. You agree that the specifications
20 of the ABR patents are the same, with the
21 exception of the '234 patent, which includes
22 certain additional disclosures as a

1 continuation-in-part application, correct?
2 A. Yes, I agree.
3 Q. According to the last sentence of
4 paragraph 5 of your declaration, you
5 addressed claim elements and limitations that
6 are recited across each of the ABR patents by
7 citing to the '564 patent, correct?
8 A. Yes.
9 Q. And you also cite in your expert
10 declaration and petition -- strike that.
11 And you also cite in your expert
12 declaration the petition and exhibits in the
13 918 IPR, unless otherwise noted; is that
14 correct?
15 A. Yes. That was the intent.
16 Q. So in the interest of time, for
17 the claim elements and limitations that are
18 the same across each of the ABR patents, can
19 we agree that your testimony today applies
20 equally to each patent, unless you note
21 otherwise?
22 A. Sure. That works.

1 Q. Can you describe generally what
2 your assignment was with respect to the IPRs
3 at issue today.
4 A. Well, to review the petitions,
5 the declaration of Dr. Houh that was
6 submitted in support of those petitions and
7 the prior art that was cited in those
8 documents, and to form -- to share my
9 opinions with DISH's counsel as to the merits
10 of the arguments that were made in those
11 documents.
12 Q. What did you do to prepare for
13 today's deposition?
14 A. I reviewed the declaration and
15 the prior art, the demonstratives that I
16 developed and then had discussions with
17 DISH's counsel.
18 Q. Did you meet with anyone in
19 preparation for today's deposition?
20 A. Well, I -- as I said, I had
21 discussions with DISH's counsel, so I met
22 with them virtually, but those were the only

1 folks that I met with.
2 Q. How long did you meet with
3 counsel virtually?
4 A. Oh, I don't know. We had two
5 extended Zoom calls in total. Maybe ten
6 hours.
7 Q. Ten hours total?
8 A. Yeah, I think so.
9 Q. And you mentioned that you
10 reviewed your declaration.
11 Do you recall which declaration
12 you reviewed?
13 A. No.
14 Q. You reviewed your declaration?
15 A. I -- I -- yes. I reviewed what
16 is -- the way I view it, as the -- the
17 numbered pages of this document. That's --
18 that's what I reviewed.
19 Q. Did you review -- did you review
20 one declaration or all four declarations?
21 A. I just reviewed one.
22 Q. Do you recall which one?

1 A. No.
2 Q. And the reason you reviewed one
3 and not all four is because they are
4 substantively identical; is that fair?
5 A. Yes.
6 Q. How many times did you read your
7 declaration cover to cover in preparation for
8 today's deposition?
9 A. Well, that's usually not the way
10 I work, but probably in terms of actually
11 reading it from cover to cover, maybe twice.
12 Q. You testified that you also
13 reviewed the declaration of Dr. Houh; is that
14 correct?
15 A. Yes.
16 Q. How many times did you review the
17 declaration of Dr. Houh cover to cover in
18 preparation for today's deposition?
19 MR. WILSON: Objection, form.
20 THE WITNESS: I did not review
21 it cover to cover in preparation for
22 today's deposition.

1 BY MR. SHENG:
2 Q. You reviewed certain portions of
3 Dr. Houh's declaration; is that correct?
4 A. Yes.
5 Q. Do you recall which portions you
6 reviewed?
7 A. Not really. I mean, I was
8 looking at it online, I mean, as in -- in
9 soft copy, so I wasn't paying attention to
10 the table of contents.
11 Q. Did counsel tell you which
12 portions to review or did you decide on your
13 own which portions to review?
14 A. Counsel gave me no instruction
15 with regard to Dr. Houh's declaration.
16 Q. Okay. So which -- which
17 portions -- what -- and you don't recall
18 which portions of Dr. Houh's declaration you
19 reviewed?
20 MR. WILSON: Objection, form.
21 THE WITNESS: Well, I'm -- in
22 terms of its table of contents, no.

1 BY MR. SHENG:
2 Q. Do you remember the subject
3 matter?
4 A. Yes.
5 Q. What was that?
6 A. I was reviewing the arguments
7 that -- well, the alleged arguments that he
8 made regarding the continuous playback
9 limitations, as well as the arranging
10 streamlets limitations and the multiple TCP
11 connections limitations.
12 Q. If counsel gave you no
13 instruction with regard to Dr. Houh's
14 declaration, why did you choose to review
15 those specific portions of the declaration in
16 preparation for today's deposition?
17 A. Because I make statements in here
18 about what Dr. Houh opined in his declaration
19 and I wanted to go back and review those
20 sections of his declaration.
21 Q. In preparing for today's
22 deposition, did you review the ABR patents?

1 A. Yes.
2 Q. Which ones?
3 A. Primarily the '234 and the '564.
4 Q. How many times did you read the
5 '234 patent cover to cover in preparation for
6 today's deposition?
7 A. I -- I didn't read it cover to
8 cover.
9 Q. Why not?
10 A. Because I read it several times.
11 And as I say, it's substantially similar to
12 the other patents.
13 Q. Can you describe for me some of
14 the differences between the '234 patent and
15 the '564 patent?
16 A. As I recall, the '234 patent, is
17 that the one that has virtual timelines in
18 it? I mean, I'd have to look at the patents
19 to refresh my recollection, but that's -- I
20 think that's the case.
21 Q. Sitting here right now, you
22 cannot tell me whether or not the '234 patent

1 has virtual timelines in it?
2 A. I mean, I -- I -- I did not
3 memorize the '234 patent, so I'm just giving
4 you my best -- my best recollection, sitting
5 here today.
6 Q. Did counsel give you instruction
7 as to whether or not -- well, strike that.
8 Did counsel give you any
9 instruction with regard to the '234 patent?
10 A. I'm not sure what you're asking.
11 Q. Did counsel give you any
12 instruction as to which portions of the '234
13 patent you should review, yes or no?
14 A. No.
15 Q. Do you recall which portions of
16 the '234 patent you reviewed?
17 A. I mean, if you -- if you're
18 interested in what I reviewed, if you give me
19 a copy of the patent, I'll show you what I
20 reviewed.
21 Q. You're aware that both the Aylo
22 petitioner and the fubo/Yanka petitioners

1 engaged Dr. Henry Houh to serve as their
2 expert in their respective IPRs, correct?
3 A. I mean, I have some understanding
4 of that.
5 Q. In preparation for today's
6 deposition, did you review the transcript of
7 Dr. Houh's deposition that took place in
8 February of 2025?
9 A. No.
10 Q. Have you ever reviewed that
11 deposition transcript, do you recall?
12 A. Yes.
13 Q. How much time did you spend
14 drafting the declaration that's in front of
15 you that's marked Exhibit 2141?
16 A. In terms of actually drafting it,
17 I don't -- I don't think I can give you a --
18 a good estimate. That's -- that's not a
19 number that I -- or that's not a metric that
20 I keep in my head.
21 Q. Is it written down somewhere?
22 A. The only place it would be

1 memorialized is on the timesheet that I use
2 for billing.
3 Q. Did you draft the expert
4 declaration yourself?
5 A. I started the declaration. I
6 mean, and I'm sure you'll recognize there's
7 lots of various parts of this that come from
8 other declarations that I've written.
9 And then I iterated with DISH's
10 counsel.
11 Q. When you say there are various
12 parts that came from other declarations, what
13 do you mean?
14 A. Well, the background section, the
15 section on level of skill. I think those are
16 essentially the same as in previous
17 declarations that I've submitted in matters
18 related to the ABR -- IPR matters related to
19 the ABR patents.
20 Q. Did counsel draft any portions of
21 your expert declaration?
22 A. Certainly the legal standards

1 section I did not draft.
2 Q. Anything else?
3 A. That's the main one that I can
4 think of.
5 Q. Can you describe for me your
6 drafting process? And what I'm getting at is
7 did you draft certain portions in the first
8 instance, then have counsel review, or did
9 counsel draft it in the first instance, just
10 generally like that?
11 A. I would -- as I say, I would
12 draft sections. I would give it to them for
13 comments. They would edit. They would
14 expand. I would review -- I would review the
15 stuff they had expanded. They would review
16 the stuff I had expanded on. And that
17 process continued for several weeks and
18 resulted in the document we have here.
19 Q. How many times did you review the
20 draft of your expert declaration cover to
21 cover before signing it?
22 A. I -- I -- that's not a metric I

1 have in my head.
2 Q. At least once?
3 A. Sure.
4 Q. Twice?
5 A. I mean, I couldn't say for
6 certainty.
7 Q. Before you signed it, you
8 confirmed that everything in your expert
9 declaration was, to the best of your
10 knowledge, accurate?
11 A. At the time I signed it, yes.
12 Q. As you sit here today, are you
13 aware of anything in the expert declaration
14 in front of you that needs to be corrected?
15 A. There are some pretty obvious
16 typos that are in here and a -- one footnote
17 that's in here that's really related to
18 material that got deleted from the final
19 version of the report. So it's kind of a
20 dangling footnote.
21 Q. Which footnote is that?
22 A. I want to say it's footnote --

1 footnote 14 on page 102. So most of the --
2 there -- there are a few typos in this
3 section. So we can talk about that and then
4 I'd like to point out another one.
5 So footnote 14 on page 102 was
6 referencing a version of the figure that is
7 on 102 that was reworked. And so this
8 footnote really no longer applies. It --
9 it's -- it was referencing a -- a different
10 example that -- that I changed.
11 So as you'll notice, it's -- it's
12 referencing a frame B-1. And, as you can
13 see, there -- there is no B-1 in this -- in
14 this example.
15 So that -- that footnote can
16 just -- there's nothing wrong with it. It
17 just doesn't make any sense. It can be
18 deleted.
19 Q. Okay. I believe that this
20 footnote appears in the section of your
21 report related to one of fubo's patents, so
22 I will let fubo's counsel address that

1 footnote.

2 Other than that footnote, are you

3 aware of any other corrections that you need

4 to make to your expert declaration?

5 A. Yeah. There is sort of an

6 obvious typo on the previous two pages,

7 page 100 in paragraph 164. The -- the first

8 sentence says, Using the MPEG format rather

9 than H.261 results in a similar problem that

10 will like -- that will likewise not result in

11 mistracking.

12 And the "not" is in error.

13 Q. Okay. And I think this is

14 referring to a different patent --

15 A. Yep.

16 Q. -- so I'll let my colleague

17 address that.

18 Other than those two, I guess,

19 corrections, are you aware of anything that

20 you wish to correct today?

21 A. I think those are the two -- I

22 don't know how to describe them. Those --

1 those are two that struck me going through
2 this again.
3 Q. Did counsel point those errors
4 out to you or did you discover those errors
5 on your own?
6 A. I discovered them on my own.
7 Q. And this was while you were
8 preparing for today's deposition?
9 A. Correct.
10 Q. So prior to today's -- prior to
11 preparing for today's deposition, you were
12 not aware of those errors that you
13 identified?
14 A. Correct.
15 Q. Can you turn to paragraph 36 of
16 your expert declaration.
17 A. Okay.
18 Q. In paragraph 36 you state, The
19 challenged patents are directed to
20 alleviating the problems of reliability,
21 efficiency and latency when video streaming
22 over packet switched networks such as the

1 internet.

2 Do you see that?

3 A. I do.

4 Q. And you quote language from

5 Exhibit 1001; is that correct?

6 A. Yes.

7 Q. That's Exhibit 1001 from the

8 918 IPR, correct?

9 A. I don't know.

10 Q. Well, we established earlier that

11 in Exhibit 2141 you'd be citing to exhibits

12 from the 918 IPR.

13 Do you remember that?

14 A. Yes.

15 Q. So if I represented to you that

16 Exhibit 1001 from the 918 IPR is the '564

17 patent, would you have any reason to disagree

18 with that?

19 A. No.

20 Q. And can -- and if we need to take

21 a break, I'm happy to take a break, but can

22 we establish -- can we agree that

1 Exhibit 1001 that's cited in paragraph 36 of
2 your expert declaration is the '564 patent?
3 A. If -- you know, when -- for most
4 of the time that I was working on this draft,
5 these were actual patent cites. I mean, it
6 said '564 patent and then at some point they
7 got turned into exhibit numbers. So, I mean,
8 that sounds right, and if you'll represent
9 that Exhibit 1001 is the '564 patent, then
10 I'm happy to accept that.
11 Q. Okay.
12 MR. SHENG: Counsel, any
13 objection?
14 MR. WILSON: No objection.
15 MR. SHENG: Okay.
16 BY MR. SHENG:
17 Q. Earlier you testified that the
18 specifications of the ABR patents are the
19 same with the exception of the '234 patent.
20 Do you remember that?
21 A. Yes.
22 Q. Is it a problem that you are

1 citing the '564 patent to opine on what the
2 '234 patent is directed to?
3 MR. WILSON: Objection, form.
4 THE WITNESS: Is it a problem.
5 I don't think it's a problem.
6 BY MR. SHENG:
7 Q. Do you think it's proper to cite
8 the '564 patent to opine on what the '234
9 patent is directed to?
10 MR. WILSON: Objection, form.
11 THE WITNESS: If you're asking
12 me a legal question, I -- I have no
13 idea what the answer is.
14 I would say given the
15 relationship between these patents, I
16 think -- and -- and the high-level
17 nature of the statement that's being
18 made here, I think this is a -- a
19 perfectly fine -- this
20 characterization would apply equally
21 to the '234 patent.
22

1 BY MR. SHENG:
2 Q. But the '234 patent is different
3 than the '564 patent, right?
4 A. In terms -- I mean, sure, it
5 has -- it has -- it's -- it's not -- it --
6 it's not -- does not have an identical
7 specification. But in terms of what it's
8 generally directed to, this is a fair
9 characterization of that.
10 Q. Is it a fair characterization
11 because the language you quote from the '564
12 patent is also found in the '234 patent?
13 A. I don't recall if this exact
14 language is in the '234 patent or not, but
15 nonetheless, I think a fair read of the '234
16 patent would show that -- as I say, as a
17 general matter, this is what it is directed
18 to.
19 Q. Does it have anything to do with
20 the fact that the two patents are related?
21 A. Does what have anything to do
22 with?

1 Q. The fact that you're citing the
2 '564 patent to describe what the '234 patent
3 is related to -- is directed to.
4 A. Yes. It's due in part to the
5 fact that these patents are related.
6 Q. Is it also due in part to the
7 fact that the language is substantially
8 similar between the two patents?
9 A. Much of the specification is --
10 in the two patents is substantially similar.
11 Q. On page 14 of your declaration
12 you have a section titled Section III, The
13 Challenged Patents.
14 Do you see that?
15 A. Yes.
16 Q. What was the general purpose of
17 Section III?
18 A. Just to give an overview of the
19 challenged patents.
20 Q. Section III of your expert
21 declaration spans pages 14 to 22.
22 Do you see that?

1 A. That appears to be correct.
2 Q. And throughout Section III of
3 your expert declaration you cite many times
4 to Exhibit 1001 from the 918 IPR; is that
5 fair?
6 A. 918 -- yes, that is fair.
7 Q. And, again, Exhibit 1001 from the
8 918 IPR is the '564 patent, correct?
9 A. Correct.
10 Q. And we established that the '564
11 patent and the '234 patent have different
12 specifications, correct?
13 A. They have substantially similar
14 specifications, but they're not identical.
15 Q. You cite the '564 patent
16 throughout Section III of your expert
17 declaration and your opinions in Section III
18 are supposed to be applicable to the '234
19 patent, correct?
20 A. Correct.
21 Q. So I'm still trying to understand
22 why it's appropriate to cite the '564 patent

1 when discussing the '234 patent.
2 Can you help me there, Doctor?
3 MR. WILSON: Objection, form.
4 THE WITNESS: Because what I'm
5 citing here -- so the -- the concepts
6 and the -- the points that are being
7 made here apply to all of the
8 challenged patents, including the
9 '234.
10 BY MR. SHENG:
11 Q. But why? I'm trying to
12 understand why.
13 A. Because -- because what I'm
14 discussing in here is these concepts are in
15 the '234 patent.
16 Q. When you say the concepts are in
17 the '234 patent, do you mean that the
18 concepts are described in the '234 patent?
19 A. I -- I mean, the disclosures of
20 the '234 patents teach the points that are
21 enumerated in this section.
22 Q. In paragraph 36 in the sentence

1 that carries over to page 15 there's a
2 sentence that begins, The challenged patents
3 describe these problems and needs in the art.
4 Do you see that?
5 A. Sorry. I -- I -- I see that.
6 That doesn't -- yeah, the paragraph carries
7 over, not the sentence.
8 Q. Apologies. The paragraph --
9 A. Yeah.
10 Q. -- carries over and you see the
11 sentence that begins, The challenged patents
12 describe these problems and needs in the art.
13 A. Yes.
14 Q. Is that --
15 A. Yes, I see that. Yes.
16 Q. Do all four of the ABR patents
17 relate to the same problems and needs in the
18 art?
19 A. They all describe the problems
20 and the needs that I -- that I have
21 enumerated in -- in the first half of
22 paragraph 36.

1 Q. Do all the challenged patents
2 describe the same solutions to overcome the
3 problems and needs in the art?
4 A. I mean, the specifications, as I
5 say, are substantially similar. And so to
6 the extent they don't describe exactly the
7 same solutions, they describe substantially
8 similar solutions.
9 Q. Are all the challenged patents
10 primarily focused on the same subject matter?
11 A. Well, three of them, as I say,
12 are essentially the -- the -- the same. They
13 have the same specification. So those three
14 do.
15 And the '234 is -- does have
16 additional disclosures that are not in the
17 other patents.
18 Q. So the ABR patents that have the
19 same specification are directed to the same
20 solutions, correct?
21 A. In terms of what's disclosed in
22 the specification, yes.

1 Q. In your opinion, though, even the
2 '234 patent is directed to the same solution,
3 correct?
4 MR. WILSON: Objection, form.
5 THE WITNESS: For what problem?
6 BY MR. SHENG:
7 Q. All the problems that are
8 described in the patents.
9 MR. WILSON: Objection, form.
10 THE WITNESS: For what I have
11 described here in paragraph 36, that
12 is correct. The specification of the
13 '234 contemplates the same -- has
14 effectively the same disclosures for
15 solutions to the problems that are
16 articulated in the first half of
17 paragraph 36.
18 BY MR. SHENG:
19 Q. Can we agree that for the three
20 patents that have identical specifications,
21 they are directed to the same problem and
22 disclose the same solutions to overcoming

1 those problems?
2 A. You -- I mean, I -- I will agree
3 only with respect to the specification.
4 Q. What do you mean by that?
5 A. Just what I said.
6 Q. I don't -- I don't understand
7 what you said.
8 A. I would agree that the
9 specifications of the three patents that are
10 identical, because they are identical, they
11 contain the same disclosures and, therefore,
12 those specifications are directed to the same
13 problems and -- and describe the same
14 solutions.
15 Q. Excellent.
16 In paragraph -- can we turn to
17 paragraph 46, please.
18 A. Okay.
19 Q. In paragraph 46, about halfway
20 through the paragraph, you identify six
21 techniques of the challenged patents that are
22 directed to achieving the stated goal of

1 continuous playback.
2 Do you see that?
3 A. Yes. And I'll mention here and
4 in a couple pages later, as I'm sure you've
5 observed, apparently I've -- I've only listed
6 five and -- and this -- this repeats in a
7 couple pages.
8 Q. Okay.
9 A. But, yes, I see what you're -- I
10 see what you're pointing at.
11 Q. So that's another, I guess, typo
12 in your report that you need to correct?
13 A. I -- I -- I -- I think -- I don't
14 know. It -- it -- it -- it is a typo. I
15 don't know this really rises to the level
16 warranting correction. I mean, when you
17 number things 1 through 5, I think it's clear
18 you're only pointing to no fewer than five
19 techniques.
20 Q. That's fair.
21 The first technique you list is
22 switching between different bitrate

1 streamlets without filling a buffer first.
2 Do you see that?
3 A. I do.
4 Q. What do you mean by "without
5 filling a buffer"?
6 A. Well, this is going to be
7 important when it comes to talking about the
8 prior art. But the point is that given the
9 streamlet architecture in the ABR patents,
10 you can immediately play a streamlet upon
11 receipt.
12 So when you switch between
13 different bitrates, when you get the first
14 streamlet -- excuse me -- at the new bitrate
15 and code it at the new bitrate, you can play
16 it immediately.
17 So there -- there -- there need
18 not be any delay between -- in playout as a
19 result of switching bitrates.
20 Q. So are you saying that if we
21 eliminated the buffer from DISH's invention,
22 the invention could still achieve continuous

1 playback upon a rate switch?
2 MR. WILSON: Objection, form.
3 THE WITNESS: No. I mean, I --
4 I haven't -- I haven't considered
5 that -- that issue. But this is not
6 talking about a buffering requirement.
7 It's really talking about a playout
8 feature. And that is that you can
9 immediately play out streamlets at a
10 new bitrate as soon as possible.
11 There's no -- with -- without any
12 delay.
13 So -- and in particular,
14 without any delay -- excuse me --
15 without any delay incurred by waiting
16 for a buffer to fill.
17 BY MR. SHENG:
18 Q. Would the buffer fill with one
19 streamlet in the scenario you're talking
20 about with respect to the fast start
21 capability?
22 MR. WILSON: Objection, form.

1 THE WITNESS: It -- it -- it --
2 that's going to depend on the size of
3 the buffer that -- that you've chosen.
4 But the point here is that this
5 ability to play out immediately is not
6 a function of buffering. It has
7 nothing to do with buffering.
8 You can play out immediately
9 once you have the streamlet at the new
10 bitrate. So the time which you play
11 it out is not tied to buffer
12 occupancy.
13 BY MR. SHENG:
14 Q. Okay. So I just want to make
15 sure I understand.
16 When the system receives that
17 first streamlet, would that first streamlet
18 be placed in the buffer or would it play out
19 right away?
20 MR. WILSON: Objection, form.
21 THE WITNESS: You have the
22 capability of doing either. And which

1 one you actually use is going to be a
2 function of the state of the media
3 player.
4 BY MR. SHENG:
5 Q. What do you mean "the state of
6 the media player"?
7 A. How much, how full, what the
8 buffer occupancy of the media player is when
9 the streamlet at the new bitrate arrives.
10 Q. So it's possible that when the
11 streamlet at the new bitrate -- when it
12 arrives, it's possible that that streamlet
13 will play immediately and forego being placed
14 into the buffer, correct?
15 MR. WILSON: Objection, form.
16 THE WITNESS: If there was
17 nothing in the buffer when the
18 streamlet arrives, that is correct.
19 BY MR. SHENG:
20 Q. When you say nothing in the
21 buffer, do you mean that the buffer's not
22 full -- at full capacity?

1 A. No. I mean, yes, but that's not
2 what I meant. I mean, that -- that is a true
3 statement. It's not at full capacity.
4 But the point is that the ABR
5 patents will play all streamlets in the order
6 in which they are to be played corresponding
7 to the original source media.
8 So if a streamlet arrives and
9 there are other streamlets in the buffer, the
10 new -- the streamlet at the new bitrate will
11 take its place behind the existing streamlets
12 and play in the playout order that it's
13 supposed to.
14 However, if the buffer -- if
15 you're -- if you're going to a lower bitrate,
16 for example, because you couldn't sustain
17 playout at a higher bitrate, it could be the
18 case that the buffer -- because the buffer
19 had been emptying faster than it was being
20 replenished, if the new streamlet arrives and
21 there's nothing -- and it's -- and in
22 temporal order, it's ready to be played right

1 now, it will be played right now, even though
2 there's nothing else in the buffer. You
3 don't have to wait for the buffer to fill in
4 order to play the streamlet at the new
5 bitrate.
6 Q. So I think I understand what
7 you're saying. Let's say the buffer's empty.
8 A. Um-hmm.
9 Q. You receive a streamlet at the
10 higher rate. DISH's invention would enable
11 that new streamlet to begin playing
12 immediately, correct?
13 A. In my example I was talking about
14 a lower rate, not a higher rate.
15 And the point is that it can be
16 played in -- it will be played in order, in
17 sequence order, and if playing in sequence
18 order means that you're playing it when the
19 buffer has -- is -- is less than completely
20 full, including the case where the buffer is
21 empty, the point is it will play -- it will
22 play in the correct sequence as soon as

1 possible.
2 The -- the -- the point here is
3 that when the streamlet will be played out
4 has nothing to do with whether the buffer is
5 full or empty. It just has to do with --
6 it -- it will be played out at the -- at
7 the -- at the -- at the time at which it was
8 meant to be played out.
9 Q. I guess I'm just trying to
10 understand what's within, I guess, the scope
11 of -- of DISH's invention here. And I'm --
12 and you -- you made a statement about being
13 able to play without filling a buffer.
14 So the scenario that I'm thinking
15 of is a user watching video at a certain
16 bitrate. And let's assume the buffer is
17 empty.
18 Okay?
19 A. Okay.
20 Q. And the network bandwidth
21 increases to the point where you can switch
22 to a higher bitrate. And so let's say DISH's

1 invention switches to the higher bitrate.
2 The buffer is empty.
3 Would that first streamlet play
4 immediately, such that there is continuous
5 playback?
6 MR. WILSON: Objection, form.
7 THE WITNESS: Yeah, your --
8 your example is broken. I -- I don't
9 think that scenario -- you -- you --
10 you seem to like to focus on
11 upshifting. And given the way the ABR
12 patents work, I don't see how you're
13 going to be upshifting when the buffer
14 is empty.
15 BY MR. SHENG:
16 Q. Let's say you're starting a video
17 from the very beginning.
18 A. Okay.
19 Q. And you would agree that the --
20 you -- you start with an empty buffer,
21 correct?
22 A. Correct.

1 Q. And the user starts the video.
2 The first streamlet is transmitted from the
3 server to the client.
4 A. Correct.
5 Q. Does that streamlet -- is that
6 streamlet played immediately or does that
7 streamlet get placed into the buffer?
8 MR. WILSON: Objection, form.
9 THE WITNESS: That streamlet
10 can be played immediately. That's --
11 by design of their stream
12 architecture, the media player has the
13 capability to play that streamlet
14 immediately.
15 BY MR. SHENG:
16 Q. Okay. So we've established that
17 part of it.
18 Now, instead of the user starting
19 the video from the very beginning -- let's
20 say the user is already watching a video, is
21 mid video.
22 Okay?

1 A. Okay.
2 Q. Or wants to jump to a different
3 part of the video. Okay?
4 Does that first streamlet that
5 comes in at the higher bitrate need to be
6 placed in the buffer or can it -- and can
7 that higher stream -- high bitrate streamlet
8 be played immediately?
9 A. So --
10 MR. WILSON: Objection, form.
11 THE WITNESS: -- your questions
12 are broken. You -- you -- you keep on
13 inserting this notion of -- of -- of
14 the higher bitrate without having
15 established how you got to the higher
16 bitrate.
17 BY MR. SHENG:
18 Q. Okay. Let me -- we'll --
19 we'll -- why don't we revisit that later and
20 I can think about better way to approach it.
21 Okay?
22 A. That works.

1 Q. In paragraph 46 of your
2 declaration, the third technique you refer to
3 is using multiple TCP connections to request
4 streamlets.
5 Do you see that?
6 A. I do.
7 Q. When you say "multiple," does
8 that mean two or more?
9 A. That is how I'm -- I mean --
10 and -- and this isn't claim language here, so
11 the extent "multiple" has particular
12 interpretation claim language.
13 What I -- what I'm meaning here
14 is, yes, two or more.
15 Q. What -- what -- well, you
16 qualified that with -- with a reference to
17 claim language. What -- what -- what -- what
18 do you mean there?
19 A. Well, certain -- certain -- as
20 you well know, certain terms in claim
21 language, like "a" can mean one or more and
22 "plurality" has to mean two or more and I

1 never keep those rules straight. So I don't
2 recall there being any formal understanding
3 of "multiple."
4 So I'm -- I'm just saying what
5 was written here was meant to -- to imply
6 more than one.
7 Q. Okay. So fair to say a person of
8 ordinary skill in the art interpreting the
9 words "multiple TCP connections" would
10 understand multiple to mean two or more,
11 fair?
12 A. I think of it as more than one,
13 but I guess that's -- so if there's any
14 difference between that and two or more, I'm
15 not aware of it, but -- so I think that's
16 fair.
17 Q. Okay. Let's go to paragraph 47
18 of your expert declaration.
19 In paragraph 47 you begin a
20 section describing the Leaning reference.
21 Agree?
22 A. Yes, that's correct.

1 Q. And the Leaning reference, just
2 for the record, is International Patent
3 Application Publication WO 2002/049343.
4 See that?
5 A. I see that.
6 Q. Okay. Let's go to paragraph 48.
7 I'd like to focus on the sentence in
8 paragraph 48 that begins, actually, on the
9 next page, page 24.
10 A. Okay.
11 Q. Page 24 at the top you say,
12 Leaning describes the threshold that must be
13 met in this regard as the playout time Tp,
14 which is set at 10 seconds in Leaning's only
15 example.
16 Do you see that?
17 A. I see that.
18 Q. So Leaning provides an example
19 where the playout time Tp is set at
20 10 seconds, correct?
21 A. Yes.
22 Q. And that's just an example.

1 Agree?
2 A. The 10-second value is just an
3 example.
4 Q. And I'm handing you what's been
5 marked as Exhibit 1004.
6 A. Thank you.
7 (Exhibit fuboTV 1004,
8 previously marked, was referred to.)
9 BY MR. SHENG:
10 Q. Exhibit 1004 is the Leaning
11 reference.
12 Agree?
13 A. Yes.
14 Q. Did you review Leaning in
15 preparation for today's deposition?
16 A. I did.
17 Q. Did you review it cover to cover?
18 A. I did.
19 Q. How many times?
20 A. Several.
21 Q. Let's turn to page 2, line 11.
22 Let me know when you get to page 2 and

1 line 11.
2 A. Page 2, 11. Okay. I'm there.
3 Q. There's a sentence that begins,
4 It is also assumed that the audio.
5 Do you see that?
6 A. I do.
7 Q. I'll read that sentence into the
8 record.
9 It is also assumed that the audio
10 signals have been recorded in compressed form
11 using the ISO MPEG-1 Layer III standard,
12 paren, the MP3 standard, close paren.
13 Do you see that?
14 A. I do.
15 Q. So Leaning teaches here that you
16 can use the MP3 standard, correct?
17 A. Yes.
18 Q. Okay. The very next sentence of
19 the one that I just read or the next
20 statement says, However, it is not essential
21 to use this particular format.
22 Do you see that?

1 A. I do.
2 Q. So what Leaning's teaching here
3 is that you can use the MP3 standard, but
4 it's not essential to use that particular
5 format.
6 Agree?
7 A. That is certainly Leaning's
8 opinion.
9 Q. Let's go to line 24 on the same
10 page. Leaning says at line 24 -- do you see
11 the sentence that begins, In these examples?
12 A. I do.
13 Q. Okay. I'll read that into the
14 record.
15 It says, In these examples, the
16 use of the hypertext transfer protocol is
17 assumed. This is not essential, but is
18 beneficial in allowing use of the
19 authentication and security features, such as
20 the Secure Sockets Layer provided by that
21 protocol.
22 Did I read that correctly for the

1 most part?
2 A. I think you -- I think you read
3 it exactly correctly.
4 Q. So Leaning says that the use of
5 the hypertext transfer protocol is assumed,
6 but not essential, right?
7 A. That's Leaning's opinion, yes.
8 Q. And you understand, then, that
9 the -- where it says it's not essential,
10 Leaning is teaching that it is not required,
11 correct?
12 A. Correct. Leaning's not saying
13 it's required.
14 Q. Okay. Turn to page 5 of Leaning.
15 And I'd like to focus on -- well, actually,
16 hold on.
17 Okay. On page 5 do you see that
18 there are numbered paragraphs in Leaning, 3,
19 4, 5, 6, 7, 8, 9?
20 A. Yes, I see that.
21 Q. Okay. So paragraph 6 -- so I
22 guess it's line 20 -- I guess I'll refer to

1 the line number.
2 A. Yeah.
3 Q. So page 5, line 20 of Leaning --
4 A. Okay.
5 Q. -- okay, Leaning says, The player
6 program has a parameter called the playout
7 time, Tp.
8 Do you see that?
9 A. I see that.
10 Q. Okay. And it goes on to state
11 that In this example it is set at 10 seconds,
12 but it could be made user selectable if
13 desired.
14 Do you see that?
15 A. Yeah. It doesn't have the word
16 "but," but other than that, it's -- you read
17 it correctly.
18 Q. Fair enough.
19 We agree that Leaning teaches
20 that the playout time Tp can be set at
21 10 seconds, but it could be made user
22 selectable, right?

1 A. Correct.
2 Q. Because it's user selectable,
3 Leaning's playout time Tp is not limited to
4 10 seconds.
5 Agree?
6 A. Yes.
7 Q. The user can set Leaning's
8 playout time to five seconds.
9 Agree?
10 MR. WILSON: Objection, form.
11 MR. SHENG: What's the
12 objection, Counselor?
13 MR. WILSON: Characterizing the
14 teachings of Leaning.
15 BY MR. SHENG:
16 Q. Doctor, Leaning's playout time Tp
17 can be set to 5 seconds.
18 Agree?
19 A. It says it can be user
20 selectable. Beyond that, it really doesn't
21 describe the interface, so we don't really
22 know what options are available. But in

1 theory, it could be set to something other
2 than 10 seconds.
3 Q. It's not your opinion today that
4 Leaning's playout Tp -- Tp time can only be
5 set at 10 seconds, correct?
6 A. Correct.
7 Q. Do you have any reason to dispute
8 that Leaning's playout time Tp can be set to
9 5 seconds?
10 A. I -- I mean, in principle, no. I
11 mean, we just don't know the range of
12 settings that Leaning is contemplating.
13 Q. Did you study this issue?
14 A. Did I study what issue?
15 Q. What Leaning's playout time Tp
16 can be set to, other than 10 seconds.
17 MR. WILSON: Objection, form.
18 THE WITNESS: Not -- not
19 really. I mean, it -- I don't -- I
20 didn't see any issue that turns on the
21 possible settings for Tp. I mean,
22 I -- in my analysis, I treated Tp as a

1 variable.
2 BY MR. SHENG:
3 Q. Okay. So in your analysis, you
4 treated Leaning's playout time Tp as
5 variable.
6 Can we agree that a user can set
7 Leaning's playout time to 9 seconds?
8 A. So to be clear, I didn't say it
9 was variable. I said it was a variable. And
10 there's -- I mean, I -- in my declaration, I
11 certainly reference Leaning's discussion of
12 10 seconds as an example to make some of the
13 points that I have in the declaration
14 concrete. But I'm not making any argument
15 that relies -- that requires Tp to be set at
16 10 seconds.
17 So I acknowledge that Tp could be
18 set to values other than 10 seconds.
19 Q. A user can set Leaning's playout
20 time Tp to 9 seconds, agree?
21 A. You know, again, we don't know
22 exactly the range that Leaning is

1 contemplating, but having studied Leaning, I
2 don't see any reason why it couldn't be
3 something like 9 seconds.
4 Q. What about 5 seconds?
5 A. Again, I -- I don't see any
6 obvious reason why it couldn't be something
7 like 5 seconds.
8 Q. What about 2 seconds?
9 A. 2 seconds, I think, since
10 2 seconds is -- so all these things are
11 interrelated. 2 seconds is less than the
12 subfile size. And so I don't know if -- it
13 may be that having a buffer playout time
14 that's less than the subfile size would cause
15 some of the logic in Leaning's system to go a
16 bit wonky.
17 So -- so I -- I don't know if --
18 if 2 seconds is a -- I'd -- I'd have to go
19 back and review this to confirm that
20 2 seconds is a reasonable setting.
21 Q. You just testified that 2 seconds
22 is less than the subfile size.

1 Isn't it true that Leaning
2 teaches that the subfile size is variable as
3 well?
4 A. Yes, but my only point is that
5 these things are interrelated. So if now
6 we're going to put two variables in play and
7 talk about all the combinations and
8 permutations of two variables, that's fine.
9 But if we're just talking about
10 line 20 on page 5, can you change Tp, yes,
11 you can change Tp.
12 But all of this discussion is
13 within the context of a subfile size that was
14 4 seconds. And I'm just saying that, you
15 know, it's not clear to me that it's sensible
16 to have the playout time be less than the --
17 the duration of a subfile.
18 Q. What if the duration of the
19 subfile was the same as the Tp time, so
20 4-second subfile and Tp equals 4?
21 MR. WILSON: Objection, form.
22 THE WITNESS: So for a subfile

1 size of 4 seconds and Tp equal to
2 4 seconds, just sitting here right
3 now, I don't see any issue with that.
4 There may be, but I just don't see it
5 sitting here right now.
6 BY MR. SHENG:
7 Q. What if the subfile size was
8 4 seconds and Tp equals 3?
9 A. Well, again, now you're in the --
10 in the realm where the -- the duration of the
11 buffer is smaller than the subfile size. And
12 I'd have to go and restudy the logic here to
13 confirm that that makes sense to do.
14 Q. Let's say the bandwidth -- the
15 network bandwidth is optimal. Sitting here
16 today, do you have an opinion as to whether
17 or not Leaning's system would work if the
18 subfile size was equal to 4 seconds and the
19 Tp time was equal to 3 seconds?
20 MR. WILSON: Objection, form.
21 THE WITNESS: Well, before you
22 even get to that, I don't know -- I

1 don't understand your characterization
2 of the network.
3 BY MR. SHENG:
4 Q. Okay. Fair to say you -- you
5 haven't investigated prior to today's
6 deposition what Leaning's system -- whether
7 Leaning's system would work if the subfile
8 size was smaller than the -- I'm sorry. Let
9 me -- let me -- let me strike that.
10 So prior to today's deposition,
11 you did not investigate whether or not
12 Leaning's system would work where the subfile
13 size was greater than the Tp time, fair?
14 MR. WILSON: Objection, form.
15 THE WITNESS: Well, I've
16 studied the logic in here. And off
17 the top of my head, my recollection is
18 that it's not going to work. But more
19 directly to your point, no one has --
20 no one has posited that operational
21 scenario for Leaning. So there was
22 really nothing for me to dive deeper

1 into here.
2 BY MR. SHENG:
3 Q. What do you mean, you studied the
4 logic in Leaning?
5 A. So Leaning gives a very detailed
6 description of its audio playout process, its
7 audio reception and playout process, and it's
8 what Leaning calls its flow chart. And
9 that's what I'm referring to as Leaning's
10 logic.
11 So the -- the flow chart that he
12 has in tabular forms on pages 9 through 11.
13 Q. Okay.
14 MR. SHENG: We've been going
15 about an hour.
16 MR. WILSON: Yep.
17 MR. SHENG: Good for a break?
18 THE WITNESS: Sure.
19 MR. SHENG: Okay.
20 VIDEO OPERATOR: Off the record
21 at 10:06.
22

1 (Thereupon, a brief recess was
2 taken.)
3 VIDEO OPERATOR: Back on the
4 record at 10:19.
5 BY MR. SHENG:
6 Q. Dr. Jeffay, did you speak with
7 counsel regarding any -- regarding your
8 deposition during the break?
9 A. I did not.
10 Q. No substantive discussions
11 about -- no -- no discussions about
12 substantively your testimony?
13 A. Nope.
14 Q. Could you please turn to page 10
15 of Leaning. Again, that's the document
16 marked Exhibit 1004.
17 A. Okay. I'm there.
18 Q. And page 10 contains what you
19 refer to in your report as pseudocode, right?
20 A. Yes, I think that's correct.
21 Q. Is the word pseudo --
22 "pseudocode" a word that you use often?

