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

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

IPR2024-00940
U.S. Patent No. 11,991,234

FUBOTV MEDIA, INC. & YANKA INDUSTRIES, INC.,
Petitioners,
vs.
DISH TECHNOLOGIES L.L.C.,
Patent Owner.
IPR2024-00917 (Patent 10,757,156 B2)
IPR2024-00918 (Patent 9,407,564 B2)
IPR2024-00919 (Patent 8,868,772 B2)

REMOTE VIDEOTAPED DEPOSITION OF
PETER RATCLIFFE
May 15, 2025

Reported by: Debra Stevens, RPR/CRR
HUDSON COURT REPORTING & VIDEO (800) 310-1769

1
2 May 15, 2025
3 10:02 a.m. EDT
4
5 Remote Videotaped Deposition of
6 PETER RATCLIFFE, the witness herein,
7 held on the above date and time,
8 before Debra Stevens, Certified
9 Realtime and Registered Professional
10 Reporter and Notary Public of the
11 State of New York.
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1

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24 STEPHAN ANDREYCHUK, Videographer

25

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1

2 THE VIDEOGRAPHER: Good morning.
3 We are going on the record. The time is
4 10:02 a.m. Eastern Time. Today's date
5 is May 15, 2025 for this
6 stenographically reported and videotaped
7 deposition of Peter Ratcliffe in the
8 action of Aylo Freesites, Ltd. and
9 fuboTV Media versus DISH Technologies.
10 My name is Stephan Andreychuk and
11 Ms. Debra Stevens is the court reporter.
12 We are here with Hudson Court Reporting
13 & Video Nationwide. This deposition is
14 being taken remotely with all parties
15 attending via videoconference. All
16 counsel present will be noted on the
17 record.
18 Before swearing in the witness,
19 all counsel present, please, introduce
20 yourselves for the record. Thank you.
21 MR. SHENG: My name is Philip
22 Sheng. I'm with the law firm Venable
23 LLP. I represent the Aylo Petitioners.
24 I'm joined by my colleague Ian Paquette,
25 who is on the Zoom as well.

1

2 MR. FRENKEL: Rick Frenkel, from
3 Latham & Watkins. I am representing not
4 only fuboTV, who is mentioned in the
5 caption, but also Yanka Industries,
6 doing business as MasterClass. Those
7 are the two Petitioners for the 917, 918
8 and 919 IPR's.
9 MR. GUY: I am Hopkins Guy with
10 Baker Botts, and I represent the Patent
11 Owner, DISH Technologies, Inc. -- sorry.
12 DISH Technologies, LLC.
13 Ready to proceed.
14 THE VIDEOGRAPHER: Will the court
15 reporter please swear in the witness.
16 COURT REPORTER: This is Debra
17 Stevens, court reporter and notary
18 public in the State of New York,
19 authorized to administer oaths remotely
20 so long as counsel will stipulate on the
21 record that the witness is properly
22 identified and is, in fact, Peter
23 Ratcliffe.
24 Counsel?
25 MR. SHENG: Yes.

1 P. RATCLIFFE
2 MR. GUY: Yes.
3 MR. FRENKEL: Yes.
4 COURT REPORTER: Thank you.
5 Whereupon,
6 P E T E R R A T C L I F F E,
7 having been first duly sworn/affirmed,
8 was examined and testified as
9 follows:
10 EXAMINATION BY
11 MR. SHENG:
12 Q. Good morning, Mr. Ratcliffe, or I
13 should say good afternoon.
14 A. It is for me. Thank you. Good
15 afternoon.
16 Q. Please state your name for the
17 record.
18 A. Peter Anthony Ratcliffe.
19 Q. As I mentioned a minute ago, I
20 represent the Aylo Petitioner. I am going
21 to ask you some questions and, when I am
22 done, I will turn it over to Mr. Frenkel,
23 who will ask you questions on behalf of his
24 clients. Okay?
25 A. Sure. Okay.

1 P. RATCLIFFE

2 Q. Is there any reason you cannot
3 tell the truth today?
4 A. No reason.
5 Q. Where do you reside?
6 A. I live in England.
7 Q. Could you be a little bit more
8 specific?
9 A. Sure. I live in a town called
10 Burgess Hill in West Sussex in England, and
11 I work in London, in England.
12 Q. Where are you right now?
13 A. Right now I am at home in Burgess
14 Hill, West Sussex, in England.
15 Q. Is there anybody in the room with
16 you?
17 A. No. Nobody.
18 Q. Whose computer are you on?
19 A. It is my work laptop.
20 Q. Do you have any other
21 applications open on your computer other
22 than the Zoom application?
23 A. Yes.
24 Q. What are those applications?
25 A. Explorer, Outlook and Teams and

1 P. RATCLIFFE

2 Word.

3 Q. Are those -- strike that.

4 If you could close the Outlook or

5 any other applications that are methods of

6 communication, I guess?

7 A. Sure. Hold on.

8 (Pause.) Okay.

9 Q. You are a practicing solicitor in

10 England and Wales. Is that correct?

11 A. Yes.

12 Q. You are also a licensed attorney

13 in the State of New York; correct?

14 A. Yes.

15 Q. You graduated from New York

16 University School of Law; correct?

17 A. I attended New York University

18 School of Law to get the New York Bar, but I

19 graduated from London University and the

20 University of Wolverhampton.

21 Q. Fair enough.

22 Have you had your deposition

23 taken before?

24 A. Yes.

25 Q. In what context?

P. RATCLIFFE

A. Litigation. BT was the plaintiff against other companies, and I was a 30(b)(6) witness for BT.

Q. How many times have you been deposed?

A. Four or five roughly.

Q. And were those in the United States?

A. No. They will be in the U.K. or on Zoom.

Q. Do you know what a United States Inter Partes Review petition is?

A. Yes.

Q. What is your understanding of what a U.S. Inter Partes Review petition is?

A. An IPR, as we call them, is a third party bringing a claim to have a patent reviewed by the USPTO for invalidity or non-infringement -- well, invalidity is the same. Prior art.

Q. Do you understand that you are being deposed today in connection with IPR petitions that have been filed against certain patents owned by DISH Technologies,

LLC?

A. Not really, no. It came to my notice after answering questions that came to BT from Baker Botts. But it was an after-the-event piece of information rather than the source of what I am providing.

Q. What do you mean by "answering questions that came to BT from Baker Botts"?

A. I received, or my line manager, Jeff Langlands, received an unsolicited email from Baker Botts asking whether we could look into whether BT had commercialized certain patent and a certain product called Voyager 2000. This was around January of this year. And since I head up the IP team in BT, I picked up that request and started looking into the matter for Baker Botts.

Q. Who is your line manager?

A. Jeff Langlands.

Q. What did Mr. Langlands tell you when he -- in that email you received from him?

MR. GUY: Objection. One moment.

1 P. RATCLIFFE

2 So, Mr. Ratcliffe, from time to time I
3 will interpose an objection. Under the
4 rules, I will simply say "Objection;
5 form" in most cases. But just give
6 me -- I know we want to run through this
7 quickly, but just give me a half second
8 to deal with the latency in our network.
9 Objection; form.
10 MR. SHENG: Let me reask the
11 question.
12 Q. What did Mr. Langlands tell you
13 in that email that you received from him
14 regarding this matter?
15 MR. GUY: Same objection.
16 A. He forwarded it to me. And I
17 can't remember the specifics. More along
18 the lines of "Any idea?" It was a bland
19 response because he wouldn't have had a clue
20 what they were asking or why they were
21 asking. But he just forwarded it to me
22 saying along the lines of "Any idea?"
23 Q. Did you ask him why DISH was
24 asking?
25 MR. GUY: Objection; form.

P. RATCLIFFE

A. No, I didn't ask. I just picked up the email and replied to it. Yeah. Picked up the email, replied to it.

Q. You weren't curious at all why the company DISH was asking you to look into whether you commercialized certain products?

A. No. It was -- from my perspective, it was a law firm, Baker Botts, asking me. They were acting on behalf of their client, but they were just asking a simple question on commercialization on a patent.

We get involved in IPR's ourselves a lot of the time and I know -- I know how difficult it can be to get information from other companies. So, it's nice sometimes when somebody actually answers the unsolicited request and, you know, provides information, because, in my experience, very often the request goes, you know, ignored or unanswered.

Q. Did DISH offer to compensate BT in any way?

A. No.

P. RATCLIFFE

Q. Are you being compensated today for your testimony?

A. No.

Q. Do you have any interest in the outcome of these IPR's?

A. None at all.

Q. So I am trying to understand, Mr. Ratcliffe, why you got involved.

A. Yeah, me too. Well, it was literally just politely answering an unsolicited email that came into BT. And when I was informed that I was asked to be deposed, that was where I was like, oh, no, for God sake, come on. I have said everything I can say, I have done everything I can do. You know, my words, BT does not have a dog in this fight so I'd rather not get involved. But, you know, here I am.

Q. Did Mr. Langlands know that -- scratch that.

Is Mr. Langlands aware that you have submitted a declaration in these IPR's?

A. Yes.

Q. Did you let him know before your

1 P. RATCLIFFE
2 deposition notice in this case?
3 MR. GUY: Objection; form,
4 hearsay.
5 A. No.
6 Q. Prior to submitting -- well, let
7 me strike that.
8 Prior to submitting your
9 declarations in these IPR's, did you inform
10 Mr. Langlands that you were going to?
11 A. No.
12 Q. Mr. Langlands is aware that you
13 are being deposed today, though?
14 A. Yes.
15 Q. Was he surprised?
16 A. No.
17 MR. GUY: Objection; form.
18 Q. Was he surprised that you
19 submitted a declaration on behalf of DISH in
20 these IPR's?
21 MR. GUY: Objection; form.
22 A. No --
23 Q. He was okay with that?
24 A. It's not that he is okay. He is
25 not -- he is not an IPR lawyer, Jeff; he is

1 P. RATCLIFFE

2 an M and A lawyer. So the fact that as a
3 consequence of me picking up that
4 unsolicited email and answering it and then
5 providing a declaration and then appearing
6 on a deposition, they'd be things that he'd
7 be willing to leave to me to deal with
8 rather than have to be informed or approve
9 along the way.
10 But he is aware that today I have
11 spent some time preparing for this
12 deposition and today I am -- I have a chunk
13 of time marked out to provide this
14 deposition. So, he is aware, but it's not
15 from a point of permission.
16 Q. Prior to your deposition today,
17 have you submitted declarations in IPR's
18 that do not involve BT?
19 A. No.
20 Q. This is the first IPR in which BT
21 is not involved where you have submitted a
22 declaration; is that correct?
23 A. Yes.
24 Q. You mentioned earlier Voyager
25 2000. What is that?

1 P. RATCLIFFE

2 A. A product that BT ran with in the
3 late '90s, I believe. It was part of the
4 email that came in. The unsolicited email
5 identified, I think it was, Voyager 2000
6 product. And I reached out to our archives
7 team to ask them whether they had heard of
8 it because I hadn't. And they provided, you
9 know, copies of photographs of a
10 particular -- it looked like a set-top-box
11 type product back in the day. And that's
12 all I know of it.
13 Q. So Baker Botts, in its email to
14 you or to Mr. Langley -- am I saying that
15 right? Langlands?
16 A. Langlands.
17 Q. Am I correct that in Baker Botts'
18 email to Mr. Langlands Baker Botts
19 identified the Voyager 2000 product?
20 Correct?
21 A. Yes.
22 Q. Did Baker Botts ask you to
23 investigate any other products besides the
24 Voyager 2000 product?
25 A. No.

P. RATCLIFFE

Q. Did you investigate any other products besides the Voyager 2000 product?

MR. GUY: Objection; form.

A. In answering -- I entered into a correspondence with Baker Botts to understand more what it was they were looking for, what type of help. And it quickly became apparent that the Voyager 2000 system, as they referred to it -- I'd call it a product -- was not something they were interested in; they were more interested in a Leaning patent and whether we had commercialized the Leaning patent.

And then I took another avenue by talking to currently employed researchers in the video area to see whether they had any contacts for the previous inventors of that Leaning patent. And in the course of those communications, when I spoke to their line manager, Mike Whybray, Mike Whybray identified or he made reference to the fact that an audio product was trialed when the Leaning patent was first invented, if you will, around that time.

1 P. RATCLIFFE

2 So, there was a reference to

3 that, but there was no name given to it. It

4 was just a bland reference, and he followed

5 that up by saying but no video product was

6 commercialized. So, they were the only --

7 it was Voyager 2000, the fact that Mike

8 believed there was an audio product that may

9 have been tested and the fact that Mike

10 believed that there was no video product

11 that was ever tested. They were the three

12 products that I came across in these

13 investigations.

14 Q. Other than the Voyager 2000

15 product, did you become aware of any other

16 video products while investigating -- in

17 preparing your declaration, in the course of

18 preparing your declaration?

19 A. No.

20 Q. So let me ask you again, just to

21 clean that question up.

22 Other than the Voyager 2000

23 product, did you become aware of any other

24 video products by BT during the course of

25 your investigation and preparation of your

1 P. RATCLIFFE

2 declaration?

3 MR. GUY: Objection; form.

4 A. No.

5 Q. As you sit here today, are you

6 able to tell me any video products that BT

7 has commercialized since the time you have

8 joined the company?

9 MR. GUY: Objection; form.

10 A. As my declaration makes clear, we

11 are not a manufacturer. So, it's difficult

12 for me to identify a BT product, a BT video

13 product that is badged BT other than

14 third-party products that we will have sold

15 for services like BT TV or BT Sport.

16 So, we sell set-top boxes which

17 are made by Asian manufacturers, which are

18 sold to our BT TV customers. So, I am aware

19 of those set-top box products. Other video

20 products that BT sells today? I can't think

21 of any right now, no.

22 Q. And not just today. I am asking

23 going back to your time at BT. Are you

24 aware of any video products that BT has

25 sold?

P. RATCLIFFE

A. None spring to mind. Over a 23-year career, none spring to mind. Certainly, none came up in investigations and preparations for this deposition. But outside of that scope -- I understand your question is much broader -- none spring to mind today of a video product that BT -- you know, a BT video product.

We may have touched other people's products, but I can't think of any, other than set-top box products called BT TV and BTSport, which is now called TNT Sport in the UK.

Q. You testified that you originally got an email from Baker Botts in January of this year. Is that correct, January?

A. I think the original email was February the 5th in to Jeff, and Jeff forwarded it to me.

Q. Do you recall which attorney from Baker Botts e-mailed you or e-mailed Jeff?

A. Jamie Lynn.

Q. Have you reviewed the DISH patents that are being challenged in these

IPR's?

A. No.

Q. Do you have any understanding of what the DISH patents are related to?

A. No.

Q. You have no idea of the subject matter of DISH's patents; correct?

A. Correct.

Q. Have you ever heard of the term "adaptive bitrate streaming"?

A. Yes.

Q. What is adaptive bitrate streaming to you? What is your understanding?

A. I have only heard of it in our own products so I'd hesitate to offer an educated description of ABR. But I am assuming, you know, like it says on the tin, it allows bit rates to stream in an adaptive way. So, sometimes fast, sometimes slow, sometimes many, sometimes few.

Q. You are not an engineer; correct?

A. Correct. I am not an engineer and I am not a patent attorney.

1 P. RATCLIFFE

2 Q. Do you have any formal technical
3 training at all?
4 A. I was a systems programmer, a
5 software systems programmer in an earlier
6 life.
7 Q. What do you mean you are not a
8 patent attorney?
9 A. Just that. Over in the U.K.
10 patent attorney is a different line of work
11 to solicitors or attorneys. It's different
12 qualifications. They do a different job.
13 They sit in a different team in BT. I am
14 not one of them. I am not qualified to be a
15 patent attorney or draft patents.
16 Q. Mr. Ratcliffe, you submitted two
17 declarations or two different declarations
18 in these IPR's. Does that sound right to
19 you?
20 MR. GUY: Objection; form.
21 A. I submitted a declaration that
22 needed to be amended because, I believe,
23 somebody on the receiving side didn't like
24 the original form. They wanted to add text
25 to the end. So, multiple, you know,

1 P. RATCLIFFE

2 declarations were signed and submitted and
3 then had to be re-signed. I don't know
4 whether it was two.
5 Q. Okay. That was the point of my
6 question. I just want to clear this up.
7 So, my understanding is that you submitted a
8 declaration that was signed on February 25,
9 2025. That was the first declaration you
10 submitted. Does that sound right to you?
11 A. Yes.
12 Q. My understanding is you submitted
13 a second declaration that was signed on
14 March 18, 2025. Does that sound right to
15 you?
16 A. Yes.
17 Q. So, I am going to put in the
18 chat, just so counsel has a copy...
19 What I just uploaded just now is
20 Exhibit 2126. I will represent that that is
21 your February 25th declaration. Then I am
22 going to upload Exhibit 2143, and I will
23 represent that this is your March 18, 2025
24 declaration.
25 You told me earlier, before we

1 P. RATCLIFFE

2 started, that you have copies of both of
3 those in front of you. Is that right?
4 A. Yes.
5 Q. Okay. My understanding is that
6 those two declarations are identical except
7 for the very last part where you stated, in
8 the March 18, 2025 declaration, that you
9 signed under the laws of -- that you declare
10 under penalty of perjury under the laws of
11 the United States of America.
12 Does that sound right to you,
13 Mr. Ratcliffe?
14 A. I don't --
15 MR. GUY: Sorry. Objection to
16 form. I was muted. Go ahead.
17 A. I am not sure whether they were
18 the only changes. There may have been one
19 or two cosmetic changes or one or two
20 changes to the text. But the reason why it
21 was being sent back to me for reexecution,
22 from recollection, was that it didn't
23 contain the "I declare under penalty of
24 perjury in the United States."
25 So, I wouldn't like to say,

1 P. RATCLIFFE

2 without a mark-up in front of me, that that
3 is the only change, but that was certainly
4 what was made known to me at the time.
5 Q. Is it fair to say that your two
6 declarations are substantively identical
7 except for the penalty of perjury portion?
8 A. I think so, yeah. I am not aware
9 of me changing my mind or anything. I just
10 may have -- if it was changed at all --
11 because they were -- what you are not
12 understanding is there were versions of this
13 thing that were being swapped.
14 So, maybe only two were ever
15 signed, but in order to get the declaration
16 right for me, you know, it wasn't a first
17 draft, that's it, done, signed. It was hold
18 on, I just want to tweak this, I want to
19 tweak that. That is why I am hesitating in
20 saying that what I signed in February was
21 exactly the same as what I signed in March
22 other than the salutation at the end. But
23 in the main, they fairly represent BT's
24 position on this.
25 Q. Does Baker Botts represent you in

1 P. RATCLIFFE

2 a legal capacity?