1 A. Yes, it's a common phrase.
2 Q. Is there another word for
3 pseudocode that you have used in the past?
4 A. None that I can think of.
5 Q. What does pseudocode mean?
6 A. Well, pseudocode meant -- means
7 that the code is -- is representative or
8 reminiscent of actual -- of some code from an
9 actual programming language, but it's not --
10 it's not actual code in a programming
11 language.
12 And typically it's designed to be
13 a little more human readable.
14 Q. Okay. So let's look at the
15 pseudocode on page 10. And I'm looking at a
16 row four rows from the bottom. Four rows
17 from the bottom there is a line related to
18 UserCommand Jump.
19 Do you see that?
20 A. I see that.
21 Q. The first line in that row says,
22 If UserCommand equals Jump, j percentage,

1 then -- do you -- you see the line that I'm
2 referring to?
3 A. Yes, I'm with you.
4 Q. What -- what does the command,
5 the UserCommand Jump mean, Doctor?
6 MR. WILSON: Objection, form.
7 THE WITNESS: So I think what a
8 person of skill would -- would
9 understand is that at this stage in
10 this pseudocode or what -- I think
11 Leaning refers to it as a flow
12 chart -- you're -- you've received
13 input from the user. So -- and what a
14 person of skill would understand is --
15 is that this input from the user is
16 stored in this variable called
17 UserCommand.
18 And so, here you're just simply
19 testing whether the user -- whether
20 the input from the user was a jump
21 command.
22

1 BY MR. SHENG:
2 Q. If you turn to page 11 of
3 Leaning, there's a subsection d around
4 line 12.
5 Do you see that?
6 A. Yes.
7 Q. Subsection d begins with the word
8 "Jump".
9 Do you see that?
10 A. I do.
11 Q. Subsection d -- and you should
12 feel free to review it -- subsection d on
13 page 11 discusses the jump command in the
14 pseudocode that we were discussing on the
15 previous page, correct?
16 A. Well, no, not -- not really. I
17 mean, what this is really doing is describing
18 the -- the -- the jump command sort of
19 semantically and in terms of the user
20 interface. And then part of this is
21 describing what the code will do.
22 Q. What do you mean, that

1 subsection d is describing the jump command
2 sort of semantically?
3 A. It's saying what -- what it means
4 from a user's perspective that -- it's going
5 to indicate you're -- the user's going to try
6 to indicate a part of the recording that they
7 wish to jump to. And then it describes a
8 possible user interface by which the jump
9 command could be entered. And then it gives
10 more details about an implementation.
11 Q. What do you mean, it gives more
12 details about an implementation?
13 A. Well, it's giving -- it --
14 through -- it uses an example to sort of show
15 what -- to -- to show how the jump command is
16 interpreted, so that if you had this -- an
17 audio file with 125 subfiles and the user
18 moved a -- a cursor on a slider bar to
19 indicate a jump to point 20 percent into the
20 recording, that it would result in a request
21 of the 26th subfile.
22 So it's using a -- an example of

1 how this would be implemented to explain the
2 semantics of jump.
3 Q. You agree, then, that -- you
4 agree, then, that subsection d on page 11
5 gives an example of how the jump command
6 would be implemented, correct?
7 A. Yes, but -- but with the
8 understanding that it's -- it's not giving
9 code. It's -- it's sort of describing, I
10 guess, what the -- the system would do. So
11 it's an implementation -- it's describing an
12 implementation in the sense of describing
13 what the behavior of the system would be.
14 Q. So on page 11, lines 19 and 20,
15 there is a -- there's a sentence that begins,
16 We prefer.
17 Do you see that?
18 A. Yes.
19 Q. I'll read it into the record.
20 It says, We prefer, in the case
21 of the jump, to suspend the coding and clear
22 the buffer so that the new request is sent

1 immediately, but this is not actually
2 essential.
3 Do you see that?
4 A. I do.
5 Q. Clearing the buffer after a jump
6 command is not actually essential, correct?
7 A. That's what Leaning says. And --
8 but nonetheless, Leaning teaches to clear the
9 buffer.
10 Q. I don't understand what you mean
11 by that, Doctor. You just said that's what
12 Leaning says, but nonetheless, Leaning
13 teaches to clear the buffer.
14 A. Correct.
15 Q. Leaning teaches you can do either
16 one, correct?
17 MR. WILSON: Objection, form.
18 THE WITNESS: No, not really.
19 I mean, Leaning directly teaches to
20 clear the buffer. But it says that
21 that step is not essential. So it's
22 not really -- it -- it doesn't provide

1 a method for not clearing the buffer.
2 The only method that's
3 disclosed here is a method that
4 implements jump in terms of clearing
5 the buffer. But I think what a person
6 of skill would understand is that if
7 they had the skill, they could come up
8 with a new method that's not clearing
9 the buffer, but it's also not
10 disclosed in Leaning.
11 BY MR. SHENG:
12 Q. Leaning directly teaches that
13 clearing the buffer on a jump command is not
14 actually essential, correct?
15 A. That's what Leaning says.
16 Q. If you can go to page 2 of
17 Leaning.
18 A. Okay.
19 Q. Leaning page 2 on line 9 --
20 around 9 line there's -- line 9, there's a
21 sentence that begins with, In this example.
22 Do you see that?

1 A. Yes.
2 Q. It says, In this example, the
3 network is the internet or other packet
4 network operating in accordance with the
5 hypertext transfer protocol, paren, see RFCs
6 1945/2068 for details, close paren, though in
7 principle other digital links or networks can
8 be used.
9 Do you see that sentence that I
10 just read?
11 A. I do.
12 Q. What is RFC 1945?
13 Do you know?
14 A. I think that is the RFC for
15 HTTP/1.0.
16 Q. And what is the RFC for 2068?
17 Do you know?
18 A. I -- I don't recognize that
19 number off the top of my head, but I think
20 it's the RFC for HTTP/1. There were two RFCs
21 for HTTP/1.1 and I think this is the second
22 of them.

1 Q. I'll hand you this document.
2 Actually, let me?
3 MR. SHENG: You know, we should
4 mark this as Jeffay Exhibit 1.
5 (Jeffay Exhibit 1 was marked
6 for identification.)
7 THE WITNESS: Thank you.
8 BY MR. SHENG:
9 Q. Dr. Jeffay, what I've marked as
10 Jeffay Exhibit 1 is RFC 1945.
11 Do you see that?
12 A. I see that.
13 Q. And this is the RFC 1945 that's
14 referenced in Leaning, correct?
15 A. Yes.
16 Q. On the first page there is an
17 abstract.
18 Do you see that?
19 A. I do.
20 Q. And the very last sentence
21 confirms that the RFC specification reflects
22 common usage of the protocol referred to as

1 HTTP/1.0, correct?
2 A. I see that.
3 Q. Do you agree that Leaning
4 discloses the use of HTTP/1.0?
5 A. At least in its reference to
6 RFC 1945.
7 Q. What do you mean, at least in
8 reference to RFC 1945?
9 A. I mean, I -- I think a person of
10 skill just understands that this is -- that
11 what's just being referred to -- so, again, I
12 don't recall off the top of my head what 2068
13 is. But to the extent it's HTTP/1.1, I think
14 Leaning is just basically referring -- is
15 just giving references for the use of the
16 common variants of HTTP. Sorry, the variants
17 that were common at the time of Leaning.
18 Q. So let's go back to page 2,
19 line 9 of Leaning. Leaning teaches that the
20 network is the internet or other packet
21 network operating in accordance with a
22 hypertext transfer protocol. And it

1 specifically cites RFC 1945.
2 Agree?
3 A. Yes.
4 Q. Do you have any -- any reason to
5 disagree with me that Leaning teaches the use
6 of HTTP/1.0?
7 A. I think you're reading too much
8 into its citation to 1945. I think it's just
9 giving this as a reference for HTTP. I mean,
10 there's -- yeah. I -- I -- I don't think
11 Leaning is binding itself to HTTP/1.0.
12 Q. That's not my question. I'm not
13 asking you whether Leaning binds itself to
14 using HTTP/1.0. I'm asking you just, does
15 Leaning teach using HTTP/1.0?
16 A. I think it teaches using HTTP,
17 full stop. And, as support for using HTTP,
18 it's referencing a document that happens to
19 be for HTTP/1.0.
20 Q. Well, before even showing you the
21 document I asked you what is RFC 1945. And
22 you said it was HTTP -- it was the RFC for

1 HTTP/1.0, correct?
2 A. Correct.
3 Q. So it's your testimony today that
4 where Leaning discloses using hypertext
5 transfer protocol and provides a citation, a
6 direct citation to RFC 1945, it's your
7 testimony today that a person of skill in the
8 art would not interpret this to mean that
9 Leaning teaches that HTTP/1.0 could be used
10 with its invention?
11 A. That's a different question.
12 There -- there -- there's no question that
13 HTTP/1.0 could be used with Leaning.
14 Q. Is there any question whether or
15 not Leaning teaches using HTTP/1.0?
16 A. Again, my -- my view is that
17 you're reading more into this than is there.
18 It -- it absolutely cites this RFC.
19 I -- I guess what maybe is hard
20 for you to appreciate is how common and
21 pervasive cites to 1945 are. I mean, there
22 are thousands of RFCs and yet this one I knew

1 off the top of my head. Right? And it's
2 because this one is just so common.
3 And when people reference HTTP,
4 they often cite to 1945. But it's not --
5 that's -- in particular at the time of
6 Leaning, I don't think a person of skill
7 would understand that -- that they're
8 limiting themselves to HTTP/1.0.
9 Leaning is teaching the use of
10 HTTP and this is the reference that they're
11 citing. And, yes, this is a reference for
12 1.0. And, yes, 1.0 could be used with
13 Leaning.
14 Q. Okay. You can put that document
15 aside, Doctor.
16 I'm going to hand you a document
17 that's previously been marked as
18 Exhibit 2137.
19 A. Thank you.
20 (Exhibit 2137-940, previously
21 marked, was referred to.)
22

1 BY MR. SHENG:
2 Q. And, Doctor, Exhibit 2137 appears
3 to me to be the RFC for -- the RFC 2068.
4 Agree?
5 A. Yes.
6 Q. If you look at the last sentence
7 in the abstract, you'll see that this
8 RFC 2068 specification defines the protocol
9 referred to as HTTP/1.1.
10 Do you see that?
11 A. I do.
12 Q. Do you agree that Leaning
13 discloses the use of HTTP/1.1?
14 A. Yes.
15 Q. But you don't agree that Leaning
16 discloses the use of HTTP/1.0? I guess I'm
17 just trying to understand why you fought me
18 so hard on HTTP/1.0, but your response to my
19 question from just now was yes.
20 A. Because, as I say, what a person
21 of ordinary skill in the art would
22 understand, that at the time of Leaning, the

1 dominant version of HTTP was 1.1. 1.0 had
2 been phased out for some -- for -- for some
3 time. And -- and, in fact, I think there's
4 another version of this RFC that came out
5 either at the time of Leaning or just after
6 it.
7 So the reason -- I'm not fighting
8 you on it. It's just I -- what I was saying
9 was you're reading too much into this. What
10 Leaning discloses is the use of HTTP. And I
11 think we can all agree on that.
12 At the time of Leaning, the
13 dominant version of HTTP that was in use was
14 1.1. So that's why I say given the cite to
15 the RFCs and the timing here, a person of
16 skill would understand that, yes, Leaning's
17 using HTTP and that the best interpretation
18 of that is that when it refers to HTTP, it's
19 referring to 1.1, because that's what the
20 dominant version was at the time of Leaning.
21 Q. Okay. Turn to page 13 of
22 Exhibit 2.

1 A. Is that the -- the second --
2 Q. Of -- of Jeffay Exhibit 2, yes.
3 I'm sorry, it's not -- I did not
4 mark it as Exhibit 2. We're -- it's
5 Exhibit 2137. Apologies.
6 A. That's fine.
7 Q. Turn to page 13 of Exhibit 2137.
8 A. Okay. Hang on.
9 13. Okay.
10 Q. And on page 13, the first
11 sentence of the third paragraph states, HTTP
12 communication usually takes place.
13 Do you see that sentence I'm
14 referring to?
15 A. I do.
16 Q. Can you read that paragraph to
17 yourself and let me know when you're done.
18 A. Okay.
19 Okay. I read it.
20 Q. Do you agree that HTTP
21 communication usually takes place over TCP/IP
22 connections?

1 A. Yes. That is by far and away the
2 dominant use case.
3 Q. Let's turn to page 46 of
4 Exhibit 2137.
5 A. 46. Okay.
6 Q. And the fourth paragraph from the
7 top starts with, Clients that use.
8 Do you see that?
9 A. Yes.
10 Q. Can you read that paragraph to
11 yourself and let me know when you're done.
12 A. Sure.
13 Okay. I read it.
14 Q. RFC 2068 discloses using
15 persistent connections between a client and a
16 given server, correct?
17 A. Yes.
18 Q. RFC 2068 discloses that a single
19 user client could maintain two persistent
20 connections with a server, correct?
21 A. Yes. That was true in 1997. And
22 by the time of the revision to this RFC, I

1 think that had changed.
2 Q. Changed how?
3 A. I think at that point they were
4 trying to limit the number of connections a
5 browser could make to a server.
6 Q. Limit it to what number?
7 Do you know?
8 A. I -- I -- I don't recall the
9 number.
10 Q. You can put that document away,
11 Doctor.
12 Let's go back to your expert
13 declaration, which is Exhibit 2141.
14 If you could turn to
15 paragraph 117 for me.
16 A. Okay.
17 Q. And in paragraph 117 you begin a
18 section titled Leaning Fails to Disclose
19 Arranging Files/Streamlets.
20 Do you see that?
21 A. I do.
22 Q. And you provide a chart in

1 paragraph 117 showing the limitations with
2 respect to the arranging limitation that
3 appears in the ABR patents, correct?
4 A. Correct.
5 Q. Can you turn to page 1 --
6 paragraph 120.
7 A. Okay.
8 Q. And you can review paragraph 120
9 to yourself.
10 Let me know when you're done.
11 A. Okay.
12 Q. You distinguish Leaning on the
13 grounds that Leaning's client requests
14 streamlets individually, one at a time, in a
15 predefined sequence, correct?
16 A. Correct. I say that.
17 Q. You argue that this creates a
18 scenario where the streamlets are simply
19 stored and played back by the client in the
20 order in which they are received, correct?
21 A. Correct.
22 Q. And according to you, this does

1 not satisfy the arranging limitations,
2 correct?
3 A. Correct.
4 Q. Is there a requirement in the ABR
5 patents that a client request and receive
6 from a server streamlets out of order, out of
7 order of ascending playout time?
8 MR. WILSON: Objection, form.
9 THE WITNESS: Is -- is there a
10 requirement that they receive things
11 out of order? No. But in the ABR
12 patents, the point is that they --
13 they're designed to deal with that
14 scenario. And that's a scenario that
15 just can't occur in Leaning.
16 BY MR. SHENG:
17 Q. The ABR patents are designed to
18 deal with a scenario where streamlets are
19 received from a server out of order, but it's
20 not required; is that correct?
21 MR. WILSON: Objection, form.
22 THE WITNESS: The ABR patents

1 aren't making any requirements of the
2 network because you can't make any
3 requirements of -- of the network.
4 So when you make multiple
5 requests in the ABR patents, you can't
6 be guaranteed of the order in which
7 those responses are going to be
8 returned. So you have to be prepared
9 to arrange the streamlets that you
10 receive so that they can be played out
11 in order.
12 BY MR. SHENG:
13 Q. Do the claims of the ABR patents
14 cover a situation in which the streamlets are
15 received one by one, in order of ascending
16 playout time?
17 MR. WILSON: Objection to form.
18 THE WITNESS: Well, these --
19 these claims are methods, and so they
20 have the steps of, for example,
21 sequentially arranging.
22 And, yes, you can sequentially

1 arrange files, even if they are
2 received in -- in order, because it --
3 it actually -- you know, it -- it
4 teaches that you have to have the --
5 the -- the code, if you will, to
6 perform that step.
7 BY MR. SHENG:
8 Q. You said that these claims are
9 method claims and you understand that method
10 claims, in order to practice a method claim,
11 each and every step must be performed?
12 MR. WILSON: Objection.
13 THE WITNESS: That's my
14 understanding.
15 BY MR. SHENG:
16 Q. And you testified that each of
17 the claims require sequentially arranging
18 files; is that correct?
19 A. I did not testify to that.
20 Q. I think you just -- I -- what I
21 mean by "testify" is you -- you -- you said
22 it a minute ago, that the claims require

1 sequentially arranging the streamlets.
2 A. That --
3 MR. WILSON: Objection,
4 misstates testimony.
5 THE WITNESS: Yeah. I wasn't
6 characterizing all the claims when I
7 was making that statement. I was --
8 in that particular case, I was just
9 reading from the language of the '772
10 patent.
11 BY MR. SHENG:
12 Q. Do the ABR patents -- strike
13 that.
14 You would agree that the ABR
15 patents do not require that the client
16 receive streamlets in sequential predefined
17 order?
18 MR. WILSON: Objection to form.
19 THE WITNESS: Sorry. They
20 do -- the ABR patents do not require
21 that the clients receive streamlets in
22 sequential order?

1 BY MR. SHENG:
2 Q. Correct. That's my question.
3 A. Yes, that's part of what they
4 contemplate, is that you don't -- they --
5 they will work even though you don't receive
6 streamlets in sequential order.
7 Q. Well, my question is, if you do
8 receive the streamlets in sequential order,
9 is that outside the scope of the ABR patent
10 claims?
11 MR. WILSON: Objection, form.
12 THE WITNESS: No, I don't think
13 so. I mean, the -- the issue is not
14 what order do [sic] they actually
15 received in. The issue is what method
16 do those -- does whatever product
17 you're looking at, what method does it
18 perform. What -- what are its
19 capabilities and what does it actually
20 do.
21 BY MR. SHENG:
22 Q. I don't understand why you're

1 referring to capabilities.
2 A. Because as -- the answer to your
3 question is I -- I don't think you can assess
4 whether a system is practicing a claim based
5 on what -- what happens in -- in the network,
6 what -- what order things arrive at the --
7 at -- at -- at -- at the -- at the playout
8 device.
9 The issue for practicing the
10 claims is do they have a method step of
11 arranging the requested files in the order in
12 which it's specified here of ascending
13 playback, for example.
14 Q. Is it your testimony or is it
15 your opinion that if a -- if a system
16 receives the requested files in the order of
17 ascending playback time, there's no arranging
18 them?
19 MR. WILSON: Objection, form.
20 THE WITNESS: That's not my
21 testimony.
22

1 BY MR. SHENG:
2 Q. You don't say that in your -- in
3 your declaration?
4 A. No, I don't think I -- I --
5 where -- where do I make a statement like
6 that? If I -- if I make a statement like
7 that, I'd invite you to show me that, because
8 I think you're probably misinterpreting what
9 I've written.
10 Q. You can turn to paragraph 141 of
11 your declaration.
12 A. Okay.
13 Q. I'll read 141 in -- in -- into
14 the record.
15 This specific manner of
16 constructing subfiles -- subfile requests
17 used by Leaning dictates other requirements.
18 Specifically, based on this, it is known that
19 Leaning's user terminal necessarily requests
20 subfiles individually, one at a time, in a
21 predefined sequence, eliminating the need to
22 arrange any subfiles at the user terminal.

1 This is true because the subfiles are already
2 arranged.
3 Did I read that correctly?
4 A. Yes.
5 Q. So it's your -- your -- it's your
6 opinion that Leaning, Leaning's client,
7 requests subfiles individually, one at a
8 time, in a predefined sequence, and this
9 eliminates the need to arrange subfiles,
10 correct?
11 A. Correct.
12 Q. So there's no arranging going on,
13 in your opinion, when Leaning's user terminal
14 requests subfiles individually, one at a
15 time, in a predefined sequence, correct?
16 A. In Leaning. So what I'm saying
17 here is that because Leaning will only ever
18 request files one at a time and those files
19 will only arrive one at a time in the order
20 in which they were requested, Leaning has no
21 need to do any arranging of -- of subfiles.
22 So this is because of the manner

1 in which Leaning is making requests, not
2 based on, for example, some property of the
3 network, as your previous questions were
4 implying.
5 Q. Okay. So what I want to make
6 clear is that we can agree that if a system
7 is designed where a client necessarily
8 requests subfiles individually, one at a
9 time, in a predefined sequence, that does not
10 meet the arranging limitations, correct?
11 MR. WILSON: Objection, form.
12 THE WITNESS: No. What I'm
13 saying here is that this means Leaning
14 has no need to arrange any of the
15 subfiles. So there -- there's no --
16 there's no disclosure anywhere in
17 Leaning of doing any arranging of
18 subfiles. Okay?
19 And as further evidence of
20 this, what I'm pointing out is that
21 the way Leaning works, Leaning has no
22 need. So at the end of the day, if

1 you want to understand whether
2 something practices a limitation, you
3 have to actually look at -- at --
4 at -- at -- at the code, at what -- at
5 what its capabilities are.
6 Leaning has no capability that
7 would require any arranging of
8 subfiles. So there's no disclosure of
9 arranging and it has no need to
10 arrange is what this paragraph is
11 about.
12 BY MR. SHENG:
13 Q. You -- you used the word
14 "capabilities" again. I'm -- I'm getting
15 hung up on the word "capabilities."
16 So a system -- let's say a
17 system -- you -- you develop a system and you
18 design it just like Leaning, where the user
19 terminal necessarily requests subfiles
20 individually, one at a time, in a predefined
21 sequence. You would agree that that does not
22 satisfy the arranging limitations, assuming

1 that you can't otherwise arrange streamlets
2 that come out of order?
3 MR. WILSON: Objection, form.
4 THE WITNESS: I -- I -- I can't
5 answer that -- that hypothetical. I
6 mean, I don't -- I don't understand
7 the system that you're referring to.
8 In this paragraph here, I'm
9 only making a comment about Leaning.
10 And this comment here is in support of
11 the foregoing text that says, Leaning
12 has no disclosure of arranging.
13 And here, I'm just trying to
14 support that opinion by saying that
15 the reason -- part of the reason
16 Leaning has no disclosure of arranging
17 is because it has no need to be
18 arranging.
19 So I'm not -- I'm not talking
20 about other -- other systems that I
21 haven't -- that I haven't studied
22 here. And I'm not stating a

1 requirement for what you have to have
2 or not have for the arranging
3 limitation.
4 This is just a statement about
5 Leaning in support of the opinion that
6 Leaning doesn't teach arranging
7 subfiles.
8 BY MR. SHENG:
9 Q. Have you studied DISH's system?
10 A. Have I studied DISH's system?
11 Q. Yeah.
12 A. I -- no, I don't even know what
13 DISH's system is.
14 Q. Have you studied the Move, the
15 Move player?
16 A. Yes, I've --
17 Q. Okay. The Move player -- if the
18 Move player, the client requests subfiles
19 individually, one at a time, in a predefined
20 sequence, would the Move player satisfy the
21 arranging limitations?
22 A. I -- I --

1 MR. WILSON: Objection, form.
2 THE WITNESS: I -- I can't
3 answer that question.
4 BY MR. SHENG:
5 Q. Why not?
6 A. I -- I would need more
7 information about how the -- I -- I would
8 want to look at the code for the Move player
9 and see what it -- how it actually works.
10 Q. So if it was known that the Move
11 player used a terminal, necessarily requests
12 subfiles individually, one at a time, in a
13 predefined sequence, you have no opinion
14 whether or not the arranging limitations are
15 met?
16 A. For -- I -- I haven't studied the
17 Move player. So the Move player was a
18 complex -- large complex piece of software.
19 And I wouldn't be ready to offer an opinion
20 about its practicing this limitation just
21 based on this one-sentence characterization.
22 Q. Does the Move player request

1 subfiles individually, one at a time, in a
2 sequence that's out of order of ascending
3 playout time?
4 A. I -- I mean --
5 MR. WILSON: Objection, form.
6 THE WITNESS: -- I don't recall
7 the Move player at that level of
8 detail, sitting here today.
9 BY MR. SHENG:
10 Q. You don't know if the Move player
11 practices the arranging limitation?
12 A. I believe it does.
13 Q. Do you know, sitting here today,
14 whether the Move player requests subfiles
15 individually, one at a time, in sequence of
16 ascending playout time?
17 A. I -- I don't believe it does,
18 because my recollection is that the Move
19 player will make requests over multiple
20 connections. So I -- my recollection sitting
21 here today is that it -- it doesn't do what's
22 described in paragraph 141.

1 Q. So it's your understanding that
2 the Move player requests subfiles
3 individually, one at a time, that's not in
4 sequence of ascending playout time?
5 A. No. No. You're -- you're --
6 you're trying to mat this description onto
7 this one sentence. And this sentence -- my
8 recollection is this sentence does not
9 characterize the Move player.
10 Q. I understand that.
11 Do you understand what I mean
12 when I say request subfiles out of order?
13 A. I assume you mean you request
14 subfile 4 before subfile 3.
15 Q. Yeah, out of order of ascending
16 playout time.
17 A. Okay.
18 Q. All right. Does the Move player
19 request subfiles from the server out of
20 order?
21 A. I -- I don't recall the Move
22 player to that level of detail, sitting here

1 today.

2 Q. You have no opinion, sitting here

3 today, whether the Move player requests

4 subfiles from a server out of order, correct?

5 A. As I said, I just don't recall

6 the Move player at that level of detail.

7 Q. Does the Move player request

8 subfiles from the server in -- in order of

9 ascending playout time, in order?

10 MR. WILSON: Objection, form.

11 THE WITNESS: I mean, I -- I

12 don't recall the exact algorithm that

13 Move uses to request its streamlets.

14 BY MR. SHENG:

15 Q. Sitting here today, you have no

16 opinion whether or not the Move player

17 requests subfiles from the server in order of

18 ascending playout time, correct?

19 MR. WILSON: Objection, asked

20 and answered.

21 THE WITNESS: Yeah. I mean, I

22 don't know what more I can say. I --

1 I -- you're -- you're -- you know,
2 this page was statements about
3 Leaning. And you're now moving from
4 Leaning to the Move player. And I
5 don't recall the Move player's
6 algorithm for making requests at that
7 level of detail.
8 BY MR. SHENG:
9 Q. If the Move player requests
10 subfiles from the server out of order, does
11 that satisfy the arranging limitations?
12 A. The Move player satisfies the
13 arranging limitation if it actually does
14 arranging. So, I mean, I -- I can't answer
15 your hypothetical because I'm not certain
16 that the preamble of your question is
17 correct.
18 Q. If the Move player requests
19 subfiles from the server in order, in exact
20 order of ascending playout time, is there
21 arranging going on?
22 A. Again, if -- if -- if the Move

1 player has the code to practice the step of
2 arranging, then it practices that limitation.
3 Q. So your -- it's your opinion --
4 hold on, let me wait till your testimony pops
5 up here.
6 It's your opinion that if the
7 Move player requests streamlets in the
8 precise order of ascending playout time, it
9 still practices the arranging limitation
10 because it would have code to practice the
11 step of arranging, correct?
12 A. No. You're -- you're twisting my
13 answer.
14 My answer ignored -- my answer
15 was -- had nothing to do with your question,
16 because I was trying to say that what matters
17 is what is the method that the Move player
18 performs in terms of what it does when
19 streamlets arrive.
20 That's the issue, does it do
21 arranging. And you're trying to tie this to
22 all sorts of scenarios about what are

1 requests and -- and -- and what happens. And
2 I'm saying that the inquiry really is whether
3 or not it has the code that's capable of --
4 that -- that performs the arranging step.
5 Q. If the Move player receives
6 streamlets in order, is the method of
7 arranging performed?
8 A. If the Move player has the code
9 to do arranging, then it will do arranging in
10 all scenarios, including the scenario where
11 things are -- arrive in order.
12 But the fact that things arrive
13 in order really has nothing to do with the
14 inquiry.
15 Q. Can you arrange streamlets that
16 are already in predefined sequence?
17 A. I don't -- I don't understand
18 what you're asking.
19 Q. Well, let's say the limitation
20 requires -- or -- strike that.
21 All right. Let's come back to
22 that in a little bit.

1 A. Okay.
2 Q. Turn to paragraph 186 of your
3 declaration, please.
4 A. Okay. I'm there.
5 Q. Paragraph 186 is under a heading
6 that reads, Dr. Houh's Obviousness Opinions
7 Are Foreclosed by Strong Objective Evidence
8 of Nonobvious Identified by the ITC.
9 Do you see that?
10 A. Nonobviousness identified by the
11 ITC.
12 Q. Nonobviousness, yes.
13 Do you see what I'm referring to?
14 A. Yes, I'm with you.
15 Q. And in the last sentence of
16 paragraph 186 you state -- the last
17 sentence -- it starts on page 115 and carries
18 over. You state, Similarly, the Leaning IPRs
19 and Dr. Houh fail to acknowledge or address
20 the International Trade Commission's finding
21 of the strong evidence of secondary
22 considerations associated with the ABR

1 patents supported a finding of
2 nonobviousness.
3 Do you see that?
4 A. I do.
5 Q. The ITC is a separate tribunal,
6 correct?
7 A. Well, you're getting a little out
8 of my wheelhouse, but generally I understand
9 it's not part of the judicial branch. Is
10 that right?
11 Q. Well, I -- I guess my point is
12 the ITC is not part of the -- the -- the --
13 the United States Patent Office.
14 Agree?
15 A. I -- I think that's correct.
16 Q. Is it your understanding -- do
17 you -- strike that.
18 Do you have an understanding as
19 to whether or not the ITC's decision is
20 binding on the Patent and Trial -- Patent
21 Trial and Appeal Board?
22 A. I -- I -- I do not know.

1 Q. You have no understanding whether
2 or not the ITC's decision is binding in these
3 proceedings, correct?
4 A. I -- I -- I -- I don't know what
5 the law is on whether or not the ITC's --
6 decisions the IT -- where and to what extent
7 ITC determinations are binding.
8 Q. The title of this section, you
9 say, Dr. Houh's obviousness opinions are
10 foreclosed by the ITC's decision, fair?
11 A. No. I'm saying they're
12 foreclosed by the evidence that's cited in
13 here and that this was evidence that was
14 identified by the ITC. So I'm -- I'm really
15 referring to the strong objective evidence
16 that exists.
17 Q. Okay. So let's go to
18 paragraph 187 then. In paragraph 187 you
19 state, I previously testified at length about
20 the strength of this evidence in the 1265
21 investigation. The final initial
22 determination in that investigation -- open

1 paren, as adopted in relevant part by the ITC
2 in its written opinion, close paren, credited
3 my testimony in finding the following.
4 Do you see that?
5 A. I do.
6 Q. It seems like to me, Doctor,
7 you're -- you're -- you're arguing because
8 the ITC agreed with you, that your evidence
9 should be given significant weight.
10 Is that fair?
11 A. I'm -- I'm -- I'm this is just a
12 statement that says, I have opined before on
13 the same evidence and at least one
14 fact-finding body agreed that the evidence
15 was strong. And so the fact that Dr. Houh
16 and the petitions ignore this to me is
17 noteworthy, hence I note it.
18 Q. So you believe it's noteworthy --
19 noteworthy that another fact-finding body
20 agreed with your position, correct?
21 A. They -- that they agreed that
22 there was strong evidence of secondary

1 considerations.
2 Q. And that was your position in the
3 ITC, correct?
4 A. Correct.
5 Q. So you believe it's noteworthy
6 that another fact-finding body agreed with
7 you -- agreed with your position in the ITC,
8 correct?
9 A. It's not that they agreed with
10 me. I mean, it -- this is not about me.
11 This is about what the evidence shows. It's
12 that they agreed with my analysis that there
13 was strong evidence of secondary
14 considerations.
15 And it's noteworthy in the sense
16 that I don't see how someone challenging
17 these patents can just ignore this.
18 Q. You don't see how someone
19 challenging these patents can ignore the
20 findings made by another -- another -- give
21 me one second.
22 You don't see how someone

1 challenging these patents can ignore the
2 findings of another fact-finding body.
3 Agree?
4 A. Yeah, I mean, as -- as -- as --
5 as an expert, given that DISH is arguing the
6 existence of secondary considerations and
7 that a fact-finding body, you know, a neutral
8 fact-finding body has said that there's
9 strong evidence of secondary considerations,
10 I just personally don't see how you can just
11 ignore this. Just seems to me that it should
12 be addressed by the petition.
13 Q. What if the ITC disagreed with
14 you? Would your position be the same?
15 A. If they disagreed with me?
16 Q. Yes.
17 A. Well, then, I -- no, my position
18 would not -- not be the same. I mean, if --
19 if they disagreed with the testimony that I
20 gave about evidence of secondary
21 considerations, I mean, we'd be in a
22 different world. I -- I don't -- I don't

1 know how to answer that question.
2 Q. Well, would the -- the -- the
3 ITC -- if the ITC disagreed with you, would
4 the significance of that decision be the
5 same, but obviously for the other side?
6 MR. WILSON: Objection, form.
7 THE WITNESS: Well, I'm not
8 opining on the significance in any
9 legal sense, but I would bet it would
10 be the case, if I was making the same
11 arguments here that were made in the
12 ITC and the ITC disagreed with those
13 arguments, that Aylo would be
14 trumpeting that.
15 BY MR. SHENG:
16 Q. How familiar are you with the
17 ITC?
18 A. In -- in what sense?
19 Q. Do you know the composition of
20 the ITC?
21 A. You mean at the -- the
22 commissioners? I mean, how the commissioners

1 are --

2 Q. Well, why don't you just tell me.

3 What's your understanding of the ITC?

4 A. That it's part of the executive

5 branch; that they adjudicate trade disputes

6 and they -- and a -- and a common trade

7 dispute is -- is -- relates to patent

8 infringement. And they have administrative

9 law judges that hear, essentially, patent

10 infringement and, I guess, invalidity cases

11 and they make a -- an initial determination

12 and then a final determination and then the

13 commissioners decide whether or not action is

14 going to be taken based on that

15 determination.

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

17 MR. SHENG: Yeah, let's go off

18 the record real quick.

19 VIDEO OPERATOR: Off the record

20 at 11:10.

21 (Thereupon, a brief recess was

22 taken.)

1 VIDEO OPERATOR: Back on the
2 record at 11:22.
3 BY MR. SHENG:
4 Q. Doctor, did you discuss the
5 substance of your testimony with counsel
6 during the break?
7 A. I did not.
8 Q. Doctor, earlier we were talking
9 about whether or not the Move player
10 satisfied the arranging limitations of the
11 claims.
12 Do you -- do you remember that?
13 A. Yes.
14 Q. And I remember you said something
15 along the lines of whether or not the Move
16 system practiced the Leaning limitations
17 would depend on whether or not the system had
18 the code for -- and I'm probably not getting
19 this right, but the code for rearranging or
20 arranging the streamlets in order.
21 Do you recall that generally?
22 A. Yeah. I mean, the point

1 generally I was making is that you have to
2 have evidence of it. And in this report I
3 cite evidence of it. But for this -- you
4 were asking about specific scenarios in which
5 the system would behave.
6 And for -- to answer those
7 questions I was saying, you know, I would
8 need to consider the code.
9 Q. Let -- let's be clear. You say
10 that in this report I cite evidence of it.
11 Evidence of what?
12 A. That the Move player practices
13 that element of the claims.
14 Q. Where in your report do you
15 discuss the Move player practicing the
16 arranging limitations of the claims?
17 A. I believe part of that is in the
18 section where I talk about secondary
19 considerations and show -- trying to show
20 that the Move player is coextensive with the
21 claims.
22 Q. Can you -- so your secondary

1 consideration section -- section, I believe,
2 starts paragraph 186.
3 Can you flip to that, please.
4 A. Oh, we're here. Yes. That
5 was -- sorry. It was open to it.
6 Yes, I'm -- I'm there.
7 Q. Could you turn to the section
8 where you describe the Move player practicing
9 the arranging limitations of the claim.
10 Doctor, just to manage my own
11 expectations, are you reviewing paragraph by
12 paragraph?
13 A. Yeah. Unfortunately, I don't
14 have it broken out by subparagraphs --
15 Q. Okay. That -- that's fine.
16 A. -- so --
17 Q. Keep -- keep doing what you need
18 to do. This is -- this is -- we -- we have
19 time.
20 A. So apologies for the delay.
21 It's -- it's a very long section. And, for
22 better or worse, I don't have it broken down

1 into subsections, so I had to skim it all.
2 So I may have missed it, but just
3 sitting here today, I'm not seeing a good
4 disclosure.
5 I believe I also have -- provide
6 evidence of practice in the claim chart that
7 was submitted along with this report or my
8 understanding it was submitted along with
9 this report.
10 MS. REPORTER: Did you say
11 "good disclosure"?
12 THE WITNESS: I think so.
13 BY MR. SHENG:
14 Q. So sitting here today, you don't
15 see a disclosure in your actual declaration,
16 but you think there might be evidence of
17 practice in the claim chart that was
18 submitted along with the report, correct?
19 A. I -- I said I don't see a good
20 disclosure.
21 Q. Do you see -- do you see a bad
22 disclosure?

1 A. I -- there are -- there --
2 there's stuff that suggests of it. Now,
3 unfortunately, I lost my place.
4 Q. What's the best disclosure,
5 Doctor, the best disclosure of the Move
6 player practicing the arranging limitation of
7 the claim?
8 A. The fact that as part of the
9 commercial success, it showed that it
10 provided continuous playout and the fact that
11 it -- these -- I -- I cite the Move documents
12 that describe its use of multiple
13 connections.
14 So if you had multiple
15 connections and you have continuous playout,
16 that means something has to be arranging the
17 receive streamlets in display order.
18 Q. What paragraph are you referring
19 to? Is there a paragraph you're referring
20 to?
21 A. Well, it's just -- it's -- the --
22 again, I -- I had one. I put my finger down

1 and I lost it.

2 But it's the disclosures in here

3 that are citing the Move documents for its --

4 its upshifting and downshifting and use of

5 multiple TCP connections.

6 Q. I'm going to -- I'm going to ask

7 you to point me to a paragraph.

8 A. Okay.

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

10 that --

11 A. Yeah.

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

13 is.

14 I'd like the best --

15 A. Sure.

16 Q. -- disclosure --

17 A. No, that's fair.

18 Q. -- of Move disclosing or

19 practicing the arranging limitation.