3 A. No.

4 Q. Do you consider Baker Botts your

5 attorney?

6 A. No.

7 Q. Do you have an engagement letter

8 with Baker Botts?

9 A. No.

10 Q. Do you consider your role in

11 these IPR's to be -- strike that.

12 (Brief reporter interruption.)

13 Q. Mr. Ratcliffe, you testified a

14 minute ago that versions of this declaration

15 were being swapped. Who were they being

16 swapped between?

17 A. Myself and Jamie Lynn.

18 Q. And Jamie Lynn is a lawyer at

19 Baker Botts; correct?

20 A. Yes.

21 Q. Who did the original draft of

22 your declaration?

23 A. Baker Botts.

24 Q. So Baker Botts did the original

25 draft of the declaration and presented you

with a draft for your review; correct?

A. Following a video call or a telephone call; yes.

Q. And you reviewed that draft and then you swapped another version to Baker Botts. Is that fair?

A. Yes. Versions, yes. It wasn't --

Q. Multiple versions; correct?

A. Yes.

Q. How many versions did you swap between yourself and Mr. Lynn at Baker Botts?

A. I don't recall. More than two but less than five.

Q. More than two, less than five?

A. Yeah. That is a fair count I think.

Q. And did you mark it up in redline?

A. I can't recall accurately whether it was done all on a computer mark-up or whether I ever marked it up longhand and scanned it and sent them a scan. I can't

1 P. RATCLIFFE

2 recall.

3 Q. These were communicated, the

4 drafts were communicated to Mr. Lynn via

5 email; is that right? You are nodding your

6 head? Is that yes?

7 A. Yes.

8 Q. And they were communicated to

9 Baker Botts using your work email; is that

10 correct?

11 A. Yes.

12 Q. That's your Outlook; is that

13 correct?

14 A. Outlook is the app I use. It is

15 the BT.com account.

16 Q. I am going to ask you to open up

17 your Outlook app on your computer now. Let

18 me know when that app is up, okay?

19 A. It's up.

20 Q. We established you have no legal

21 attorney-client relationship between

22 yourself and Baker Botts. Is that correct?

23 MR. GUY: Objection to form.

24 Q. Is that correct?

25 A. Baker Botts are not BT's lawyers.

1 P. RATCLIFFE

2 Correct.

3 Q. And they are not your lawyer,

4 right?

5 A. They are not my lawyer, no.

6 Correct.

7 Q. Very good. Can you click on the

8 "Sent" items folder of your Outlook?

9 A. Yes.

10 Q. I need you to search all the

11 emails that you had with Baker Botts, okay?

12 A. Sure, but you are going to fall

13 into confidential information of BT. At

14 some stage I am going to stop sharing

15 information that I consider confidential to

16 BT. So, I will do as much as I can --

17 Q. Let me make sure I understand.

18 You shared with Baker Botts information

19 about BT that you cannot share with me

20 today?

21 A. Well, there is information

22 that -- all the information in this Outlook

23 folder is confidential of British

24 Telecommunications PLC. So whether --

25 whether I am willing to share all that

1 P. RATCLIFFE

2 information with you is something I'd rather
3 think about rather than be dragged into
4 having to share something simply because you
5 have asked the question.
6 I am here to talk about my
7 declaration. I don't want to be having to
8 share potentially confidential information
9 of BT with you today without having the
10 opportunity to consider that.
11 Q. Did you sign a non-disclosure
12 agreement with Baker Botts?
13 A. No.
14 Q. So what I am interested in,
15 Mr. Ratcliffe, is the information that you
16 shared with Baker Botts. I am not
17 interested in any of BT's confidential
18 information, any trade secrets, anything
19 like that, okay? I am just interested in
20 the information that you shared with Baker
21 Botts. Okay?
22 A. I know that.
23 Q. Okay.
24 A. And so there will probably come a
25 time -- if you ask me for everything that I

1 P. RATCLIFFE

2 have shared with Jamie Lynn or Baker Botts
3 since February 2025, then I would say I am
4 not going to do that; I want to review the
5 confidentiality provisions of the
6 information in that just to make sure that I
7 don't trip up and disclose more to you than
8 I am comfortable disclosing.
9 Q. I am just interested in the
10 information that you felt comfortable
11 disclosing to Mr. Lynn at Baker Botts. That
12 is why I asked you to go to your "Sent"
13 folder; you already sent it out.
14 MR. GUY: Phil, I will interpose
15 an objection here. You are back-dooring
16 a document request. If you want a
17 document, you should have requested
18 them.
19 MR. SHENG: We will go to the
20 board on this, Hop. You guys submitted
21 a declaration. I am probing the witness
22 about multiple drafts he had sent
23 between himself and your firm, and the
24 witness is refusing to provide me
25 information that he provided you guys.

1 P. RATCLIFFE
2 So, we will go to the mat on this.
3 MR. GUY: I hear that. That is
4 fine. Please do. You provided a Notice
5 of Deposition to this witness. There
6 was no request for documents in that
7 notice. There was no warning about
8 this, and this is a surprise.
9 So, I am just creating a record
10 here that that is what you did, and this
11 is unfair to a third-party witness that
12 has the courtesy and the kindness to
13 give us his time. So, that is our
14 position.
15 So go ahead, but we have an
16 objection to any document production
17 that is done on the fly here that you
18 could have anticipated easily with
19 requests to the board.
20 MR. SHENG: I disagree that I
21 could have easily anticipated that he
22 swapped multiple drafts with you guys
23 and confidential BT information. We can
24 agree to disagree on that.
25 BY MR. SHENG:

1 P. RATCLIFFE

2 Q. Mr. Ratcliffe, can you tell me
3 approximately how many emails you sent
4 Mr. Lynn in the course of preparing your
5 declaration? You have your Outlook folder
6 in front of you and you can give me an
7 estimate.
8 A. Four.
9 Q. So we are only talking about four
10 emails here, right?
11 A. Four emails that I shared with
12 Jamie Lynn that were aimed at drafting and
13 completing my declaration; yes.
14 Q. Okay. So I want you to look at
15 the very first email that you sent Mr. Lynn.
16 Can you describe for me generally what that
17 email is about?
18 A. It's -- it's me giving my first
19 proposed edits to the Baker Botts drafted
20 declaration.
21 Q. Okay. Is there any BT
22 confidential information in that draft that
23 you sent Mr. Lynn?
24 A. In the document itself, no. In
25 the email itself, it talks about

1 P. RATCLIFFE

2 conversations I have had with ex-BT
3 employees because it was part of a chain of
4 communication that led up to the
5 declaration. And that's where I am
6 sensitive to blindly sharing with you emails
7 without really thinking about the
8 consequences of that.
9 But in the attachment itself
10 where I have my edits, then, no, there is
11 nothing confidential in that.
12 Q. Which BT employees are identified
13 in that email chain?
14 A. Gosh. Ex-BT employees. So, Mike
15 Whybray.
16 Q. You quoted Mr. Whybray in your
17 declaration, right?
18 A. I did.
19 Q. Or you cited him, right?
20 A. I did.
21 Q. So the information Mr. Whybray
22 provided you, at least part of it is not
23 confidential; correct?
24 A. The identification of Mr. Whybray
25 in this is not confidential, but whether

1 P. RATCLIFFE

2 there is anything in the email
3 correspondence -- I am just concerned that I
4 don't want to be shanghaied into having to
5 provide you with copies of email
6 communications on the fly on this deposition
7 without the opportunity to consider the
8 consequences of that.
9 Q. Okay. Fair enough.
10 But you agree that the Word
11 document with your edits do not contain BT
12 confidential information; correct?
13 A. Correct.
14 Q. Okay. So, here is my email
15 address in the comments. If you could
16 forward to me just the Word document, I'd
17 appreciate it.
18 MR. GUY: We object to this
19 on-the-fly document production. We do
20 not believe it is proper and that you
21 had ample opportunity to request
22 documents that you certainly knew would
23 be denied, given your own position with
24 respect to other witnesses in which you
25 have refused to produce documents on the

fly. So, we have an objection to any production.

We are not representing Mr. Ratcliffe here, but we do have an objection in terms of fairness to the witness and the surprise you that clearly think that you are pulling here.

MR. SHENG: Thumbs up, Hop. I'm giving you a thumbs up.

Q. Mr. Ratcliffe, can you please send that to me, please?

A. No. I am going to wait until that objection is ruled on as to whether I send you anything more.

MR. SHENG: Let's go off the record and let's call the board on this one. This is absurd, Hop.

THE VIDEOGRAPHER: Going off the record, the time is 10:39.

(Recess.)

THE VIDEOGRAPHER: Back on the record, the time is 10:46.

BY MR. SHENG:

Q. Mr. Ratcliffe, prior to the break

1 P. RATCLIFFE

2 we were discussing one of the four emails
3 that you sent Mr. Lynn from Baker Botts. Do
4 you recall that?
5 MR. GUY: Phil, before we go
6 back, when we went off the record you
7 said you were going to call the board.
8 I want a record that you have decided
9 not to call the board at this time and,
10 rather, you will proceed with the
11 deposition. Is that correct?
12 MR. SHENG: Well, you have
13 limited our deposition time today to
14 three and a half hours. So in view of
15 the witness's time and the deadline you
16 guys have given us, we are going to
17 proceed with the deposition. But we
18 reserve all rights and do intend to
19 raise this issue with the board after
20 the deposition.
21 MR. GUY: Okay. But you will not
22 be calling the board at this time. Is
23 that correct?
24 MR. SHENG: Not at this time;
25 correct. We will move forward with the

1 P. RATCLIFFE

2 deposition.

3 MR. FRENKEL: Just for the

4 record, this is not the portion where

5 fubo and MasterClass are asking

6 questions, but we join Mr. Sheng's

7 concerns and we will not raise it at the

8 deposition due to time, either.

9 MR. GUY: Let's proceed.

10 BY MR. SHENG:

11 Q. Mr. Ratcliffe, during the

12 five-minute break we just took, did you

13 speak to anybody?

14 A. No.

15 Q. Prior to the break we were

16 discussing the first of four emails that you

17 had sent Mr. Lynn at Baker Botts; correct?

18 A. We were discussing the first of

19 four emails concerning my declaration edits

20 that I had sent to Jamie Lynn at Baker

21 Botts.

22 Q. Have you e-mailed Mr. Lynn at

23 Baker Botts regarding any other matters

24 besides your declaration edits?

25 A. Yes. There were emails prior to

1 P. RATCLIFFE

2 the declaration being proposed which
3 contained information of my investigations
4 to the original unsolicited email in to BT
5 in February.
6 Q. So you have emails to Mr. Lynn at
7 Baker Botts that contain information of your
8 investigation into the request that DISH had
9 sent BT. Is that correct?
10 A. Well, Baker Botts sent BT; yes.
11 I had no communications with DISH
12 whatsoever.
13 Q. Understood.
14 In that first email that we have
15 been discussing, the one of four, are there
16 any other BT employees or former employees
17 mentioned besides Mr. Whybray?
18 MR. GUY: Objection; form.
19 A. I don't think so, no, not that I
20 can see in the email chain.
21 Q. Could you take a look at the
22 second email that you sent Mr. Lynn that
23 contains edits to your declaration?
24 A. Yes.
25 Q. Does that email contain

1 P. RATCLIFFE

2 confidential information to BT?

3 A. Well, see, the problem you have

4 got is that the changes I am making to the

5 declaration concern BT's activities around

6 the Leaning patent, whether we have licensed

7 it, whether we have asserted it, things like

8 that. And it is that that I don't want to

9 get involved in as well; as well as I am

10 concerned blindly forwarding you

11 confidential BT emails -- because all emails

12 from BT's accounts are considered

13 confidential. They have it in the footer of

14 them: "Contains confidential information of

15 BT."

16 I am not here today to argue with

17 you or to justify that statement; that is

18 just the way it is. But my concern also

19 stems from some of the edits that I am

20 making and the why I am making those edits.

21 And I absolutely will not go down a rabbit

22 hole that talks around who we have asserted,

23 who we have tried to license, how we have

24 tried to commercialize any of these patents

25 that BT owned. That's not the purpose of my

1 P. RATCLIFFE

2 declaration here today.

3 Q. Right. And I am just asking for

4 the information that you shared with Baker

5 Botts. You understand that; correct?

6 A. I am not sure why you are asking,

7 Philip.

8 Q. But you understand that that is

9 my question, that that is what I am after?

10 A. I understand that that is what

11 you phrased it as, but I am not

12 understanding what the true purpose of that

13 request is so I am not about to be

14 shanghaied into having to disclose

15 information that I am unprepared for in this

16 declaration.

17 Q. Well, the purpose, Mr. Ratcliffe,

18 is you submitted a declaration regarding

19 activities at BT and you made edits and you

20 shared information with Baker Botts but you

21 are not sharing it with me. That's the

22 issue. Do you understand that?

23 MR. GUY: Objection; form.

24 A. I have the declaration. You have

25 both of them. I signed two of them. What

1 P. RATCLIFFE

2 you don't have are things that -- or when I
3 added changes to it or which changes came
4 out. But you have the declaration, so it is
5 in front of you. You have added it to the
6 chat. I am happy to talk about that.
7 Q. Okay. Last question on this
8 topic, Mr. Ratcliffe: Can we agree that
9 information you shared with Baker Botts is
10 not confidential to BT?
11 MR. GUY: Object to form.
12 A. No, we cannot agree. I don't
13 know whether it is. That is, hence, my
14 hesitance in going down what I consider to
15 be a rabbit hole. I am not saying none of
16 it is confidential. I am not agreeing to
17 that at all.
18 Q. You do not have a non-disclosure
19 agreement with Baker Botts; correct?
20 A. I have answered that one already.
21 Correct. Yes.
22 Q. Prior to you submitting a
23 declaration in this case, you had no formal
24 relationship with Baker Botts to the best of
25 your knowledge; correct?

1 P. RATCLIFFE

2 A. Correct. I know a few of their
3 attorneys. That's it.
4 Q. Okay.
5 You are currently the legal
6 director for intellectual property rights at
7 British Telecom. Is that correct?
8 A. Yes.
9 Q. You have held that position since
10 2019. Is that right?
11 A. Yes.
12 Q. You have been a lawyer for
13 British Telecom since 2003. Is that
14 correct?
15 A. Yes. I was a lawyer and then I
16 left and went to '02 and then I came back to
17 BT. So in this stint, since 2003, yes.
18 Q. You have been at BT for over
19 20 years. Sound right?
20 A. Correct. Yes.
21 Q. During the time you have been at
22 BT, are you aware of any business
23 relationship between British Telecom and
24 DISH Technologies LLC?
25 A. No. None.

1 P. RATCLIFFE

2 Q. Are you aware of any business
3 relationship between British Telecom and
4 DISH Networks LLC?
5 A. No. None.
6 Q. Any relationship between British
7 Telecom and EchoStar Corporation?
8 A. No. None.
9 Q. Have you ever heard of a company
10 called MOVE Network Inc.?
11 A. No.
12 Q. So prior to your involvement in
13 these IPR's, you have never heard of a
14 company called MOVE Network Inc. Correct?
15 A. Correct.
16 Q. Have you ever heard of the name
17 MOVE Network Inc.?
18 A. Asked and answered. No.
19 Q. What did you do to prepare for
20 today's deposition, Mr. Ratcliffe?
21 A. Questioned my sanity and then
22 read the declaration three times and then
23 read the email correspondence as to what
24 caused that declaration to be drafted and
25 executed. And then a load of other

1 P. RATCLIFFE

2 confidential BT work.

3 Q. In preparation for today's

4 deposition, you questioned your sanity. Is

5 that correct?

6 A. I did.

7 Q. Why did you say that?

8 A. Because of the time it's taking

9 out of my busy day. So, it's like why did I

10 get involved in this? Why did I answer that

11 unsolicited email? Why was I being nice?

12 Q. Do you regret submitting that

13 declaration?

14 A. No.

15 Q. In preparation for today's

16 deposition you reviewed your declaration

17 three times. Is that right?

18 A. Yes. I read it three times.

19 Q. Do you know which declaration,

20 which version you reviewed these times?

21 A. Yeah. The wrong one.

22 Q. The earlier one, the February

23 one?

24 A. Yes.

25 Q. Okay. In preparation for today's

1 P. RATCLIFFE
2 deposition you reviewed email
3 correspondence; correct?
4 A. Yes.
5 Q. Which email correspondence was
6 that?
7 A. The original email from Jeff to
8 me and then my emails internally to my
9 patent attorney of record, because I was
10 asking them about the Leaning patent. And
11 then my email correspondence with Mike
12 Whybray and some of the emails with our
13 archives on the Voyager 2000 and a couple of
14 emails with Jamie Lynn which contained the
15 Mike Whybray responses to the questions I
16 had asked him.
17 Q. Are those the emails we were
18 discussing a moment ago, the four emails
19 that you sent Mr. Lynn?
20 A. No. I didn't review any of those
21 four emails, but they may be on a chain.
22 Q. So there are additional emails
23 other than the four that we spoke about
24 earlier today where you communicated with
25 Mr. Lynn at Baker Botts. Correct?

1 P. RATCLIFFE

2 A. Yes. As I said before, in order
3 to pass on the information from my
4 investigations and before the declaration
5 was drafted, I had communications with Jamie
6 Lynn of Baker Botts.
7 Q. Those emails contain information
8 from your investigation before the
9 declaration was drafted. Correct?
10 MR. GUY: Objection; form.
11 A. Yes.
12 Q. And you reviewed those emails
13 prior to -- strike that.
14 You reviewed those emails in
15 preparation of your deposition today;
16 correct?
17 MR. GUY: Objection; form.
18 A. I scanned them.
19 Q. If I asked you to forward me
20 those communications with Mr. Lynn, would
21 your response be the same as with respect to
22 the four emails we discussed earlier that
23 contain the drafts of your declaration?
24 A. Yes, it would be the same.
25 Q. Did you meet with any attorneys

from Baker Botts prior -- strike that.

Did you meet with any attorneys at Baker Botts in preparation for today's deposition?

A. No.

Q. Did you meet with anybody at BT in preparation for today's deposition?

A. No.

Q. Let's pull up Exhibit 2143. That is the declaration you signed on March 18, 2025. Do you have any objection to me referring to this declaration as opposed to -- well, strike that.

Let's pull up Exhibit 2143. I am going to ask you questions about Exhibit 2143, and if your answers would be different if I asked you with respect to your prior declaration, will you let me know?

A. Gosh. Yeah, let's give it a go. I am not sure I can -- well, let's try it. Let's see what it is you are trying to aim at.