20 A. So maybe the good one is -- well,

21 if we look at paragraphs 198 and 199 on 123

22 and 124, it describes placing a streamlet

1 request, a GET request, over one or more
2 network connections to receive the -- the
3 streamlets; and the fact that they are --
4 there's an illustration at the top of 124
5 that shows the duration and alignment of
6 streamlets.
7 So this is showing that you can
8 use one or more connections, which implies
9 you can have out-of-order arrivals, and the
10 fact that ultimately things are played out in
11 order. So that would indicate that there has
12 to be some form of arranging in playout
13 order.
14 So that's an example.
15 Q. You just said one or more
16 connections, right?
17 A. I did.
18 Q. So it could be one connection,
19 correct?
20 A. Or more.
21 Q. If it's one connection, though,
22 does that -- is that -- does that mean that

1 there is no arranging?
2 A. No. I mean, again, whether or
3 not there's arranging is a function of what
4 the system is -- how the system is designed
5 to operate. And the point here is that it
6 can use more than one.
7 Q. But it could also use one
8 connection, correct?
9 A. But it's going to use -- again,
10 we'd have to go look at the code, but it's
11 going to be doing the same receive
12 processing, whether it's one or multiple
13 connections.
14 Q. Yes or no, Doctor --
15 A. What?
16 Q. -- the Move player can use one
17 single TCP connection?
18 A. I don't know if it -- if it -- if
19 it can be operated in a mode where it will
20 exclusively use one connection. I don't -- I
21 don't -- you know, you're -- you're asking a
22 very detailed question about the operation of

1 the media player and I don't recall that
2 detail.
3 Q. Whether or not the Move player
4 can use one TCP connection or more than one
5 TCP connection is not a detail that you've
6 opined on, correct?
7 A. I have opined that it can use
8 more than one. And that's --
9 Q. Okay.
10 A. -- and that's part of the
11 evidence that you're going to have to be able
12 to arrange streamlets.
13 Q. You've opined that the Move
14 player can use one or more TCP -- TCP
15 connections, which means that it could also
16 use one TCP connection, correct?
17 That's what one or more means,
18 fair?
19 A. Sure. But -- but you're --
20 you're focusing on the one. I'm -- you --
21 you asked for evidence.
22 The evidence I'm saying here is

1 that the Move player can use more than one
2 network connection. And that's the -- the --
3 that's part of the evidence for arranging,
4 because when you use more than one network
5 connection, you have to be able to deal with
6 the fact that you can get out-of-order
7 arrivals, and as the illustration on page 124
8 shows that you get playout in order.
9 Q. Did you draw the figure on
10 page 124?
11 A. No, this is from one of the Move
12 documents.
13 Q. The figure says Instant Start, No
14 Buffering: Move Adaptive Streaming, correct?
15 A. Correct.
16 Q. What does "no buffering" mean?
17 A. It means instant start. It's --
18 it's a reference to the instant start that
19 you can start playback as soon as you receive
20 the first streamlet.
21 Q. In the Move player you can start
22 playback as soon as you receive the first

1 streamlet without buffering, correct?
2 A. Without having to -- to receive
3 more and buffer more streamlets. When you
4 receive the first streamlet, you can start
5 playback.
6 Q. So the answer to my question is
7 yes?
8 A. Well, I was just phrasing it that
9 way because I wasn't sure I understood your
10 question.
11 Q. In the Move player you can start
12 playback as soon as you receive the first
13 streamlet with no buffering, correct?
14 A. Well, so I was just elaborating.
15 I'm giving you my understanding of what you
16 meant when you said no buffering.
17 Q. What does no buffering mean in
18 the figure on page 124?
19 A. That you can have instant start;
20 that you -- you don't have to wait to build
21 up a buffer of streamlets before you start
22 playout.

1 Q. And is that playout at the new
2 rate?
3 A. Well, there's -- this -- the
4 instant start, I think, is referring -- as I
5 recall the document, is referring to the
6 playout of the initial streamlet, the first
7 streamlet in the stream. So it's -- instant
8 start isn't related to adaptation.
9 Q. Is there a point in time when the
10 arranging needs to occur? So, for example, a
11 device requests streamlets from the server.
12 And let's say the server does the arranging.
13 Does that satisfy the arranging
14 limitation?
15 MR. WILSON: Objection, form.
16 THE WITNESS: I -- I don't
17 know. I don't know. I don't
18 understand your -- your question
19 doesn't make sense to me.
20 BY MR. SHENG:
21 Q. Okay. So we're -- we're in a
22 world where a device requests streamlets in

1 order. And the streamlets were placed in
2 order by the server, okay, so the server has
3 the logic of arranging the streamlets in
4 order of ascending playout time.
5 Do -- do you follow what I'm
6 saying?
7 A. No.
8 Q. Why not?
9 A. It makes no sense to me.
10 Q. Why?
11 A. You -- you make a request for --
12 for an object. The server returns that
13 object. I -- I don't know what it means for
14 the server to do arranging in your world.
15 Q. So if the client requests
16 streamlets in order, they will be received in
17 order from the server? Is that what you're
18 saying?
19 MR. WILSON: Objection, form.
20 THE WITNESS: No, that's not
21 what I'm saying.
22

1 BY MR. SHENG:
2 Q. Do you have an answer to my --
3 the -- the question, though? If the client
4 requests streamlets in order from the server,
5 will they be sent in order?
6 A. From the -- the server?
7 Technically, you -- you -- you don't know.
8 There -- there's no mechanism to ensure that
9 that's the -- the case. But typically that
10 was -- that's what's likely to happen.
11 You're -- you're not guaranteed, but
12 typically that's what you'd expect.
13 Q. That's the goal, fair?
14 A. The -- the -- the server has no
15 goal. The server's goal is just to return
16 what's requested.
17 Q. So if the client requests
18 streamlets in order of ascending playout
19 time, you agree that the server for the most
20 part would send back the streamlets in that
21 order, correct?
22 A. So this whole discussion is -- is

1 just -- is -- is -- is just broken.
2 So if you want to get into this
3 level detail, you're going to have to tell me
4 more about how you're envisioning the client
5 is -- is requesting these streamlets in
6 order.
7 Q. Let's use the Move player.
8 A. Okay.
9 Q. The Move player requests
10 streamlets from the server in order of
11 ascending playout time.
12 Would those streamlets be sent by
13 the server in that order?
14 A. They -- they -- they may or they
15 may not be. I mean, you -- you're -- you're
16 not going to be able to know a priori.
17 Q. What -- what determines whether
18 or not they are sent in order or not?
19 A. There -- there's all kinds of
20 things that go wrong here. You're ignoring
21 the fact that networks are famous for
22 reordering transmissions. You can have

1 things that are called route flaps, where
2 packets sent at one instance take one route
3 to a destination, the next instance take
4 another route and things arrive out -- out of
5 order. So networks famously reorder things.
6 The server, in particular, if
7 you're -- you know, all of the intelligence
8 in the Move system is at the client. So the
9 server isn't doing any fancy. It's just
10 responding to requests.
11 And if you're making multiple
12 requests on multiple connections, each of
13 those connections is an independent
14 connection. And the fact that you may make
15 requests in a certain order doesn't mean
16 you're going to get responses in that order.
17 So they can be -- you can get
18 reordering in -- in that way.
19 In addition, the Move player
20 talks about doing things like making
21 redundant requests for a -- for purposes of
22 fault tolerance. That's another mechanism

1 that can lead to out-of-order arrivals.
2 So, I mean, there -- there's all
3 kinds of ways in which you can get -- which
4 you can send requests in one order, but not
5 receive the responses in a corresponding
6 order.
7 Q. So let's say the Move player
8 requests streamlets in order and, upon
9 receipt, checks each streamlet it receives to
10 ascertain whether it is marked with later
11 time than the previous one for placing it
12 into the buffer.
13 Is that arranging, Doctor?
14 A. I -- I don't -- I don't
15 understand your -- I don't understand your
16 analogy -- your question.
17 Q. Okay. So the -- the Move player
18 is requesting streamlets from a server.
19 Okay? You with me?
20 A. Sure.
21 Q. Okay. The server transmits
22 streamlets back to the client. And, upon

1 receipt by the client, the client checks each
2 streamlet to ascertain whether the streamlet
3 is marked with a later time or a timestamp
4 than the previous one before placing it into
5 the buffer.
6 Is that --
7 A. I --
8 Q. -- arranging?
9 A. I -- I -- I still don't
10 understand your question.
11 Q. What part of my question did you
12 not understand?
13 A. I don't understand what your
14 timestamp is.
15 Q. Okay. System requests a
16 streamlet from the Move player. Client
17 requests a streamlet from the server. Server
18 transmits streamlets back to the client. The
19 client checks to see whether or not the
20 streamlet is in order of ascending playout
21 time. And if it's not, it does something to
22 make it into the correct ascending playout

1 time.

2 Is that arranging?

3 MR. WILSON: Objection, form.

4 THE WITNESS: Yeah, I -- I --

5 I -- I mean, I just can't follow

6 your -- your -- your question.

7 You're -- you -- you've got all kinds

8 of implicit assumptions about what's

9 in the streamlets and -- and what --

10 and -- and using terminology like it's

11 in ascending order.

12 I mean, relative to what?

13 Right? You've got a receipt process.

14 You've got a playout process. Those

15 are independent. So I'm -- I'm just

16 not following what you're trying to

17 cook up here.

18 BY MR. SHENG:

19 Q. Okay. So let's say the

20 streamlets are in ascending playout time.

21 You have 1, 2, 3, 4.

22 Okay?

1 A. Where -- where are these
2 streamlets?
3 Q. These streamlets are in the
4 server.
5 A. Okay.
6 Q. Okay? 1, 2, 3, 4.
7 A. The server certainly has copies
8 of all the streamlets.
9 Q. Yes, okay. So the server
10 certainly has copies of all the streamlets.
11 The streamlets are named 1, 2, 3, 4.
12 Okay? You with me?
13 A. Right. Sure.
14 Q. The client requests streamlets
15 from the server in that order, 1, 2, 3, 4.
16 A. Okay.
17 Q. Okay? You with me?
18 Server sends back the streamlets
19 and the client does some sort of check to see
20 whether the files are 1, 2, 3, 4.
21 Is that sufficient to meet the
22 arranging limitation?

1 A. If -- if -- if the client
2 actually arranges them sequentially into
3 playout order in its buffer, that is
4 arranging the streamlets. If it
5 affirmatively does that, that's -- that's
6 arranging the streamlets.
7 Q. Does it have to be before placing
8 it into the buffer or can it be after placing
9 it in the buffer and before playout? Does
10 that make sense?
11 MR. WILSON: Objection, form.
12 THE WITNESS: No, that doesn't
13 really make sense to me.
14 BY MR. SHENG:
15 Q. So after a streamlet is placed in
16 the buffer, it will then go from the buffer
17 to the player before it's actually played out
18 to the view -- to the user; is that correct?
19 A. I'm sorry. I -- I'm -- I
20 apologize. I was looking at something else.
21 I missed your question.
22 Q. It's okay. What were you looking

1 at?

2 A. I just wanted to look at this --

3 the claim language for the element of

4 arranging.

5 Q. And why did you want to do that?

6 A. Because now you're asking me

7 where does this arranging have to occur and

8 I'm trying to see what the claims actually

9 say about the arranging.

10 Q. Okay. Is -- is -- do -- do you

11 see anything in the claims that requires the

12 arranging to happen at a particular point in

13 time?

14 A. I -- I would ask to get a copy

15 of -- I guess since you're doing the '234,

16 the '234 patent so I can see the -- the

17 entirety of the claim language.

18 Q. Sure. So here's Exhibit 1001.

19 And, again, this is from the 940 IPR and this

20 is --

21 A. Okay.

22 Q. -- the '234 patent.

1 A. Okay.
2 MR. SHENG: And you know what,
3 why don't we mark this, actually, as
4 Jeffay Exhibit 3, just so we're not
5 confused, because earlier we talk
6 about a different Exhibit 1001.
7 So if we could mark his copy as
8 Jeffay -- I think we're on Exhibit 2
9 actually, Jeffay -- no -- yeah, Jeffay
10 Exhibit 2.
11 (Jeffay Exhibit 2 was marked
12 for identification.)
13 BY MR. SHENG:
14 Q. Okay. Doctor, you have --
15 A. Okay. Now I have it.
16 Q. Okay. I think the question is
17 whether or not the claim language requires
18 the arranging to occur at any particular
19 time.
20 A. Okay. Could you ask your
21 question again?
22 Q. Sure. Is there any language in

1 the claims that would require the arranging
2 to occur at any particular point in time?
3 A. You're basically asking a
4 question that I haven't considered. And
5 reading this claim language now, I would need
6 some time to go off and consider this.
7 It's -- it's -- it's a long enough claim,
8 it's a complicated enough claim that -- as I
9 say, you're asking a -- me a question I
10 haven't considered and I would need some time
11 to consider that.
12 Q. Okay. So in my scenario that
13 I -- well, the scenario that I want to ask
14 you about is where the client requests
15 streamlets from the server. Server sends
16 back the streamlets and, prior to placing
17 those streamlets into the buffer, the client
18 arranges them in sequential order. You have
19 not considered whether or not the timing of
20 that before -- when I say timing, it's a
21 terrible question, but I'm just trying to
22 orient us here. Okay?

1 So, like, what I'm trying to
2 distinguish between is doing the arranging
3 before placing it in the buffer versus doing
4 the arranging after you put it in the buffer
5 and before sending it to the player.
6 Does that -- does that make
7 sense? Does my question make sense to you?
8 Before placing the buffer versus
9 after placing the buffer.
10 A. Well, I mean, I would say from a
11 technical standpoint, I don't think it makes
12 sense because if you're saying -- or I don't
13 understand -- your -- your scenario
14 doesn't -- doesn't make sense to me because I
15 don't know what it would mean to arrange
16 before you put it into the buffer.
17 Q. Okay. So we -- we -- we agree
18 that when a client requests streamlets from
19 the server, that it retrieves the streamlets
20 and places them in a buffer, correct?
21 A. We're -- we're talking about Move
22 here?

1 Q. Sure.
2 A. Yes.
3 Q. And I believe your opinion is
4 that after the streamlets are placed into the
5 buffer, there is a -- a -- a -- logic or I --
6 I think the patents refer to it as a staging
7 module -- that after the streamlets are
8 placed into the buffer, then there is a
9 staging module that arranges the streamlets
10 in the correct order.
11 Does that -- does that conform to
12 your understanding?
13 A. Well --
14 MR. WILSON: Objection, form.
15 THE WITNESS: -- so you said --
16 you started this with it is my opinion
17 and I haven't offered any opinion --
18 BY MR. SHENG:
19 Q. Okay.
20 A. -- on -- on -- on any of that.
21 But I do agree that the patents
22 teach the use of a staging module to do the

1 arranging.

2 Q. And the staging module does the

3 arranging after the streamlets are placed

4 into the buffer, correct?

5 MR. WILSON: Objection, form.

6 THE WITNESS: Well, there's

7 multiple buffers here. So I don't

8 know which -- you're going to have to

9 be more specific.

10 BY MR. SHENG:

11 Q. Well, which buffers are you

12 talking about? I -- I thought we were only

13 talking about one buffer.

14 A. You're only talking about -- I

15 mean, the -- the staging module is -- is --

16 is -- is effectively a buffer.

17 Q. Okay. Fair enough. Fair enough.

18 Okay.

19 Before -- in the Move player, is

20 the arranging done after the streamlets have

21 been placed into the buffer? And by "buffer"

22 I mean -- hold on -- maybe -- maybe we should

1 do this in -- in reference to a figure.
2 So let's go to Figure 7 of the
3 '234 patent. Let me know when you get there.
4 A. Okay. I'm there.
5 Q. So when I've been referring to
6 buffer, I've been referring to the streamlet
7 cache module and -- and the streamlet cache
8 704, 710.
9 Okay?
10 A. Yeah, and just not to be
11 critical, but in the art we just call it a
12 cache.
13 Q. Cache. Fair enough.
14 The -- so my question to you is,
15 in the Move player -- or as shown in
16 Figure 7, the arranging occurs after the
17 streamlets are already placed into the
18 streamlet cache 710, correct?
19 MR. WILSON: Objection, form.
20 BY MR. SHENG:
21 Q. Let me ask again just to clean it
22 up.

1 My question to you is, as shown
2 in Figure 7, the arranging occurs after the
3 streamlets have been placed into the
4 streamlet cache 710, correct?
5 A. Okay.
6 Yes. So I think the answer to
7 your question is -- is yes, that when the
8 streamlets arrive, they first go into the
9 cache.
10 Q. Okay. So my question, then, is,
11 after the system -- after the client requests
12 streamlets in order of ascending playout time
13 from the server, if the client checks upon
14 receipt that each streamlet is in the proper
15 order before being placed into the streamlet
16 cache, does that satisfy the arranging
17 limitation?
18 MR. WILSON: Objection, form.
19 THE WITNESS: Again, I -- I
20 don't understand the operation that
21 you're -- you're describing. It --
22 it -- it -- it makes no sense to me.

1 BY MR. SHENG:
2 Q. Why -- why doesn't it make sense?
3 A. Because you're -- you're saying
4 before you have looked at anything that
5 you've received, you're making some
6 determination about whether or not it's in
7 order.
8 Q. Before -- what -- what I'm saying
9 is before the streamlets are placed into the
10 streamlet cache, that the system arranges
11 them in order of 1, 2, 3, 4, just like is
12 shown in Figure 7.
13 A. There's no them there. Right?
14 You receive a streamlet. You have one
15 streamlet.
16 Q. Um-hmm.
17 A. You don't arrange it with
18 anything. I mean, you --
19 Q. Well --
20 A. -- you -- you -- you have --
21 you've just received a streamlet. There's
22 nothing to arrange it with.

1 Q. Okay. Let me ask it this way:
2 System requests streamlets -- if
3 a system receives -- strike that.
4 If a system requests streamlets
5 in order and, upon receipt of that one
6 streamlet, as you pointed out, checks to see
7 if that streamlet is marked 1, 2, 3, 4, in
8 order compared to the previous streamlets it
9 has received, if it does that check before
10 placing it in the -- the buffer, is that
11 arranging?
12 MR. WILSON: Objection, form.
13 THE WITNESS: I mean, I -- I --
14 I don't know. But in your example,
15 nothing has been arranged.
16 BY MR. SHENG:
17 Q. I -- I feel like I'm asking it so
18 clearly. I'm -- I'm -- I'm getting --
19 A. What --
20 Q. -- frustrated. You're doing a
21 great job here to --
22 A. What -- what was arranged?

1 Q. Okay.
2 A. You just described a check.
3 Q. Right. So it checks to see if it
4 is in the order of ascending playout time
5 compared to a streamlet that was previously
6 put into the buffer.
7 Okay? You with -- you with me
8 there?
9 A. Sure.
10 Q. Okay. And let's say that
11 streamlet is not in the correct order and
12 let's say it just discards it and requests
13 the actual one that's in -- that comes in --
14 comes in next.
15 A. Okay.
16 Q. Is that -- and then actually does
17 get the correct streamlet and puts it in the
18 buffer.
19 Is that arranging?
20 MR. WILSON: Objection, form.
21 THE WITNESS: I -- I'm not
22 seeing any arranging here in your --

1 in your -- in your scenario. If -- if
2 people are walking through the door --
3 BY MR. SHENG:
4 Q. Um-hmm.
5 A. -- and I'm trying to determine
6 are they coming in the door in alphabetical
7 order and -- and then once they come in the
8 door, they go in the cache, how has there
9 been any arranging?
10 BY MR. SHENG:
11 Q. Okay.
12 A. You're -- you're -- you're
13 focusing on a test on some comparison and I'm
14 just saying a simple comparison, I don't see
15 how that constitutes arrangement.
16 Q. Let's use your example of people
17 walking through the door. Okay?
18 You get an assignment to say you
19 need to arrange the people who walk in the
20 door in alphabetical order. Okay? And
21 you -- the first person comes in. You let
22 him in. The second person comes in and you

1 see oh, well, that person is -- has a -- a
2 name that's -- maybe alphabetical order's
3 not -- let's strike that.
4 Let's -- let's use height. Can
5 we use height, arrange them in -- in -- in
6 order of height?
7 A. This is -- this is -- your --
8 Q. Okay. Let's try it.
9 A. Your example's going to break
10 down either way, so ...
11 Q. Let's try it. Okay. Entertain
12 me here, okay, Doc?
13 A. Happy to.
14 Q. Okay. So your assignment is to
15 arrange people in order of height, okay?
16 A. Okay.
17 Q. First person or streamlet comes
18 in.
19 A. Okay.
20 Q. You say okay, go into the cache.
21 All right? Second person comes in and you
22 say wait, hold on, you're shorter than the

1 person or the streamlet I just let in, so I'm
2 getting rid of you and you toss it aside.
3 And the next person comes in and then you say
4 okay, yes, you are taller than the person who
5 came in before me, you get to come in and,
6 you know, line up.
7 Is that arranging?
8 A. Okay.
9 MR. WILSON: Objection, form.
10 THE WITNESS: There's so much
11 wrong here.
12 So first of all, you threw
13 somebody out, right?
14 BY MR. SHENG:
15 Q. Okay.
16 A. You threw out data. That --
17 Q. Okay.
18 A. That doesn't happen in -- in --
19 you know, unless you re- -- rerequest it,
20 that doesn't happen in -- in the Move system.
21 The second is you never described
22 any arrangement. You just described who

1 you're letting in the door and -- and -- and
2 the criteria that you're using to allow
3 people into the door. That's all you
4 described. That's all I heard you describe.
5 BY MR. SHENG:
6 Q. So that -- that check -- well,
7 you -- you -- you -- you -- you criticize
8 the -- the -- the analogy by saying that I
9 was casting people aside. So instead of
10 casting people aside, you tell them come back
11 later. You rerequest it. Okay?
12 So -- so no one's is being cast
13 aside. You're just -- no? That -- that --
14 that -- that --
15 A. This is so --
16 Q. All right. Fair enough, Doc.
17 Well, Dr. Jeffay, that's -- thank
18 you for your time. I don't have any more
19 questions on direct.
20 MR. SHENG: Timing-wise, it's
21 12:10. Defer to counsel for -- for
22 fubo if we should take a -- if now

1 is a good time to take a quick break
2 for lunch -- or we can take a lunch
3 break since it's around lunchtime.
4 THE WITNESS: Don't look at me.
5 MR. WILSON: Ready for lunch?
6 THE WITNESS: Sure. I mean --
7 VIDEO OPERATOR: I'll take us
8 off the record at 12:08.
9 (Thereupon, at 12:08 p.m. EDT, a
10 lunch recess was taken.)
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1 AFTERNOON SESSION (1:10 p.m. EDT)
2 VIDEO OPERATOR: Back on the
3 record at 1:10.
4 EXAMINATION BY COUNSEL FOR PETITIONERS fuboTV
5 MEDIA, INC. AND YANKA INDUSTRIES, INC.
6 BY MS. OSMAN:
7 Q. Good afternoon, Dr. Jeffay. How
8 are you?
9 A. I'm well.
10 Q. How was lunch?
11 A. Very quick.
12 Q. Well, I -- I'll introduce myself.
13 My name is Inge Osman. I am representing
14 fuboTV and Yanka Industries, also known as
15 MasterClass, doing business as MasterClass.
16 A. Oh, okay. Interesting.
17 Q. Yep.
18 Did you talk to your counsel
19 about -- about the deposition today during
20 lunch?
21 A. No, I didn't talk to them at all.
22 Q. Okay. Okay. Great.

1 Well, I know you have your
2 declaration in front of you, but I'm going to
3 hand you another declaration. This is the
4 declaration in the '156 patent, IPR, the IPR
5 number ends in 00917.
6 A. Thank you.
7 MS. REPORTER: Do you not want
8 it marked?
9 MS. OSMAN: It's already been
10 marked. This is Exhibit 2141 in the
11 IPR ending in the numbers 00917.
12 (Exhibit 2141-917, previously
13 marked, was referred to.)
14 BY MS. OSMAN:
15 Q. Okay. Dr. Jeffay, could you
16 please turn to paragraph 49. Excuse me.
17 A. 49. Okay. I'm there.
18 Q. Okay. So I'd actually like to
19 direct you to the very next page, page 25.
20 It's the end of paragraph 49. And the last
21 sentence in that paragraph I'll -- I'll read
22 into the record.

1 It says, A POSITA would
2 understand that suspending decoding and
3 clearing the buffer also would advantageously
4 allow a new request -- oh, I'm sorry. Excuse
5 me. It's the sentence before. So I'll start
6 again.
7 And with respect to jumps,
8 Leaning explains that we prefer to suspend
9 decoding and clear the buffer so that the new
10 request is sent immediately.
11 Is that right? Did I read that
12 correctly?
13 A. I think you did.
14 Q. Okay. But that's not the whole
15 sentence in Leaning, is it?
16 A. No. I mean, you're talking about
17 what I quoted here?
18 Q. Yeah.
19 A. Yeah, I think that's probably
20 right.
21 Q. Right. And we know it's not the
22 whole sentence because there's that ellipses

1 that you included there, right?
2 A. Oh, yes. Sure.
3 Q. Okay. I -- I'm going to hand you
4 Leaning.
5 A. Okay.
6 Q. And that's Exhibit 1004. Okay.
7 A. I mean, I --
8 Q. You already have it. Okay.
9 Great. So I'm not --
10 A. I mean, I'm happy to get a new
11 copy, but --
12 Q. No, you don't need to have
13 another copy.
14 Okay. So you have Leaning in
15 front of you. If you'll please turn to
16 page 11. And this is -- I'd like to direct
17 you to lines 19 through 20.
18 A. Okay. Hang on.
19 19 through 20. Okay.
20 Q. I just want to compare the
21 sentence that you quoted to the sentence in
22 Leaning. So are -- let me know when you're

1 at lines 19 through 20.
2 A. I'm there.
3 Q. Okay. So the sentence in Leaning
4 says, We prefer, in the case of a -- of the
5 jump, to suspend decoding and clear the
6 buffer so that the new request is sent
7 immediately, but this is not actually
8 essential.
9 So in your declaration you --
10 that ellipses refers to this first part of
11 the sentence, which says, in the case of the
12 jump; is that right? That's the part that
13 was excluded?
14 A. Yes.
15 Q. And then you also excluded the
16 last clause in the sentence, but this is not
17 actually essential; is that right?
18 A. Sure.
19 Q. So you omitted the last clause of
20 the sentence?
21 A. I'm sorry?
22 Q. You omitted the last clause of

1 that sentence; is that right?
2 A. I -- I just quoted what -- what I
3 quoted. I didn't explicitly omit this last
4 sentence, this last bit.
5 Q. But you didn't include it in your
6 declaration, did you?
7 A. Correct.
8 Q. Okay. Okay. Could you please
9 turn in your declaration to paragraph 133.
10 A. Okay.
11 Q. Okay. So I'll direct you to sort
12 of the second half of paragraph 133. Here
13 you quote parts of that same sentence in
14 Leaning again. You say, As also explained
15 supra, and you cite a particular section,
16 Leaning emphasizes its buffer clearing step,
17 explaining with respect to the jump process
18 that, We prefer, in the case of the jump, to
19 suspend decoding and clear the buffer so that
20 the new request for a subfile is sent
21 immediately.
22 Is that right?

1 A. You -- I think you read that
2 correctly.
3 Q. Okay. And, again, when you're
4 quoting Leaning here too, you omitted that
5 final clause in Leaning; is that right?
6 A. I mean, I didn't explicitly omit
7 it. I just quoted the part that I -- I
8 quoted here because this is just explaining
9 what Leaning prefers.
10 Q. But you would agree you did not
11 include that final clause in that statement?
12 A. Sure.
13 Q. And that final -- final clause
14 says, but this is not actually essential.
15 Is that correct?
16 A. Correct.
17 Q. Okay. If you'll turn, please, to
18 paragraph 191 in your declaration.
19 A. 191.
20 Okay.
21 Q. Okay. So in paragraph 191 you
22 opine that Move -- Move's system, which

1 includes novel and nonobvious elements, such
2 as the Move Media Player --
3 MS. REPORTER: I'm sorry.
4 Again.
5 MS. OSMAN: Too fast? Sorry.
6 I'll start again.
7 BY MS. OSMAN:
8 Q. I'm reading, Dr. Jeffay, part of
9 your declaration. And I'm at paragraph 191.
10 This is the second sentence in this paragraph
11 and it -- and it says, As I explain below,
12 MOVE Networks' system, which includes novel
13 and nonobvious elements, such as the Move
14 Media Player, embodies the limitations
15 present in the challenged claims.
16 Did I read that correctly?
17 A. I believe you did.
18 Q. Okay. And then in support of
19 that statement, you cite to Exhibit 2071, the
20 '156 patent, claim 13, and it's a chart.
21 Is that right?
22 A. Yes. This is also evidence

1 that's being supported -- being provided and
2 supported that sentence.
3 Q. Okay. And what is -- what is
4 this? What is Exhibit 2071?
5 A. My recollection is, it's a -- a
6 claim chart that shows how the Move system
7 practiced claim 13.
8 Q. Okay. And who prepared that
9 claim chart?
10 A. I don't remember who -- who
11 provided the initial version of it. I do not
12 remember who -- who -- I don't recall who
13 drafted that, the first draft.
14 Q. Did you have anything to do with
15 the preparation of that claim chart?
16 A. I think so. I mean, do you have
17 a copy of it that I could review?
18 Q. Sure. This is Exhibit 2071 in
19 IPR2024-00917.
20 A. Thank you.
21 Okay. What's your question?
22 Q. Okay. Does that refresh your

1 recollection as to who prepared this claim
2 chart?
3 A. No, not really. I mean, I've
4 done so many charts over the course of all
5 these IPRs that I don't -- I -- I can't say
6 for certain for this specific chart who made
7 the first draft of it.
8 Q. I didn't ask you who wrote the
9 first draft. I'm asking if you prepared or
10 who prepared this claim chart.
11 A. Well, but, I mean, that's --
12 that's sort of what I'm saying. I mean, all
13 the things I've worked on, somebody,
14 typically me, makes the first draft and then
15 we iterate on it. And I just don't recall
16 the genesis of this exhibit.
17 Q. Dr. Jeffay, it sounds like you're
18 telling me that you don't remember if you had
19 anything to do with the preparation of this
20 claim chart.
21 Is that right?
22 A. I think what I said was I don't

1 recall the genesis of it, which I think is a
2 fundamentally different statement than not
3 having anything to do with it.
4 Q. So I don't understand your
5 answer. So let me ask my question again and
6 then you can answer again.
7 Who prepared this claim chart?
8 A. I had a hand -- I'm almost
9 certain I had a hand in preparing this. I
10 just don't recall who came up with the
11 initial version of the draft. And in any
12 event, this is certainly something that I
13 reviewed and was comfortable with at the
14 time.
15 Q. So you have seen this claim chart
16 before?
17 A. Yes.
18 Q. And when you say you had a hand
19 in preparing it, what does that mean?
20 A. I'm sure that at a minimum, I
21 provided edits and feedback on it.
22 Q. But you don't recall doing so,

1 sitting here today?
2 A. I don't recall this specific
3 chart, only because I have worked on so many
4 charts in -- in this case. And at -- at a
5 certain point they all sort of blur because
6 they're all -- a huge number of them cite --
7 make the same argument, cite the same
8 evidence, so ...
9 Q. Okay. Well, would you agree with
10 me that this is a claim chart for claim 13 of
11 the '156 patent?
12 A. Yes.
13 Q. And it doesn't include any other
14 claims of the '156 patent?
15 A. I think that is correct. Yes,
16 that is correct.
17 Q. Have you prepared any other claim
18 charts that would map any other claims of the
19 '156 patent to the Move player?
20 A. Well, the report and all the
21 exhibits speak for themselves, but I don't
22 recall all the claims that were charted

1 sitting here today.
2 Q. So would you agree that sitting
3 here today, you don't know of any other claim
4 charts that you've prepared that would map
5 any other claims of the '156 patent to the
6 Move Media Player?
7 A. Sure. Sitting here today, that's
8 the case.
9 Q. Okay. Do you know which claims
10 of the '156 patent are challenged in the
11 00917 IPR?
12 A. I don't know that off the top of
13 my head.
14 Q. Okay. But this -- you agree this
15 claim chart only -- only analyzes claim 13?
16 A. I think we've covered that.
17 Q. That's a yes?
18 A. Yes, we've covered that and yes,
19 I think I previously told you that, yes, this
20 covers claim 13.
21 Q. Okay. Thank you. You can -- you
22 can set that aside.

1 I'm going to hand you another
2 declaration. So give me a moment, please.
3 This is Exhibit 2141 in
4 IPR2024-00918.
5 Dr. Jeffay.
6 A. Oh, sorry. Thank you.
7 (Exhibit 2141-918, previously
8 marked, was referred to.)
9 BY MS. OSMAN:
10 Q. If you'll please -- do you
11 recognize this document?
12 A. Yes.
13 Q. This is your -- this is your
14 declaration in the -00918 IPR; is that right?
15 A. Yes, that's what it appears to
16 be.
17 Q. Okay. Can you please turn to
18 paragraph 191 in your declaration.
19 A. Okay. I'm there.
20 Q. Okay. This paragraph is very
21 similar to the one that we just looked at.
22 And if you look at the second sentence in

1 this paragraph, it starts with the words, As
2 I explain below, Move -- and I'll -- I'll
3 just read the sentence.
4 Move Networks' system, which
5 includes novel and nonobvious elements such
6 as the Move Media Player, embodies the
7 limitations present in the challenged claims.
8 And then there's a See also cite.
9 Do you see that there?
10 A. I do.
11 Q. And it cites to Exhibit 2071 and
12 in parentheses, the '156 patent claim 13
13 chart.
14 Is that right?
15 A. I think you read that correctly.
16 Q. Okay. This -- this declaration
17 is not directed to the '156 patent, is it?
18 A. No, this is, what, the '564?
19 Yeah --
20 Q. Okay.
21 A. -- the '564 patent.
22 Q. Okay. So is that a clerical

1 error or are you relying on the '156 patent
2 claim chart to support this statement?
3 A. Well, I think I'm relying on the
4 '156 chart, because the elements of --
5 there's commonality between the elements of
6 the claims across several of the patents.
7 Q. Okay. And you're relying on this
8 chart on one claim, claim 13, and the '156
9 patent claim chart; is that right?
10 A. Yes.
11 Q. Okay. And that's despite the
12 fact that the '564 patent has different
13 claims, correct?
14 A. Correct.
15 Q. Okay. Do you know what claims
16 are asserted or challenged in the '564
17 patent?
18 A. I -- I don't.
19 Q. You don't know?
20 A. I don't have that off the top of
21 my head.
22 Q. Okay. But -- but certainly,

1 claim 13 of the '156 patent is not among
2 those challenged in the patent challenge in
3 the '564 IPR?
4 A. I mean, it's obviously not a
5 claim of the '564 patent, but as I say, my
6 recollection is there's significant overlap
7 between the elements of this claim and claims
8 in the other patents.
9 Q. Okay. Okay. You can set that
10 declaration aside.
11 I'm going to hand you one more
12 declaration. This declaration is from --
13 this -- it's Exhibit 2141 in IPR2024-00919.
14 And this IPR is -- is related to the '772
15 patent.
16 Here's your declaration.
17 A. Thank you.
18 (Exhibit 2141-919, previously
19 marked, was referred to.)
20 BY MS. OSMAN:
21 Q. Dr. Jeffay, you recognize this
22 document as your declaration in the 00919

1 IPR?
2 A. I do.
3 Q. Okay. Can you please turn again
4 to paragraph 191 in this declaration.
5 A. 191. Okay. I'm there.
6 Q. Okay. This paragraph is, again,
7 I think nearly identical to the one we just
8 looked at in the prior two declarations. And
9 it -- and it includes that same sentence that
10 I've read to you twice now and the same cite,
11 the See also Exhibit 2071 and, in
12 parentheses, '156 patent claim 13 chart.
13 Do you see that there?
14 MR. WILSON: Objection.
15 Counsel, you're asking him questions
16 about an exhibit but not showing it to
17 him.
18 MS. OSMAN: Counselor --
19 MR. WILSON: Can you --
20 MS. OSMAN: -- that's coaching.
21 You're restricted to objection, form.
22 Thank you.

1 MR. WILSON: That's the
2 objection.
3 MS. OSMAN: Okay. Keep -- keep
4 it to objection, form, please.
5 BY MS. OSMAN:
6 Q. Dr. Jeffay, do you see that
7 there?
8 A. I -- I see the text that you
9 read.
10 Q. Okay. And so, again, your
11 opinion in this declaration is that the Move
12 Networks system embodies limitations present
13 in the challenged claims. And you're relying
14 on Exhibit 2071, which is related to the '156
15 patent claim 13 chart; is that correct?
16 A. That's my recollection.
17 Q. Okay. And that is despite,
18 again, the fact that this declaration is
19 related to the '772 patent, correct?
20 A. Correct.
21 Q. And claim 13 of the '156 patent
22 is not in the '772 patent, correct?

1 A. The literal claim itself, that is
2 true.
3 Q. Okay. And do you recall which
4 claims of the '772 patent are challenged in
5 this IPR?
6 A. Not off the top of my head.
7 Q. Okay. But -- but certainly those
8 claims -- those challenged claims do not
9 include claim 13 of the '156 patent?
10 MR. WILSON: Objection. It's
11 the same objection.
12 THE WITNESS: So if I
13 understand your question, you're
14 asking me in the -- in the 919 IPR,
15 there's -- it's only claims -- it's
16 not claims of the '156 patent?
17 BY MS. OSMAN:
18 Q. Correct.
19 A. I think that is correct.
20 Q. Okay. Thank you. You can set
21 that aside. Oh, you know, actually, please
22 keep that declaration. I'll have more

1 questions and we can use this one.
2 A. Fine.
3 Q. Could you turn to paragraph 210
4 in that same declaration that's in front of
5 you.
6 A. Okay.
7 Q. Can you take a moment to read
8 that paragraph.
9 A. Okay.
10 Q. And I'm focusing on that very
11 last sentence, in which -- my understanding
12 is that you're opining that there are novel
13 claim elements that are practiced by Sling
14 TV; is that correct?
15 A. Yes.
16 Q. Did you provide a claim chart
17 mapping any claim elements to Sling TV?
18 A. Well, the report and the exhibit
19 speak for themselves, but I don't -- I don't
20 recall that sitting here today.
21 Q. Okay. Can you please turn to
22 paragraph 217 of your declaration.

1 A. Okay.
2 Q. And this is a long paragraph. I
3 will direct you to the -- sort of the bottom
4 of this paragraph. And it -- it -- I think
5 it is the last sentence, but it's a -- a
6 longer sentence. It starts with the words
7 More recently.
8 A. Okay. I found that.
9 Q. Okay. Just take a look at that
10 sentence for a moment.
11 A. Okay. I've reviewed it.
12 Q. Okay. So in this sentence you
13 say, Sling TV, which I understand the ITC
14 found to practice claims of the challenged
15 '564 and '156 patents; is that right?
16 A. That's what I wrote.
17 Q. Okay. And you cite to
18 Exhibit 1009; is that correct?
19 A. Yes.
20 Q. Okay. So you're relying on the
21 ITC's findings with regard to Sling TV
22 practicing claims; is that correct?

1 A. I wouldn't say I'm -- I'm relying
2 on it. I'm just commenting on it.
3 Q. Did you provide a claim chart
4 mapping any challenged claims to Sling TV?
5 A. Again, the report and the
6 exhibits speak for themselves, but I don't
7 recall a claim chart for Sling TV.
8 Q. Okay. So what's your basis for
9 saying that the Sling TV practices the claims
10 of the challenged patents?
11 A. Well, it's all the references
12 that I provide in this section for Sling TV.
13 Q. Okay. And one of those
14 references is the ITC decision; is that
15 correct?
16 A. Sure.
17 Q. Okay.
18 A. That's -- that's one of them.
19 Q. I'm going to hand you another
20 exhibit. This is Exhibit 1009, Dr. Jeffay.
21 A. Thank you.
22

1 (Exhibit 1009, previously
2 marked, was referred to.)
3 BY MS. OSMAN:
4 Q. Dr. Jeffay, do you recognize this
5 document?
6 A. I mean, it looks somewhat -- I
7 don't actually recognize it just sitting here
8 today, but I assume this is something that
9 I've reviewed at some point.
10 Q. But you don't remember reviewing
11 it?
12 A. No, I just don't recognize the
13 document because I think this was something I
14 probably looked at in soft copy and never in
15 a printed-out form like this.
16 Q. But you agree that this is
17 Exhibit 1009 that's cited in your
18 declaration?
19 A. I don't have any reason to
20 dispute that.
21 Q. Okay. And if you could look at
22 the first page of this document, what is this

1 document?

2 A. This is the initial determination

3 on violation of Section 337 and recommended

4 determination on remedy and bond by the chief

5 ALJ, Judge Cheney.

6 Q. Okay. And which patents does

7 this determination, initial determination,

8 relate to?