Q. Okay. You testified earlier that

1 P. RATCLIFFE

2 an attorney at Baker Botts drafted, did the
3 initial draft of your declaration; correct?
4 MR. GUY: Objection to form.
5 A. Baker Botts did it. I don't know
6 who did it, but Baker Botts did it.
7 Q. And you testified that there were
8 versions that were swapped between yourself
9 and Baker Botts; correct?
10 A. Yes.
11 Q. Prior to signing Exhibit 2143,
12 how many times did you review the draft
13 cover to cover before signing it?
14 A. At least four times.
15 Q. As you sit here today, are you
16 aware of anything in Exhibit 2143 that needs
17 to be corrected?
18 A. No.
19 Q. Let's turn to paragraph 1 of
20 Exhibit 2143. Do you have it in front of
21 you?
22 A. Yes.
23 Q. In paragraph 1, you state that
24 you made this declaration based upon your
25 personal knowledge. Do you see that?

P. RATCLIFFE

A. Yes.

Q. What did you mean by "personal knowledge"?

A. That this was the information that I had gathered through my investigations.

Q. In the 22 years, or in the 20-plus years you have been a lawyer at British Telecom, have you ever heard of British Telecom referred to as a patent troll?

A. Never.

Q. Do you know what a patent troll is?

A. Yes.

Q. Is it fair to say that British Telecom has a significant patent licensing program?

A. Yes.

Q. Is it fair to say that British Telecom receives substantial revenue from its patent licensing program?

A. Received, past tense.

Q. Why do you make that

clarification?

A. Because we don't have many ongoing royalty bearing licenses.

Q. Got it.

As the leading director for intellectual property at British Telecom, are you able to tell me how large British Telecom's worldwide patent portfolio is?

A. Roughly, yes.

Q. How many?

A. About 5,200.

Q. If I represented to you that British Telecom claims on its website that it has a portfolio of around 5,400 patents and applications worldwide, would you disagree with that number?

A. No.

Q. Do you need me to show it to you or will you accept my representation that British Telecom on its website says it has around 5,400 patents and applications worldwide?

A. Just for the record, you are saying 5,400, I am saying 5,200. I will

accept the 5,400 that is on the BT website.

Q. Very good.

Can you tell me how many of British Telecom's 5,400 patents and applications British Telecom has commercialized or has commercialized on its behalf?

A. No.

Q. Are you able to ballpark it for me?

MR. GUY: Objection; form.

A. How many? Well, we've got a number of patent portfolio licenses, so if you want to count them as being licensing all the portfolio, then I could say all of them have been included in a license, or the majority of them, to other companies.

If you wanted to be more specific and say "named patent licenses," it would be too difficult for me to even ballpark it.

Q. I am making a distinction between "commercializing" and "licensing." Are those two terms the same to you?

A. Oh, maybe I misheard you then.

1 P. RATCLIFFE

2 So can you repeat your question?

3 Q. Sure.

4 Are you able to tell me how many

5 of British Telecom's 5,400 patents and

6 applications British Telecom has

7 commercialized or has had commercialized on

8 its behalf?

9 A. No, I couldn't. But that said,

10 as part of our patent box application to the

11 UK government, then we do include or we are

12 allowed to include our UK-granted patents

13 saying that we commercialized them as part

14 of our business.

15 But other than that, other than

16 for patent box purposes, then, no, I

17 couldn't tell you and I couldn't guess at

18 it.

19 Q. Is "patent box," is that a term

20 of art or a term that is in UK patent law,

21 or is there a corollary United States term?

22 A. It's -- it's a tax incentive from

23 the government that allows you to claim tax

24 credits in return for commercializing your

25 patents. And so, we can represent to the UK

1 P. RATCLIFFE

2 government that we have this many UK-granted
3 patents, and of those, roughly this
4 percentage is considered to be
5 commercialized by our business. So, that's
6 what it is. That is what "patent box" is.
7 Q. Are you saying that there are
8 patents that are part of the patent box that
9 aren't actually commercialized by British
10 Telecom?
11 A. There are patents that BT owns
12 that we could not claim to be included in
13 the calculation for tax credits that we can
14 include in patent box. We can only include
15 GB-granted patents and only those for which
16 we are comfortable representing to the
17 government that that invention is captured
18 somewhere in our business. And I am sure
19 there are patents that fall outside of that
20 net.
21 Q. So British Telecom hasn't
22 commercialized or had commercialized on its
23 behalf all 5,400 patents and applications in
24 its portfolio. Fair?
25 A. Probably fair.

1 P. RATCLIFFE

2 Q. Are you able to tell me if they
3 have commercialized more than half of the
4 applications or patents?
5 A. As I say, I couldn't even hazard
6 a guess.
7 Q. Less than half?
8 A. I refer to my previous answer. I
9 couldn't even hazard a guess.
10 Q. So fair to say, sitting here
11 today, you have no -- you have no clue how
12 many of the 5,400 patents or applications
13 British Telecom owns has been
14 commercialized; fair?
15 A. Other than patent box, yes. We
16 are -- you know, we are in licensing
17 negotiations with other companies to
18 commercialize some. You know, it's a very
19 difficult -- easy question to ask; very
20 difficult question to answer with any degree
21 of certainty. Hence, I am saying I couldn't
22 hazard a guess. I'd need more time to look
23 into that to give you an intelligent answer.
24 Q. What are some reasons British
25 Telecom might choose not to commercialize a

1 P. RATCLIFFE

2 patent in its portfolio?

3 MR. GUY: Object to form.

4 A. The patent may relate to a

5 technology that's not linked to our core

6 business, telecommunications. So, we could

7 decide we are not going to commercialize

8 that because it doesn't read onto what we

9 do. It might read onto medical devices, but

10 it doesn't read onto telecommunications

11 devices, for example. A whole host of

12 reasons as to why we wouldn't necessarily

13 follow that.

14 But you also have to understand

15 that we are not a manufacturer, as my

16 deposition makes clear. And what that means

17 is, when we patent, what we research, it's

18 not for the purpose of bringing that patent

19 through our business and out onto the

20 market, not like an Apple. They will patent

21 things that they are now going to make and

22 sell and badge and make a fortune on. We

23 are not Apple.

24 So, we'll patent in areas that

25 are interesting or that in the future may be

relevant to telecommunications, but they are not, at the time of the research, linked in any way, shape or form to a part of the business that is buying and selling products or services. So, the link between what we invent and what we make and sell is not always crystal clear.

Q. So it wouldn't surprise you if BT patented a technology and didn't commercialize it?

A. No, it wouldn't surprise me at all.

Q. And you testified a minute ago that there could be a whole host of reasons why BT would choose not to commercialize a patent. Is that right?

MR. GUY: Object to form.

A. Yes.

Q. Your answer was yes?

A. My answer was yes.

Q. Would you agree with me that one reason British Telecom might not commercialize a patent is that the technology is too new and there isn't a

1 P. RATCLIFFE

2 large enough market to justify

3 commercialization? Could that be a reason?

4 MR. GUY: Objection; form.

5 Q. The answer is yes?

6 A. Theoretically, it could be.

7 Q. It could be. Fair?

8 A. Theoretically.

9 Q. What do you mean by

10 "theoretically"?

11 A. The link between what we create

12 in research and what we sell, in order for

13 your hypothetical to be true, that link

14 would have to be clear. There would have to

15 be a link between what are you making and

16 now I am going to take it and I am going to

17 sell it.

18 I am saying, that link is not

19 always there, if it ever is. It is really

20 hard to get that link between research and

21 lines of business. So, it is not really

22 going to be common that BT would say I have

23 an invention, it's capable of being

24 commercialized if we were to have somebody,

25 including ourselves, put it into a product

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2 or a service, but it's just not ready yet in
3 the market to take that step; we couldn't
4 sell enough. It would cost us a million to
5 get it to that stage and we'd probably only
6 sell a hundred thousand for the next five
7 years.
8 I have never been in a room where
9 a BT salesman or woman has made that link
10 between our inventions and our products.
11 But that fact aside, in a classroom, then,
12 yes, that's a theoretical reason why one
13 would not commercialize the patent.
14 Q. I heard you say that is a
15 theoretical reason -- strike that.
16 Have you ever heard of the term
17 "blocking patent"?
18 A. Yes.
19 Q. A blocking patent is a patent
20 that a company may have patented simply to
21 block competitors from entering a space and
22 not to necessarily develop the technology.
23 Is that fair?
24 A. Yes. I have heard it used in
25 those terms.

1 P. RATCLIFFE

2 Q. Another reason British Telecom
3 might not commercialize a patent is that the
4 company may be using it as a blocking
5 patent. Agreed?
6 MR. GUY: Objection; form,
7 relevance.
8 A. Again, it's theoretically
9 possible, but I have never been in a room
10 where anybody in BT has made that type of
11 leap.
12 Q. Fair to say that another reason
13 British Telecom might not commercialize a
14 patent is that commercialization of a new
15 invention might undercut sales of an
16 existing profitable product? Agree with me
17 there?
18 MR. GUY: Same objection.
19 A. And the same answer. These are
20 all just theoretical. For BT, that's not
21 how we work. And so I have never been in a
22 room where that type of decision or even
23 conversation has been had. But, you know,
24 leaving aside the reality of what it's like
25 working in BT, if you are just sitting in a

classroom and you say to your students, "Who can think of ways and reasons why you wouldn't want to commercialize a patent," that is a legitimate way as to why you wouldn't want to commercialize a patent.

Q. Let's remove British Telecom. I think that is where we are getting hung up here. I think you are comparing my questions to specifically British Telecom. Let me reask the question in a different way, okay? I will start over.

One reason a technology company might not commercialize a patent is that the technology is too new and there isn't a large enough market to justify commercialization. Would you agree with that?

MR. GUY: Objection; relevance.

A. In theory, yeah. Sure.

Q. And another reason a technology company might not commercialize a patent is that the company may have patented the invention as a blocking patent. Agreed?

MR. GUY: Objection; relevance,

form.

A. In theory, yeah, sure.

Q. And another reason a technology company might not commercialize a patent is that commercializing a new invention might undercut sales of an existing profitable product. Agreed?

MR. GUY: Objection; relevance, form.

A. It's theoretical, but, you know, for a patent to be valid, it's got to be so in advance of what's available on the market that, you know, it's highly unlikely that what you are capable of getting a patent for is going to be capable of being put on the market in the next one, two or three years.

So, sure, you know, for the sake of argument, yes, that's a logical way as to why you wouldn't want to commercialize. But reality bites and you say, yeah, you are at least 10 years out if your patent is going to be worth anything, so who knows what the future is going to be in 10 years. I think that is the experience of IP.

1 P. RATCLIFFE

2 Q. I think you misunderstand my
3 question. My question was, another reason a
4 technology company might not commercialize a
5 patent is that commercializing a new product
6 might undercut sales of an existing
7 profitable product.
8 Is that how you understood my
9 question?
10 MR. GUY: Same objection.
11 A. I think you misunderstood my
12 answer.
13 Q. Okay. You will give me the same
14 answer?
15 A. Yeah.
16 Q. Okay.
17 Would you agree with me that
18 another reason a technology company might
19 not commercialize a patent is that it simply
20 might be too expensive to manufacture or
21 scale the product?
22 A. Sure. Yeah.
23 Q. Okay.
24 A. I suppose cost is going to be an
25 element.

1 P. RATCLIFFE

2 Q. Another reason a technology
3 company might not commercialize a patent is
4 that it might trigger lawsuits if similar IP
5 is held by a competitor. Agreed?
6 MR. GUY: Objection; relevance,
7 form.
8 A. Well, I am not sure about that.
9 That one, you know, no patent is going to be
10 the only patent in the product. Every
11 product is going to need licenses or need to
12 infringe lots of patents.
13 Take a mobile phone. Thousands
14 of patents are going to be infringed by
15 that. Just because we have one patent that
16 might be relevant to that phone doesn't
17 mean, say, we wouldn't invent the mobile
18 phone. We'd just say the cost of
19 manufacturing and selling is going to be
20 high because we have to take licenses in all
21 these other existing patents.
22 Q. Would you agree that another
23 reason a technology company might not
24 commercialize a patent is that it might not
25 align with the company's current strategies?

1 P. RATCLIFFE

2 MR. GUY: Same objection.

3 A. Yes, I would agree with that.

4 Yeah.

5 Q. You'd agree with me that there

6 are many reasons a technology company might

7 not commercialize a patent. Can we agree

8 there?

9 MR. GUY: Same objection.

10 A. Yes.

11 Q. Simply because a technology

12 company doesn't commercialize a patent

13 doesn't mean that the patent isn't valuable;

14 agreed?

15 MR. GUY: Same objections.

16 A. Agree.

17 Q. And specifically with respect to

18 British Telecom, simply because British

19 Telecom chooses not to commercialize a

20 patent doesn't mean that the patent isn't

21 valuable. Agree?

22 A. Agree.

23 Q. And simply because British

24 Telecom doesn't commercialize a patent

25 doesn't mean that the patent isn't

1 P. RATCLIFFE

2 innovative. Agree?

3 A. Agree.

4 Q. Do you understand that DISH's

5 patents are related -- well, strike that. I

6 think you answered it but I will ask again.

7 Do you have any understanding

8 whether DISH's patents are related to

9 adaptive bitrate streaming?

10 A. No.

11 Q. Do you have any understanding of

12 when DISH's patents were filed?

13 A. No.

14 Q. You joined British Telecom in

15 2003, correct?

16 A. Yes.

17 Q. And since the time you joined

18 British Telecom, you are not aware of any

19 other video product offered by British

20 Telecom except the Voyager 2000 product.

21 Correct?

22 MR. GUY: Objection. Form.

23 A. I think I've answered that one at

24 the start.

25 Q. The answer is yes, correct?

P. RATCLIFFE

MR. GUY: Same objection.

A. I can't recall any video product. I can't recall any. It would take me some time. I did mention the set-top boxes for BT TV but I can't recall any. I didn't prepare for that.

Q. Sitting here today, you can't recall any other video product other than the Voyager 2000 product and the set-top boxes related to video. Is that correct?

A. Yeah. Yeah. Correct.

Q. Do you know if British Telecom has ever taken a license to DISH's adaptive bitrate streaming patents?

A. No, we haven't.

Q. As the legal director for intellectual property at British Telecom, would you agree with me that British Telecom respects the intellectual property rights of others?

A. I would. I wrote that.

Q. What do you mean, you wrote that?

A. That's part of BT's group IPR policy. BT respects the intellectual

property rights of others.

Q. By "IPR policy," you are not referring to Inter Partes Review there. You are referring to the intellectual property rights; correct?

A. Correct.

Q. Is it fair to say the reason British Telecom hasn't taken a license to any of DISH's an adaptive bitrate streaming patents is because British Telecom hasn't commercialized any products covered by DISH's patents?

MR. GUY: Objection; form, foundation.

A. I suspect the reason is more to do with the fact that our manufacturers, if they needed a license in DISH's patents, would have taken a license. And then when we bought their kit and put it in our network, we'd have had the benefit of their license.

Q. Are you aware of any manufacturers in general -- I don't need specific names. But are you aware of any of

1 P. RATCLIFFE

2 your manufacturers that have taken a license
3 to DISH's adaptive bitrate streaming
4 patents?
5 A. I am not. If they are standard
6 essential, then yes, I can think of a couple
7 who properly have if they are standard
8 essential. If they are not, then, no, I
9 couldn't.
10 Q. Is it fair to say that if British
11 Telecom itself commercialized products that
12 are covered by DISH's patents, British
13 Telecom would take a license to DISH's
14 patents?
15 MR. GUY: Objection; form.
16 A. Well, we respect the IP of
17 others, so whether that respect necessarily
18 requires us to take a license, that's a leap
19 of faith. But we certainly respect the IP
20 of others.
21 Q. Would you turn to paragraph 3 of
22 your declaration?
23 A. I am there.
24 Q. Can you review paragraph 3 to
25 yourself and let me know when you are done?

1 P. RATCLIFFE

2 A. I am done.

3 Q. You refer to records and files

4 concerning intellectual property

5 commercialization and licensing. Do you see

6 that?

7 A. Yes.

8 Q. Did you -- strike that.

9 Did you, yourself, access those

10 files?

11 A. In the purpose of this

12 investigation?

13 Q. Let me reask.

14 Did you, yourself, access those

15 records and files during the course of

16 preparing your declaration?

17 A. Yes, I did.

18 Q. And what is contained in those

19 records and files?

20 A. Confidential information of BT.

21 Q. Related to what?

22 A. All manner of things.

23 Q. Where are the records and files

24 kept? Do you know?

25 A. The ones I reviewed are now all

1 P. RATCLIFFE

2 online.

3 Q. Are you referring to the BT

4 archive?

5 A. No.

6 Q. So you reviewed online records

7 and files -- strike that.

8 So the records and files you are

9 referring to in paragraph 3 are online

10 records and files; correct?

11 A. Yes.

12 Q. Who besides yourself has access

13 to them?

14 A. All of the IP team and all of the

15 patent attorneys.

16 Q. And when you searched the records

17 and files referenced in paragraph 3, what

18 was your search strategy?

19 A. Gosh. I was looking for

20 "Voyager," "Voyager 2000," keywords. I was

21 also looking at the Leaning patent and the

22 links that the Leaning patent record would

23 have had had we ever licensed it. And also

24 the attorney, patent attorney comments on

25 the patent had it been involved in any

trials at the time the invention was drafted.

Q. Did you do any keyword searches for things like video streaming or adaptive bitrate? Things of that nature?

A. No.

Q. And again, the reason you searched for Voyager 2000 is because that's the name of the product that Baker Botts provided you. Is that correct?

A. Yes.

Q. You did not search for any other specific product name; is that fair?

A. Yes.

Q. Turn to paragraph 4. Let me know when you get there.

A. I am there.

Q. So British Telecom is a network services provider. You mentioned that earlier. Is that correct?

A. Yes.

Q. And British Telecom is not a manufacturer, right?

A. Yes.

1 P. RATCLIFFE

2 Q. British Telecom must engage with
3 third parties if it wants to test, trial or
4 procure products or services; correct?
5 A. Other than the "must." BT does
6 engage with third parties when we want to
7 test, trial, procure products or services,
8 yes.
9 Q. Fair enough. British Telecom
10 engages with third parties if it wants to
11 commercialize products or services; correct?
12 A. Yes.
13 Q. British Telecom cannot
14 commercialize products on its own; is that
15 fair?
16 MR. GUY: Objection; form.
17 A. I am talking commercialize
18 here -- so, we have defined it here in this
19 paragraph. So when I am talking
20 commercialize, I am talking test, trial or
21 procure, right? As long as that's what
22 we're talking about, then yes, 99 percent of
23 the time BT will need a manufacturer or its
24 kit to help us test, trial or procure
25 products or services in our network.