9 A. So as I recall or as it's listed

10 here, it's the '564 patent, the '156 and then

11 two others that I don't think we're talking

12 about here, the '554, or what's -- what we've

13 previously called the '554 and the '555

14 patent.

15 Q. Okay. But this decision does not

16 relate to the '772 patent; is that right?

17 A. I mean, the document speaks for

18 itself, but I think that is probably correct.

19 Q. Okay. And it also does not

20 relate to the '234 patent; is that right?

21 A. That is probably correct.

22 Q. Okay. Can you please turn to

1 page 101 of this document.
2 A. Okay.
3 Q. You're faster than I am.
4 A. Just lucky.
5 Q. Okay. So I'm going to direct you
6 to that -- the bottom of this page in
7 subsection B, entitled Domestic Industry and
8 in parentheses Technical Prong.
9 Do you see that there?
10 A. I do.
11 Q. Okay. And there in the opinion
12 it states, DISH contends that the DISH
13 set-top boxes and the Sling TV apps practice
14 independent claim 1 of the '564 patent.
15 And then if you turn to the very
16 next page --
17 A. Okay.
18 Q. -- is -- there's an analysis of
19 claim 1 there.
20 Do you see that?
21 A. I do.
22 Q. Okay. Does this decision relate

1 to the 55 -- the '156 patent?
2 A. This decision, what
3 specifically --
4 Q. Strike that. Let me --
5 A. -- are you referring to?
6 Q. That -- that was a bad question.
7 Let me -- let me rephrase.
8 Does this analysis -- does this
9 analysis relate to the '156 patent?
10 A. I mean, the analysis that's here
11 starting on page 102 seems to relate to the
12 '564 patent and I don't recall if the ALJ
13 specifically walked through the elements of
14 the claim of the '156 patent, but to the
15 extent that they're substantially similar
16 limitations, in theory, the ALJ's analysis
17 would carry over for those limitations as
18 well.
19 Q. Okay. Well, I'm asking you what
20 the ALJ specifically found here. You cited
21 to pages -- in your report you cited to
22 pages 101 through 112. So please take a look

1 at those pages. And what I'd like to know
2 when you're done taking a look is if the
3 ALJ's analysis in the section that you cited
4 identifies any claim from the '156 patent or
5 not.
6 A. Okay.
7 So just quickly skimming this
8 and, hopefully, without having missed
9 anything, I don't see any reference to the
10 '156 patent.
11 Q. Okay. That's correct. That's --
12 that's what I've seen too.
13 So the ALJ's analysis that you
14 cited in support of your statement that
15 Sling TV is -- practices the claims actually
16 is only related to the '564 patent; is that
17 correct?
18 A. I guess as a literal matter,
19 that's true. But as I mentioned, to the
20 extent there's overlapping claim limitations,
21 in theory his analysis would apply.
22 Q. But that's not what I asked you.

1 My -- my question is, the ALJ's
2 analysis was only related to the '564 patent,
3 that -- he only analyzed claim 1 of the '564
4 patent; is that right?
5 MR. WILSON: Objection,
6 misstates testimony.
7 MS. OSMAN: Counsel, you're --
8 MR. WILSON: I'm sorry.
9 MS. OSMAN: -- restricted to
10 form. Please keep it to form.
11 THE WITNESS: Could you just
12 ask the question again?
13 BY MS. OSMAN:
14 Q. Of course.
15 My question for you was, the
16 ALJ's analysis was restricted to claim 1 of
17 the '564 patent; is that correct?
18 A. In these 12 pages, that
19 appears -- again, unless I missed something,
20 that appears to be correct.
21 Q. Okay. And these 12 pages, that's
22 what you cited in -- in your declaration in

1 support of your statement. And I'll read the
2 statement.
3 It says, Sling TV, which I
4 understand the ITC found to practice the
5 claims of the challenged '564 and '156
6 patents.
7 Correct?
8 A. I was -- you -- I was -- wasn't
9 tracking you in real time, but I think you
10 read that correct.
11 Q. Okay. Thank you. Okay. Well,
12 let's -- let's look at the ITC's decision.
13 If you could look at page 102, this is
14 related to claim 1 of the '564 patent.
15 A. Okay.
16 Q. You see in subsection a is the
17 first limitation. And he calls it -- the ALJ
18 refers to it in parentheses as 1pre.
19 A. I see that.
20 Q. In that section the ALJ says,
21 Respondents do not contest that use of the
22 DISH set-top boxes and the Sling Fire App

1 satisfy this limitation.
2 Do you see that there?
3 A. Yes.
4 Q. So the ALJ noted that this
5 limitation was not contested, correct?
6 A. I think that's a fair read of
7 that.
8 Q. Okay. If you turn to the very
9 next limitation, this one in parentheses --
10 it's -- it's 1a.
11 Again, if you look at the second
12 sentence, the ALJ says, Respondents do not
13 contest that use of DISH set-top boxes and
14 the Sling Fire App satisfy this limitation.
15 Is that correct?
16 A. That's -- that's what the ALJ
17 appears to have written.
18 Q. Okay. So the ALJ is finding
19 these limitations as disclosed, but they're
20 uncontested, correct?
21 A. I'm sorry. He's -- the ALJ is
22 finding these as disclosed but not contested?

1 Q. The -- let me strike that
2 question.
3 A. Okay. Thank you.
4 Q. You're correct. It was poorly
5 worded.
6 The ALJ is finding that the Sling
7 Fire App satisfies these limitations, but
8 there is no -- but respondents conceded that
9 these were satisfied; is that right?
10 MR. WILSON: Objection, form.
11 THE WITNESS: Well, to the
12 extent that I'm parsing this right, I
13 think that appears to be correct. The
14 ALJ is making those two statements.
15 BY MS. OSMAN:
16 Q. Okay. If you could please turn
17 to page 104.
18 A. Okay.
19 Q. I'm going to direct you to
20 subsection d. And this is, in parentheses,
21 limitation 1c.
22 Again --

1 A. Okay.
2 Q. -- the second sentence there
3 states, Respondents do not contest that the
4 use of the DISH set-top boxes and the Sling
5 Fire App satisfies this limitation.
6 Do you see that there?
7 A. I do.
8 Q. So -- so this is another
9 limitation where respondents conceded that
10 Sling Fire App satisfies the limitation,
11 correct?
12 MR. WILSON: Objection, form.
13 THE WITNESS: It seems that
14 that is at least the case.
15 BY MS. OSMAN:
16 Q. Okay. If you'll turn, please, to
17 page 105.
18 A. I'm sorry, I missed it. 100 --
19 Q. Sorry. Turn, please, to 105 --
20 A. Okay.
21 Q. -- the very next page.
22 A. Perfect.

1 Q. I'll direct you to
2 subsection e --
3 A. Okay.
4 Q. -- limitation, in parentheses,
5 1d.
6 That second sentence reads,
7 again, Respondents do not contest that use of
8 the DISH set-top boxes and the Sling Fire App
9 satisfies this limitation.
10 Do you see that there?
11 A. I'm sorry, I -- I was in the
12 wrong section.
13 Q. Sure.
14 A. I see the response.
15 Yes, I see that.
16 Q. Okay. And I think this makes
17 four uncontested limitations.
18 Do you agree with that? You can
19 go back and count.
20 A. It is what it is, but --
21 Q. One, two --
22 A. One, two --

1 Q. -- three, four.
2 A. I think you have counted
3 correctly.
4 Q. Okay. And then if you'll turn to
5 page 106.
6 A. Okay.
7 Q. This is subsection g. In
8 parentheses, the ALJ said f for this
9 limitation. And you see that same language
10 again, Respondents do not contest that the
11 Sling Fire App satisfies this limitation,
12 right?
13 A. That same language appears there.
14 Q. Okay. So this is uncontested
15 limitation number five.
16 A. It's at least uncontested.
17 Q. Okay. And then if you'll turn to
18 page 107, subsection i --
19 A. Subsection i.
20 Q. It's at the bottom of page 107.
21 Do you see that?
22 A. I -- oh, sorry. Sorry. I was

1 doing 1i.
2 Q. No.
3 A. Yes, I see that.
4 Q. Yeah. And this is in
5 parentheses. 1h the ALJ has called this
6 limitation?
7 A. I -- I see that.
8 Q. Okay. And you see that same
9 sentence, Respondents do not contest; is that
10 right?
11 A. That same sentence does appear
12 here as well.
13 Q. Okay. And this is the sixth
14 uncontested limitation?
15 A. Sure.
16 Q. Okay. So in finding that the
17 Sling Fire TV app satisfied the limitations
18 of claim 1 of the '564 patent, the ALJ was
19 relying on respondent's concessions; is that
20 correct?
21 MR. WILSON: Objection, form.
22 THE WITNESS: I don't know,

1 just quickly reviewing this, the
2 extent to which he's exclusively
3 relying on that.
4 BY MS. OSMAN:
5 Q. In each of these subsections that
6 we just walked through, was there any other
7 reason given for why the ALJ found these
8 limitations were satisfied?
9 MR. WILSON: Objection, form.
10 THE WITNESS: Well, he's citing
11 other documents and I don't recall
12 what evidence is in those documents.
13 BY MS. OSMAN:
14 Q. You're correct. We don't have
15 access to those documents in these
16 proceedings.
17 A. Okay. Well, I'm -- I'm just
18 saying he's citing to other documents and
19 I -- I -- I can't, you know, fully analyze
20 your -- your question because he is citing to
21 other documents and I don't know to what
22 extent he's -- what -- what's in those

1 documents and whether or not part of his --
2 his statement that -- for example, for
3 limitation 1h at the bottom of page 107 when
4 he says the use of DISH set-top boxes and the
5 Sling Fire App meets this limitation, I don't
6 know to what extent is he relying exclusively
7 on respondent's concession or on additional
8 evidence that was presented in these other
9 documents that he's referring to.
10 Q. But certainly respondent's
11 concession was at least important enough to
12 include in the initial determination; is that
13 correct?
14 MR. WILSON: Objection, form.
15 THE WITNESS: I mean, he
16 certainly included it, therefore, I
17 assume he felt it was important to
18 include it.
19 BY MS. OSMAN:
20 Q. And there were six different
21 concessions in this one claim?
22 MR. WILSON: Objection, asked

1 and answered.
2 MS. OSMAN: Counsel, you really
3 need to stick to form. That's the
4 PTAB's rules. You have to stick to --
5 your objections have to be just form.
6 MR. WILSON: I'd hardly say
7 that asked and answered is --
8 MS. OSMAN: Asked and answered
9 is --
10 MR. WILSON: -- a speaking
11 objection --
12 MS. OSMAN: -- not okay.
13 Research it. It's not okay. Just
14 form.
15 THE WITNESS: Yeah. I -- in
16 any event, I think we established --
17 or -- or I trusted that you had
18 counted correctly to 6.
19 BY MS. OSMAN:
20 Q. Okay. Okay. You can put the
21 ITC's decision away. Thank you. Let's go
22 back to your declaration, please.

1 A. Okay. Just give me a sec.
2 Okay.
3 Q. Okay. Would you please turn to
4 paragraph 216 of your declaration.
5 A. Okay.
6 Q. Okay. So I'll direct you to the
7 very last sentence in this paragraph. Will
8 you take a look at that, please.
9 A. Okay.
10 Q. Okay. So I'm going to read this
11 in the record just so that we have it. The
12 sentence says, The key, one article writes,
13 is in Move's plugin because it puts the
14 end-user environment control. It can
15 determine the best end user experience,
16 intelligently ensuring fluidity of playback.
17 Is that correct?
18 A. I think you read that correctly.
19 Q. And there's no cite here, but I'm
20 going to show you Exhibit 2048, because
21 that's where this quote came from.
22 So give me one moment. I will

1 give you that exhibit.
2 A. Okay.
3 Q. Okay. This is Exhibit -- this is
4 Exhibit 2048. Sorry.
5 A. Thank you.
6 (Exhibit 2048, previously
7 marked, was referred to.)
8 BY MS. OSMAN:
9 Q. Have you seen this before,
10 Dr. Jeffay?
11 A. This looks familiar.
12 Q. Okay. Do you want to take a
13 moment to take a look at it?
14 A. Please. Just let me --
15 Q. Sure.
16 A. -- read it quick.
17 Okay.
18 Q. Okay. In that sentence that we
19 just looked at in your declaration -- again,
20 we were looking at the bottom of
21 paragraph 216 in your declaration -- that's
22 quoting this exhibit; isn't that right?

1 Do you see where that came from
2 in the exhibit?
3 A. Yes.
4 Q. Yeah, the -- the sentence starts
5 with, But the key is the plug -- is in the
6 plugin.
7 A. Yes.
8 Q. Do you see that there?
9 Okay. And if we look at the full
10 sentence in the article, Exhibit 2048 that's
11 in front of you, it -- it actually says, But
12 the key is in the plugin, comma, which
13 manages delivery, assembles and renders the
14 stream and offers DRM, geotargeting and
15 extremely in-depth reporting.
16 Do you see that?
17 A. Yes.
18 Q. But you didn't identify any of
19 those functions of the plugin in your
20 statement in your declaration, did you?
21 A. Sure. That's fair.
22 Q. Okay. So there are a number of

1 different functions that you excluded. And
2 the first one is managing delivery, then
3 assembling the stream and rendering the
4 stream, offering DRM.
5 What's DRM?
6 A. Digital rights management.
7 Q. And digital rights management,
8 that's not in the challenged claims, is it?
9 A. No, I don't believe so.
10 Q. Okay. And then another function
11 you exclude is geotargeting.
12 Do you see that there?
13 A. Yes.
14 Q. And geotargeting is not in the
15 challenged claims either, is it?
16 A. No, I don't believe so.
17 Q. Okay. And then also extremely
18 in-depth reporting.
19 Do you see that there?
20 A. I do.
21 Q. Is extremely in-depth reporting
22 in the -- in the challenged claims?

1 A. I'm not sure what exactly this is
2 referring to when it says extremely in-depth
3 reporting. But for just a -- a layperson's
4 read of this, I don't think this is part of
5 the claims.
6 Q. You would agree that the
7 challenged claims don't say anything about
8 any kind of reporting; is that right?
9 A. Well, I mean, reporting -- the --
10 the -- the claims involve a form of -- how
11 can I say this -- of kind of metric
12 accumulation and -- and reporting between the
13 components of the player for purposes of --
14 of adaptation. But I don't know that that's
15 what this is referring to.
16 Q. Well, let's keep reading in this
17 article. If you look down a couple
18 paragraphs there's a sentence that starts
19 with, The final element.
20 Do you see that?
21 A. Yes.
22 Q. Okay. So the sentence says, The

1 final element in Move's technology is
2 reporting. And, again, this is where having
3 a client side plugin is a tremendous
4 advantage. So this article is identifying
5 this reporting feature as a tremendous
6 advantage; is that right?
7 MR. WILSON: Objection, form.
8 THE WITNESS: I mean, it
9 certainly has the words "tremendous
10 advantage." But I think -- I think
11 you have to take it in context.
12 BY MS. OSMAN:
13 Q. I'm not asking what you think.
14 I'm asking this article is identifying Move
15 technology's reporting as a tremendous
16 advantage. That's what the article says,
17 isn't it?
18 MR. WILSON: Objection, form.
19 THE WITNESS: There is a
20 context to this. And in that context
21 it certainly says that -- that Move's
22 reporting is a tremendous advantage.

1 BY MS. OSMAN:
2 Q. Okay. And then the next sentence
3 says, Everything viewed in a Move Networks
4 player is tracked. They track where viewers
5 are, what they have watched and how long, the
6 bitrate and when people scrolled back or
7 forward in a given program. All this is more
8 reliable and specific than tracking provided
9 by most CDNs and content management systems,
10 which make it extremely valuable to networks
11 and advertisers.
12 Is that right?
13 A. I think you read that correctly.
14 Q. Okay. Is that kind of reporting
15 claimed in any of the challenged claims?
16 A. I don't believe so.
17 Q. But this kind of reporting,
18 according to this article, is extremely
19 valuable to networks and advertisers; is that
20 correct?
21 A. Within the context of this
22 person's article, that is what they are

1 representing.
2 Q. So you don't agree with this
3 article?
4 A. No. What I'm saying here is you
5 can't remove this from the -- the context of
6 this -- of this particular report. I mean,
7 the -- this -- and -- and all I'm saying here
8 is that the starting point here is how well
9 Move works and -- and what it's able to do
10 that others had not been able to do.
11 And once you've established that,
12 then you can look at sort of the secondary
13 issues of tracking and -- and -- and things
14 like this. But none of this would be
15 possible or none of this would be talked
16 about had the -- the plugin not been
17 successful and an advance over the state of
18 the art.
19 Q. But this article doesn't refer to
20 them as secondary. In fact, it says that the
21 reporting is a tremendous advantage; isn't
22 that right? You might not agree, but that's

1 what the article says, correct?
2 MR. WILSON: Objection, form.
3 THE WITNESS: The article
4 clearly says that. All I'm saying is
5 that there's a context to these
6 statements. And you have to
7 appreciate that context in order to
8 understand the impact of these
9 statements.
10 BY MS. OSMAN:
11 Q. And the article also says that
12 this reporting is extremely valuable to
13 networks and advertisers; is that right?
14 MR. WILSON: Objection, form.
15 THE WITNESS: Again, in the
16 context of this article, that's what
17 it says.
18 BY MS. OSMAN:
19 Q. Okay. Let me give you another
20 exhibit. You can put this one aside for now.
21 A. Okay.
22 Q. This is Exhibit 2022.

1 A. Thank you.
2 MS. OSMAN: Counsel.
3 (Exhibit 2022, previously
4 marked, was referred to.)
5 BY MS. OSMAN:
6 Q. Have you seen this document
7 before, Dr. Jeffay?
8 A. Yes.
9 Q. Okay. And what is it?
10 A. This is a -- a document that I
11 understand Move would share with potential
12 customers. And it's called Technical
13 Overview of Move Networks Implementation.
14 Q. This is a document that was
15 written by Move Networks?
16 A. I believe that's the case.
17 Q. Okay. And you rely on this
18 document in your declaration, don't you?
19 A. I'm sure I probably cite to this.
20 Q. Well, I'll represent that you do
21 cite to it quite a lot.
22 A. Thank you. I was going to say

1 the -- the -- the problem is the figures are
2 so common --
3 Q. Yes.
4 A. -- between them, but, yes, I'm
5 sure I do cite to this.
6 Q. Okay.
7 Okay. Can you please turn to
8 page 27 of this document.
9 A. Got it.
10 Q. So we just talked about the
11 importance of advertising. And on page 27 of
12 this Move Networks document there's a section
13 entitled, Programming and Ad Traffic
14 Interface, in parentheses, Move Publish.
15 Do you see that?
16 A. I do.
17 Q. In the second paragraph in this
18 section it starts with the words, Core to the
19 Move Networks video platform is the ability
20 to insert advertisements dynamically as pre-
21 and post-role commercials, as well as
22 replacement commercials in linear

1 programming.
2 Is that right?
3 A. I think you read that correctly.
4 Q. Okay. So Move Networks is
5 identifying and describing its advertising
6 ability as core to its platform; is that
7 correct?
8 A. Yeah, it's a little unclear the
9 context of -- of core, but it's certainly
10 saying that it -- it has -- it has this
11 ability and it -- and it uses the word
12 "core."
13 Q. So you just told me that this
14 advertising, the advantage to advertising,
15 was secondary, but Move Networks is
16 describing it as core to its platform; is
17 that right?
18 A. I don't think I said the word
19 "secondary."
20 Q. Maybe I'm misquoting you, but I
21 recall you said secondary.
22 A. Different topic --

1 Q. Go ahead.
2 A. -- several answers ago.
3 Q. Okay. But this document
4 describes it is not secondary, but core
5 advertising its ability -- strike that.
6 This document describes Move
7 Networks' platform's ability to insert
8 advertisements as core to its platform; is
9 that right?
10 A. Sure. But I think all this is
11 saying is -- is that, you know, it's -- it's
12 a -- its essential feature. It's -- it's
13 integrated into the heart of the -- the --
14 the platform.
15 Q. Okay. If you could look at the
16 very next paragraph, this discusses DRM,
17 digital rights management; is that right?
18 A. Yes.
19 Q. So the Move player included
20 embedded DRM heavy encryption; is that right?
21 A. That's what it says.
22 Q. Okay. And this allowed for

1 specific rules to obtain permission to play
2 specific content?
3 A. Yes. There's -- yeah, this is a
4 traditional DRM authentication process.
5 Q. And that's one of the
6 functionalities that we were just looking at
7 in that past -- in the last exhibit; is that
8 right?
9 MR. WILSON: Objection, form.
10 THE WITNESS: In the last
11 exhibit I just mentioned DRM. This is
12 certainly a specific instance of -- of
13 DRM. I don't know to what extent the
14 other document was contemplating some
15 other aspect of D -- DRM.
16 BY MS. OSMAN:
17 Q. Okay. If you'll turn, please, to
18 page 29.
19 A. Okay.
20 Q. The last document we were looking
21 at --
22 A. Okay.

1 Q. Last document we were looking at
2 also talked about reporting.
3 A. Yes.
4 Q. This provides -- it looks like
5 this provides a list of the data types that
6 be -- can be collected and reported; is that
7 correct?
8 A. Yes.
9 Q. And so the Move player allowed
10 for customized reporting, right?
11 MR. WILSON: Objection, form.
12 THE WITNESS: I'm not sure what
13 all you're sweeping in when you say
14 allowed for. I think this is what was
15 collected and then some downstream
16 processing could probably generate
17 these customized reports.
18 BY MS. OSMAN:
19 Q. Let me reframe my question.
20 The Move network enabled users to
21 have a customized report; is that correct?
22 A. The Move system could -- I'm just

1 tripping up on your word, "users." I
2 don't -- I don't believe all of this was --
3 any of this was made available to users.
4 Q. I'm just going to read what this
5 document actually says. It says --
6 A. Okay.
7 Q. -- The following is a list of
8 data types collected and provided within the
9 log files and a brief description of each
10 element, which are available in customized
11 report forms and analysis.
12 Correct?
13 A. I think you read that perfectly.
14 Q. So this is -- this allows
15 customized reporting, correct?
16 MR. WILSON: Objection, form.
17 MS. OSMAN: What's the
18 objection?
19 MR. WILSON: Vague, ambiguous.
20 THE WITNESS: So I -- I think
21 what this fairly says is these are the
22 data types that are collected and

1 that -- whether it's -- we -- we don't
2 know -- I can't tell -- I don't recall
3 from this whether it's part of the
4 player or not. But one way or
5 another, based on what is collected,
6 you can get customized reports.
7 BY MS. OSMAN:
8 Q. Okay. And then if you look at
9 some of these -- some of these options for
10 reporting, you'll see one of them, sort of in
11 the top half of the page, is called
12 stallCount.
13 Do you see that?
14 A. Yes.
15 Q. What is stallCount?
16 A. A count --
17 Q. Dr. Jeffay, why are you laughing?
18 A. Just -- it's -- it's just always
19 humorous to me how the -- how people try and
20 describe this to a general audience, the fact
21 that it -- that they refer to it as a blip.
22 That's all. That's just kind of humorous to

1 me.

2 So a stallCount for them is -- I

3 assume what they mean is -- is they're

4 counting when any kind of blip occurs during

5 play.

6 Q. Okay. And what is a blip?

7 A. No idea.

8 Q. Okay.

9 A. I mean, blip is not a -- a term

10 of art, which is why I was kind of chuckling

11 at it.

12 Q. Okay. And what is a stall?

13 A. So a stall -- well, so their

14 stall is basically when any kind of blip

15 occurs during play.

16 Q. But you don't know what a blip

17 is?

18 A. No. Blip is not a term of art.

19 Q. Okay. So you have no idea what a

20 stall count is?

21 A. I'm sorry?

22 Q. You have no idea, sitting here

1 today, what a stallCount is?
2 A. I'm assuming it's -- it's a count
3 of some form of anomaly.
4 Q. What kind of anomaly?
5 A. Blips.
6 Q. But you don't know what a blip
7 is?
8 A. No. And I don't know that this
9 document defines what a blip -- you know,
10 what's the -- the full range of what could
11 constitute a blip.
12 Q. Okay. Well, let's look at the
13 very next kind of data that can be analyzed.
14 It's called mindur.
15 Do you see that?
16 A. I do.
17 Q. What is mindur?
18 A. It says it is the minimum
19 duration of all stalls user experienced.
20 Q. Okay. Does that give you any
21 more information about what a stall is?
22 A. No.

1 Q. No?
2 A. Because it's clearly -- I'm
3 assuming it's just going to refer to the
4 previous metric for its conception of a
5 stall.
6 Q. But you would agree that a stall
7 at least has a duration, correct?
8 A. Yes, I would agree.
9 Q. Okay. And then if you look at
10 the next metric, it's A-V-G dur.
11 Do you see that?
12 A. I do.
13 Q. What is an A-V-G dur?
14 A. It says it is the average
15 duration of all the stalls users experienced.
16 Q. Okay. Does this give you any
17 more insight into what a stall is?
18 A. No.
19 Q. So still no idea what a stall
20 could be?
21 A. It's a blip.
22 Q. But you don't know what a blip

1 is?

2 A. I -- I don't know the metes and

3 bounds of what a blip is as far as Move

4 Networks was concerned.

5 Q. Have you ever heard the word

6 "blip" used in this context before?

7 A. In what context?

8 Q. In a networking context before.

9 A. I don't think so.

10 Q. It's never been used before?

11 A. Well, I just don't have any

12 definite recollection of it.

13 Q. Okay. And do you -- have you

14 ever used the word "blip" before?

15 A. I doubt it.

16 Q. Okay. So you've never used or

17 heard blip before today?

18 A. No. I mean, usually, you know,

19 we use terms that clearly indicate what they

20 are as opposed to a blip, which God only

21 knows what a blip is.

22 Q. Okay.

1 A. Or, like I say, what's -- what's
2 a blip, what's not a blip.
3 Q. Okay. So sitting here today,
4 your testimony is you have no idea what a
5 blip is?
6 A. I -- what I said was I don't know
7 what the metes and bounds of a blip are.
8 Q. Well, that sounds like you do
9 have an idea of what a blip is.
10 A. I could imagine what might be a
11 blip, but I don't know if that's what the
12 Move folks consider a blip or not, because a
13 blip is not a term of art and I don't think
14 it's defined in this document. And it's
15 clearly, you know, really something that's
16 meant to just colloquially convey that some
17 anomaly has occurred.
18 Q. You said you could imagine what
19 might be a blip. What might be a blip?
20 A. A -- a blip could be something
21 that causes the video to freeze.
22 Q. Okay. So a blip could be

1 something that causes a delay?
2 A. Causes a?
3 Q. Delay.
4 A. A delay in what sense?
5 Q. In the streaming.
6 MR. WILSON: Objection -- yeah,
7 objection, form.
8 THE WITNESS: So a -- a delay
9 in what? A delay in the video doesn't
10 mean anything to me.
11 BY MS. OSMAN:
12 Q. Okay. You just said a blip could
13 be something that causes a video to stream --
14 to freeze; is that right?
15 A. I -- I think that that's
16 something I -- that -- that is a type of
17 anomaly that I could imagine one would want
18 to track. And whether or not Move considers
19 that a blip or not, I don't know.
20 Q. Okay. But that in your mind
21 could be a kind of a blip, correct?
22 A. It could --

1 MR. WILSON: Objection, form.
2 THE WITNESS: What I said was
3 it could be a type of anomaly that
4 you'd want to track. And whether or
5 not Move considers that a blip, I do
6 not know.
7 BY MS. OSMAN:
8 Q. Okay. And if a video is
9 freezing, then some of these other analytics
10 make sense, min duration, min duration of a
11 freeze might make sense; is that right?
12 A. Yes.
13 Q. Okay. And then the next one that
14 we talked about, A-V-G dur, the average
15 duration of all the stalls users experienced?
16 A. Sure.
17 Q. That would also make sense?
18 A. That would make sense.
19 Q. Okay. Let's look at the next
20 one. It's maxdur. What is maxdur?
21 A. It is the maximum duration of all
22 the stalls users experienced.

1 Q. And if we're talking about
2 freezes in video, that, too, would make
3 sense, correct?
4 A. Yes.
5 Q. Okay. Likewise, the next one,
6 enddurstall, what is that?
7 A. It's the value 1 if the user
8 exited the browser during a stall and 0zero
9 if not.
10 Q. And if a stall is the video
11 freezing, again, that would make sense,
12 correct?
13 A. If the video -- well, there's
14 other issues here. I'm -- I'm not sure
15 what -- what exactly they're referring to as
16 if the user exited the browser.
17 Q. Okay. Well, let's skip down to
18 one of the other analytical -- analytics.
19 One of them is A-V-G delay.
20 Do you see that one there?
21 A. Okay.
22 Q. What is A-V-G delay?

1 A. It's the average duration for the
2 content to resume -- to -- sorry -- to resume
3 playing after a stall.
4 Q. So what does that mean if a stall
5 is frozen -- the video has frozen?
6 A. The average duration for the
7 content to resume playing after the video
8 first froze.
9 Q. Okay. And then the next analytic
10 is maxdelay.
11 Do you see that there?
12 A. Yes.
13 Q. And what is that?
14 A. Max duration for the content to
15 resume playing after a stall.
16 Q. And what does that mean if a
17 stall is the video froze?
18 A. If the stall was the video
19 freezing, it says it's a record of the
20 longest time it took the content to resume
21 playing after the freeze.
22 Q. Is it fair to say that the Move

1 Media Player was reporting on interruptions
2 in playback?
3 A. It's certainly generating
4 statistics on these blip events. And these
5 blips are clearly anomalous things, so -- you
6 know, that's the best I can do.
7 Q. So the Move Media Player is
8 reporting on discontinuities in the playback?
9 MR. WILSON: Objection, form.
10 THE WITNESS: Again, you know,
11 that's not what this says and I don't
12 know fully what's -- what Move is
13 characterizing as a blip.
14 BY MS. OSMAN:
15 Q. But you said one thing a blip
16 could be is freezing the video, correct?
17 A. Could be.
18 Q. What else could a blip be?
19 A. I mean, I -- I don't know. I
20 mean, I haven't -- I haven't sat here and
21 considered all the things that Move might
22 have thought of as a blip.

1 Q. But sitting here today, you can't
2 think of any other thing that a blip could
3 be?
4 A. I -- I -- I don't know what
5 Move -- this is a difficult exercise because
6 I don't know what Move considers a blip. And
7 blip, as I say, is a -- it's not -- it's --
8 it's -- it's not a term of art. The -- I
9 gave you the first thing that came to mind.
10 Q. And sitting here today, you can't
11 think of anything else that would be a blip?
12 A. No.
13 Q. Okay. If you could please -- you
14 can put this aside. Let's turn back to your
15 declaration.
16 I'd like to look at
17 paragraph 274.
18 A. 274. Okay. It's not okay.
19 Now okay.
20 Q. Okay. Maybe just read -- read
21 the paragraph and then I'll ask you
22 questions.

1 A. Okay.
2 Okay.
3 Q. Okay. So I want to direct your
4 attention to the final sentence in this
5 paragraph where you say, Level 3 praised the
6 ability of Move's ABR technology to
7 automatically upshift and downshift video
8 content to provide continuous video playback
9 at the highest quality profile possible.
10 Is that right?
11 A. I think you read that correctly.
12 Q. Okay. And you cite Exhibit 2130
13 and you describe it as E-mail regarding
14 nonbinding indication of interest, right?
15 A. Yes.
16 Q. Okay. I'd like to look at that
17 exhibit, so give me a moment to pull it out.
18 A. Okay.
19 Q. Okay. This is Exhibit 2130.
20 A. Okay. Thank you.
21 MS. OSMAN: Counsel.
22

1 (Exhibit 2130, previously
2 marked, was referred to.)
3 BY MS. OSMAN:
4 Q. Have you seen this document
5 before?
6 A. I do not recognize it sitting
7 here today, but I'm sure this is something I
8 looked at at some point.
9 Q. What is this document?
10 A. This appears to be a letter from
11 Mr. Lepard of L3 to Mr. Edwards, CEO of Move,
12 that was sent via E-mail.
13 Q. Okay. The quoted language that I
14 just read you from your declaration doesn't
15 appear in this letter on page 1 of this
16 document, does it?
17 You can take a moment and read
18 the letter if it's helpful.
19 A. Sure.
20 Yeah, that appears to be correct.
21 Q. Okay. In fact, this -- the first
22 page of this document doesn't say anything

1 about continuous video playback at all, does
2 it?
3 A. Not specifically, no.
4 Q. Okay. This E-mail is a
5 nonbinding indication of interest Level 3,
6 which was evaluating a potential investment
7 in Move; is that right?
8 A. I believe that is correct.
9 Q. And the letter states that The
10 attached term sheet is based on certain
11 assumptions made by Level 3 and certain
12 information provided by Move.
13 Do you see where I'm reading?
14 That's the --
15 A. I do.
16 Q. Okay. And then it goes on to
17 say, the accuracy of which Level 3 will need
18 to confirm.
19 Is that right?
20 A. That's what it says.
21 Q. Okay. So that quote that you
22 cited at paragraph 274 of your declaration

1 doesn't appear on the first page and you
2 don't have a cite in your declaration.
3 But if you turn to page 54 of the
4 document, you'll see that language. So if
5 you could please turn to page 54.
6 A. Okay.
7 Q. And this language appears in that
8 last paragraph on the bottom of the page.
9 A. Okay.
10 Q. So you'll see it's called Move
11 Media Player. And then it describes the Move
12 Media Player.
13 A. I see that.
14 Q. And -- and will you confirm that
15 this -- that is where this language came
16 from, the automatically upshift and
17 downshift?
18 Do you see that?
19 Let me make sure it's here. Yep,
20 it's -- it's --
21 A. Yeah.
22 Q. -- 4. It's the very last

1 sentence --
2 A. Yeah.
3 Q. -- on this page.
4 A. Certainly the language --
5 certainly the quoted language appears to
6 match the bottom of page 54.
7 Q. Okay. And if you turn back to
8 page 53, which is the beginning of this
9 section, what is this section?
10 A. This section is called -- well, I
11 don't know what you're -- what -- what you're
12 looking for here, the -- the high level?
13 Q. Yeah, the -- the high level. I
14 just want to understand.
15 What is this that we're reading
16 from?
17 A. This is Exhibit A, which is
18 described as Description of
19 Services/Development Work.
20 Q. And those services/development
21 work were to be provided by Move Networks; is
22 that correct?

1 A. This is describing things that
2 Move will do.
3 Q. Okay. This is a description of
4 services/development work of services to be
5 provided by Move Networks, correct?
6 A. Oh, yes. Right. There's the
7 title. Yes.
8 Yes, that's the title, Move --
9 that's the subtitle, Move Media Services
10 Provided by Move Networks.
11 Q. It's not a description of Move
12 Networks by Level 3, is it?
13 A. I don't know that to be true.
14 Q. Well, in your declaration you
15 describe that quote as Level 3 praising the
16 ability of Move's ABR technology.
17 Did I read that correctly?
18 A. Yes, you read that correctly.
19 Q. How do you know this is Level 3
20 praising Move?
21 A. Because this is being sent by
22 Level 3, by this executive at Level 3.

1 Q. And in that paragraph that we
2 read a few moments ago, this E-mail or this
3 letter says, The attached term sheet is based
4 on certain assumptions made by Level 3 and
5 certain information provided by Move, the
6 accuracy of which Level 3 will need to
7 confirm.
8 Is that correct?
9 A. Yeah. That sentence is there.
10 Q. Okay. And so this Exhibit A, are
11 you still taking the position that this is
12 Level 3 praising Move?
13 A. I mean, I don't know how to
14 answer that. I mean, it says what it says.
15 And it's a positive statement. It certainly
16 is based on assumptions that Level 3 is
17 making, but you can praise based on
18 assumptions or, said another way, it wasn't
19 Level 3's assumption that this was terrible
20 and it didn't work. So, I mean, this is all
21 in a document that was sent by -- by Level 3.
22 I'm just taking it at -- at face value and

1 it's saying positive things about Move.
2 Q. Is there any indication that
3 Level 3 drafted this Exhibit A?
4 A. Other than the fact that it's
5 an -- an E-mail being sent by Level 3?
6 Q. Would it surprise you if Move
7 Networks drafted the Description of
8 Services/Development Work that it was to
9 perform?
10 A. I -- I -- I -- I don't know.
11 Q. Okay.
12 A. I mean --
13 Q. You don't know if it would
14 surprise you?
15 A. There's very little about these
16 sorts of contractual agreements that would
17 surprise me.
18 Q. So you don't actually know who
19 drafted this Exhibit A that you quoted, do
20 you?
21 A. It has no authorship, but it is
22 in a -- it -- it is a document being sent by

1 Level 3. And I assume Level 3 wouldn't be
2 sending back to Move documents that Move had
3 authored.
4 Q. I mean, certainly in contracts,
5 you sent contracts back and forth even if you
6 have -- the other side drafted and you're
7 signing, right?
8 A. I -- you know, I -- I -- I -- I
9 don't know.
10 Q. But there's no evidence that you
11 can point to sitting here today that Level 3
12 drafted this section, correct?
13 A. Other than the fact that this is
14 being sent by Level 3.
15 Q. And it's possible that this is
16 Move media describing its own capabilities,
17 correct?
18 A. I don't know the extent to which
19 that's possible or not.
20 Q. Why do you say you don't know to
21 the extent to which that's possible?
22 A. I don't know how to explain it.

1 I mean, I just don't know.
2 Q. You just don't know who drafted
3 this, correct?
4 MR. WILSON: Objection, form.
5 THE WITNESS: It's my
6 assumption that it was drafted by
7 Level 3 because it's being sent by
8 Level 3. You know, the -- the
9 document doesn't specifically have
10 a -- a particular indication of the
11 author, so all we know is that it was
12 sent by Level 3 to Move.
13 BY MS. OSMAN:
14 Q. Okay. But if this was drafted by
15 Move and not Level 3, then it's not Level 3
16 praising Move, is it?
17 A. I don't know that I necessarily
18 agree with that. I mean, these are terms
19 ultimately that Level 3 is, in theory, going
20 to agree to, you know, subject to
21 confirmation. So it's not something they
22 disagree with.

1 Q. Well, we don't know that based on
2 this document, do we? Level 3 says they will
3 need to confirm.
4 A. It's -- we know --
5 MR. WILSON: Objection, form.
6 THE WITNESS: We know that it's
7 based on certain assumptions they've
8 made. So at this point in whatever
9 these are, the negotiations, what --
10 however you want to characterize it,
11 Move is sending a document that has
12 laudatory statements -- sorry, Level 3
13 is sending a document that has
14 laudatory statements about Move.
15 If this was something that they
16 disagreed with, I can't imagine they
17 would be sending it. So I -- I -- I
18 really don't see -- I think the
19 statement in my declaration is a fair
20 statement.
21 BY MS. OSMAN:
22 Q. Okay. And you have no other

1 basis for believing that this Exhibit A was
2 drafted by Level 3, other than the fact that
3 Level 3 sent the E-mail? There's no other
4 reason you -- you draw that conclusion?
5 A. I think that is -- is correct.
6 And I'll -- I'll point out that even if Move
7 drafted it, Level 3 is not refuting anything
8 that's said in there.
9 Q. No. Okay. You can set that
10 aside.
11 Okay. I'm going to hand you
12 another exhibit. Dr. Jeffay, this is
13 Exhibit 1001.
14 (Exhibit 1001-919 was marked
15 for identification.)
16 BY MS. OSMAN:
17 Q. And it is in the IPR2024-00919
18 proceeding. It's the '772 patent.
19 Dr. Jeffay, do you recognize this
20 document?
21 A. I do.
22 Q. Okay. I assume you've seen this

1 multiple times?
2 A. Yes.
3 MR. WILSON: Counsel, I think
4 we've been going about an hour. Is
5 this --
6 MS. OSMAN: I'm almost done.
7 Can we just keep going? It won't be
8 too much longer if you're okay,
9 Dr. Jeffay.
10 THE WITNESS: I mean, if you're
11 almost done, let's just keep going.
12 MS. OSMAN: I'm almost done.
13 You guys want to give me
14 another ten minutes maybe? I won't be
15 long.
16 THE WITNESS: Unless you guys
17 are going to keel over dead or --
18 MS. OSMAN: If you want to --
19 THE WITNESS: -- the court
20 reporter --
21 MS. OSMAN: -- take a break now
22 we can.