1 P. RATCLIFFE

2 Sometimes it can be based solely
3 on BT's own software, but most of the time
4 it will be through those assistance with
5 third parties.
6 Q. What do you mean "sometimes it
7 can be based solely on BT's own software"?
8 A. We write millions of lines of
9 code in the business. You know, if the --
10 if the thing looking to be commercialized
11 takes the form only of our software and
12 doesn't need new hardware or anybody else's
13 hardware in order for it to function or test
14 or trial, then we can do that independently;
15 we don't need to talk with third parties.
16 But if we are talking about
17 commercialization, test, trial or procure,
18 then, generally speaking, we'll need to go
19 to a third party and ask them to help.
20 Q. Turn to paragraph 5 of your
21 declaration.
22 A. I am there.
23 Q. You state that British Telecom
24 has built an archive of records extensively
25 documenting its research, development,

1 P. RATCLIFFE

2 history and commercialization. Do you see
3 that?
4 A. I do.
5 Q. You state that this archive is
6 known as the "BT archives." Do you see
7 that?
8 A. I do.
9 Q. And the BT archives are a
10 different set of records and files than
11 those that you referred to in paragraph 3;
12 correct?
13 A. Correct.
14 Q. Is there a physical version of
15 the BT archives?
16 A. Yes. You --
17 Q. Like hard copy?
18 A. Well, you can go and visit the BT
19 archives. It's a physical place that exists
20 in Central London. And if you make an
21 appointment, you can go and visit it and
22 walk around it. But it also -- it is going
23 through a process of digitization, so moving
24 a lot of its records online.
25 Q. And when you searched the BT

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2 archives, were you searching the physical
3 archives, or were you searching the online
4 BT archive?
5 A. I didn't do the searching. I
6 contacted the BT archives people and I asked
7 them to search for me for Voyager 2000.
8 Ever heard of it? What is it? Got anything
9 in the archives that is called it? And
10 ultimately, do you have any of them?
11 So, it was more of, you know, a
12 shotgun approach. I didn't know what it
13 was, so I just reached out to them and asked
14 them for help through the archives as to
15 whether they had any records from Voyager
16 2000.
17 Q. So you reached out to the BT
18 archives and asked an employee of the BT
19 archives to do a search for Voyager 2000.
20 Is that correct?
21 A. Yeah. I asked a BT employee who
22 works in BT archives to look for me in the
23 archives for BT Voyager 2000.
24 Q. Do you know if that employee
25 looked in the physical BT archives or looked

in the online version of the archive?

A. I think they did both because I did ask whether we had a physical example, and they didn't have one. So I did ask. But -- so yeah, both.

Q. Just to be clear, you asked specifically for a search on Voyager 2000?

A. Correct.

Q. You did not ask the employee of the BT archive to run searches for terms such as adaptive bitrate or video streaming; correct?

A. Correct.

Q. And you don't know, sitting here today, whether the BT employee actually ran your search; correct?

A. Well, they gave me an answer. They gave me links, they gave me records that showed that BT Voyager 2000 was a thing back in the day, a box. Looked like a set-top box. So, they did the work if that's what you're asking.

Q. What is your understanding of what the Voyager 2000 product was?

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2 A. As I say, it looked to me more
3 like a set-top box, but I didn't investigate
4 it any more than that. I just got the
5 answer and shared it with Jamie Lynn at
6 Baker Botts to say, look, this product, we
7 have this. We have this link from the
8 Science Museum. You know, we just gave the
9 information.
10 I knew nothing more than what was
11 in that unsolicited email. I knew nothing
12 about this request is linked to video or ABR
13 or anything other than Voyager 2000.
14 Q. Did Baker Botts ask you to do any
15 research into other video streaming products
16 besides Voyager 2000?
17 A. They asked me around the Leaning
18 patent. Did we ever commercialize the
19 Leaning patent? That is where -- once I
20 gave them the answers to the Voyager 2000.
21 They then asked me around the Leaning
22 patent, had we ever commercialized it.
23 And it was way before my time and
24 nobody in BT was left; the inventors or the
25 research manager . And so I then reached

out to them.

Q. What is your understanding of what the Leaning patent is directed to?

A. Audio and video files on a server that are shared. So, sharing of audio and video files.

Q. What is that understanding based on?

A. A document that we produced back in 2017 which was a potential infringement read against another company.

Q. When you say you produced a document in 2017, what do you mean by that?

A. BT, lawyers acting on behalf of BT produced a document that we reviewed internally with regard to whether we wanted to assert it against another company. And one of the patents that were reviewed in that activity was the Leaning patent.

Q. Was that lawsuit ever filed against that other company?

A. No. That particular one, no.

Q. So you reviewed a document that was prepared by BT lawyers in 2017 --

1 P. RATCLIFFE

2 A. No. Outside lawyers.

3 Q. Okay. Understood.

4 So you reviewed a document that

5 was prepared by BT's outside lawyers in 2017

6 that reviewed whether BT wanted to assert

7 the Leaning patent against another company;

8 is that right?

9 A. Yes.

10 Q. Was that -- and I am not

11 interested in confidential information, but

12 was that document in the form of like a

13 claim chart?

14 A. Not really, no.

15 Q. Did that document describe the

16 Leaning patent?

17 A. Yes.

18 Q. Did you share that document with

19 Baker Botts?

20 A. No.

21 Q. Did you describe the contents of

22 that document with Baker Botts?

23 A. No.

24 Q. So your understanding of the

25 Leaning patent is based solely on that

document?

A. Yes. Well -- yes. The technical aspects of the Leaning patent, yes. Reading that document, I -- you know, what is Leaning? What is it about? Have we ever used it? And that document came up.

Q. Do you understand whether -- strike that.

Is the Leaning patent related to adaptive bitrate streaming in your view?

A. I -- I don't know. I am not a technical expert, so don't know. No idea.

Q. So your understanding of Leaning is limited to audio and video files on a server that are shared; correct?

A. Correct.

Q. Anything beyond that, the technical details or how the Leaning system operates, you have no understanding. Is that correct?

A. Correct.

Q. You have no understanding whether or not the Leaning system performs adaptive bitrate streaming?

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A. Correct.

Q. You mentioned that the BT archive is available online; correct?

A. It's going through a process of digitization, so yes. It is not fully available and it is not a complete archive, but it is starting to put more and more of its records online.

Q. Do you know how far in the process of digitization the online -- I guess my question is how complete is the BT online archive compared to the physical archive?

A. No idea.

Q. So searching the BT online archive could not necessarily give me the universe of information that's available concerning the Voyager 2000 product. Is that fair?

MR. GUY: Objection; form.

A. It probably wouldn't give you a complete history of what the BT archives facility has in its possession concerning the Voyager 2000. It doesn't have

1 P. RATCLIFFE

2 everything. It only keeps some things.
3 It's limited by space because it was more
4 physical than virtual. Now it is becoming
5 more virtual than physical. But if you were
6 to restrict yourself to searching online you
7 are likely to get half an answer.
8 Q. Did you, yourself, search the
9 online BT arrives in connection with
10 preparing your declaration?
11 A. No.
12 Q. Why not?
13 A. Because I got the experts at BT
14 archives to do it.
15 Q. In paragraph 5 of your
16 declaration, you don't mention that the
17 online version of the archive is not a
18 complete record of the archive, do you?
19 MR. GUY: Objection; form.
20 A. Let me read it.
21 (Pause.) So what is your question
22 again?
23 Q. My question is, you provide a
24 link to the online version of the BT archive
25 but you don't mention that the archive, the

1 P. RATCLIFFE

2 online version, might not be a complete
3 record of the documents that are available.
4 Correct?
5 A. Correct.
6 Q. Why not?
7 A. I didn't think it was relevant.
8 Q. You didn't think it was relevant
9 that when you provide a link to BT's
10 archives to inform the reader of your
11 declaration that that archive might not
12 contain all of BT's records?
13 A. Correct.
14 MR. GUY: Objection to form.
15 Q. Do you recall whether or not your
16 original drafts of this declaration
17 mentioned that the online version might not
18 be correct or complete?
19 A. I don't believe this has ever
20 been -- the archives has what the archives
21 has. The link provided is there just for
22 information purposes, not as to represent
23 the sole source of the information available
24 from the archives. So, I don't believe it's
25 ever been a concern for anybody as to

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2 whether paragraph 5 and the link provided in
3 paragraph 5 contains a history of absolutely
4 everything in BT or a history of absolutely
5 everything in BT archives.
6 So, I don't believe so.
7 Q. You didn't draft paragraph 5 of
8 your declaration in the first instance;
9 correct?
10 MR. GUY: Objection; form.
11 A. I don't recall.
12 MR. SHENG: I think now would be
13 a good time for a five-minute break.
14 Does that sound good to you,
15 Mr. Ratcliffe?
16 THE WITNESS: Perfect.
17 MR. SHENG: I am on a clock today
18 and I want to make sure I get through
19 all my questions. Can we say in five
20 minutes?
21 THE WITNESS: Okay.
22 MR. SHENG: Very good. See you
23 in five minutes.
24 THE VIDEOGRAPHER: Going off the
25 record, the time is 11:42.

1 P. RATCLIFFE
2 (Recess.)
3 THE VIDEOGRAPHER: Back on the
4 record. The time is 11:47.
5 BY MR. SHENG:
6 Q. Mr. Ratcliffe, let me ask you
7 real quickly, do you recall the name of the
8 employee you spoke with at the BT archive?
9 A. No.
10 Q. Do you see my screen here?
11 A. I do.
12 Q. Okay. I will represent to you
13 that this is the Leaning application that we
14 have been referring to or the Leaning
15 patent, I guess, we have been referring to.
16 Okay?
17 A. Okay.
18 Q. And I am just bringing this up to
19 show you the inventors. There is an Anthony
20 Leaning and there is a Richard Whiting. Do
21 you see that?
22 A. Yes.
23 Q. Okay. Do you know who Anthony
24 Leaning is?
25 A. Not personally, no, other than

1 P. RATCLIFFE

2 the inventor of that patent or one of them.