1 THE WITNESS: It doesn't matter
2 to me.
3 MS. OSMAN: You guys just want
4 to break for ten and come back? Will
5 that be better?
6 THE WITNESS: I think maybe to
7 be -- we'll -- we'll --
8 MS. OSMAN: Okay.
9 THE WITNESS: We'll blame it on
10 the court reporter.
11 MS. OSMAN: Okay. Sure.
12 VIDEO OPERATOR: Off the record
13 at 2:25.
14 (Thereupon, a brief recess was
15 taken.)
16 VIDEO OPERATOR: Back on the
17 record at 2:41.
18 BY MS. OSMAN:
19 Q. Good afternoon, Dr. Jeffay.
20 How are you?
21 A. I'm well.
22 Q. Did you talk to your attorneys

1 during the break?
2 A. I did.
3 Q. Did you discuss anything related
4 to this deposition?
5 A. Nope.
6 Q. Anything related to the substance
7 of these -- of these IPRs?
8 A. Nope.
9 Q. Okay. Great.
10 Right before our break I'd handed
11 you Exhibit 1001 in the -- in IPR2024-0019
12 [sic]. And this is a copy of the '772
13 patent; is that right?
14 A. That is correct.
15 Q. Okay. And you -- and you
16 recognize this document, I assume?
17 A. Yes.
18 Q. Okay. If you'll please turn --
19 oh, and you -- and you agree -- I think
20 you -- I think Mr. Sheng already asked you
21 about the '156 and the '564 patents. Those
22 have the identical specification as the '772

1 patent that's in front of you?
2 A. Yes, I believe that is correct.
3 Q. And the '234 patent you agree has
4 a very similar specification; is that right?
5 A. Correct.
6 Q. Okay. If you'll turn, please, to
7 column 6 --
8 A. Six.
9 Q. -- lines -- starting at line 38
10 in column 6.
11 A. Okay.
12 Q. Okay. So I'm directing your
13 attention to the paragraph that starts with
14 the words Figure 2a.
15 Can you take a look at that,
16 please.
17 A. Okay.
18 Q. Let me know when you're done.
19 A. Okay.
20 Q. Okay. This paragraph is talking
21 about content file 200; is that right?
22 A. Yes.

1 Q. And it describes content file 200
2 as -- as including uncompressed video and
3 audio, correct?
4 A. That is one option that it may --
5 that it teaches that it may comprise.
6 Q. And it also teaches that content
7 file 200 may be compressed; is that correct?
8 A. Correct.
9 Q. And it provides Examples of a
10 compressed content file 200 include, but are
11 not -- but are not limited to DivX, Windows
12 Media Video 9 and a few other examples; is
13 that right?
14 A. Yes, that is correct.
15 Q. What is DivX?
16 A. DivX --
17 Q. Why are you laughing, Dr. Jeffay?
18 A. DivX is -- there's a company
19 called DivX that is not this DivX that is
20 currently off suing everybody under the sun.
21 Q. Okay.
22 A. DivX at the time of this writing

1 was a company that made a particular -- I
2 think -- I think they would view themselves
3 as a codec company.
4 Q. Um-hmm. When the sentence says a
5 compressed content file 200 includes, but is
6 not limited to, DivX, what does the sentence
7 mean by that?
8 A. You -- you read that fast.
9 You're saying the sentence examples of a
10 compressed content file 200 include, but are
11 not limited to, DivX. I think if -- if
12 that's correct, I think what it's saying
13 is -- they're -- they're talking about a file
14 that would have been compressed with a DivX
15 technology codec.
16 Q. Okay. And is that an encoded
17 video stream?
18 A. The result of that, yes. Well,
19 it's not a stream. It's a -- it's a file.
20 Q. Okay. But it's an encoded video
21 file?
22 A. Yes.

1 Q. Okay.
2 A. That would be considered an
3 encoded video file.
4 Q. Likewise, Windows Media Video 9,
5 the product of that would also be an encoded
6 video file?
7 A. Correct.
8 Q. Okay. And then if you'll look
9 down in this same column -- I just want you
10 to skip paragraph -- the next paragraph,
11 although you can read it if you'd like to,
12 but I want to direct your attention to the
13 paragraph starting at column 6, line 58,
14 starts with the words Figure 2c is a
15 schematic block diagram.
16 A. Okay.
17 Q. Do you see that?
18 And I just want to direct you to
19 the first two sentences there. You don't
20 have to read the whole paragraph.
21 A. Okay.
22 Q. Okay. Oh, and then actually, the

1 next -- the next sentence. It also says, As
2 used herein, streamlet refers to any size
3 portion of content file 200.
4 See that there?
5 A. I do.
6 Q. So content file 200 we just
7 established could be an encoded video file.
8 And then this paragraph says that stream 210
9 is divided into a plurality of streamlets.
10 Each streamlet refers to any size portion of
11 content file 200.
12 So content file 200 is then
13 divided into a number of streamlets; is that
14 right?
15 A. Well, no. I mean, I -- I -- I
16 don't know how precise you're -- you're
17 trying to be here, but I think what this says
18 is that you -- you have a content file and
19 a -- a streamlet is some portion of that or
20 it represents a -- a portion of that.
21 Q. Okay. And then it's saying that
22 the content file 200 can be divided into

1 these streamlets; is that right?
2 A. No, I don't think it says that.
3 Q. What's being divided into
4 streamlets? Might be --
5 A. Well --
6 Q. It might be helpful to look at
7 Figure 2. So there's 2a, b and c, just
8 because that's what's being referred to here,
9 if you want -- if -- if helpful.
10 A. Sure.
11 Yeah. I mean, all -- all of this
12 is -- I mean, Figure 2 is -- is fine. I -- I
13 think the idea is that you have a content
14 file, it can be compressed or uncompressed,
15 and a streamlet is a portion of that content
16 file.
17 Q. Okay. So you agree, then, that
18 the content file is divided into streamlets?
19 A. Some representation of the
20 content file is going to be divided into
21 streamlets.
22 Q. What do you mean by some

1 representation of the content file is divided
2 into streamlets?
3 A. Just that I don't think this is
4 saying that literally the content file is
5 divided into streamlets.
6 Q. What might happen to the content
7 file before it's divided into streamlets?
8 MR. WILSON: Objection, form.
9 THE WITNESS: What might happen
10 to the content file.
11 What I'm saying is the --
12 the -- this teaching here doesn't
13 require that you simply take the
14 content file as it exists and chop it
15 up into streamlets. I mean, each
16 streamlet does have to represent a
17 portion of the content file.
18 BY MS. OSMAN:
19 Q. So are you saying that you could
20 have the content file, have some steps in
21 between and then divide it up into
22 streamlets?

1 A. No, that's -- no, I'm -- I'm not
2 saying that you get any extra information or
3 anything like that in it.
4 Q. I'm not sure I understand. Are
5 you saying the content file is not divided
6 into streamlets?
7 A. The way I view it is the content
8 of the content file is divided into
9 streamlets, such that ultimately each
10 streamlet refers to some sized portion of the
11 content file.
12 Q. How is that different from saying
13 the content file is divided into streamlets?
14 A. Because it's implying that you --
15 when you say it that way, you're implying
16 that a content file, as delivered by a --
17 what's the phrase they use -- publisher, that
18 that content file can't be modified, can't be
19 processed in any way.
20 Q. Okay. So first you might process
21 the content file by compressing it and then
22 divide it?

1 MR. WILSON: Objection, form.
2 THE WITNESS: Or you could
3 divide it and then encode it.
4 BY MS. OSMAN:
5 Q. Could you compress it and then
6 divide the content file?
7 A. I don't think that is the way --
8 I mean, I -- I don't know if that's excluded
9 here, but -- but that's not, I think, the
10 general approach that's taught in the patent.
11 Q. So it's your position that the
12 '772 patent does not disclose compressing a
13 content file and then dividing it into
14 streamlets?
15 A. No, I -- I think a fair read of
16 it is that is something that's contemplated
17 in the spec --
18 Q. So it does disclose?
19 A. -- as -- as -- as -- as an
20 option.
21 Q. Where is it contemplated in the
22 specification as an option?

1 MR. WILSON: Objection, form.
2 THE WITNESS: In these two
3 paragraphs you could -- it -- it's at
4 least in these two paragraphs that
5 we've been talking about in column 6.
6 BY MS. OSMAN:
7 Q. Okay. So the specification
8 contemplates compressing a content file and
9 then dividing it into streamlets?
10 A. That is something that is
11 consistent with the teachings here in
12 column 6.
13 Q. Okay. And would someone of skill
14 in the art at the time of these alleged
15 inventions have known how to compress a
16 content file and then divide it into
17 streamlets?
18 A. I guess it's going to be -- it's
19 going to depend on the codec that they use.
20 Q. Would they -- would a person of
21 skill in the art have known how to select a
22 codec so that they could compress a content

1 file and then divide it into streamlets?
2 A. How could they select a codec.
3 Sure.
4 Q. Okay.
5 A. They would select a codec for
6 which they -- the bit stream would be
7 amenable to that -- the -- the format on disk
8 for the stored file would be amenable to
9 that.
10 Q. And would a skilled artisan have
11 known how to segment a content file into
12 streamlets so that a decoder could properly
13 decode the received files?
14 MR. WILSON: Objection, form.
15 THE WITNESS: If they designed
16 it that way. I mean, you -- you
17 can't -- all these pieces have to work
18 together. You -- you have to use a
19 codec that's amenable to that. So --
20 so you can't -- you can't -- so the --
21 to -- so the general answer to your
22 question is no, a skilled artisan

1 would not know how to -- to do that
2 for an arbitrary codec.
3 They could design from scratch
4 a system that did this using an --
5 an -- I can't say the word -- an
6 amenable codac -- codec. I think
7 that's right.
8 BY MS. OSMAN:
9 Q. So a person of ordinary skill
10 reading this disclosure in the '772 patent
11 wouldn't have known how to implement it?
12 A. No, that's -- no, I -- I disagree
13 with that statement.
14 Q. I thought you just told me that a
15 person of ordinary skill would not have known
16 how to segment a content file or divide it
17 into streamlets, such that a decoder would be
18 able to properly decode the file.
19 A. I think the transcript's going to
20 represent that's not what I said.
21 Q. Can you repeat what you said?
22 A. What I said is you -- that --

1 that you can't -- a person of skill would not
2 know how to do this for an arbitrary codec.
3 That you have to use a codec that is amenable
4 to the segmentation process.
5 Q. But you would agree that a person
6 of ordinary skill in the art would know how
7 to select a codec to use the segmentation
8 process; is that correct?
9 A. They would be aware of codecs
10 that -- for which the segmentation process --
11 that would be amenable to segmenting the
12 resulting file.
13 Q. Okay. That's all I have.
14 Thank you, Dr. Jeffay.
15 MR. WILSON: Short break?
16 MS. OSMAN: I tender the
17 witness.
18 VIDEO OPERATOR: Off the record
19 at 2:55.
20 (Thereupon, a brief recess was
21 taken.)
22 VIDEO OPERATOR: Back on the

1 record at 3:30.
2 EXAMINATION BY COUNSEL FOR PATENT OWNER
3 BY MR. WILSON:
4 Q. Dr. Jeffay, if you turn to
5 Exhibit 2141 in case number -- the 919 IPR.
6 Do you have that in front of you?
7 A. Let's see. The 919 -- yes,
8 that's what's in front of me.
9 Q. Can you turn to paragraph 191.
10 A. Okay, I'm there.
11 Q. Do you recall you were -- you
12 testified -- strike that.
13 You recall that you were asked
14 about an Exhibit 2071 in this paragraph?
15 A. Yes.
16 Q. Do you recall you testified that
17 you thought you submitted a claim chart
18 charting claim 13 of the '156 patent in all
19 four cases that we've been discussing today?
20 Do you recall that?
21 MR. SHENG: Objection, form.
22 THE WITNESS: Yes, that sounds

1 familiar.
2 BY MR. WILSON:
3 Q. I'm going to hand you what's
4 previously been marked as Exhibit 2071 in the
5 919 IPR.
6 (Exhibit 2071-919, previously
7 marked, was referred to.)
8 BY MR. WILSON:
9 Q. Take a look at that.
10 A. Oh, yes. Okay.
11 Q. Does this document refresh your
12 recollection as to what claim chart you
13 submitted in the 919 IPR case?
14 A. Yeah, it -- it refreshes my -- my
15 recollection that certain of -- certain --
16 most of the exhibits had -- were the same
17 across all the declarations, but some of them
18 had the same number but were actually
19 different documents. And this is an example
20 of one.
21 So there was a 2071 in all the
22 declarations, but they were different charts.

1 Q. I understand. And -- and what is
2 this chart?
3 A. This is a claim chart for the
4 '772 patent, which is the subject of the
5 919 IPR.
6 Q. And does it appear to chart the
7 limitations of claim 1 of this patent?
8 MR. SHENG: Leading.
9 THE WITNESS: Yeah, I think
10 it's obvious on its face -- well,
11 that -- that's what it's titled. And
12 that is, in fact, what it does.
13 BY MR. WILSON:
14 Q. Thank you.
15 I'm going to hand you what's
16 previously been marked as 2071 in the 918 IPR
17 now.
18 (Exhibit 2071-918, previously
19 marked, was referred to.)
20 BY MR. WILSON:
21 Q. And does this document refresh
22 your recollection as to what claim chart you

1 submitted in the 918 IPR?
2 MR. SHENG: Objection, form.
3 THE WITNESS: Yes. Again, this
4 is the same exhibit number, but it's a
5 different -- it's -- it's an -- it's a
6 different document than -- or -- or
7 this document was -- Exhibit 2071 was
8 an exhibit to all the declarations.
9 It was not the same actual document
10 in -- in each declaration it was a
11 unique document. And this is the 2071
12 for the declaration on the '564
13 patent.
14 BY MR. WILSON:
15 Q. And what is this Exhibit 2071?
16 What does this show?
17 A. It's the claim chart for
18 mapping -- showing how the Move products
19 practice claim 8 of the '564 patent.
20 How -- it's -- it's a document
21 showing how the Move products and services
22 practiced claim 8 of the '564 patent.

1 Q. Okay. I'm going to hand you
2 what's previously been marked as Exhibit 2071
3 in the 917 case.
4 (Exhibit 2071-917, previously
5 marked, was referred to.)
6 BY MR. WILSON:
7 Q. I think we can skip that one.
8 I'm -- I'm going to hand you now
9 what's previously been marked as Exhibit 2071
10 in the 940 case.
11 A. Okay.
12 (Exhibit 2071-940, previously
13 marked, was referred to.)
14 BY MR. WILSON:
15 Q. And -- and same question, does
16 this document refresh your recollection as to
17 what claim chart you submitted in the
18 940 case?
19 A. Yes. I submitted -- Exhibit 2071
20 in the 940 case was a claim chart mapping
21 claim 1 to the Move products and services.
22 Q. Thank you.

1 If you turn to -- back to your
2 declaration, Exhibit 2141 in the 919 IPR
3 case, if you turn to paragraph 217 now.
4 And once you're there, if you
5 flip to page 141, second page of that
6 paragraph, 217 --
7 A. Okay.
8 Q. -- do you recall you were asked
9 about support for your statement that the ITC
10 found that Sling TV practices claims of the
11 '156 patent?
12 A. Yes.
13 Q. And in this paragraph you cite to
14 Exhibit 1009, pages 101 to 112.
15 Do you see that?
16 A. Yes.
17 Q. I believe you have a copy of this
18 handy, but if you turn now to Exhibit 1009 to
19 those same pages starting at 101 and just let
20 me know when you're there.
21 A. Okay. 101. Let me get rid of
22 these.

1 101. I'm there.
2 Q. What is this section starting
3 with the -- the numeral B on page 101? What
4 is this section describing?
5 MR. SHENG: Objection, leading.
6 THE WITNESS: This --
7 MR. SHENG: The buildup to
8 that -- this whole paragraph, the
9 whole line of questioning here is
10 leading.
11 THE WITNESS: This section here
12 is the ALJ's analysis of the technical
13 prong of the domestic industry for the
14 '564 patent.
15 BY MR. WILSON:
16 Q. And if you turn to page 129 of
17 Exhibit 1009 and let me know when you're
18 there.
19 A. I'm there.
20 Q. And take a look through that
21 section, beginning at page 129.
22 A. Okay.

1 Q. And I'll ask you this:
2 Does -- does that section refresh
3 your recollection about support for your
4 statement about the ITC's determination about
5 Sling TV with regard to the '156 patent?
6 MR. SHENG: Same objection.
7 It's leading.
8 THE WITNESS: Yeah, this is the
9 ALJ's analysis. The section starting
10 on page 129 is the ALJ's analysis of
11 the technical prong for domestic
12 industry for the '156 patent.
13 BY MR. WILSON:
14 Q. And what products is the ALJ
15 talking about here?
16 A. He's talking about the DISH
17 set-top boxes and the Sling Fire App.
18 Q. And does the ALJ reach a
19 conclusion regarding the domestic industry as
20 to those products as to the '156 patent?
21 MR. SHENG: Leading.
22 THE WITNESS: If we go to the

1 end of his analysis -- wrong one.
2 The ALJ has its conclusion on
3 page 134, where he wrote, I find that
4 each limitation of claim 1 of the '156
5 patent is met at least when DISH's
6 customers use the DISH set-top boxes
7 and the Sling Fire App in their
8 intended and authorized manner and
9 that DISH has satisfied the technical
10 prong of the domestic industry
11 requirement for claim 1 of the '156
12 patent.
13 BY MR. WILSON:
14 Q. Thank you, Dr. Jeffay.
15 MR. WILSON: Pass the witness.
16 FURTHER EXAMINATION BY COUNSEL FOR
17 PETITIONER AYLO FREESITES LTD
18 BY MR. SHENG:
19 Q. Dr. Jeffay, do you have in front
20 of you still Exhibit 2071 from the 919 IPR?
21 A. For the 919, yes.
22 Q. Well, let's -- let's actually use

1 the one that's most relevant to the Aylo
2 petitioner, and that's the -- the -- the
3 Exhibit 2171 for the 940 IPR.
4 Do you have that?
5 A. Yes. I have that right in front.
6 Q. Prior to counsel introducing this
7 exhibit during this deposition, when was the
8 last time you saw this document?
9 A. For the '234 I reviewed this
10 probably last weekend.
11 Q. Did you review it during the
12 break?
13 A. No.
14 Q. Did you review any of the claim
15 charts that were shown to you by counsel --
16 prior to them being introduced in this
17 deposition, were you shown those claim charts
18 during the break?
19 A. No.
20 Q. The Exhibit 2071 for the '234
21 patent, can you pull that one out again.
22 A. Yes. I have it right in front.

1 Q. This claim chart maps the Move
2 products and services to claim 1 of the '234
3 patent, correct?
4 A. Correct.
5 Q. You don't map the Move products
6 and services to any other claim of the '234
7 patent, other than claim 1 of the '234
8 patent, correct?
9 A. That is correct.
10 Q. And you rely on this claim chart
11 for the '234 patent to show that the Move
12 product and services practice the limitations
13 of the '234 patent, fair?
14 A. Yes.
15 Q. Claim 1 of the '234 patent does
16 not recite the words "continuous playback,"
17 correct?
18 A. I believe that is correct.
19 Q. Is it your opinion that claim 1
20 of the '234 patent does not require
21 continuous playback?
22 A. Claim 1 does not require, I

1 think, that -- continuous playback, I think
2 that is correct.
3 MR. SHENG: Ms. Osman, do you
4 have any questions?
5 MS. OSMAN: I do have a couple
6 more questions.
7 MR. SHENG: Okay. Do you want
8 to take a two-minute break and then we
9 can switch the mics?
10 THE WITNESS: Sure.
11 MR. SHENG: Okay.
12 VIDEO OPERATOR: Okay. Off the
13 record at 3:42.
14 (Thereupon, a brief recess was
15 taken.)
16 VIDEO OPERATOR: Back on the
17 record at 3:43.
18 FURTHER EXAMINATION BY COUNSEL FOR
19 PETITIONERS fuboTV MEDIA, INC.
20 AND YANKA INDUSTRIES, INC.
21 BY MS. OSMAN:
22 Q. Okay. Dr. Jeffay, I think you

1 have still in front of you Exhibit 2071 from
2 IPR 00918; is that right?
3 A. I do.
4 Q. This is the claim chart for the
5 '564 patent mapping claim 8; is that right?
6 A. Yes.
7 Q. This claim chart maps claim 8 of
8 the '564 patent to the Move Media Player; is
9 that right?
10 A. To what I'm characterizing is the
11 Move system.
12 Q. Okay.
13 A. Yes.
14 Q. The Move system, yes?
15 A. Yes, claim 8.
16 Q. And it doesn't map any other
17 claim, right?
18 A. That is correct.
19 Q. Did you provide any other claim
20 charts mapping any claim to the Move -- any
21 claim of the '564 patent to the Move Media
22 Player?

1 A. Other than this exhibit, I don't
2 believe so.
3 Q. Did you draft this exhibit?
4 A. Again, I don't recall the process
5 by which these charts were developed because
6 I've worked on so many charts mapping claims
7 to Move's system.
8 Q. Before this redirect, when was
9 the last time you saw this document?
10 A. For the '564 I couldn't tell you.
11 Q. Okay. So you don't remember the
12 last time you saw this claim chart?
13 A. Correct.
14 Q. Okay. You can set that one
15 aside.
16 I'd like you to pick up
17 Exhibit 2071, this time for the 00919 IPR.
18 A. Okay.
19 Q. This is related to the '772
20 patent.
21 A. Okay.
22 Q. This is a claim chart mapping the

1 '772 patent claim 1 to Move's media player;
2 is that correct?
3 A. Yes.
4 Q. Does it map any other claim of
5 the '772 patent to Move's media player?
6 A. No.
7 Q. No. Are you aware of any other
8 claim charts mapping any claim to Move's
9 media player?
10 A. Certainly sitting here today, I
11 don't recall any other chart.
12 Q. You didn't submit any other
13 charts mapping any claim of the '772 patent
14 to Move's media player?
15 A. Well, the report and the exhibits
16 speak for themselves, but I don't recall
17 submitting any other chart.
18 Q. Do you remember who created this
19 chart?
20 A. Originally, no.
21 Q. Did you prepare this chart?
22 A. Again, I -- I've worked on so

1 many charts that I can't -- and this was done
2 so long ago that I can't recollect the
3 process by which this came into being.
4 Q. Before this redirect examination
5 today, when's the last time you remember
6 seeing this chart?
7 A. This one I also looked at, I
8 think, over the weekend.
9 Q. Okay. Did you talk about the
10 substance of your testimony during the break
11 before redirect with your attorneys?
12 A. Did I talk about the substance
13 during the break before redirect, just the --
14 just generally points about the ITC decision
15 document and the fact that there were
16 multiple 2071 exhibits.
17 Q. Can you tell me exactly what you
18 talked about with regard to the ITC document.
19 MR. WILSON: Objection,
20 privileged.
21 THE WITNESS: Do I answer?
22 MR. WILSON: No.

1 THE WITNESS: I'm sorry? Oh,
2 okay.
3 BY MS. OSMAN:
4 Q. You're going to follow your
5 attorney's guidance and not answer that
6 question?
7 A. Well, he's -- he's not my
8 attorney, but I will follow his guidance.
9 Q. You did discuss the substance of
10 your testimony before redirect?
11 A. Not really the -- the substance,
12 but the -- the -- as I say, just the -- the
13 fact that there were multiple 2071 exhibits.
14 Q. Did you discuss corrections that
15 you needed to make to your testimony before
16 redirect?
17 MR. WILSON: Objection,
18 privileged.
19 MS. OSMAN: He's already said
20 that he discussed the ITC decision and
21 that there were multiple 2071
22 exhibits. It's already in the record.

1 BY MS. OSMAN:
2 Q. Did you discuss corrections that
3 needed to be made to your testimony?
4 MR. WILSON: Objection,
5 privileged.
6 MR. SHENG: I -- I also just
7 want to lodge an objection.
8 Jamie, you can't be telling
9 Mr. Wilson what to be doing during
10 this deposition.
11 MR. LYNN: There's two
12 attorneys on your side.
13 MR. SHENG: I'm not telling
14 Ms. Osman what kind of questions to
15 ask --
16 MR. LYNN: There's a
17 precedential opinion. We're allowed
18 to speak to him about the substance --
19 (Crosstalk)
20 MS. REPORTER: I'm sorry, I
21 can't hear you.
22 MR. LYNN: Sure.

1 There's a PTAB precedential
2 decision that you're allowed to
3 discuss the substance of the testimony
4 with the witness before redirect.
5 MS. OSMAN: It doesn't say the
6 substance is privileged. Doesn't say
7 those discussions are privileged.
8 It's during the deposition.
9 MR. LYNN: You're not -- you're
10 not permitted to get into that.
11 MS. OSMAN: You know, if you
12 want to give him a privilege
13 objection, go ahead and do that.
14 MR. LYNN: And we have.
15 BY MS. OSMAN:
16 Q. Dr. Jeffay, did you discuss
17 corrections that needed to be made to your
18 testimony before your redirect?
19 MR. WILSON: Objection,
20 privileged.
21 MS. OSMAN: Are you instructing
22 him not to answer?

1 MR. WILSON: Yes.
2 BY MS. OSMAN:
3 Q. Dr. Jeffay, are you going to
4 follow that instruction?
5 A. I guess I am.
6 Q. Okay. I have no further
7 questions.
8 Thank you.
9 VIDEO OPERATOR: Anybody else?
10 MR. WILSON: No recross, no.
11 VIDEO OPERATOR: Okay. If that
12 is everything, off the record on
13 May 8th 2025 at 3:49.
14 (Thereupon, signature having not
15 been waived, at 3:49 p.m. EDT
16 the deposition concluded.)
17
18
19
20
21
22

1 CERTIFICATE OF DEPONENT

2 I, KEVIN JEFFAY, do hereby certify
3 that I have read the foregoing pages, which
4 contain a correct transcript of the answers
5 given by me to the questions propounded to me
6 herein, except for changes, if any, duly
7 noted on the enclosed errata sheet.
8
9
10 _____
KEVIN JEFFAY
11
12
13
14 Sworn and subscribed to before me
15 this ___ day of _____, 2025.
16
17
18 My commission expires: Notary Public:
19 _____ _____
20
21
22

1 CASE: Aylo Freesites, Ltd, et al. v. DISH
2 Technologies, L.L.C.
3 DEPOSITION OF: Kevin Jeffay, Ph.D.
4 TAKEN: May 8, 2025
5 PAGE LINE ERROR CORRECTION REASON
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17 _____
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20 _____
21

_____

22 KEVIN JEFFAY

1 CERTIFICATE OF NOTARY

2 I, MISTY KLAPPER, the officer before whom
3 the foregoing deposition was taken, do hereby
4 certify that the witness whose testimony appears in
5 the foregoing deposition was duly sworn by me; that
6 the testimony of said witness was taken by me in
7 shorthand and thereafter reduced to typewriting by
8 me; that said deposition is a true record of the
9 testimony given by said witness; that I am neither
10 counsel for, related to, nor employed by any of the
11 parties to the action in which this deposition was
12 taken; and, further, that I am not a relative or
13 employee of any attorney or counsel employed by the
14 parties hereto, nor financially or otherwise
15 interested in the outcome of this action.
16
17 _____
Misty Klapper, RMR, CSR, RPR, RSA
18 and Notary Public
19
20
21
22

A

A-V-G 211:10 211:13 215:14 216:19,22
a.m 1:17 8:4
ability 45:5 202:19 203:6,11 204:5,7 220:6 225:16
able 49:13 124:11 125:5 130:16 199:9,10 246:18
ABR 12:7,11 15:13,20 16:6,18 21:22 25:18,19 32:18 38:16 39:18 43:9 47:4 50:11 88:3 89:4 89:11,17 89:22 90:5 90:13 92:12,14 92:20 93:9 108:22 220:6 225:16
absolutely 81:18
abstract 78:17 83:7
accept 32:10
access 189:15
accumula... 196:12
accuracy 222:17 226:6
accurate 27:10
achieve 43:22
achieving 41:22
acknowledge 63:17 108:19
action 8:7 115:13 270:11,15
actual 32:5 70:8,9,10 119:15 147:13 251:9
Ad 202:13
adaptation 127:8 196:14
adaptive 12:11 125:14
addition 13:2 131:19
additional 15:22 39:16 190:7
address 28:22 29:17 108:19
addressed 16:5 113:12
adjudicate 115:5
administ... 115:8
Administ... 1:19
adopted 111:1
advance 199:17
advantage 197:4,6,10 197:16,22 199:21 203:14
advantag... 155:3
advertis... 202:20 204:8
advertisers 198:11,19 200:13
advertising 202:11 203:5,14 203:14 204:5
affirmat... 136:5
afternoon 153:1,7 233:19
ago 9:19 91:22 204:2 226:2 263:2
agree 11:15 11:19 13:21 15:13,19 16:2,19 31:22 40:19 41:2 41:8 50:19 54:21 56:1 56:12 58:6 60:19 61:5 61:9,18 63:6,20 74:3,4 79:3 80:2 83:4,12,15 84:11 85:20 92:14 97:6 98:21 109:14 113:3 129:19 140:17 141:21 159:10 164:9 165:2,14 176:16 186:18 196:6 199:2,22 211:6,8 229:18,20 234:19 235:3 240:17 247:5
agreed 111:8 111:14,20 111:21 112:6,7,9 112:12
agreements 227:16
ahead 204:1 266:13
al 269:1
algorithm 104:12 105:6
alignment 122:5
ALJ 177:5 179:12,20 182:17,20 183:4,12 183:16,18 183:21 184:6,14 187:8 188:5,18 189:7 255:14,18 256:2
ALJ's 179:16 180:3,13 181:1,16 254:12 255:9,10
alleged 21:7 244:14
alleviating 30:20
allow 151:2 155:4
allowed 204:22 206:9,14 265:17 266:2
allowing 58:18
allows 207:14
alphabet... 148:6,20 149:2
Alto 2:19
ambiguous 207:19
amenable 245:7,8,19 246:6 247:3,11
analogy 132:16 151:8
analysis 62:22 63:3 112:12 178:18 179:8,9,10 179:16 180:3,13 180:21 181:2,16 207:11 254:12 255:9,10 256:1
analytic 217:9
analytical 216:18
analytics 215:9 216:18
analyze 189:19
analyzed 181:3 210:13
analyzes 165:15

ANDREW 2:17
andrew.w... 2:20
anomalous 218:5
anomaly 210:3,4 213:17 214:17 215:3
answer 33:13 94:2 99:5 101:3 105:14 106:13,14 106:14 114:1 117:6 126:6 129:2 144:6 163:5,6 226:14 245:21 263:21 264:5 266:22
answered 104:20 191:1,7,8
answers 204:2 268:4
Anybody 267:9
apologies 38:8 85:5 118:20
apologize 136:20
app 182:22 183:14 184:7 185:5,10 186:8 187:11 188:17 190:5 255:17 256:7
apparently 42:5
Appeal 1:2 109:21
appear 188:11 221:15 223:1 250:6
APPEARANCES 2:1 3:1
appears 28:20 36:1 83:2 88:3 166:15 181:19,20 183:17 184:13 187:13 221:10,20 223:7 224:5 270:4
applicable 36:18
application 16:1 55:3
applies 16:19 28:8
apply 9:22 33:20 37:7 180:21
appreciate 81:20 200:7
approach 52:20 243:10
appropriate 36:22
apps 178:13
arbitrary 246:2 247:2
architec... 43:9 51:12
argue 88:17
arguing 111:7 113:5
argument 63:14 164:7
arguments 17:10 21:6 21:7 114:11,13
arrange 90:9 91:1 95:22 96:9 97:14 98:10 99:1 107:15 124:12 140:15 145:17,22 148:19 149:5,15
arranged 96:2 146:15,22
arrangement 148:15 150:22
arranges 136:2 139:18 141:9 145:10
arranging 21:9 87:19 88:2 89:1 90:21 91:17 92:1 94:11,17 96:12,21 97:10,17 98:7,9,22 99:12,16 99:18 100:2,6,21 101:14 102:11 105:11,13 105:14,21 106:2,9,11 106:21 107:4,7,9 107:9 116:10,20 117:16 118:9 120:6,16 121:19 122:12 123:1,3 125:3 127:10,12 127:13 128:3,14 132:13 133:8 134:2 135:22 136:4,6 137:4,7,9 137:12 138:18 139:1 140:2,4 142:1,3,20 143:16 144:2,16 146:11 147:19,22 148:9 150:7
arrivals 122:9 125:7 132:1
arrive 94:6 96:19 106:19 107:11,12 131:4 144:8
arrives 46:9 46:12,18 47:8,20
art 17:7,15 38:3,12,18 39:3 43:8 54:8 81:8 83:21 143:11 199:18 209:10,18 213:13 219:8 244:14,21 247:6
article 5:15 192:12 194:10 196:17 197:4,14 197:16 198:18,22 199:3,19 200:1,3,11 200:16
articulated 40:16
artisan 245:10,22
ascending 89:7 90:15 94:12,17 102:2,16 103:4,15 104:9,18 105:20 106:8 128:4 129:18 130:11 133:20,22 134:11,20 144:12 147:4
ascertain 132:10 133:2
aside 82:15 150:2 151:9,10 151:13 165:22 169:10 172:21 200:20 219:14 231:10 261:15
asked 80:21 104:19 124:21 180:22 190:22 191:7,8

234:20
248:13
253:8
asking 14:8
23:10
33:11
80:13,14
107:18
117:4
123:21
137:6
139:3,9
146:17
162:9
170:15
172:14
179:19
197:13,14
aspect
205:15
assembles
194:13
assembling
195:3
asserted
168:16
assess 94:3
assignment
17:2
148:18
149:14
associated
108:22
assume 49:16
103:13
176:8
190:17
209:3
228:1
231:22
234:16
assumed 57:4
57:9 58:17
59:5
assuming
98:22
210:2
211:3
assumption
226:19
229:6
assumptions
134:8
222:11
226:4,16
226:18
230:7
attached
222:10
226:3
attachment
6:7
attention
20:9 220:4
235:13
238:12
attorney
264:8
270:13
attorney's
264:5
attorneys
233:22
263:11
265:12
audience
208:20
audio 57:4,9
68:6,7
73:17
236:3
authenti...
58:19
205:4
author
229:11
authored
228:3
authorized
256:8
authorship
227:21
automati...
220:7
223:16
available
61:22
207:3,10
average
211:14
215:14
217:1,6
aware 23:21
27:13 29:3
29:19
30:12
54:15
247:9
262:7
Aylo 1:4 2:2
8:7 11:14
14:4,7
23:21
114:13
256:17
257:1
269:1

B

b 4:9 5:1
6:1 7:1
178:7
240:7
254:3
B-1 28:12,13
back 21:19
64:19 69:3
79:18
87:12
88:19
107:21
116:1
129:20
132:22
133:18
135:18
139:16
151:10
153:2
186:19
191:22
198:6
219:14
224:7
228:2,5
233:4,16
247:22
253:1
259:16
background
25:14
bad 119:21
179:6
Baker 1:16
2:18 3:3,7
8:15
bandwidth
49:20
66:14,15
bar 73:18
based 94:4
95:18 97:2
101:21
115:14
208:5
222:10
226:3,16
226:17
230:1,7
basically
79:14
139:3
209:14
basis 175:8
231:1
beginning
1:17 50:17
51:19
224:8
254:21
begins 38:2
38:11 55:8
57:3 58:11
72:7 74:15
76:21
BEHALF 2:2
2:10,16
3:2
behave 117:5
behavior
74:13
believe 14:1
28:19
102:12,17
111:18
112:5
117:17
118:1
119:5
141:3
160:17
195:9,16
198:16
201:16
207:2
222:8
235:2
253:17
258:18
261:2
believing
231:1
beneficial
58:18
best 23:4,4
27:9 84:17
120:4,5
121:14
192:15
218:6
bet 114:9
better 52:20
118:22
233:5
Beyond 61:20
billing 25:2
binding
80:11
109:20
110:2,7
binds 80:13
bit 64:16
107:22
158:4
245:6
bitrate
12:11
42:22
43:14,15
44:10
45:10 46:9
46:11
47:10,15
47:17 48:5
49:16,22
50:1 52:5
52:7,14,16
198:6
bitrates
43:13,19

blame 233:9
blip 208:21 209:4,6,9 209:14,16 209:18 210:6,9,11 211:21,22 212:3,6,14 212:17,20 212:21 213:2,2,5 213:7,9,11 213:12,13 213:19,19 213:20,22 214:12,19 214:21 215:5 218:4,13 218:15,18 218:22 219:2,6,7 219:11
blips 210:5 218:5
block 238:15
blur 164:5
Board 1:2 109:21
body 111:14 111:19 112:6 113:2,7,8
bond 5:11 177:4
bottom 10:21 70:16,17 174:3 178:6 187:20 190:3 193:20 223:8 224:6
Botts 1:16 2:18 3:3,7 8:15
bounds 212:3 213:7
boxes 178:13 182:22 183:13 185:4 186:8 190:4 255:17 256:6
branch 109:9 115:5
break 31:21 31:21 68:17 69:8 116:6 149:9 152:1,3 232:21 233:4 234:1,10 247:15 257:12,18 259:8 263:10,13
BRIANNA 2:17
brianna.... 2:21
brief 69:1 115:21 207:9 233:14 247:20 259:14
broken 50:8 52:12 118:14,22 130:1
browser 87:5 216:8,16
buffer 43:1 43:5,21 44:16,18 45:3,11,18 46:8,14,17 46:21 47:9 47:14,18 47:18 48:2 48:3,19,20 49:4,13,16 50:2,13,20 51:7 52:6 64:13 66:11 74:22 75:5 75:9,13,20 76:1,5,9 76:13 126:3,21 132:12 133:5 136:3,8,9 136:16,16 139:17 140:3,4,8 140:9,16 140:20 141:5,8 142:4,13 142:16,21 142:21 143:6 146:10 147:6,18 155:3,9 157:6 158:16,19
buffer's 46:21 48:7
buffering 44:6 45:6 45:7 125:14,16 126:1,13 126:16,17
buffers 142:7,11
build 126:20
Building 2:19
buildup 254:7
business 153:15

C

c 4:1 8:1 240:7
cache 143:7 143:7,12 143:13,18 144:4,9,16 145:10 148:8 149:20
California 2:4,4,19
call 11:6,10 143:11
called 9:3 60:6 71:16 131:1 177:13 188:5 201:12 208:11 210:14 223:10 224:10 236:19
calls 18:5 68:8 182:17
Campbell 3:11 8:10
capabili... 93:19 94:1 98:5,14,15 228:16
capability 44:21 45:22 51:13 98:6
capable 107:3
capacity 46:22 47:3
carries 38:1 38:6,10 108:17
carry 179:17
case 22:20 47:18 48:20 74:20 86:2 92:8 114:10 129:9 157:4,11 158:18 164:4 165:8 185:14 201:16 248:5 249:13 252:3,10 252:18,20 253:3 269:1
cases 115:10 248:19
cast 151:12
casting 151:9,10
cause 64:14
causes 213:21 214:1,2,13
CDNs 198:9
CEO 221:11
certain 15:22 20:2 26:7 49:15 53:19,19 53:20 105:15 131:15 162:6 163:9 164:5 222:10,11 226:4,5 230:7 249:15,15
certainly 25:22 58:7 63:11 135:7,10 163:12 168:22 172:7 190:10,16 197:9,21 203:9 205:12 218:3 224:4,5 226:15 228:4 262:10
certainty 27:6

CERTIFICATE 268:1 270:1
Certified 1:18
certify 268:2 270:4
challenge 169:2
challenged 12:17 30:19 35:13,19 37:8 38:2 38:11 39:1 39:9 41:21 160:15 165:10 167:7 168:16 169:2 171:13 172:4,8 174:14 175:4,10 182:5 195:8,15 195:22 196:7 198:15
challenges 11:17
challenging 112:16,19 113:1
change 65:10 65:11
changed 28:10 87:1 87:2
changes 268:6
characte... 33:20 34:9 34:10 67:1 101:21
characte... 103:9 230:10
characte... 61:13 92:6 218:13 260:10
chart 5:18 5:19,20,21 68:8,11 71:12 87:22 119:6,17 160:20 161:6,9,15 162:2,6,10 162:20 163:7,15 164:3,10 165:15 167:13 168:2,4,8 168:9 170:12 171:15 173:16 175:3,7 248:17 249:12 250:2,3,6 250:22 251:17 252:17,20 258:1,10 260:4,7 261:12,22 262:11,17 262:19,21 263:6
charted 164:22
charting 248:18
charts 162:4 164:4,18 165:4 249:22 257:15,17 260:20 261:5,6 262:8,13 263:1
check 135:19 146:9 147:2 151:6
checks 132:9 133:1,19 144:13 146:6 147:3
Cheney 177:5
chief 177:4
choose 21:14
chop 241:14
chosen 45:3
chuckling 209:10
citation 80:8 81:5 81:6
cite 16:9,11 33:7 36:3 36:15,22 82:4 84:14 117:3,10 120:11 158:15 160:19 164:6,7 167:8 170:10 174:17 192:19 201:19,21 202:5 220:12 223:2 253:13
cited 17:7 32:1 110:12 176:17 179:20,21 180:3,14 181:22 222:22
cites 32:5 80:1 81:18 81:21 167:11
citing 16:7 31:11 33:1 35:1 37:5 82:11 121:3 189:10,18 189:20
claim 5:18 5:19,20,21 16:5,17 53:10,12 53:17,20 91:10 94:4 118:9 119:6,17 120:7 137:3,17 138:17 139:5,7,8 160:20 161:6,7,9 161:15 162:1,10 162:20 163:7,15 164:10,10 164:17 165:3,15 165:15,20 167:12 168:2,8,8 168:9 169:1,5,7 170:12 171:15,21 172:1,9 173:13,16 173:17 175:3,7 178:14,19 179:14 180:4,20 181:3,16 182:14 188:18 190:21 248:17,18 249:12 250:3,7,22 251:17,19 251:22 252:17,20 252:21 256:4,11 257:14,17 258:1,2,6 258:7,10 258:15,19 258:22 260:4,5,7 260:7,15 260:17,19 260:20,21 261:12,22 262:1,4,8 262:8,13
claimed 198:15
claims 90:13 90:19 91:8 91:9,10,17 91:22 92:6 93:10 94:10 116:11 117:13,16 117:21 137:8,11 139:1 160:15 164:14,18 164:22 165:5,9 167:7 168:6,13 168:15 169:7 171:13 172:4,8,8 172:15,16 174:14,22 175:4,9 180:15 182:5 195:8,15 195:22 196:5,7,10 198:15 253:10 261:6
clause 157:16,19

157:22
159:5,11
159:13
clean 143:21
clear 42:17
63:8 65:15
74:21 75:8
75:13,20
97:6 117:9
155:9
157:5
158:19
clearing
75:5 76:1
76:4,8,13
155:3
158:16
clearly
146:18
200:4
211:2
212:19
213:15
218:5
clerical
167:22
client 51:3
86:15,19
88:13,19
89:5 92:15
96:6 97:7
100:18
128:15
129:3,17
130:4
131:8
132:22
133:1,1,16
133:18,19
135:14,19
136:1
139:14,17
140:18
144:11,13
197:3
clients 86:7
92:21
close 57:12
77:6 111:2
coaching
170:20
codac 246:6
code 43:15
70:7,8,10
72:21 74:9
91:5 98:4
101:8
106:1,10
107:3,8
116:18,19
117:8
123:10
codec 237:3
237:15
244:19,22
245:2,5,19
246:2,6
247:2,3,7
codecs 247:9
coding 74:21
coextensive
117:20
colleague
29:16
collected
206:6,15
207:8,22
208:5
colloqui...
213:16
column 235:7
235:10
238:9,13
244:5,12
combinat...
65:7
come 25:7
76:7 99:2
107:21
148:7
150:5
151:10
233:4
comes 43:7
52:5
147:13,14
148:21,22
149:17,21
150:3
comfortable
163:13
coming 148:6
comma 194:12
command 71:4
71:21
72:13,18
73:1,9,15
74:5 75:6
76:13
comment 99:9
99:10
commenting
175:2
comments
26:13
commercial
120:9
commercials
202:21,22
commission
268:18
Commissi...
108:20
commissi...
114:22,22
115:13
common 70:1
78:22
79:16,17
81:20 82:2
115:6
202:2
commonality
168:5
communic...
85:12,21
company
236:18
237:1,3
compare
156:20
compared
146:8
147:5
comparison
148:13,14
completely
48:19
complex
101:18,18
complicated
139:8
components
196:13
composition
114:19
compress
243:5
244:15,22
compressed
57:10
236:7,10
237:5,10
237:14
240:14
compressing
242:21
243:12
244:8
comprise
236:5
conceded
184:8
185:9
conception
211:4
concepts
37:5,14,16
37:18
concerned
212:4
concession
190:7,11
concessions
188:19
190:21
concluded
267:16
conclusion
231:4
255:19
256:2
concrete
63:14
confirm
64:19
66:13
222:18
223:14
226:7
230:3
confirma...
229:21
confirmed
27:8
confirms
78:21
conform
141:11
confused
138:5
connection
10:18 11:2
122:18,21
123:8,17
123:20
124:4,5,16
125:2,5
131:14
connections
21:11 53:3
54:9 85:22
86:15,20
87:4
102:20
120:13,15
121:5
122:2,8,16
123:13
124:15
131:12,13
consider
117:8
139:6,11
213:12
consider...
118:1
consider...
108:22
112:1,14
113:6,9,21
117:19
considered
44:4 139:4
139:10,19
218:21
238:2
considers
214:18
215:5

219:6
consistent
244:11
constitute
210:11
constitutes
148:15
construc...
95:16
contain
41:11
268:4
contains
69:18
contemplate
93:4
contempl...
243:16,21
contempl...
40:13
244:8
contempl...
62:12 64:1
205:14
contends
178:12
content
198:9
205:2
217:2,7,14
217:20
220:8
235:21
236:1,6,10
237:5,10
239:3,6,11
239:12,18
239:22
240:13,15
240:18,20
241:1,4,6
241:10,14
241:17,20
242:5,7,8
242:11,13
242:16,18
242:21
243:6,13
244:8,16
244:22
245:11
246:16
contents
20:10,22
contest
182:21
183:13
185:3
186:7
187:10
188:9
contested
183:5,22
context
65:13
197:11,20
197:20
198:21
199:5
200:5,7,16
203:9
212:6,7,8
continua...
16:1
continued
3:1,2 5:1
6:1,2 7:1
7:2 26:17
continuous
21:8 42:1
43:22 50:4
120:10,15
220:8
222:1
258:16,21
259:1
contracts
228:4,5
contractual
227:16
control
192:14
convey
213:16
cook 134:17
copies 135:7
135:10
copy 20:9
23:19
137:14
138:7
156:11,13
161:17
176:14
234:12
253:17
core 202:18
203:6,9,12
203:16
204:4,8
corner 10:22
correct 9:16
10:19
12:12 13:6
14:2 15:14
16:1,7,14
19:14 20:3
24:2 29:20
30:9,14
31:5,8
36:1,8,9
36:12,19
36:20
39:20 40:3
40:12
42:12
46:14,18
48:12,22
50:21,22
51:4 54:22
55:20
57:16
59:11,12
61:1 62:5
62:6 69:20
72:15 74:6
75:6,14,16
76:14
78:14 79:1
81:1,2
86:16,20
88:3,4,15
88:16,20
88:21 89:2
89:3,20
91:18 93:2
96:10,11
96:15
97:10
104:4,18
105:17
106:11
109:6,15
110:3
111:20
112:3,4,8
119:18
122:19
123:8
124:6,16
125:14,15
126:1,13
129:21
133:22
136:18
140:20
141:10
142:4
143:18
144:4
147:11,17
158:7
159:15,16
164:15,16
168:13,14
171:15,19
171:20,22
172:18,19
173:14
174:18,22
175:15
177:18,21
180:11,17
181:17,20
182:7,10
183:5,15
183:20
184:4,13
185:11
188:20
189:14
190:13
192:17
198:20
200:1
203:7
206:7,21
207:12,15
211:7
214:21
216:3,12
218:16
221:20
222:8
224:22
225:5
226:8
228:12,17
229:3
231:5
234:14
235:2,5
236:3,7,8
236:14
237:12
238:7
247:8
258:3,4,8
258:9,17
258:18
259:2
260:18
261:13
262:2
268:4
corrected
27:14
correction
42:16
269:5
corrections
29:3,19
264:14
265:2
266:17
correctly
58:22 59:3
60:17 96:3
155:12
159:2
160:16
167:15
187:3
191:18
192:18
198:13
203:3
220:11
225:17,18
correspo...

12:17,21 47:6 132:5
counsel 8:18 9:7 10:2 14:13 15:4 17:9,17,21 18:3 20:11 20:14 21:12 23:6 23:8,11 25:10,20 26:8,9 28:22 30:3 32:12 69:7 116:5 151:21 153:4,18 170:15 181:7 191:2 201:2 220:21 232:3 248:2 256:16 257:6,15 259:18 270:10,13
Counselor 61:12 170:18
count 186:19 208:16 209:20 210:2
counted 187:2 191:18
counting 209:4
couple 42:4 42:7 196:17 259:5
course 162:4 181:14
court 1:22 8:12,13,20 232:19 233:10
cover 19:7,7 19:11,11 19:17,17 19:21,21 22:5,5,7,8 26:20,21 56:17,17 90:14
covered 165:16,18
covers 165:20
created 262:18
creates 88:17
credited 111:2
criteria 151:2
critical 143:11
criticize 151:7
Crosstalk 265:19
CSR 270:17
currently 236:20
cursor 73:18
customers 201:12 256:6
customized 206:10,17 206:21 207:10,15 208:6

D

d 8:1 72:3,7 72:11,12 73:1 74:4 184:20 205:15
D.C 1:14,17 2:13 3:4 8:16
dangling 27:20
data 150:16 206:5 207:8,22 210:13
dated 6:5
David 3:11 8:10
day 97:22 268:15
dead 232:17
deal 89:13 89:18 125:5
decide 20:12 115:13
decision 109:19 110:2,10 114:4 175:14 177:15 178:22 179:2 182:12 191:21 263:14 264:20 266:2
decisions 110:6
declaration 6:11,15,19 7:4 11:5 13:3,8,17 13:19 14:9 15:17 16:4 16:10,12 17:5,14 18:10,11 18:14,20 19:7,13,17 20:3,15,18 21:14,15 21:18,20 24:14 25:4 25:5,21 26:20 27:9 27:13 29:4 30:16 32:2 35:11,21 36:3,17 53:2 54:18 63:10,13 87:13 95:3 95:11 108:3 119:15 154:2,3,4 157:9 158:6,9 159:18 160:9 166:2,14 166:18 167:16 169:10,12 169:12,16 169:22 170:4 171:11,18 172:22 173:4,22 176:18 181:22 191:22 192:4 193:19,21 194:20 201:18 219:15 221:14 222:22 223:2 225:14 230:19 251:10,12 253:2
declarat... 10:17 13:4 13:10,13 18:20 25:8 25:12,17 170:8 249:17,22 251:8
decode 245:13 246:18
decoder 245:12 246:17
decoding 155:2,9 157:5 158:19
deeper 67:22
Defer 151:21
defined 213:14
defines 83:8 210:9
definite 212:12
delay 43:18 44:12,14 44:15 118:20 214:1,3,4 214:8,9 216:19,22
deleted 27:18 28:18
delivered 242:16
delivery 194:13 195:2
demonstr... 17:15
depend 45:2 116:17 244:19
DEPONENT 268:1
deposed 9:15 9:18
deposition 1:16 8:6 8:14 17:13 17:19 19:8 19:18,22 21:16,22 22:6 24:6 24:7,11 30:8,11 56:15 67:6 67:10 69:8 153:19 234:4

257:7,17
265:10
266:8
267:16
269:3
270:3,5,8
270:11
describe
17:1 22:13
26:5 29:22
35:2 38:3
38:12,19
39:2,6,7
41:13
61:21
118:8
120:12
151:4
208:20
220:13
225:15
described
37:18 40:8
40:11
102:22
147:2
150:21,22
151:4
224:18
describes
55:12 73:7
121:22
204:4,6
223:11
236:1
describing
54:20
72:17,21
73:1 74:9
74:11,12
144:21
203:5,16
225:1
228:16
254:4
description
4:11 5:3
6:3 7:3
68:6 103:6
207:9
224:18
225:3,11
227:7
design 51:11
98:18
246:3
designed
70:12
89:13,17
97:7 123:4
245:15
desired
60:13
despite
168:11
171:17
destination
131:3
detail 102:8
103:22
104:6
105:7
124:2,5
130:3
detailed
68:5
123:22
details
73:10,12
77:6
determin...
5:7,10
110:22
115:11,12
115:15
145:6
177:2,4,7
177:7
190:12
255:4
determin...
110:7
determine
148:5
192:15
determines
130:17
develop
98:17
developed
17:16
261:5
device 94:8
127:11,22
diagram
238:15
dictates
95:17
difference
54:14
differences
22:14
different
28:9 29:14
34:2 36:11
42:22
43:13 52:2
81:11
113:22
138:6
163:2
168:12
190:20
195:1
203:22
242:12
249:19,22
251:5,6
difficult
219:5
digital 77:7
195:6,7
204:17
digits 11:6
11:10
direct 15:3
81:6
151:19
154:19
156:16
158:11
174:3
178:5
184:19
186:1
192:6
220:3
238:12,18
directed
14:8 30:19
33:2,9
34:8,17
35:3 39:19
40:2,21
41:12,22
167:17
directing
235:12
directly
67:19
75:19
76:12
disagree
31:17 80:5
229:22
246:12
disagreed
113:13,15
113:19
114:3,12
230:16
discards
147:12
disclose
40:22
87:18
243:12,18
disclosed
39:21 76:3
76:10
183:19,22
discloses
79:4 81:4
83:13,16
84:10
86:14,18
disclosing
121:18
disclosure
97:16 98:8
99:12,16
119:4,11
119:15,20
119:22
120:4,5
121:16
246:10
disclosures
15:22
37:19
39:16
40:14
41:11
121:2
disconti...
218:8
discover
30:4
discovered
30:6
discuss
116:4
117:15
234:3
264:9,14
265:2
266:3,16
discussed
264:20
discusses
72:13
204:16
discussing
37:1,14
72:14
248:19
discussion
63:11
65:12
129:22
discussions
17:16,21
69:10,11
266:7
DISH 1:8 8:8
113:5
178:12,12
182:22
183:13
185:4
186:8
190:4
255:16
256:6,9
269:1
Dish's 11:17
17:9,17,21
25:9 43:21
48:10
49:11,22

100:9,10
100:13
256:5
disk 245:7
display
120:17
dispute 62:7
115:7
176:20
disputes
115:5
distinguish
88:12
140:2
dive 67:22
divide
241:21
242:22
243:3,6
244:16
245:1
246:16
divided
239:9,13
239:22
240:3,18
240:20
241:1,5,7
242:5,8,13
dividing
243:13
244:9
DivX 236:11
236:15,16
236:18,19
236:19,22
237:6,11
237:14
Doc 149:12
151:16
Doctor 9:9
10:9 37:2
61:16 71:5
75:11
82:15 83:2
87:11
111:6
116:4,8
118:10
120:5
123:14
132:13
138:14
document
10:10 11:1
18:17
26:18
69:15 78:1
80:18,21
82:14,16
87:10
127:5
166:11
169:22
176:5,13
176:22
177:1,17
178:1
201:6,10
201:14,18
202:8,12
204:3,6
205:14,20
206:1
207:5
210:9
213:14
221:4,9,16
221:22
223:4
226:21
227:22
229:9
230:2,11
230:13
231:20
234:16
249:11
250:21
251:6,7,9
251:11,20
252:16
257:8
261:9
263:15,18
documents
17:8,11
120:11
121:3
125:12
189:11,12
189:15,18
189:21
190:1,9
228:2
249:19
doing 45:22
72:17
97:17
118:17
123:11
131:9,20
137:15
140:2,3
146:20
153:15
163:22
188:1
265:9
domestic
178:7
254:13
255:11,19
256:10
dominant
84:1,13,20
86:2
door 148:2,6
148:8,17
148:20
151:1,3
doubt 212:15
downshift
220:7
223:17
downshif...
121:4
downstream
206:15
Dr 6:11,15
6:19 7:4
8:6 17:5
19:13,17
20:3,15,18
21:13,18
24:1,7
69:6 78:9
108:6,19
110:9
111:15
151:17
153:7
154:15
160:8
162:17
166:5
169:21
171:6
175:20
176:4
193:10
201:7
208:17
231:12,19
232:9
233:19
236:17
247:14
248:4
256:14,19
259:22
266:16
267:3
draft 25:3
25:20 26:1
26:7,9,12
26:20 32:4
161:13
162:7,9,14
163:11
261:3
drafted
161:13
227:3,7,19
228:6,12
229:2,6,14
231:2,7
drafting
24:14,16
26:6
draw 125:9
231:4
DRM 194:14
195:4,5
204:16,20
205:4,11
205:13,15
due 35:4,6
duly 9:5
268:6
270:5
dur 211:10
211:13
215:14
duration
65:17,18
66:10
122:5
210:19
211:7,15
215:10,10
215:15,21
217:1,6,14
dynamically
202:20

E

e 4:1,9 5:1
6:1 7:1
8:1,1
186:2
E-mail 2:5,9
2:14,20
3:5,9
220:13
221:12
222:4
226:2
227:5
231:3
earlier
31:10
32:17
116:8
138:5
edit 26:13
edits 163:21
EDT 152:9
153:1
267:15
Edwards 6:4
221:11
effectively
40:14
142:16
efficiency
30:21
either 45:22
75:15 84:5
149:10

195:15
elaborating 126:14
element 117:13 137:3 196:19 197:1 207:10
elements 16:5,17 160:1,13 167:5 168:4,5 169:7 173:13,17 179:13
Eleventh 2:13
eliminated 43:21
eliminates 96:9
eliminating 95:21
ellipses 155:22 157:10
embedded 204:20
embodies 160:14 167:6 171:12
emphasizes 158:16
employed 270:10,13
employee 270:13
empty 48:7 48:21 49:5 49:17 50:2 50:14,20
emptying 47:19
enable 48:10
enabled 206:20
enclosed 268:7
encode 243:3
encoded 237:16,20 238:3,5 239:7
encryption 204:20
end-user 192:14
enddurstall 216:6
ends 154:5
engaged 24:1
ensure 129:8
ensuring 192:16
entered 73:9
Entertain 149:11
entirety 137:17
entitled 178:7 202:13
enumerated 37:21 38:21
environment 192:14
envisioning 130:4
equal 66:1 66:18,19
equally 16:20 33:20
equals 65:20 66:8 70:22
errata 268:7
error 29:12 168:1 269:5
errors 30:3 30:4,12
ESQUIRE 2:3 2:6,12,17 2:17 3:3,6
essential 57:20 58:4 58:17 59:6 59:9 75:2 75:6,21 76:14 157:8,17 159:14 204:12
essentially 25:16 39:12 115:9
establish 31:22
established 31:10 36:10 51:16 52:15 191:16 199:11 239:7
estimate 24:18
et 269:1
evaluating 222:6
event 163:12 191:16
events 218:4
everybody 236:20
evidence 97:19 108:7,21 110:12,13 110:15,20 111:8,13 111:14,22 112:11,13 113:9,20 117:2,3,10 117:11 119:6,16 124:11,21 124:22 125:3 160:22 164:8 189:12 190:8 228:10
exact 34:13 104:12 105:19
exactly 39:6 59:3 63:22 196:1 216:15 263:17
examination 4:2 9:4,7 15:4 153:4 248:2 256:16 259:18 263:4
examined 9:5
example 28:10,14 47:16 48:13 50:8 55:15,18 55:22 56:3 60:11 63:12 73:14,22 74:5 76:21 77:2 90:20 94:13 97:2 122:14 127:10 146:14 148:16 190:2 249:19
example's 149:9
examples 58:11,15 236:9,12 237:9
Excellent 41:15
exception 15:21 32:19
exclude 195:11
excluded 157:13,15 195:1 243:8
exclusively 123:20 189:2 190:6
excuse 43:14 44:14 154:16 155:4
executive 115:4 225:22
exercise 121:12 219:5
exhibit 4:12 4:14 5:4,5 5:7,12,15 5:18,19,20 5:21 6:4,8 6:11,15,19 7:4 10:9 10:13,22 12:4 13:6 13:7,15,18 24:15 31:5 31:7,11,16 32:1,7,9 36:4,7 56:5,7,10 69:16 78:4 78:5,10 82:18,20 83:2 84:22 85:2,4,5,7 86:4 87:13 137:18 138:4,6,8 138:10,11 154:10,12 156:6 160:19 161:4,18 162:16 166:3,7 167:11 169:13,18 170:11,16 171:14

173:18
174:18
175:20,20
176:1,17
192:20
193:1,3,4
193:6,22
194:2,10
200:20,22
201:3
205:7,11
220:12,17
220:19
221:1
224:17
226:10
227:3,19
231:1,12
231:13,14
234:11
248:5,14
249:4,6
250:18
251:4,7,8
251:15
252:2,4,9
252:12,19
253:2,14
253:18
254:17
256:20
257:3,7,20
260:1
261:1,3,17
exhibits
4:10 5:2
6:2 7:2
16:12
31:11
164:21
175:6
249:16
262:15
263:16
264:13,22
existence
113:6
existing
47:11
exists
110:16
241:14
exited 216:8
216:16
expand 26:14
expanded
26:15,16
expect
129:12
expectat...
118:11
experience
192:15
experienced
210:19
211:15
215:15,22
expert 10:17
13:3,4,13
13:17,19
14:9 15:17
16:9,11
24:2 25:3
25:21
26:20 27:8
27:13 29:4
30:16 32:2
35:20 36:3
36:16
54:18
87:12
113:5
expires
268:18
explain 74:1
160:11
167:2
228:22
explained
158:14
explaining
158:17
159:8
explains
155:8
explicitly
158:3
159:6
extended
18:5
extent 39:6
53:11
79:13
110:6
179:15
180:20
184:12
189:2,22
190:6
205:13
228:18,21
extra 242:2
extremely
194:15
195:17,21
196:2
198:10,18
200:12

F

f 187:8
face 226:22
250:10
fact 9:18
34:20 35:1
35:5,7
84:3
107:12
111:15
120:8,10
122:3,10
125:6
130:21
131:14
168:12
171:18
199:20
208:20
221:21
227:4
228:13
231:2
250:12
263:15
264:13
fact-fin...
111:14,19
112:6
113:2,7,8
fail 108:19
Fails 87:18
fair 15:12
19:4 34:8
34:10,15
36:5,6
42:20 54:7
54:11,16
60:18 67:4
67:13
110:10
111:10
121:17
124:18
129:13
142:17,17
143:13
151:16
183:6
194:21
217:22
230:19
243:15
258:13
fairly
207:21
familiar
114:16
193:11
249:1
famous
130:21
famously
131:5
fancy 131:9
far 86:1
212:3
fast 44:20
160:5
237:8
faster 47:19
178:3
fault 131:22
feature 44:8
197:5
204:12
features
58:19
February
24:8
feed 115:16
feedback
163:21
feel 72:12
146:17
felt 190:17
fewer 42:18
fighting
84:7
figure 28:6
125:9,13
126:18
143:1,2,16
144:2
145:12
235:14
238:14
240:7,12
figures
202:1
file 73:17
235:21
236:1,7,10
237:5,10
237:13,19
237:21
238:3,6
239:3,6,7
239:11,12
239:18,22
240:14,16
240:18,20
241:1,4,7
241:10,14
241:17,20
242:5,8,11
242:13,16
242:18,21
243:6,13
244:8,16
245:1,8,11
246:16,18
247:12
files 91:1
91:18
94:11,16
96:18,18
135:20
207:9
245:13
Files/St...

87:19
fill 44:16
44:18 48:3
filling 43:1
43:5 49:13
final 27:18
110:21
115:12
159:5,11
159:13,13
196:19
197:1
220:4
financially
270:14
find 256:3
finding
108:20
109:1
111:3
183:18,22
184:6
188:16
findings
112:20
113:2
174:21
fine 33:19
65:8 85:6
118:15
173:2
240:12
finger
120:22
Fire 182:22
183:14
184:7
185:5,10
186:8
187:11
188:17
190:5
255:17
256:7
first 26:7,9
29:7 38:21
40:16
42:21 43:1
43:13
45:17,17
50:3 51:2
52:4 70:21
78:16
85:10
125:20,22
126:4,12
127:6
144:8
148:21
149:17
150:12
157:10
161:13
162:7,9,14
176:22
182:17
195:2
217:8
219:9
221:21
223:1
238:19
242:20
five 42:6,18
61:8
187:15
flaps 131:1
flip 118:3
253:5
flow 68:8,11
71:11
fluidity
192:16
focus 50:10
55:7 59:15
focused
39:10
focusing
124:20
148:13
173:10
folks 18:1
213:12
follow 128:5
134:5
264:4,8
267:4
following
111:3
134:16
207:7
follows 9:6
footnote
27:16,20
27:21,22
28:1,5,8
28:15,20
29:1,2
foreclosed
108:7
110:10,12
forego 46:13
foregoing
99:11
268:3
270:3,5
form 15:8
17:8 19:19
20:20 33:3
33:10 37:3
40:4,9
44:2,22
45:20
46:15 50:6
51:8 52:10
57:10
61:10
62:17
65:21
66:20
67:14 71:6
75:17 89:8
89:21
90:17
92:18
93:11
94:19
97:11 99:3
101:1
102:5
104:10
114:6
122:12
127:15
128:19
134:3
136:11
141:14
142:5
143:19
144:18
146:12
147:20
150:9
170:21
171:4
176:15
181:10,10
184:10
185:12
188:21
189:9
190:14
191:3,5,14
196:10
197:7,18
200:2,14
205:9
206:11
207:16
210:3
214:7
215:1
218:9
229:4
230:5
241:8
243:1
244:1
245:14
248:21
251:2
formal 54:2
format 29:8
57:21 58:5
245:7
forms 68:12
207:11
forth 228:5
forward
198:7
fought 83:17
found 34:12
174:8,14
179:20
182:4
189:7
253:10
four 12:15
13:11,14
18:20 19:3
38:16
70:16,16
186:17
187:1
248:19
fourth 86:6
frame 28:12
Francisco
2:4
free 72:12
Freesites
1:4 2:2
8:7 11:14
14:4
256:17
269:1
freeze
213:21
214:14
215:11
217:21
freezes
216:2
freezing
215:9
216:11
217:19
218:16
front 12:4
24:14
27:14
154:2
156:15
173:4
194:11
235:1
248:6,8
256:19
257:5,22
260:1
froze 217:8
217:17
frozen 217:5
217:5
frustrated
146:20
fubo 5:5
14:13,15
15:5

151:22
fubo's 28:21 28:22
fubo/Yanka 23:22
fuboTV 1:4 2:10 8:8 14:15 56:7 153:4,14 259:19
full 46:7,22 46:22 47:3 48:20 49:5 80:17 194:9 210:10
fully 189:19 218:12
function 45:6 46:2 123:3 195:10
function... 205:6
functions 194:19 195:1
fundamen... 163:2
further 97:19 256:16 259:18 267:6 270:12

G

g 2:6 8:1 187:7
general 34:17 35:16 208:20 243:10 245:21
generally 17:1 26:10 34:8 109:8 116:21 117:1 263:14
generate 206:16
generating 218:3
genesis 162:16 163:1
geotarge... 194:14 195:11,14
getting 26:6 98:14 109:7 116:18 146:18 150:2
give 23:6,8 23:11,18 24:17 26:12 35:18 112:20 166:2 192:1,22 193:1 200:19 210:20 211:16 220:17 232:13 266:12
given 33:14 43:8 50:11 84:14 86:16 111:9 113:5 189:7 198:7 268:5 270:9
gives 68:5 73:9,11 74:5
giving 23:3 73:13 74:8 79:15 80:9 126:15
go 21:19 54:17 55:6 58:9 64:15 64:18 66:12 76:16 79:18 87:12 110:17 115:17 123:10 130:20 136:16 139:6 143:2 144:8 148:8 149:20 186:19 191:21 204:1 255:22 266:13
goal 41:22 129:13,15 129:15
God 212:20
goes 60:10 222:16
going 8:3 30:1 43:6 45:2 46:1 47:15 50:13 65:6 67:18 68:14 73:4 73:5 82:16 90:7 96:12 105:21 115:14 121:6,6 123:9,11 124:11 130:3,16 131:16 142:8 149:9 154:2 156:3 166:1 169:11 175:19 178:5 184:19 192:10,20 201:22 207:4 211:3 229:19 231:11 232:4,7,11 232:17 240:20 244:18,19 246:19 249:3 250:15 252:1,8 264:4 267:3
good 8:2 9:9 9:11 24:18 68:17 119:3,11 119:19 121:20 152:1 153:7 233:19
great 146:21 153:22 156:9 234:9
greater 67:13
grounds 88:13
guaranteed 90:6 129:11
guess 15:9 29:18 42:11 49:9 49:10 54:13 59:22,22 74:10 81:19 83:16 109:11 115:10 137:15 180:18 244:18 267:5
guidance 264:5,8
guys 232:13 232:16 233:3

H

H 4:9 5:1 6:1 7:1
H.261 29:9
half 38:21 40:16 158:12 208:11
halfway 41:19
hand 78:1 82:16 154:3 156:3 163:8,9,18 166:1 169:11 175:19 231:11 249:3 250:15 252:1,8
handed 10:11 11:1 234:10
handing 56:4
handy 253:18
Hang 85:8 156:18
happen 129:10 137:12 150:18,20 241:6,9
happens 80:18 94:5 107:1
happy 31:21 32:10 149:13

156:10
hard 81:19 83:18
head 24:20 27:1 67:17 77:19 79:12 82:1 165:13 168:21 172:6
heading 108:5
hear 115:9 265:21
heard 151:4 212:5,17
heart 204:13
heavy 204:20
height 149:4 149:5,6,15
held 1:16 8:14
help 37:2
helpful 221:18 240:6,9
Henry 24:1
hereto 270:14
high 52:7 224:12,13
high-level 33:16
higher 47:17 48:10,14 49:22 50:1 52:5,7,14 52:15
highest 220:9
hold 59:16 106:4 142:22 149:22
hopefully 180:8
Houh 17:5 19:13,17 21:18 24:1 108:19 111:15
Houh's 20:3 20:15,18 21:13 24:7 108:6 110:9
hour 68:15 232:4
hours 18:6,7
Houston 3:8
HTTP 79:16 80:9,16,17 80:22 82:3 82:10 84:1 84:10,13 84:17,18 85:11,20
HTTP/1 77:20
HTTP/1.0 4:13 77:15 79:1,4 80:6,11,14 80:15,19 81:1,9,13 81:15 82:8 83:16,18
HTTP/1.1 6:10 77:21 79:13 83:9 83:13
Hudson 1:22 8:13
huge 164:6
human 70:13
humorous 208:19,22
hung 98:15
hypertext 4:12 6:8 58:16 59:5 77:5 79:22 81:4
hypothet... 99:5 105:15

I

IAN 2:6
idea 33:13 209:7,19 209:22 211:19 213:4,9 240:13
identical 13:13 19:4 34:6 36:14 40:20 41:10,10 170:7 234:22
identifi... 78:6 138:12 231:15
identified 13:5 30:13 108:8,10 110:14
identifies 180:4
identify 12:6,15 41:20 194:18
identifying 197:4,14 203:5
ignore 111:16 112:17,19 113:1,11
ignored 106:14
ignoring 130:20
igpaquet... 2:9
III 35:12,17 35:20 36:2 36:16,17 57:11
illustra... 122:4 125:7
imagine 213:10,18 214:17 230:16
immediately 43:10,16 44:9 45:5 45:8 46:13 48:12 50:4 51:6,10,14 52:8 75:1 155:10 157:7 158:21
impact 200:8
implement 246:11
implemen... 5:14 73:10 73:12 74:11,12 201:13
implemented 74:1,6
implements 76:4
implicit 134:8
implies 122:8
imply 54:5
implying 97:4 242:14,15
importance 202:11
important 43:7 190:11,17
in-depth 194:15 195:18,21 196:2
include 158:5 159:11 164:13 172:9 190:12,18 236:10 237:10
included 156:1 190:16 204:19
includes 15:21 160:1,12 167:5 170:9 237:5
including 37:8 48:20 107:10 236:2
increases 49:21
incurred 44:15
independent 131:13 134:15 178:14
indicate 73:5,6,19 122:11 212:19
indication 6:6 220:14 222:5 227:2 229:10
individu... 88:14 95:20 96:7 96:14 97:8 98:20 100:19 101:12 102:1,15 103:3
Industries 1:5 2:11 14:14,16 153:5,14 259:20
industry 178:7 254:13 255:12,19 256:10
information 101:7 210:21 222:12

226:5
242:2
infringe...
115:8,10
Inge 2:12
153:13
inge.osm...
2:14
initial 5:7
110:21
115:11
127:6
161:11
163:11
177:2,7
190:12
input 71:13
71:15,20
inquiry
107:2,14
insert
202:20
204:7
inserting
52:13
insight
211:17
instance
26:8,9
131:2,3
205:12
instant
125:13,17
125:18
126:19
127:4,7
instructing
266:21
instruction
20:14
21:13 23:6
23:9,12
267:4
integrated
204:13
intellig...
131:7
intellig...
192:16
intended
256:8
intent 16:15
interest 6:7
16:16
220:14
222:5
interested
23:18
270:15
Interesting
153:16
interface
61:21
72:20 73:8
202:14
Internat...
5:5 55:2
108:20
internet
31:1 77:3
79:20
interpret
81:8
interpre...
53:12
84:17
interpreted
73:16
interpre...
54:8
interrel...
64:11 65:5
interrup...
218:1
introduce
153:12
introduced
257:16
introducing
257:6
invalidity
115:10
invention
43:21,22
48:10
49:11 50:1
81:10
inventions
244:15
investigate
67:11
investig...
67:5
investig...
110:21,22
investment
222:6
invite 95:7
involve
196:10
IP 11:7
IPR 5:18,19
5:20,21
6:14,18,22
7:7 11:9
11:10,13
11:17
12:20 13:3
13:18 14:4
16:13
25:18 31:8
31:12,16
36:4,8
137:19
154:4,4,11
165:11
166:14
169:3,14
170:1
172:5,14
248:5
249:5,13
250:5,16
251:1
253:2
256:20
257:3
260:2
261:17
IPR2024-...
1:10
IPR2024-...
1:11
IPR2024-...
1:11
IPR2024-...
1:12
IPR2024-...
234:11
IPR2024-...
161:19
IPR2024-...
166:4
IPR2024-...
169:13
231:17
IPR2024-...
11:2
IPR20240...
1:12
IPR20240...
1:13
IPRs 10:18
12:8,16
13:5,11,14
13:20
14:17 15:6
17:2 24:2
108:18
162:5
234:7
ISO 57:11
issue 10:18
12:7,16
13:20 17:3
44:5 62:13
62:14,20
66:3 93:13
93:15 94:9
106:20
issues
199:13
216:14
ITC 108:8,11
109:5,12
110:7,14
111:1,8
112:3,7
113:13
114:3,3,12
114:12,17
114:20
115:3
174:13
175:14
182:4
253:9
263:14,18
264:20
ITC's 109:19
110:2,5,10
174:21
182:12
191:21
255:4
iterate
162:15
iterated
25:9

J

j 70:22
Jamie 3:3
265:8
jamie.ly...
3:5
Jeffay 1:16
4:3,10
6:12,16,20
7:5 8:7
9:2,14
69:6 78:4
78:5,9,10
85:2 138:4
138:8,9,9
138:11
151:17
153:7
154:15
160:8
162:17
166:5
169:21
171:6
175:20
176:4
193:10
201:7
208:17
231:12,19
232:9
233:19
236:17
247:14
248:4
256:14,19
259:22
266:16
267:3
268:2,10

269:3,22
job 146:21
Judge 177:5
judges 115:9
judicial 109:9
jump 52:2 70:18,22 71:5,20 72:8,13,18 73:1,7,8 73:15,19 74:2,5,21 75:5 76:4 76:13 157:5,12 158:17,18
jumps 155:7

K

K 1:16 3:4 8:15
keel 232:17
keep 24:20 52:12 54:1 118:17,17 171:3,3 172:22 181:10 196:16 232:7,11
Kevin 1:16 4:3 6:11 6:15,19 7:4 8:6 9:2,14 268:2,10 269:3,22
key 192:12 194:5,12
kind 27:19 196:8,11 198:14,17 208:22 209:4,10 209:14 210:4,13 214:21 265:14
kinds 130:19 132:3 134:7
Klapper 1:17 8:11 270:2 270:17
knew 81:22
know 10:1,2 18:4 29:22 31:9 32:3 42:14,15 53:20 56:22 61:22 62:11 63:21,21 64:12,17 65:15 66:22 77:13,17 78:3 85:17 86:11 87:7 88:10 91:3 100:12 102:10,13 104:22 105:1 109:22 110:4 113:7 114:1,19 117:7 123:18,21 127:17,17 128:13 129:7 130:16 131:7 138:2 140:15 142:8 143:3 146:14 150:6,19 154:1 155:21 156:22 165:3,9,12 168:15,19 172:21 180:1 188:22 189:19,21 190:6 196:14 204:11 205:13 208:2 209:16 210:6,8,9 211:22 212:2,18 213:6,11 213:15 214:19 215:6 218:6,10 218:12,19 219:4,6 224:11 225:13,19 226:13 227:10,13 227:18 228:8,9,18 228:20,22 229:1,2,8 229:11,17 229:20 230:1,4,6 235:18 239:16 243:8 246:1 247:2,6 253:20 254:17 266:11
knowledge 27:10
known 95:18 101:10 153:14 244:15,21 245:11 246:11,15
knows 212:21

L

L.L.C 1:8 269:2
L3 221:11
language 31:4 34:11 34:14 35:7 53:10,12 53:17,21 70:9,11 92:9 137:3 137:17 138:17,22 139:5 187:9,13 221:13 223:4,7,15 224:4,5
large 101:18
latency 30:21
LATHAM 2:12
laudatory 230:12,14
laughing 208:17 236:17
law 1:16 110:5 115:9
Layer 57:11 58:20
layperson's 196:3
lead 132:1
leading 250:8 254:5,10 255:7,21
Leaning 54:20 55:1 55:12,18 56:10,14 57:15 58:10 59:4 59:10,14 59:18 60:3 60:5,19 61:14 62:12 63:22 64:1 65:1 67:21 68:4,5,8 69:15 71:11 72:3 75:7,8,12 75:12,15 75:19 76:10,12 76:15,17 76:19 78:14 79:3 79:14,17 79:19,19 80:5,11,13 80:15 81:4 81:9,13,15 82:6,9,13 83:12,15 83:22 84:5 84:10,12 84:20 87:18 88:12 89:15 95:17 96:6 96:16,17 96:20 97:1 97:13,17 97:21,21 98:6,18 99:9,11,16 100:5,6 105:3,4 108:18 116:16 155:8,15 156:4,14 156:22 157:3 158:14,16 159:4,5,9
Leaning's 55:14 58:2 58:7 59:7 59:12 61:3 61:7,16 62:4,8,15 63:4,7,11 63:19 64:15 66:17 67:6 67:7,12

68:9 84:16
88:13
95:19 96:6
96:13
legal 25:22
33:12
114:9
length
110:19
Lepard 6:4
221:11
let's 48:7
49:16,22
50:16
51:19
54:17 55:6
56:21 58:9
66:14
70:14
79:18 86:3
87:12
98:16
107:19,21
110:17
115:17
117:9
127:12
130:7
132:7
134:19
143:2
147:10,12
148:16
149:3,4,4
149:8,11
182:12,12
191:21
196:16
210:12
215:19
216:17
219:14
232:11
248:7
256:22,22
letter 6:4
221:10,15
221:18
222:9
226:3
letting
151:1
level 25:15
42:15
102:7
103:22
104:6
105:7
130:3
220:5
222:5,11
222:17
224:12,13
225:12,15
225:19,22
225:22
226:4,6,12
226:16,19
226:21
227:3,5
228:1,1,11
228:14
229:7,8,12
229:15,15
229:19
230:2,12
231:2,3,7
likewise
29:10
216:5
238:4
limit 87:4,6
limitation
88:2 98:2
100:3
101:20
102:11
105:13
106:2,9
107:19
120:6
121:19
127:14
135:22
144:17
182:17
183:1,5,9
183:14
184:21
185:5,9,10
186:4,9
187:9,11
187:15
188:6,14
190:3,5
256:4
limitations
16:5,17
21:9,10,11
88:1 89:1
97:10
98:22
100:21
101:14
105:11
116:10,16
117:16
118:9
160:14
167:7
171:12
179:16,17
180:20
183:19
184:7
186:17
188:17
189:8
250:7
258:12
limited 61:3
236:11
237:6,11
limiting
82:8
line 56:21
57:1 58:9
58:10
59:22 60:1
60:3 65:10
70:17,21
71:1 72:4
76:19,20
76:20
79:19
150:6
235:9
238:13
254:9
269:5
linear
202:22
lines 74:14
116:15
156:17
157:1
235:9
links 77:7
list 42:21
206:5
207:7
listed 12:21
13:14 42:5
177:9
literal
172:1
180:18
literally
241:4
little 70:13
107:22
109:7
203:8
227:15
LLP 1:16 2:3
2:7,12,18
3:3,7
located 8:15
lodge 265:7
log 207:9
logic 64:15
66:12
67:16 68:4
68:10
128:3
141:5
long 18:2
118:21
139:7
174:2
198:5
232:15
263:2
longer 28:8
174:6
232:8
longest
217:20
look 10:21
22:18
70:14 83:6
98:3 101:8
121:21
123:10
137:2
152:4
166:22
174:9
176:21
179:22
180:2
182:12,13
183:11
192:8
193:13
194:9
196:17
199:12
204:15
208:8
210:12
211:9
215:19
219:16
220:16
235:15
238:8
240:6
249:9
254:20
looked 145:4
166:21
170:8
176:14
193:19
221:8
263:7
looking 20:8
70:15
93:17
136:20,22
193:20
205:6,20
206:1
224:12
looks 176:6
193:11
206:4
lost 115:16
120:3

121:1
lot 201:21
lots 25:7
Louisiana 3:7
lower 47:15 48:14
lucky 178:4
lunch 152:2 152:2,5,10 153:10,20
lunchtime 152:3
LYNN 3:3 265:11,16 265:22 266:9,14

M

main 26:3
maintain 86:19
making 63:14 90:1 92:7 97:1 99:9 105:6 114:10 117:1 131:11,20 145:5 184:14 226:17
manage 118:10
management 195:6,7 198:9 204:17
manages 194:13
managing 195:2
manner 95:15 96:22 256:8
map 164:18 165:4 258:5 260:16 262:4
mapping 173:17 175:4 251:18 252:20 260:5,20 261:6,22 262:8,13
maps 258:1 260:7
mark 78:4 85:4 138:3 138:7
marked 5:2 6:2 7:2 10:14 13:18 24:15 56:5 56:8 69:16 78:5,9 82:17,21 132:10 133:3 138:11 146:7 154:8,10 154:13 166:8 169:19 176:2 193:7 201:4 221:2 231:14 249:4,7 250:16,19 252:2,5,9 252:13
MasterClass 153:15,15
mat 103:6
match 224:6
material 27:18
matter 12:14 21:3 34:17 39:10 180:18 233:1
matters 25:17,18 106:16
Max 217:14
maxdelay 217:10
maxdur 215:20,20
maximum 215:21
mean 20:7,8 22:18 23:2 23:17 24:3 25:6,13 27:5 32:5 32:7 34:4 37:17,19 39:4 41:2 41:4 42:16 43:4 44:3 46:5,21 47:1,2 53:8,9,18 53:21,22 54:10 62:10,11 62:19,21 63:10 68:3 70:5 71:5 72:17,22 73:11 75:10,19 79:7,9 80:9 81:8 81:21 91:21 93:13 99:6 102:4 103:11,13 104:11,21 105:14 112:10 113:4,18 113:21 114:21,22 116:22 122:22 123:2 125:16 126:17 130:15 131:15 132:2 134:5,12 140:10,15 142:15,22 145:18 146:13 152:6 155:16 156:7,10 159:6 161:16 162:3,11 162:12 163:19 169:4 176:6 177:17 179:10 190:15 196:9 197:8 199:6 209:3,9 212:18 214:10 217:4,16 218:19,20 226:13,14 226:20 227:12 228:4 229:1,18 232:10 237:7 239:15 240:11,12 240:22 241:15 243:8 245:16
meaning 53:13
means 48:18 70:6 73:3 97:13 120:16 121:9 124:15,17 125:17 128:13
meant 47:2 49:8 54:5 70:6 126:16 213:16
mechanism 129:8 131:22
media 1:4 2:10 8:8 14:15,15 46:2,6,8 47:7 51:12 124:1 153:5 160:2,14 165:6 167:6 218:1,7 223:11,12 225:9 228:16 236:12 238:4 259:19 260:8,21 262:1,5,9 262:14
meet 17:18 18:2 97:10 135:21
meets 190:5
memorial... 25:1
memorize 23:3
mention 42:3
mentioned 18:9 180:19 205:11
Merit 1:18
merits 17:9
met 17:21 18:1 55:13 101:15 256:5
metes 212:2 213:7

method 76:1 76:2,3,8 91:9,9,10 93:15,17 94:10 106:17 107:6
methods 90:19
metric 24:19 26:22 196:11 211:4,10
mics 259:9
mid 51:21
Mill 2:18
min 215:10 215:10
mind 214:20 219:9
mindur 210:14,17
minimum 163:20 210:18
minute 91:22
minutes 232:14
misinter... 95:8
misquoting 203:20
missed 119:2 136:21 180:8 181:19 185:18
misstates 92:4 181:6
mistracking 29:11
Misty 1:17 8:11 270:2 270:17
mode 123:19
modified 242:18
module 141:7 141:9,22 142:2,15 143:7
moment 9:1 166:2 173:7 174:10 192:22 193:13 220:17 221:17
moments 226:2
months 9:19
morning 8:2 9:9,11
Move 5:13,15 100:14,15 100:17,18 100:20 101:8,10 101:17,17 101:22 102:7,10 102:14,18 103:2,9,18 103:21 104:3,6,7 104:13,16 105:4,5,9 105:12,18 105:22 106:7,17 107:5,8 116:9,15 117:12,15 117:20 118:8 120:5,11 121:3,18 123:16 124:3,13 125:1,11 125:14,21 126:11 130:7,9 131:8,19 132:7,17 133:16 140:21 142:19 143:15 150:20 159:22 160:2,12 160:13 161:6 164:19 165:6 167:2,4,6 171:11 197:14 198:3 199:9 201:11,13 201:15 202:12,14 202:19 203:4,15 204:6,19 206:9,20 206:22 212:3 213:12 214:18 215:5 217:22 218:7,12 218:21 219:5,6 221:11 222:7,12 223:10,11 224:21 225:2,5,8 225:9,10 225:11,20 226:5,12 227:1,6 228:2,2,16 229:12,15 229:16 230:11,14 231:6 251:18,21 252:21 258:1,5,11 260:8,11 260:14,20 260:21
Move's 159:22 192:13 197:1,21 220:6 225:16 261:7 262:1,5,8 262:14
moved 73:18
moving 105:3
MP3 57:12,16 58:3
MPEG 29:8
MPEG-1 57:11
multiple 21:10 53:3 53:7,11 54:3,9,10 90:4 102:19 120:12,14 121:5 123:12 131:11,12 142:7 232:1 263:16 264:13,21

N

N 4:1,1 8:1
N.W 1:17 2:13 3:4
name 8:10 9:12,14 149:2 153:13
named 135:11
nature 33:17
nearly 170:7
necessarily 95:19 97:7 98:19 101:11 229:17
need 29:3 31:20 42:12 43:17 52:5 95:21 96:9 96:21 97:14,22 98:9 99:17 101:6 117:8 118:17 139:5,10 148:19 156:12 191:3 222:17 226:6 230:3
needed 264:15 265:3 266:17
needs 27:14 38:3,12,17 38:20 39:3 127:10
negotiat... 230:9
neither 270:9
network 49:20 66:15 67:2 77:3,4 79:20,21 90:2,3 94:5 97:3 122:2 125:2,4 206:20
networking 212:8
networks 5:13,15 30:22 77:7 130:21 131:5 171:12 198:3,10 198:19 200:13 201:13,15 202:12,19 203:4,15 212:4 224:21

225:5,10
225:12
227:7
Networks'
160:12
167:4
204:7
neutral
113:7
never 54:1
150:21
176:14
212:10,16
new 2:8,8
43:14,15
44:10 45:9
46:9,11
47:10,10
47:20 48:4
48:11
74:22 76:8
127:1
155:4,9
156:10
157:6
158:20
Non-binding
6:6
nonbinding
220:14
222:5
nonobvious
108:8
160:1,13
167:5
nonobvio...
108:10,12
109:2
Nope 69:13
234:5,8
Northwest
8:16
Notary 1:19
268:18
270:1,18
note 16:20
111:17
noted 8:18
16:13
183:4
268:7
noteworthy
111:17,18
111:19
112:5,15
notice 28:11
notion 52:13
novel 160:1
160:12
167:5
173:12
number 11:18
24:19
42:17 60:1
77:19 87:4
87:6,9
154:5
164:6
187:15
194:22
239:13
248:5
249:18
251:4
numbered
14:1 18:17
59:18
numbers 32:7
154:11
numeral
254:3

O

O 4:1 8:1
object
128:12,13
objection
15:8 19:19
20:20
32:13,14
33:3,10
37:3 40:4
40:9 44:2
44:22
45:20
46:15 50:6
51:8 52:10
61:10,12
62:17
65:21
66:20
67:14 71:6
75:17 89:8
89:21
90:17
91:12 92:3
92:18
93:11
94:19
97:11 99:3
101:1
102:5
104:10,19
114:6
127:15
128:19
134:3
136:11
141:14
142:5
143:19
144:18
146:12
147:20
150:9
170:14,21
171:2,4
172:10,11
181:5
184:10
185:12
188:21
189:9
190:14,22
191:11
197:7,18
200:2,14
205:9
206:11
207:16,18
214:6,7
215:1
218:9
229:4
230:5
241:8
243:1
244:1
245:14
248:21
251:2
254:5
255:6
263:19
264:17
265:4,7
266:13,19
objections
191:5
objective
108:7
110:15
observed
42:5
obtain 205:1
obvious
27:15 29:6
64:6
250:10
obviously
114:5
169:4
obviousness
108:6
110:9
occupancy
45:12 46:8
occur 89:15
127:10
137:7
138:18
139:2
occurred
213:17
occurs
143:16
144:2
209:4,15
offer 101:19
offered
141:17
offering
195:4
offers
194:14
Office 1:1
109:13
officer
270:2
offices 1:16
oh 18:4
118:4
149:1
153:16
155:4
156:2
166:6
172:21
187:22
225:6
234:19
238:22
249:10
264:1
okay 9:22
10:3,4
12:5 15:7
15:10,18
20:16
28:19
29:13
30:17
32:11,15
41:18 42:8
45:14
49:18,19
50:18
51:16,22
52:1,3,18
52:21 54:7
54:17 55:6
55:10 57:2
57:18
58:13
59:14,17
59:21 60:4
60:5,10
63:3 67:4
68:13,19
69:17
70:14
76:18
82:14
84:21 85:8
85:9,18,19
86:5,13
87:16 88:7
88:11
95:12 97:5
97:18

100:17
103:17
108:1,4
110:17
118:15
121:8
124:9
127:21
128:2
130:8
132:17,19
132:21
133:15
134:19,22
135:5,6,9
135:12,16
135:17
136:22
137:10,21
138:1,14
138:15,16
138:20
139:12,22
140:17
141:19
142:17,18
143:4,9
144:5,10
146:1
147:1,7,10
147:15
148:11,17
148:20
149:8,11
149:12,14
149:15,16
149:19,20
150:4,8,15
150:17
151:11
153:16,22
153:22
154:15,17
154:18
155:14
156:3,5,6
156:8,14
156:18,19
157:3
158:8,8,10
158:11
159:3,17
159:20,21
160:18
161:3,8,21
161:22
164:9
165:9,14
165:21
166:17,19
166:20
167:16,20
167:22
168:7,11
168:15,22
169:9,9
170:3,5,6
171:3,10
171:17
172:3,7,20
173:6,9,21
174:1,8,9
174:11,12
174:17,20
175:8,13
175:17
176:21
177:6,15
177:19,22
178:2,5,11
178:17,22
179:19
180:6,11
181:21
182:11,11
182:15
183:8,18
184:3,16
184:18
185:1,16
185:20
186:3,16
187:4,6,14
187:17
188:8,13
188:16
189:17
191:12,13
191:20,20
192:1,2,3
192:5,6,9
192:10
193:2,3,12
193:17,18
194:9,22
195:10,17
196:22
198:2,14
200:19,21
201:9,17
202:6,7
203:4
204:3,15
204:22
205:17,19
205:22
207:6
208:8
209:6,8,12
209:19
210:12,20
211:9,16
212:13,16
212:22
213:3,22
214:12,20
215:8,13
215:19
216:5,17
216:21
217:9
219:13,18
219:18,19
219:20
220:1,2,3
220:12,16
220:18,19
220:20
221:13,21
222:4,16
222:21
223:6,9
224:7
225:3
226:10
227:11
229:14
230:22
231:9,11
231:22
232:8
233:8,11
234:9,15
234:18
235:6,11
235:12,17
235:19,20
236:21
237:16,20
238:1,8,16
238:21,22
239:21
240:17
242:20
244:7,13
245:4
247:13
248:10
249:10
252:1,11
253:7,21
254:22
259:7,11
259:12,22
260:12
261:11,14
261:18,21
263:9
264:2
267:6,11
omit 158:3
159:6
omitted
157:19,22
159:4
once 27:2
45:9 148:7
199:11
253:4
one's 151:12
one-sent...
101:21
ones 22:2
online 20:8
open 110:22
118:5
operate
123:5
operated
123:19
operating
77:4 79:21
operation
123:22
144:20
operational
67:20
OPERATOR
3:11 8:2
68:20 69:3
115:19
116:1
152:7
153:2
233:12,16
247:18,22
259:12,16
267:9,11
opine 33:1,8
159:22
opined 21:18
111:12
124:6,7,13
opining
114:8
173:12
opinion 40:1
58:8 59:7
62:3 66:16
94:15 96:6
96:13
99:14
100:5
101:13,19
104:2,16
106:3,6
111:2
141:3,16
141:17
171:11
178:11
258:19
265:17
opinions
17:9 36:17
108:6
110:9
opposed
212:20
optimal

66:15
option 236:4
243:20,22
options
61:22
208:9
order 47:5
47:12,22
48:4,16,17
48:18
88:20 89:6
89:7,11,19
90:6,11,15
91:2,10
92:17,22
93:6,8,14
94:6,11,16
96:19 99:2
102:2
103:12,15
103:20
104:4,8,9
104:17
105:10,19
105:20
106:8
107:6,11
107:13
116:20
120:17
122:11,13
125:8
128:1,2,4
128:16,17
129:4,5,18
129:21
130:6,10
130:13,18
131:5,15
131:16
132:4,6,8
133:20
134:11
135:15
136:3
139:18
141:10
144:12,15
145:7,11
146:5,8
147:4,11
148:7,20
149:6,15
200:7
order's
149:2
ordinary
54:8 83:21
246:9,15
247:6
orient
139:22
original
47:7
Originally
262:20
Osman 2:12
4:4 153:6
153:13
154:9,14
160:5,7
166:9
169:20
170:18,20
171:3,5
172:17
176:3
181:7,9,13
184:15
185:15
189:4,13
190:19
191:2,8,12
191:19
193:8
197:12
198:1
200:10,18
201:2,5
205:16
206:18
207:17
208:7
214:11
215:7
218:14
220:21
221:3
229:13
230:21
231:16
232:6,12
232:18,21
233:3,8,11
233:18
241:18
243:4
244:6
246:8
247:16
259:3,5,21
264:3,19
265:1,14
266:5,11
266:15,21
267:2
out-of-o...
122:9
125:6
132:1
outcome
270:15
outside 93:9
overcome
39:2
overcoming
40:22
overlap
169:6
overlapping
180:20
overview
5:12 35:18
201:13
Owner 1:9
2:16 3:2
7:6 248:2

P

P 8:1
p.m 152:9
153:1
267:15
packet 30:22
77:3 79:20
packets
131:2
page 2:18
3:1 4:2,11
5:3 6:3
7:3 28:1,5
29:7 35:11
38:1 55:9
55:9,11
56:21,22
57:2 58:10
59:14,17
60:3 65:10
69:14,18
70:15 72:2
72:13,15
74:4,14
76:16,19
78:16
79:18
84:21 85:7
85:10 86:3
88:5 105:2
108:17
125:7,10
126:18
154:19,19
156:16
176:22
178:1,6,16
179:11
182:13
184:17
185:17,21
187:5,18
187:20
190:3
202:8,11
205:18
208:11
221:15,22
223:1,3,5
223:8
224:3,6,8
253:5,5
254:3,16
254:21
255:10
256:3
269:5
pages 14:1
18:17 29:6
35:21 42:4
42:7 68:12
179:21,22
180:1
181:18,21
253:14,19
268:3
Palo 2:19
PAQUETTE 2:6
paragraph
12:3,6,15
13:5,15
15:16 16:4
29:7 30:15
30:18 32:1
37:22 38:6
38:8,22
40:11,17
41:16,17
41:19,20
53:1 54:17
54:19 55:6
55:8 59:21
85:11,16
86:6,10
87:15,17
88:1,6,8
95:10
98:10 99:8
102:22
108:2,5,16
110:18,18
118:2,11
118:12
120:18,19
121:7
154:16,20
154:21
158:9,12
159:18,21
160:9,10
166:18,20
167:1
170:4,6
173:3,8,22
174:2,4
192:4,7
193:21
202:17
204:16
219:17,21
220:5
222:22

223:8
226:1
235:13,20
238:10,10
238:13,20
239:8
248:9,14
253:3,6,13
254:8
paragraphs
59:18
121:21
196:18
244:3,4
parameter
60:6
paren 57:12
57:12 77:5
77:6 111:1
111:2
parentheses
167:12
170:12
178:8
182:18
183:9
184:20
186:4
187:8
188:5
202:14
parsing
184:12
part 35:4,6
51:17 52:3
59:1 72:20
73:6 93:3
99:15
109:9,12
111:1
115:4
117:17
120:8
124:10
125:3
129:20
133:11
157:10,12
159:7
160:8
190:1
196:4
208:3
particular
44:13
53:11
57:21 58:4
82:5 92:8
131:6
137:12
138:18
139:2
158:15
199:6
229:10
237:1
parties
270:11,14
parts 25:7
25:12
158:13
Pass 256:15
patent 1:1,2
1:9,10,11
1:11,12,12
1:13 2:16
3:2 4:14
5:4 6:13
6:17,21
7:6 11:18
11:21,22
12:17,21
14:10
15:21 16:7
16:20 22:5
22:14,15
22:16,22
23:3,9,13
23:16,19
29:14
31:17 32:2
32:5,6,9
32:19 33:1
33:2,8,9
33:21 34:2
34:3,12,12
34:14,16
35:2,2
36:8,11,11
36:15,19
36:22 37:1
37:15,17
37:18 40:2
55:2 92:10
93:9
109:13,20
109:20
115:7,9
137:16,22
143:3
154:4
160:20
164:11,14
164:19
165:5,10
167:12,17
167:21
168:1,9,12
168:17
169:1,2,5
169:15
170:12
171:15,19
171:21,22
172:4,9,16
177:10,14
177:16,20
178:14
179:1,9,12
179:14
180:4,10
180:16
181:2,4,17
182:14
188:18
231:18
234:13
235:1,3
243:10,12
246:10
248:2,18
250:4,7
251:13,19
251:22
253:11
254:14
255:5,12
255:20
256:5,12
257:21
258:3,7,8
258:11,13
258:15,20
260:5,8,21
261:20
262:1,5,13
patents 12:7
15:13,20
16:6,18
21:22
22:12,18
25:19
28:21
30:19
32:18
33:15
34:20 35:5
35:8,10,13
35:19 37:8
37:20 38:2
38:11,16
39:1,9,17
39:18 40:8
40:20 41:9
41:21 43:9
47:5 50:12
88:3 89:5
89:12,17
89:22 90:5
90:13
92:12,15
92:20
109:1
112:17,19
113:1
141:6,21
168:6
169:8
174:15
175:10
177:6
182:6
234:21
paying 20:9
people 82:3
148:2,16
148:19
149:15
151:3,9,10
198:6
208:19
percent
73:19
percentage
70:22
Perfect
185:22
perfectly
33:19
207:13
perform 91:6
93:18
227:9
performed
91:11
107:7
performs
106:18
107:4
permission
205:1
permitted
266:10
permutat...
65:8
persistent
86:15,19
person 54:7
71:8,14
76:5 79:9
81:7 82:6
83:20
84:15
148:21,22
149:1,17
149:21
150:1,3,4
244:20
246:9,15
247:1,5
person's
198:22
personally
113:10
perspective
73:4
pervasive
81:21
petition
16:10,12

113:12
petitioner 2:2 11:13 14:3 23:22 256:17 257:2
petitioners 1:6 2:10 9:4,7 14:16 23:22 153:4 259:19
petitions 17:4,6 111:16
Ph.D 1:16 4:3 9:2 269:3
phased 84:2
PHILIP 2:3
phrase 70:1 242:17
phrasing 126:8
pick 261:16
piece 101:18
pieces 245:17
place 24:7 24:22 47:11 85:12,21 120:3
placed 45:18 46:13 51:7 52:6 128:1 136:15 141:4,8 142:3,21 143:17 144:3,15 145:9
places 140:20
placing 121:22 132:11 133:4 136:7,8 139:16 140:3,8,9 146:10
platform 202:19 203:6,16 204:8,14
platform's 204:7
play 43:10 43:15 44:9 45:5,8,10 45:18 46:13 47:5 47:12 48:4 48:21,22 49:13 50:3 51:13 65:6 205:1 209:5,15
playback 21:8 42:1 44:1 50:5 94:13,17 125:19,22 126:5,12 192:16 218:2,8 220:8 222:1 258:16,21 259:1
played 47:6 47:22 48:1 48:16,16 49:3,6,8 51:6,10 52:8 88:19 90:10 122:10 136:17
player 46:3 46:6,8 51:12 60:5 100:15,17 100:18,20 101:8,11 101:17,17 101:22 102:7,10 102:14,19 103:2,9,18 103:22 104:3,6,7 104:16 105:4,9,12 105:18 106:1,7,17 107:5,8 116:9 117:12,15 117:20 118:8 120:6 123:16 124:1,3,14 125:1,21 126:11 130:7,9 131:19 132:7,17 133:16 136:17 140:5 142:19 143:15 160:2,14 164:19 165:6 167:6 196:13 198:4 204:19 206:9 208:4 218:1,7 223:11,12 260:8,22 262:1,5,9 262:14
player's 105:5
playing 48:11,17 48:18 217:3,7,15 217:21
playout 43:18 44:7 47:12,17 55:13,19 60:6,20 61:3,8,16 62:4,8,15 63:4,7,19 64:13 65:16 68:6 68:7 89:7 90:16 94:7 102:3,16 103:4,16 104:9,18 105:20 106:8 120:10,15 122:12 125:8 126:22 127:1,6 128:4 129:18 130:11 133:20,22 134:14,20 136:3,9 144:12 147:4
please 8:21 9:12 12:3 41:17 69:14 108:3 118:3 154:16 156:15 158:8 159:17 166:2,10 166:17 170:3 171:4 172:21 173:21 177:22 179:22 181:10 184:16 185:16,19 191:22 192:3,8 193:14 202:7 205:17 219:13 223:5 234:18 235:6,16
plug 194:5
plugin 192:13 194:6,12 194:19 197:3 199:16
plurality 53:22 239:9
point 28:4 30:3 32:6 43:8 45:4 47:4 48:15 48:21 49:2 49:21 65:4 67:19 73:19 87:3 89:12 109:11 116:22 121:7 123:5 127:9 137:12 139:2 164:5 176:9 199:8 221:8 228:11 230:8 231:6
pointed 146:6
pointing 42:10,18 97:20
points 37:6 37:20 63:13 263:14
poorly 184:4

pops 106:4
portion
239:3,10
239:19,20
240:15
241:17
242:10
portions
20:2,5,12
20:13,17
20:18
21:15
23:12,15
25:20 26:7
POSITA 155:1
posited
67:20
position
111:20
112:2,7
113:14,17
226:11
243:11
positive
226:15
227:1
possible
44:10
46:10,12
49:1 62:21
73:8
199:15
220:9
228:15,19
228:21
post-role
202:21
potential
201:11
222:6
POTTER 2:17
practice
91:10
106:1,10
119:6,17
174:14
178:13
182:4
251:19
258:12
practiced
116:16
161:7
173:13
251:22
practices
98:2
102:11
106:2,9
117:12
175:9
180:15
253:10
practicing
94:4,9
101:20
117:15
118:8
120:6
121:19
174:22
praise
226:17
praised
220:5
praising
225:15,20
226:12
229:16
pre- 202:20
preamble
105:16
preceden...
265:17
266:1
precise
106:8
239:16
predefined
88:15
92:16
95:21 96:8
96:15 97:9
98:20
100:19
101:13
107:16
prefer 74:16
74:20
155:8
157:4
158:18
prefers
159:9
premarked
10:6
preparation
17:19 19:7
19:18,21
21:16 22:5
24:5 56:15
161:15
162:19
prepare
17:12
262:21
prepared
90:8 161:8
162:1,9,10
163:7
164:17
165:4
preparing
21:21 30:8
30:11
163:9,19
present 3:10
160:15
167:7
171:12
presented
190:8
pretty 27:15
previous 3:1
25:16 29:6
72:15 97:3
132:11
133:4
146:8
211:4
previously
5:2 6:2
7:2 10:13
56:8 82:17
82:20
110:19
147:5
154:12
165:19
166:7
169:18
176:1
177:13
193:6
201:3
221:1
249:4,6
250:16,18
252:2,4,9
252:12
primarily
14:8 22:3
39:10
principle
62:10 77:7
printed-out
176:15
prior 17:7
17:15
30:10,10
43:8 67:5
67:10
139:16
170:8
257:6,16
priori
130:16
privilege
266:12
privileged
263:20
264:18
265:5
266:6,7,20
probably
19:10 95:8
116:18
155:19
176:14
177:18,21
201:19
206:16
257:10
problem 29:9
32:22 33:4
33:5 40:5
40:21
202:1
problems
30:20 38:3
38:12,17
38:19 39:3
40:7,15
41:1,13
proceed 8:22
proceeding
231:18
proceedings
110:3
189:16
process 26:6
26:17 68:6
68:7
134:13,14
158:17
205:4
242:20
247:4,8,10
261:4
263:3
processed
242:19
processing
123:12
206:16
product
93:16
238:5
258:12
products
251:18,21
252:21
255:14,20
258:2,5
Professi...
1:18
profile
220:9
program 60:6
198:7
programming
70:9,10
202:13
203:1
prong 178:8
254:13
255:11
256:10
proper 33:7
144:14

properly 245:12 246:18
property 97:2
propounded 268:5
protocol 4:13 6:9 58:16,21 59:5 77:5 78:22 79:22 81:5 83:8
provide 75:22 87:22 119:5 173:16 175:3,12 220:8 260:19
provided 58:20 120:10 161:1,11 163:21 198:8 207:8 222:12 224:21 225:5,10 226:5
provides 55:18 81:5 206:4,5 236:9
pseudo 69:21
pseudocode 69:19,22 70:3,5,6 70:15 71:10 72:14
PTAB 266:1
PTAB's 191:4
ptsheng@... 2:5
Public 1:19 268:18 270:18
Publication 5:5 55:3
Publish 202:14
publisher 242:17
pull 220:17 257:21
purpose 35:16
purposes 131:21 196:13
put 65:6 82:14 87:10 120:22 140:4,16 147:6 191:20 200:20 219:14
puts 147:17 192:13

Q

qualified 53:16
quality 5:16 220:9
question 33:12 80:12 81:11,12 81:14 83:19 93:2 93:7 94:3 101:3 105:16 106:15 114:1 123:22 126:6,10 127:18 129:3 132:16 133:10,11 134:6 136:21 138:16,21 139:4,9,21 140:7 143:14 144:1,7,10 161:21 163:5 172:13 179:6 181:1,12 181:15 184:2 189:20 206:19 245:22 252:15 264:6
questioning 254:9
questions 10:1 14:8 15:6 52:11 97:3 117:7 151:19 170:15 173:1 219:22 259:4,6 265:14 267:7 268:5
quick 115:18 152:1 153:11 193:16
quickly 180:7 189:1
quite 201:21
quote 31:4 34:11 158:13 192:21 222:21 225:15
quoted 155:17 156:21 158:2,3 159:7,8 221:13 224:5 227:19
quoting 159:4 193:22

R

R 3:3 8:1
range 62:11 63:22 210:10
rate 44:1 48:10,14 48:14 127:2
re- 150:19
reach 255:18
read 19:6 22:4,7,10 34:15 57:7 57:19 58:13,22 59:2 60:16 74:19 77:10 85:16,19 86:10,13 95:13 96:3 154:21 155:11 159:1 160:16 167:3,15 170:10 171:9 173:7 182:1,10 183:6 192:10,18 193:16 196:4 198:13 203:3 207:4,13 219:20,20 220:11 221:14,17 225:17,18 226:2 237:8 238:11,20 243:15 268:3
readable 70:13
reading 19:11 80:7 81:17 84:9 92:9 139:5 160:8 196:16 222:13 224:15 246:10
reads 108:6 186:6
ready 47:22 101:19 152:5
real 115:18 182:9
really 20:7 27:17 28:8 42:15 44:7 61:20,21 62:19 67:22 72:16,17 75:18,22 107:2,13 110:14 136:13 162:3 191:2 213:15 230:18 264:11
realm 66:10
Realtime 1:18
rearranging 116:19
reason 19:2 31:17 62:7 64:2,6 80:4 84:7 99:15,15 176:19 189:7

231:4
269:5
reasonable
64:20
recall 18:11
18:22 20:5
20:17
22:16
23:15
24:11
34:13 54:2
79:12 87:8
102:6
103:21
104:5,12
105:5
116:21
124:1
127:5
161:12
162:15
163:1,10
163:22
164:2,22
172:3
173:20
175:7
177:9
179:12
189:11
203:21
208:2
248:11,13
248:16,20
253:8
261:4
262:11,16
receipt
43:11
132:9
133:1
134:13
144:14
146:5
receive 48:9
89:5,10
90:10
92:16,21
93:5,8
120:17
122:2
123:11
125:19,22
126:2,4,12
132:5
145:14
received
71:12
88:20
89:19
90:15 91:2
93:15
128:16
145:5,21
146:9
245:13
receives
45:16
94:16
107:5
132:9
146:3
reception
68:7
recess 69:1
115:21
152:10
233:14
247:20
259:14
recite
258:16
recited 16:6
recognize
10:10 25:6
77:18
166:11
169:21
176:4,7,12
221:6
231:19
234:16
recollect
263:2
recollec...
22:19 23:4
67:17
102:18,20
103:8
161:5
162:1
169:6
171:16
212:12
249:12,15
250:22
252:16
255:3
recommended
5:9 177:3
record 8:3
8:19 9:13
55:2 57:8
58:14
68:20 69:4
74:19
95:14
115:18,19
116:2
152:8
153:3
154:22
192:11
217:19
233:12,17
247:18
248:1
259:13,17
264:22
267:12
270:8
recorded
57:10
recording
73:6,20
recross
267:10
redirect
261:8
263:4,11
263:13
264:10,16
266:4,18
reduced
270:7
redundant
131:21
refer 11:5,9
11:21 53:2
59:22
69:19
141:6
199:19
208:21
211:3
reference
53:16
54:20 55:1
56:11
63:11 79:5
79:8 80:9
82:3,10,11
125:18
143:1
180:9
referenced
78:14
references
79:15
175:11,14
referencing
28:6,9,12
80:18
referred 5:2
6:2 7:2
10:14 56:8
78:22
79:11
82:21 83:9
154:13
166:8
169:19
176:2
193:7
201:4
221:2
240:8
249:7
250:19
252:5,13
referring
11:11 12:1
29:14 68:9
71:2 79:14
84:19
85:14 94:1
99:7
108:13
110:15
120:18,19
127:4,5
143:5,6
179:5
190:9
196:2,15
216:15
refers 71:11
84:18
157:10
182:18
239:2,10
242:10
reflects
78:21
reframe
206:19
refresh
22:19
161:22
249:11
250:21
252:16
255:2
refreshes
249:14
refuting
231:7
regard 20:15
21:13 23:9
55:13
174:21
255:5
263:18
regarding
21:8 69:7
69:7
220:13
255:19
Registered
1:18,18
relate 38:17
177:8,16
177:20
178:22
179:9,11
related 15:6
15:14
25:18,18
27:17
28:21

34:20 35:3
35:5 70:17
127:8
169:14
171:14,19
180:16
181:2
182:14
234:3,6
261:19
270:10
relates 14:9
115:7
relation...
33:15
relative
134:12
270:12
relevant
111:1
257:1
reliability
30:20
reliable
198:8
relies 63:15
rely 201:17
258:10
relying
168:1,3,7
171:13
174:20
175:1
188:19
189:3
190:6
remedy 5:10
177:4
remember
9:20 21:2
31:13
32:20
116:12,14
161:10,12
162:18
176:10
261:11
262:18
263:5
reminiscent
70:8
REMOTELY
2:17 3:6
remove 199:5
rendering
195:3
renders
194:13
reorder
131:5
reordering
130:22
131:18
repeat
246:21
repeats 42:6
rephrase
179:7
replacement
202:22
replenished
47:20
report 27:19
28:21
42:12
69:19
117:2,10
117:14
119:7,9,18
164:20
173:18
175:5
179:21
199:6
206:21
207:11
262:15
reported 8:5
206:6
reporter
1:18,18,18
8:12,21
9:1 14:21
119:10
154:7
160:3
232:20
233:10
265:20
reporting
1:22 8:13
194:15
195:18,21
196:3,8,9
196:12
197:2,5,15
197:22
198:14,17
199:21
200:12
206:2,10
207:15
208:10
218:1,8
reports
206:17
208:6
represent
14:7 32:8
201:20
241:16
246:20
represen...
240:19
241:1
represen...
70:7
represented
31:15
represen...
153:13
199:1
represents
239:20
request 53:3
73:20
74:22 89:5
96:18
101:22
103:12,13
103:19
104:7,13
122:1,1
128:11
155:4,10
157:6
158:20
requested
94:11,16
96:20
129:16
requesting
130:5
132:18
requests
88:13 90:5
95:16,19
96:7,14
97:1,8
98:19
100:18
101:11
102:14,19
103:2
104:3,17
105:6,9,18
106:7
107:1
127:11,22
128:15
129:4,17
130:9
131:10,12
131:15,21
132:4,8
133:15,17
135:14
139:14
140:18
144:11
146:2,4
147:12
require
91:17,22
92:15,20
98:7 139:1
241:13
258:20,22
required
59:10,13
89:20
requirement
44:6 89:4
89:10
100:1
256:11
requirem...
90:1,3
95:17
requires
63:15
107:20
137:11
138:17
rerequest
150:19
151:11
Research
191:13
respect 17:2
41:3 44:20
88:2 155:7
158:17
respective
24:2
responde...
188:19
190:7,10
respondents
182:21
183:12
184:8
185:3,9
186:7
187:10
188:9
responding
131:10
response
6:13,17,21
7:6 83:18
186:14
responses
90:7
131:16
132:5
restricted
170:21
181:9,16
restudy
66:12
result 29:10
43:19
73:20
237:18
resulted
26:18
resulting
247:12
results 29:9

resume 217:2 217:2,7,15 217:20
retrieves 140:19
return 129:15
returned 90:8
returns 128:12
review 17:4 18:19,19 19:16,20 20:12,13 21:14,19 21:22 23:13 24:6 26:8,14,14 26:15,19 56:14,17 64:19 72:12 88:8 161:17 257:11,14
reviewed 17:14 18:10,12 18:14,15 18:18,21 19:2,13 20:2,6,19 23:16,18 23:20 24:10 163:13 174:11 176:9 257:9
reviewing 21:6 118:11 176:10 189:1
revision 86:22
revisit 52:19
reworked 28:7
RFC 4:12 6:8 77:12,14 77:16,20 78:10,13 78:21 79:6 79:8 80:1 80:21,22 81:6,18 83:3,3,8 84:4 86:14 86:18,22
RFCs 77:5,20 81:22 84:15
rid 150:2 253:21
right 22:21 32:8 34:3 45:19 47:22 48:1 59:6 60:22 66:2,5 69:19 82:1 103:18 107:21 109:10 116:19 122:16 134:13 135:13 145:13 147:3 149:21 150:13 151:16 155:11,20 155:21 156:1 157:12,17 158:1,22 159:5 160:21 162:21 166:14 167:14 168:9 174:15 177:16,20 181:4 184:9,12 187:12 188:10 193:22 196:8 197:6 198:12 199:22 200:13 203:2,17 204:9,17 204:20 205:8 206:10 214:14 215:11 220:10,14 222:7,19 225:6 228:7 234:10,13 235:4,21 236:13 239:14 240:1 246:7 257:5,22 260:2,5,9 260:17
right-hand 10:22
rights 195:6 195:7 204:17
rises 42:15
RMR 270:17
Road 2:18
room 9:21
route 131:1 131:2,4
row 70:16,21
rows 70:16 70:16
RPR 270:17
RSA 270:17
rules 9:22 54:1 191:4 205:1

S

S 4:1,9 5:1 6:1 7:1 8:1
San 2:4
sat 218:20
satisfied 116:10 184:9 188:17 189:8 256:9
satisfies 105:12 184:7 185:5,10 186:9 187:11
satisfy 89:1 98:22 100:20 105:11 127:13 144:16 183:1,14
saw 257:8 261:9,12
saying 43:20 48:7 54:4 59:12 65:14 73:3 84:8 96:16 97:13 99:14 107:2 110:11 117:7 124:22 128:6,18 128:21 140:12 145:3,8 148:14 151:8 162:12 175:9 189:18 199:4,7 200:4 203:10 204:11 227:1 237:9,12 239:21 241:4,11 241:19 242:2,5,12
says 29:8 57:20 58:10,15 59:4,9 60:5 61:19 70:21 74:20 75:7 75:12,20 76:15 77:2 99:11 111:12 125:13 155:1 157:4,11 159:14 160:11 182:3,20 183:12 190:4 192:12 194:11 196:2,22 197:16,21 198:3 199:20 200:1,4,11 200:17 204:21 207:5,5,21 210:18 211:14 217:19 218:11 222:20 226:3,14 226:14 230:2 237:4 239:1,8,17 240:2
scenario 44:19 49:14 50:9 67:21 88:18

89:14,14
89:18
107:10
139:12,13
140:13
148:1
scenarios
106:22
107:10
117:4
schematic
238:15
scope 49:10
93:9
scratch 11:7
14:14
246:3
scrolled
198:6
sec 192:1
second 77:21
85:1
112:21
148:22
149:21
150:21
158:12
160:10
166:22
183:11
185:2
186:6
202:17
253:5
secondary
108:21
111:22
112:13
113:6,9,20
117:18,22
199:12,20
203:15,19
203:21
204:4
seconds
55:14,20
60:11,21
61:4,8,17
62:2,5,9
62:16 63:7
63:12,16
63:18,20
64:3,4,7,8
64:9,10,11
64:18,20
64:21
65:14 66:1
66:2,8,18
66:19
section 5:8
25:14,15
26:1 28:3
28:20
35:12,12
35:17,20
36:2,16,17
37:21
54:20
87:18
110:8
117:18
118:1,1,7
118:21
158:15
175:12
177:3
180:3
182:20
186:12
202:12,18
224:9,9,10
228:12
254:2,4,11
254:21
255:2,9
sections
21:20
26:12
Secure 58:20
security
58:19
see 11:1,3,4
12:9,18,22
28:13 31:2
35:14,22
38:4,5,10
38:15 42:2
42:9,10
43:2 50:12
53:5 55:4
55:5,16,17
57:5,13,22
58:10
59:17,20
60:8,9,14
62:20 64:2
64:5 66:3
66:4 70:19
70:20 71:1
72:5,9
74:17 75:3
76:22 77:5
77:9 78:11
78:12,18
79:2 83:7
83:10
85:13 86:8
87:20
101:9
108:9,13
109:3
111:4
112:16,18
112:22
113:10
119:15,19
119:21,21
133:19
135:19
137:8,11
137:16
146:6
147:3
148:14
149:1
167:8,9
170:11,13
171:6,8
178:9,20
180:9
182:16,19
183:2
185:6
186:10,14
186:15
187:9,21
188:3,7,8
194:1,8,16
195:12,19
196:20
202:15
208:10,13
210:15
211:11
216:20
217:11
222:13
223:4,10
223:13,18
230:18
238:17
239:4
248:7
253:15
seeing 119:3
147:22
263:6
seen 163:15
180:12
193:9
201:6
221:4
231:22
segment
245:11
246:16
segmenta...
247:4,7,10
segmenting
247:11
select
244:21
245:2,5
247:7
selectable
60:12,22
61:2,20
semantic...
72:19 73:2
semantics
74:2
send 129:20
132:4
sending
140:5
228:2
230:11,13
230:17
sends 135:18
139:15
sense 28:17
66:13
74:12
112:15
114:9,18
127:19
128:9
136:10,13
140:7,7,12
140:14
144:22
145:2
214:4
215:10,11
215:17,18
216:3,11
sensible
65:15
sent 74:22
129:5
130:12,18
131:2
155:10
157:6
158:20
221:12
225:21
226:21
227:5,22
228:5,14
229:7,12
231:3
sentence
16:3 29:8
37:22 38:2
38:7,11
55:7 57:3
57:7,18
58:11
74:15
76:21 77:9
78:20 83:6
85:11,13
103:7,7,8
108:15,17
154:21
155:5,15
155:22
156:21,21
157:3,11

157:16,20
158:1,4,13
160:10
161:2
166:22
167:3
170:9
173:11
174:5,6,10
174:12
183:12
185:2
186:6
188:9,11
192:7,12
193:18
194:4,10
196:18,22
198:2
220:4
224:1
226:9
237:4,6,9
239:1
sentences
238:19
separate
109:5
sequence
48:17,17
48:22
88:15
95:21 96:8
96:15 97:9
98:21
100:20
101:13
102:2,15
103:4
107:16
sequential
92:16,22
93:6,8
139:18
sequenti...
90:21,22
91:17 92:1
136:2
serve 24:1
server 51:3
86:16,20
87:5 89:6
89:19
103:19
104:4,8,17
105:10,19
127:11,12
128:2,2,12
128:14,17
129:4,6,14
129:19
130:10,13
131:6,9
132:18,21
133:17,17
135:4,7,9
135:15,18
139:15,15
140:19
144:13
server's
129:15
services
225:4,9
251:21
252:21
258:2,6,12
services...
224:19,20
225:4
227:8
SESSION
153:1
set 55:14,19
60:11,20
61:7,17
62:1,5,8
62:16 63:6
63:15,18
63:19
165:22
169:9
172:20
231:9
261:14
set-top
178:13
182:22
183:13
185:4
186:8
190:4
255:17
256:6
setting
64:20
settings
62:12,21
seven 9:19
share 17:8
201:11
she'll 15:5
sheet 222:10
226:3
268:7
Sheng 2:3
4:3 9:8
10:5,8,15
15:1,2,11
20:1 21:1
32:12,15
32:16 33:6
34:1 37:10
40:6,18
44:17
45:13 46:4
46:19
50:15
51:15
52:17 56:9
61:11,15
63:2 66:6
67:3 68:2
68:14,17
68:19 69:5
72:1 76:11
78:3,8
83:1 89:16
90:12 91:7
91:15
92:11 93:1
93:21 95:1
98:12
100:8
101:4
102:9
104:14
105:8
114:15
115:17
116:3
119:13
127:20
129:1
134:18
136:14
138:2,13
141:18
142:10
143:20
145:1
146:16
148:3,10
150:14
151:5,20
234:20
248:21
250:8
251:2
254:5,7
255:6,21
256:18
259:3,7,11
265:6,13
SHEPARD 3:6
Short 247:15
shorter
149:22
shorthand
1:18 270:7
show 23:19
34:16
73:14,15
95:7
117:19,19
192:20
251:16
258:11
showed 120:9
showing
80:20 88:1
122:7
170:16
251:18,21
shown 143:15
144:1
145:12
257:15,17
shows 112:11
122:5
125:8
161:6
sic 93:14
234:12
side 114:5
197:3
228:6
265:12
signals
57:10
signature
267:14
signed 27:7
27:11
signific...
114:4,8
significant
111:9
169:6
signing
26:21
228:7
similar
22:11 29:9
35:8,10
36:13 39:5
39:8
166:21
179:15
235:4
Similarly
108:18
simple
148:14
simply 71:18
88:18
241:13
single 86:18
123:17
sit 27:12
sitting
22:21 23:4
66:2,5,15
102:8,13
102:20
103:22
104:2,15
119:3,14
164:1
165:1,2,7

173:20
176:7
209:22
213:3
219:1,10
221:6
228:11
262:10
situation
90:14
six 41:20
190:20
235:8
sixth 188:13
size 45:2
64:12,14
64:22 65:2
65:13 66:1
66:7,11,18
67:8,13
239:2,10
sized 242:10
skill 25:15
54:8 71:8
71:14 76:6
76:7 79:10
81:7 82:6
83:21
84:16
244:13,21
246:9,15
247:1,6
skilled
245:10,22
skim 119:1
skimming
180:7
skip 216:17
238:10
252:7
slider 73:18
Sling 173:13
173:17
174:13,21
175:4,7,9
175:12
178:13
180:15
182:3,22
183:14
184:6
185:4,10
186:8
187:11
188:17
190:5
253:10
255:5,17
256:7
slow 14:21
smaller
66:11 67:8
Sockets
58:20
soft 20:9
176:14
software
101:18
solution
5:16 40:2
solutions
39:2,7,8
39:20
40:15,22
41:14
somebody
150:13
162:13
somewhat
176:6
soon 44:10
48:22
125:19,22
126:12
sorry 13:7
38:5 67:8
79:16 85:3
92:19
118:5
136:19
155:4
157:21
160:3,5
166:6
181:8
183:21
185:18,19
186:11
187:22,22
193:4
209:21
217:2
230:12
264:1
265:20
sort 29:5
72:18 73:2
73:14 74:9
135:19
158:11
162:12
164:5
174:3
199:12
208:10
sorts 106:22
227:16
sounds 32:8
162:17
213:8
248:22
source 47:7
spans 35:21
speak 69:6
164:21
173:19
175:6
262:16
265:18
speaking
191:10
speaks
177:17
spec 243:17
specific
21:15
95:15
117:4
142:9
162:6
164:2
198:8
205:1,2,12
specific...
80:1 95:18
179:3,13
179:20
222:3
229:9
specific...
34:7 35:9
39:13,19
39:22
40:12 41:3
78:21 83:8
234:22
235:4
243:22
244:7
specific...
15:19
32:18
36:12,14
39:4 40:20
41:9,12
specified
94:12
spend 24:13
stage 71:9
staging
141:6,9,22
142:2,15
stall 209:12
209:13,14
209:20
210:21
211:5,6,17
211:19
216:8,10
217:3,4,15
217:17,18
stallCount
208:12,15
209:2
210:1
stalls
210:19
211:15
215:15,22
standard
57:11,12
57:16 58:3
standards
25:22
standpoint
140:11
stands 12:11
start 11:7
44:20
50:20
125:13,17
125:18,19
125:21
126:4,11
126:19,21
127:4,8
155:5
160:6
started 25:5
141:16
starting
50:16
51:18
179:11
199:8
235:9
238:13
253:19
254:2
255:9
starts 51:1
86:7
108:17
118:2
167:1
174:6
194:4
196:18
202:18
235:13
238:14
state 9:12
30:18 46:2
46:5 60:10
108:16,18
110:19
199:17
stated 41:22
statement
33:17 47:3
49:12
57:20 92:7
95:5,6
100:4
111:12
159:11
160:19
163:2
168:2
180:14

182:1,2
190:2
194:20
226:15
230:19,20
246:13
253:9
255:4
statements
21:17
105:2
184:14
200:6,9
230:12,14
states 1:1
85:11
109:13
178:12
185:3
222:9
stating
99:22
statistics
218:4
stenogra...
8:19
stenogra...
1:17 8:5
step 75:21
91:6,11
94:10
106:1,11
107:4
158:16
steps 90:20
241:20
stick 191:3
191:4
stop 80:17
stored 71:16
88:19
245:8
straight
54:1
stream 51:11
52:7 127:7
194:14
195:3,4
214:13
237:17,19
239:8
245:6
streaming
30:21
125:14
214:5
streamlet
43:9,10,14
44:19 45:9
45:17,17
46:9,11,12
46:18 47:8
47:10,20
48:4,9,11
49:3 50:3
51:2,5,6,7
51:9,13
52:4,7
121:22
125:20
126:1,4,13
127:6,7
132:9
133:2,2,16
133:17,20
136:15
143:6,7,18
144:4,14
144:15
145:10,14
145:15,21
146:6,7
147:5,11
147:17
149:17
150:1
239:2,10
239:19
240:15
241:16
242:10
streamlets
21:10 43:1
44:9 47:5
47:9,11
53:4 88:14
88:18 89:6
89:18 90:9
90:14 92:1
92:16,21
93:6,8
99:1
104:13
106:7,19
107:6,15
116:20
120:17
122:3,6
124:12
126:3,21
127:11,22
128:1,3,16
129:4,18
129:20
130:5,10
130:12
132:8,18
132:22
133:18
134:9,20
135:2,3,8
135:10,11
135:14,18
136:4,6
139:15,16
139:17
140:18,19
141:4,7,9
142:3,20
143:17
144:3,8,12
145:9
146:2,4,8
239:9,13
240:1,4,18
240:21
241:2,5,7
241:15,22
242:6,9,13
243:14
244:9,17
245:1,12
246:17
Street 1:17
2:4,7,13
3:4,7 8:16
strength
110:20
strike 16:10
23:7 67:9
92:12
107:20
109:17
146:3
149:3
179:4
184:1
204:5
248:12
strong 108:7
108:21
110:15
111:15,22
112:13
113:9
struck 30:1
studied 64:1
67:16 68:3
99:21
100:9,10
100:14
101:16
study 62:13
62:14
stuff 26:15
26:16
120:2
subfile
64:12,14
64:22 65:2
65:13,17
65:19,20
65:22 66:7
66:11,18
67:7,12
73:21
95:16
103:14,14
158:20
subfiles
73:17
95:16,20
95:22 96:1
96:7,9,14
96:21 97:8
97:15,18
98:8,19
100:7,18
101:12
102:1,14
103:2,12
103:19
104:4,8,17
105:10,19
subject 21:2
39:10
229:20
250:4
submit
262:12
submitted
10:17 13:4
13:10,12
13:19 17:6
25:17
119:7,8,18
248:17
249:13
251:1
252:17,19
submitting
13:2
262:17
subparag...
118:14
subscribed
268:14
subsection
72:3,7,11
72:12 73:1
74:4 178:7
182:16
184:20
186:2
187:7,18
187:19
subsections
119:1
189:5
substance
116:5
234:6
263:10,12
264:9,11
265:18
266:3,6
substant...
22:11 35:7
35:10
36:13 39:5

39:7
179:15
substantive
69:10
substant...
13:13 19:4
69:12
subtitle
225:9
success
120:9
successful
199:17
sufficient
135:21
suggests
120:2
suing 236:20
Suite 2:4,13
2:19
sun 236:20
support 6:12
6:16,20
7:5 17:6
80:17
99:10,14
100:5
160:18
168:2
180:14
182:1
253:9
255:3
supported
109:1
161:1,2
supposed
36:18
47:13
supra 158:15
sure 15:1
16:22
23:10 25:6
27:3 34:4
42:4 45:15
68:18
86:12
121:15
124:19
126:9
132:20
135:13
137:18
138:22
141:1
147:9
152:6
156:2
157:18
159:12
161:18
163:20
165:7
175:16
186:13
188:15
193:15
194:21
196:1
201:19
202:5
204:10
206:12
215:16
216:14
221:7,19
223:19
233:11
240:10
242:4
245:3
259:10
265:22
surprise
227:6,14
227:17
suspend
74:21
155:8
157:5
158:19
suspending
155:2
sustain
47:16
swear 8:21
sweeping
206:13
switch 43:12
44:1 49:21
259:9
switched
30:22
switches
50:1
switching
42:22
43:19
sworn 9:5
268:14
270:5
system 45:16
64:15
66:17 67:6
67:7,12
74:10,13
94:4,15
97:6 98:16
98:17,17
99:7 100:9
100:10,13
116:16,17
117:5
123:4,4
131:8
133:15
144:11
145:10
146:2,3,4
150:20
159:22
160:12
161:6
167:4
171:12
206:22
246:4
260:11,14
261:7
systems 1:19
99:20
198:9

T

T 2:3 4:1,1
4:9 5:1
6:1 7:1
table 20:10
20:22
tabular
68:12
take 31:20
31:21
47:11
131:2,3
151:22
152:1,2,7
173:7
174:9
179:22
192:8
193:12,13
197:11
221:17
232:21
235:15
241:13
249:9
254:20
259:8
taken 1:17
69:2
115:14,22
152:10
233:15
247:21
259:15
269:4
270:3,6,12
takes 85:12
85:21
talk 28:3
65:7
117:18
138:5
153:18,21
233:22
263:9,12
talked
199:15
202:10
206:2
215:14
263:18
talking 43:7
44:6,7,19
48:13 65:9
99:19
116:8
140:21
142:12,13
142:14
155:16
177:11
216:1
235:20
237:13
244:5
255:15,16
talks 131:20
taller 150:4
taught
243:10
TCP 21:10
53:3 54:9
121:5
123:17
124:4,5,14
124:14,16
TCP/IP 85:21
teach 37:20
80:15
100:6
141:22
teaches
57:15
60:19 65:2
75:8,13,15
75:19
76:12
79:19 80:5
80:16 81:9
81:15 91:4
236:5,6
teaching
58:2 59:10
82:9
241:12
teachings
61:14
244:11
technical
5:12
140:11
178:8
201:12
254:12
255:11
256:9
Technically

129:7
technique 42:21 53:2
techniques 41:21 42:19
Technolo... 1:8 8:9 269:2
technology 197:1 220:6 225:16 237:15
technolo... 197:15
tell 20:11 22:22 115:2 130:3 151:10 208:2 261:10 263:17
telling 162:18 265:8,13
temporal 47:22
ten 18:5,7 232:14 233:4
tender 247:16
term 209:9 209:18 213:13 219:8 222:10 226:3
terminal 95:19,22 96:13 98:19 101:11
terminology 134:10
terms 13:22 19:10 20:22 24:16 34:4 34:7 39:21 53:20 72:19 76:4 106:18 212:19 229:18
terrible 139:21 226:19
test 148:13
testified 9:5 19:12 32:17 64:21 91:16 110:19 248:12,16
testify 91:19,21
testimony 16:19 69:12 81:3 81:7 92:4 94:14,21 106:4 111:3 113:19 116:5 181:6 213:4 263:10 264:10,15 265:3 266:3,18 270:4,6,9
testing 71:19
Texas 3:8
text 99:11 171:8
thank 10:7 56:6 78:7 82:19 151:17 154:6 161:20 165:21 166:6 169:17 170:22 172:20 175:21 182:11 184:3 191:21 193:5 201:1,22 220:20 247:14 250:14 252:22 256:14 267:8
theory 62:1 179:16 180:21 229:19
thing 218:15 219:2,9
things 42:17 64:10 65:5 89:10 94:6 107:11,12 122:10 130:20 131:1,4,5 131:20 162:13 199:13 218:5,21 225:1 227:1
think 9:21 18:8 22:20 24:17 25:15 26:4 29:13,21 33:5,7,16 33:18 34:15 42:13,17 48:6 50:9 52:20 54:12,15 59:2,2 64:9 69:20 70:4 71:7 71:10 76:5 77:14,19 77:21 79:9 79:13 80:7 80:8,10,16 82:6 84:3 84:11 87:1 87:3 91:20 93:12 94:3 95:4,8 109:15 119:12,16 127:4 138:8,16 140:11 141:6 144:6 155:13,19 159:1 161:16 162:22 163:1 164:15 165:16,19 167:15 168:3 170:7 172:19 174:4 176:13 177:11,18 182:9 183:6 184:13 186:16 187:2 191:16 192:18 196:4 197:10,10 197:13 198:13 203:3,18 204:10 206:14 207:13,20 212:9 213:13 214:15 219:2,11 220:11 230:18 231:5 232:3 233:6 234:19,20 237:2,2,11 237:12 239:17 240:2,13 241:3 243:7,9,15 246:6,19 250:9 252:7 259:1,1,22 263:8
thinking 49:14
third 53:2 85:11
thought 142:12 218:22 246:14 248:17
thousands 81:22
three 11:6 11:10 14:17 39:11,13 40:19 41:9 187:1
threshold 55:12
threw 150:12 150:16
Thursday 1:15 8:4
tie 106:21
tied 45:11
till 106:4
time 16:16 24:13 27:11 32:4 45:10 49:7 55:13,19 60:7,20 61:3,8,16 62:4,8,15 63:4,7,20

65:16,19
66:19
67:13
79:17 82:5
83:22 84:3
84:5,12,20
86:22
88:14 89:7
90:16
94:17
95:20 96:8
96:15,18
96:19 97:9
98:20
100:19
101:12
102:1,3,15
102:16
103:3,4,16
104:9,18
105:20
106:8
118:19
127:9
128:4
129:19
130:11
132:11
133:3,21
134:1,20
137:13
138:19
139:2,6,10
144:12
147:4
151:18
152:1
163:14
182:9
217:20
236:22
244:14
257:8
261:9,12
261:17
263:5
timelines 22:17 23:1
times 19:6 19:16 22:4 22:10 26:19 36:3 56:19 232:1
timesheet 25:1
timestamp 133:3,14
timing 84:15 139:19,20
Timing-wise 151:20
title 110:8 225:7,8
titled 35:12 87:18 250:11
today 10:18 12:16 13:20 14:7 16:19 17:3 23:5 27:12 29:20 62:3 66:16 81:3 81:7 102:8 102:13,21 104:1,3,15 119:3,14 153:19 164:1 165:1,3,7 173:20 176:8 210:1 212:17 213:3 219:1,10 221:7 228:11 248:19 262:10 263:5
today's 17:13,19 19:8,18,22 21:16,21 22:6 24:5 30:8,10,11 56:15 67:5 67:10
told 165:19 203:13 246:14
tolerance 131:22
top 55:11 67:17 77:19 79:12 82:1 86:7 122:4 165:12 168:20 172:6 208:11
topic 203:22
toss 150:2
total 18:5,7
Tp 55:13,19 60:7,20 61:3,16 62:4,4,8 62:15,21 62:22 63:4 63:15,17 63:20 65:10,11 65:19,20 66:1,8,19 67:13
track 198:4 214:18 215:4
tracked 198:4
tracking 182:9 198:8 199:13
trade 108:20 115:5,6
TRADEMARK 1:1
traditional 205:4
Traffic 202:13
transcript 24:6,11 268:4
transcri... 246:19
transfer 4:12 6:9 58:16 59:5 77:5 79:22 81:5
transmis... 130:22
transmits 132:21 133:18
transmitted 51:2
treated 62:22 63:4
tremendous 197:3,5,9 197:15,22 199:21
Trial 1:2 109:20,21
tribunal 109:5
tripping 207:1
true 13:12 47:2 65:1 86:21 96:1 172:2 180:19 225:13 270:8
trumpeting 114:14
trusted 191:17
try 11:12 73:5 149:8 149:11 208:19
trying 36:21 37:11 49:9 83:17 87:4 99:13 103:6 106:16,21 117:19 134:16 137:8 139:21 140:1 148:5 239:17
turn 12:3 15:4,16 30:15 41:16 56:21 59:14 69:14 72:2 84:21 85:7 86:3 87:14 88:5 95:10 108:2 118:7 154:16 156:15 158:9 159:17 166:17 170:3 173:3,21 177:22 178:15 183:8 184:16 185:16,19 187:4,17 192:3 202:7 205:17 219:14 223:3,5 224:7 234:18 235:6 248:4,9 253:1,3,18 254:16
turned 32:7
turns 62:20
TV 173:14,17 174:13,21 175:4,7,9 175:12 178:13 180:15 182:3 188:17 253:10

255:5
twice 19:11 27:4 170:10
twisting 106:12
two 18:4 29:6,18,21 30:1 34:20 35:8,10 53:8,14,22 54:10,14 65:6,8 77:20 86:19 170:8 177:11 184:14 186:21,22 238:19 244:2,4 265:11
two-minute 259:8
type 214:16 215:3
types 206:5 207:8,22
typewriting 270:7
typically 70:12 129:9,12 162:14
typo 29:6 42:11,14
typos 27:16 28:2

U

U.S 4:14 5:4 11:18
ultimately 122:10 229:19 242:9
Um-hmm 48:8 145:16 148:4 237:4
unclear 203:8
uncompre... 236:2 240:14
uncontested 183:20 186:17 187:14,16 188:14
understand 11:11,22 12:14 14:5 14:11,18 36:21 37:12 41:6 45:15 48:6 49:10 54:10 59:8 67:1 71:9 71:14 75:10 76:6 82:7 83:17 83:22 84:16 91:9 93:22 98:1 99:6 103:10,11 107:17 109:8 127:18 132:15,15 133:10,12 133:13 140:13 144:20 155:2 163:4 172:13 174:13 182:4 200:8 201:11 224:14 242:4 250:1
understа... 11:16,20 13:16 24:3 54:2 74:8 91:14 103:1 109:16,18 110:1 115:3 119:8 126:15 141:12 173:11
understands 79:10
understood 126:9
unfortun... 118:13 120:3
unique 251:11
United 1:1 109:13
upshift 220:7 223:16
upshifting 50:11,13 121:4
usage 78:22
use 25:1 46:1 57:16 57:21 58:3 58:4,16,18 59:4 69:22 79:4,15 80:5 82:9 83:13,16 84:10,13 86:2,7 120:12 121:4 122:8 123:6,7,9 123:16,20 124:4,7,14 124:16 125:1,4 130:7 141:22 148:16 149:4,5 173:1 182:21 183:13 185:4 186:7 190:4 212:19 242:17 244:19 245:18 247:3,7 256:6,22
user 49:15 51:1,18,20 60:12,21 61:2,7,19 63:6,19 71:13,15 71:19,20 72:19 73:8 73:17 86:19 95:19,22 96:13 98:18 136:18 192:15 210:19 216:7,16
user's 73:4 73:5
UserCommand 70:18,22 71:5,17
users 206:20 207:1,3 211:15 215:15,22
uses 73:14 104:13 203:11
usually 19:9 85:12,21 212:18

V

v 269:1
Vague 207:19
valuable 198:10,19 200:12
value 56:2 216:7 226:22
values 63:18
variable 63:1,5,9,9 65:2 71:16
variables 65:6,8
variants 79:16,16
various 25:7 25:11
VENABLE 2:3 2:7
version 27:19 28:6 84:1,4,13 84:20 161:11 163:11
versus 8:8 140:3,8
video 1:22 3:11 8:2 30:21 49:15 50:16 51:1 51:19,20 51:21 52:3 68:20 69:3 115:19 116:1 152:7 153:2 202:19 213:21 214:9,13 215:8 216:2,10 216:13 217:5,7,17 217:18 218:16 220:7,8 222:1 233:12,16 236:2,12 237:17,20 238:3,4,6

239:7
247:18,22
259:12,16
267:9,11
videogra... 8:11
videotaped 1:16 8:6
view 18:16 81:16 136:18 237:2 242:7
viewed 198:3
viewers 198:4
violation 5:8 177:3
virtual 22:17 23:1
virtually 17:22 18:3
vs 1:7

W

wait 48:3 106:4 126:20 149:22
waiting 44:15
waived 267:15
walk 148:19
walked 179:13 189:6
walking 148:2,17
want 27:22 45:14 97:5 98:1 101:8 130:2 137:5 139:13 154:7 156:20 193:12 214:17 215:4 220:3 224:14 230:10 232:13,18 233:3 238:9,12 238:18 240:9 259:7 265:7 266:12
wanted 21:19 137:2
wants 52:2
warranting 42:16
Washington 1:14,17 2:13 3:4 8:16
wasn't 20:9 92:5 126:9 182:8 226:18
watched 198:5
watching 49:15 51:20
WATKINS 2:12
way 18:16 19:9 50:11 52:20 97:21 126:9 131:18 146:1 149:10 208:4 226:18 242:7,15 242:19 243:7 245:16
ways 132:3
we'll 52:18 52:19 233:7,7,9
we're 65:6,9 85:4 118:4 127:21,21 138:4,8 140:21,21 177:11 216:1 224:15 265:17
we've 51:16 68:14 121:9 165:16,18 177:12 232:4 244:5 248:19
weekend 257:10 263:8
weeks 26:17
weight 111:9
West 2:7
wheelhouse 109:8
when's 263:5
Wilson 2:17 4:5 15:8 19:19 20:20 32:14 33:3 33:10 37:3 40:4,9 44:2,22 45:20 46:15 50:6 51:8 52:10 61:10,13 62:17 65:21 66:20 67:14 68:16 71:6 75:17 89:8 89:21 90:17 91:12 92:3 92:18 93:11 94:19 97:11 99:3 101:1 102:5 104:10,19 114:6 127:15 128:19 134:3 136:11 141:14 142:5 143:19 144:18 146:12 147:20 150:9 152:5 170:14,19 171:1 172:10 181:5,8 184:10 185:12 188:21 189:9 190:14,22 191:6,10 197:7,18 200:2,14 205:9 206:11 207:16,19 214:6 215:1 218:9 229:4 230:5 232:3 241:8 243:1 244:1 245:14 247:15 248:3 249:2,8 250:13,20 251:14 252:6,14 254:15 255:13 256:13,15 263:19,22 264:17 265:4,9 266:19 267:1,10
Windows 236:11 238:4
wish 29:20 73:7
witness 4:2 8:22 9:3 10:7 15:9 19:20 20:21 33:4 33:11 37:4 40:5,10 44:3 45:1 45:21 46:16 50:7 51:9 52:11 62:18 65:22 66:21 67:15 68:18 71:7 75:18 78:7 89:9,22 90:18 91:13 92:5 92:19 93:12 94:20 97:12 99:4 101:2 102:6 104:11,21 114:7 119:12 127:16 128:20 134:4 136:12 141:15 142:6 144:19 146:13 147:21 150:10 152:4,6 172:12

181:11
184:11
185:13
188:22
189:10
190:15
191:15
197:8,19
200:3,15
205:10
206:12
207:20
214:8
215:2
218:10
229:5
230:6
232:10,16
232:19
233:1,6,9
241:9
243:2
244:2
245:15
247:17
248:22
250:9
251:3
254:6,11
255:8,22
256:15
259:10
263:21
264:1
266:4
270:4,6,9
WO 5:6 55:3
wonky 64:16
word 60:15
69:21,22
70:2 72:7
98:13,15
203:11,18
207:1
212:5,14
246:5
worded 184:5
words 54:9
167:1
174:6
197:9
202:18
235:14
238:14
258:16
work 19:10
50:12
66:17 67:7
67:12,18
93:5
224:19,21
225:4
226:20
227:8
245:17
worked
162:13
164:3
261:6
262:22
working 32:4
works 16:22
52:22
97:21
101:9
199:9
world 113:22
127:22
128:14
worse 118:22
wouldn't
101:19
175:1
228:1
246:11
writes
192:12
writing
236:22
written
24:21 25:8
54:5 95:9
111:2
183:17
201:15
wrong 28:16
130:20
150:11
186:12
256:1
wrote 162:8
174:16
256:3

X

X 4:9 5:1
6:1 7:1

Y

Yanka 1:5
2:11 14:14
14:16 15:5
153:5,14
259:20
yeah 18:8
29:5 38:6
38:9 50:7
60:2,15
80:10 92:5
100:11
103:15
104:21
113:4
115:17
116:22
118:13
121:11
134:4
138:9
143:10
155:18,19
167:19
188:4
191:15
194:4
203:8
205:3
214:6
221:20
223:21
224:2,13
226:9
240:11
249:14
250:9
255:8
Yep 29:15
68:16
153:17
223:19
York 2:8,8

Z

zach.she...
3:9
ZACHARIAS
3:6
Zoom 18:5

0

00917 154:5
154:11
165:11
00918 166:14
260:2
00919 169:22
261:17
02/49343 5:6
0zero 216:8

1

1 4:12 42:17
78:4,5,10
88:5
134:21
135:6,11
135:15,20
145:11
146:7
178:14,19
181:3,16
182:14
188:18
216:7
221:15
250:7
252:21
256:4,11
258:2,7,15
258:19,22
262:1
1.0 82:12,12
84:1
1.1 84:1,14
84:19
1:10 153:1,3
10 7:7 55:14
55:20
60:11,21
61:4 62:2
62:5,16
63:12,16
63:18
69:14,18
70:15
10-second
56:2
10,469,544
1:11
10,469,555
1:12
10,951,680
1:12
10:06 68:21
10:19 69:4
100 29:7
185:18
1000 2:13
1001 2:18
31:5,7,16
32:1,9
36:4,7
137:18
138:6
231:13
234:11
1001-919 5:4
231:14
10036 2:8
1004 5:5
56:5,7,10
69:16
156:6
1009 5:7
174:18
175:20
176:1,17
253:14,18
254:17
101 2:4
178:1
179:22
253:14,19
253:21
254:1,3
102 28:1,5,7
179:11
182:13
104 184:17
105 185:17

185:19
106 187:5
107 187:18
187:20
190:3
11 56:21
57:1,2
68:12 72:2
72:13 74:4
74:14
156:16
11,470,138
1:11
11,677,798
1:10
11,991,234
4:14 11:18
11:10 115:20
11:22 116:2
112 179:22
253:14
115 108:17
117 87:15,17
88:1
12 72:4
181:18,21
12:08 152:8
152:9
12:10 151:21
120 88:6,8
123 121:21
124 121:22
122:4
125:7,10
126:18
125 73:17
1265 110:20
129 254:16
254:21
255:10
13 84:21
85:7,9,10
160:20
161:7
164:10
165:15,20
167:12
168:8
169:1
170:12
171:15,21
172:9
248:18
133 158:9,12
134 256:3
138 4:14
14 28:1,5
35:11,21
141 95:10,13
102:22
253:5
15 38:1
151 2:7
153 4:4
154 6:14
156 154:4
160:20
164:11,14
164:19
165:5,10
167:12,17
168:1,4,8
169:1
170:12
171:14,21
172:9,16
174:15
177:10
179:1,9,14
180:4,10
182:5
234:21
248:18
253:11
255:5,12
255:20
256:4,11
164 29:7
166 6:18
169 6:22
176 5:11
186 108:2,5
108:16
118:2
187 110:18
110:18
19 74:14
156:17,19
157:1
191 159:18
159:19,21
160:9
166:18
170:4,5
248:9
193 5:17
1945 4:12
77:12
78:10,13
79:6,8
80:1,8,21
81:6,21
82:4
1945/2068
77:6
198 121:21
199 121:21
1997 86:21
1a 183:10
1c 184:21
1d 186:5
1h 188:5
190:3
1i 188:1
1pre 182:18

2

2 4:14 12:4
56:21,22
57:2 64:8
64:9,10,11
64:18,20
64:21
76:16,19
79:18
84:22 85:2
85:4
134:21
135:6,11
135:15,20
138:8,10
138:11
145:11
146:7
240:7,12
2:25 233:13
2:41 233:17
2:55 247:19
20 59:22
60:3 65:10
73:19
74:14
156:17,19
157:1
200 2:19
235:21
236:1,7,10
237:5,10
239:3,6,11
239:12,22
20001 8:17
20001-5692
3:4
20004-1304
2:13
2002/049343
55:3
201 5:14
202 2:14 3:5
2022 5:12
200:22
201:3
2025 1:15
8:4 24:8
267:13
268:15
269:4
2048 5:15
192:20
193:4,6
194:10
2068 6:8
77:16
79:12 83:3
83:8 86:14
86:18
2071 160:19
161:4,18
167:11
170:11
171:14
248:14
249:4,21
250:16
251:7,11
251:15
252:2,9,19
256:20
257:20
260:1
261:17
263:16
264:13,21
2071-917
5:18 252:4
2071-918
5:19
250:18
2071-919
5:20 249:6
2071-940
5:21
252:12
210 173:3
239:8
212 2:8
2130 6:4
220:12,19
221:1
2137 82:18
83:2 85:5
85:7 86:4
2137-940 6:8
82:20
2141 10:9
12:4 13:6
13:15,18
24:15
31:11
87:13
154:10
166:3
169:13
248:5
253:2
2141-917
6:11
154:12
2141-918
6:15 166:7
2141-919
6:19
169:18
2141-940 7:4
10:13
216 192:4
193:21
217 173:22
253:3,6
2171 257:3

218-2347 2:8
22 35:21
220 6:7
229-1234 3:8
231 5:4
234 11:22 12:21 14:10 15:21 22:3 22:5,14,16 22:22 23:3 23:9,12,16 32:19 33:2 33:8,21 34:2,12,14 34:15 35:2 36:11,18 37:1,9,15 37:17,18 37:20 39:15 40:2 40:13 137:15,16 137:22 143:3 177:20 235:3 257:9,20 258:2,6,7 258:11,13 258:15,20
24 55:9,11 58:9,10
248 4:5
249 5:20
25 154:19
250 5:19
252 5:18,21
256 4:3
259 4:4
26th 73:21
27 202:8,11
274 219:17 219:18 222:22
29 205:18
2a 235:14 240:7
2c 238:14

3

3 12:3,6,15 13:5,15 59:18 66:8 66:19 103:14 134:21 135:6,11 135:15,20 138:4 145:11 146:7 220:5 222:5,11 222:17 225:12,15 225:19,22 225:22 226:4,6,12 226:16,21 227:3,5 228:1,1,11 228:14 229:7,8,12 229:15,15 229:19 230:2,12 231:2,3,7
3's 226:19
3:30 248:1
3:42 259:13
3:43 259:17
3:49 267:13 267:15
310-1769 1:22
337 5:8 177:3
343-4493 2:5
36 30:15,18 32:1 37:22 38:22 40:11,17
38 235:9
3800 2:4

4

4 59:19 65:14,20 66:1,2,8 66:18 103:14 134:21 135:6,11 135:15,20 145:11 146:7 223:22
4-second 65:20
415 2:5
42nd 2:7
46 41:17,19 53:1 86:3 86:5
47 54:17,19
48 55:6,8
49 154:16,17 154:20

5

5 15:16 16:4 42:17 59:14,17 59:19 60:3 61:17 62:9 64:4,7 65:10
5/11/21 5:17
53 224:8
54 223:3,5 224:6
55 179:1
554 177:12 177:13
555 2:13 177:13
56 5:6
564 16:7 22:3,15 31:16 32:2 32:6,9 33:1,8 34:3,11 35:2 36:8 36:10,15 36:22 167:18,21 168:12,16 169:3,5 174:15 177:10 178:14 179:12 180:16 181:2,3,17 182:5,14 188:18 234:21 251:12,19 251:22 254:14 260:5,8,21 261:10
58 238:13

6

6 59:19,21 191:18 235:7,10 238:13 244:5,12
6/22/07 6:5
637-2200 2:14
639-7700 3:5
650 2:20

7

7 59:19 143:2,16 144:2 145:12
700 1:16 3:4 8:15
704 143:8
710 143:8,18 144:4
713 3:8
739-7500 2:20
77003 3:8
772 92:9 169:14 171:19,22 172:4 177:16 231:18 234:12,22 243:12 246:10 250:4 261:19 262:1,5,13
78 4:13

8

8 1:15 59:19 251:19,22 260:5,7,15 269:4
8,868,772 5:4
800 1:22
82 6:10
8th 8:4 267:13

9

9 4:3 59:19 63:7,20 64:3 68:12 76:19,20 76:20 79:19 236:12 238:4
9,407,564 1:13
9/9/22 5:11
9:08 1:17 8:4
910 3:7
917 5:18 6:14 252:3
918 5:19 6:18 16:13 31:8,12,16 36:4,6,8 250:16 251:1
919 5:20 6:22 172:14 248:5,7 249:5,13 250:5 253:2 256:20,21
940 5:21 7:7

11:6,10,13
11:17
12:20 13:3
13:18 14:4
14:6
137:19
252:10,18
252:20
257:3
94111 2:4
94304-1007
2:19