3 Q. Sorry?

4 A. One of them.

5 Q. Have you ever spoken to him?

6 A. I don't believe so.

7 Q. In connection with preparing your

8 declaration, did you try to reach out to

9 Mr. Leaning?

10 A. No.

11 Q. Why not?

12 A. I believe that Baker Botts had

13 already spoken with Anthony Leaning, and I

14 reached out to their boss, Mike Whybray,

15 because when I was investigating whether

16 anybody in BT had any knowledge of the

17 Leaning patent, the current-serving

18 researchers had no knowledge, they had no

19 contact details of any of the inventors, but

20 they did have a contact detail for

21 Richard -- for Mike Whybray. And so I

22 reached out to Mike and asked Mike what he

23 remembered.

24 Q. It's your understanding that

25 Baker Botts has spoken with Mr. Leaning; is

1 P. RATCLIFFE

2 that correct?

3 MR. GUY: Objection to form.

4 A. I believe so. Yes, I believe

5 that prior to contacting -- I think they got

6 BT's legal contact details from Anthony

7 Leaning. That's how they knew who to reach

8 out to in BT. Hence, they reached out to

9 Jeff Langlands eventually and then Jeff to

10 me.

11 Q. What is this understanding based

12 on?

13 A. An email correspondence. There

14 was an email correspondence, I think, in one

15 of Jamie Lynn's emails in to BT, one of his

16 original emails in to BT which showed a

17 correspondence, I think, between Baker

18 Botts -- I am pretty sure it was Anthony

19 Leaning rather than Richard Whiting, but it

20 was based on that. Email correspondence.

21 Q. Do you recall what that email

22 correspondence between Baker Botts and

23 Mr. Leaning said?

24 A. No.

25 Q. You have no recollection at all?

P. RATCLIFFE

A. I know it was to do with the patent, I know it was to do with whether it was commercialized. And I believe that Anthony was saying his recollection of it was that only the audio elements were ever -- were ever commercialized.

We are using that phrase repeatedly here, but, yes. In Anthony's vernacular, when he was part of the team, it was only the audio and not the video. But this is just from memory. Roughly, it was that type of correspondence between the two. And then they were asking, you know, who to contact, and he was apologizing that he doesn't give more details than the general who to contact in BT details that you get from looking at a website.

Q. Are you able to share that email, that correspondence with me right now on your screen?

A. No.

Q. Why not?

A. Well, part of a -- I refer to the previous answer. So, I don't know what else

1 P. RATCLIFFE

2 is in that email chain that I don't want you
3 to see. So right now, no. In the future,
4 maybe when you have gone to the mat and you
5 have come back with an answer.
6 Q. I just want to be clear on what
7 document we are talking about.
8 You are sitting here today. You
9 recall being sent correspondence between
10 Baker Botts and one of the inventors of the
11 Leaning patent. Is that correct?
12 MR. GUY: Objection; form.
13 A. Yes. I believe so, yes. Again,
14 this is an imperfect recollection, right?
15 So it is -- I don't want to say any more
16 specifics than that. So, I am not going to
17 represent anything more than the imperfect
18 recollection I have given you.
19 Q. And it is your recollection that
20 Mr. Leaning told Baker Botts that the audio
21 embodiment of his invention was
22 commercialized. Is that correct?
23 MR. GUY: Objection; form.
24 A. Yes. There was something in the
25 correspondence around audio. He was

1 P. RATCLIFFE

2 definitely saying video wasn't but audio was
3 part of some trials, because they were
4 working at the time for BT conferencing, and
5 then the project team that they were part
6 of, which Mike Whybray would have led, got
7 disbanded, as is often the case in BT. We
8 move people around all the time.
9 And from recollection, he was
10 explaining just what was happening at the
11 time of the disbanding around his, you know,
12 his invention. I read it, you know, months
13 ago, so rather than -- it wasn't one of the
14 emails that I read in preparation for
15 today's deposition.
16 Q. Do you recall whether the
17 correspondence between Baker Botts and
18 Mr. Leaning discussed adaptive bitrate
19 streaming?
20 A. I do not recall.
21 Q. Are you able to tell me
22 Mr. Leaning's email address? Would you feel
23 comfortable sharing that with me right now?
24 A. Definitely not, no.
25 Q. Why not?

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2 A. Confidential information. You
3 know, he -- get it from him if you want it
4 from him. I am sure he is not -- somehow
5 Baker Botts found him so I am sure you can.
6 Absolutely, no, I wouldn't be willing to
7 share. He didn't share it with me. It was
8 shared accidental with me through Baker
9 Botts. So, I wouldn't want to be sharing
10 that with anybody else.
11 Q. Did you consider speaking with
12 Mr. Leaning prior to preparing your
13 declaration?
14 A. I didn't. And maybe the fact of
15 the matter is I don't have his email.
16 Maybe -- I might have it. I am not sure
17 whether what I read included an email
18 address to him or not. It may have done, it
19 may not have done. It certainly didn't have
20 contact details. But --
21 Q. But if you wanted to speak with
22 Mr. Leaning prior to preparing your
23 declaration, could you have?
24 A. I am not sure. I am not sure
25 whether I could have because the only -- the

only -- and I don't know whether that was a -- I know they have already spoken to Leaning, so there is no need for me to speak to him anymore.

Remember, this is an unsolicited, can you help, rather than roll out the red carpet, BT is under attack, contact everybody and anybody. So I am not going to go to the ends of the earth on this unsolicited request.

But I did reach out to our currently serving researchers in the video field, and I asked them. And they gave me Mike Whybray's email address and I spoke to Mike. It wasn't -- you got to understand what I was trying to achieve through that unsolicited email request and answer. Nothing more than that. We are not under attack. As I said at the beginning so many hours ago, BT does not have a dog in this fight.

Q. Do you know what Mr. Leaning is doing today?

A. No.

1 P. RATCLIFFE

2 Q. Do you know if he is retired?

3 A. I hope so but I don't know.

4 Q. Does British Telecom have any

5 employee records of his still available?

6 A. No idea.

7 Q. What about Mr. Richard Whiting?

8 Did you ever speak with Mr. Whiting in

9 preparation --

10 A. No --

11 Q. - while preparing your

12 declaration?

13 A. No. And I believe -- no, I

14 didn't. One of them seemed to be

15 contactable, the other not, from

16 recollection. And certainly chatting to the

17 BT people who are current serving employees,

18 they didn't have contact details for either

19 of them, only for their boss.

20 Q. So you confirmed with folks at BT

21 whether or not BT had contact information

22 for both Mr. Leaning and Mr. Whiting;

23 correct?

24 A. Yes. Yeah. The request was more

25 around the patent, whether anybody had

relevant information on it or whether they knew of the inventors; yes.

Q. Do you know if Baker Botts ever spoke with Mr. Whiting?

A. I don't know.

Q. Do you know if Baker Botts asked Mr. Leaning to submit a declaration in these IPR's?

A. I don't know.

Q. Do you recall anything like that in the correspondence you saw between Baker Botts and Mr. Leaning?

A. No.

Q. Let's go to paragraph 9 of your declaration.

A. I am there.

Q. In paragraph 9 you state that you contacted serving researchers in British Telecom's R&D center. Do you see that?

A. I do.

Q. Are those folks different than the folks you reached out to at the BT archives?

A. They are.

1 P. RATCLIFFE

2 Q. What did you ask the serving
3 researchers in British Telecom's R&D center
4 to do?
5 A. Whether they had any contact
6 details for Leaning or Whiting or relevant
7 information around commercialization of
8 Voyager 2000. Yeah. It was a general, you
9 know, question based on the unsolicited
10 request that came in to BT from Jamie Lynn.
11 Q. And they provided you the manager
12 and team leader of the research team where
13 Mr. Leaning and Mr. Whiting worked, and his
14 name was Mike Whybray. Is that correct?
15 A. Yes. One of the researchers
16 replied saying they had contact details for
17 Mike, would I like them, and they provided
18 that and I reached out to Mike.
19 Q. And Mike has since retired from
20 British Telecom; is that correct?
21 A. Yeah, I believe so. We didn't --
22 it was an email correspondence, but I am
23 assuming that he is retired.
24 Q. And what did you ask Mr. Whybray,
25 Mike Whybray to do in connection with

1 P. RATCLIFFE

2 preparing your declaration?

3 A. Well, I was not preparing my

4 declaration when I was speaking to Mike

5 Whybray. I was just following up on an

6 unsolicited email coming in to BT.

7 Q. Sure.

8 A. So I was just asking Mike around

9 whether audio and video elements of the

10 Leaning patent were ever commercialized.

11 Q. I am going to skip ahead because

12 I want to make sure I provide Mr. Frenkel

13 time, and then I will come back if there is

14 time left over at the end. I have been

15 taking up quite a bit of it.

16 But I do have one more question I

17 would like to ask you about. Have you ever

18 heard of a product or service offered by

19 British Telecom called Fastnets?

20 A. Maybe. Not in any degree of

21 detail. It may be a term that popped up.

22 You know, "fast" and "nets" are words often

23 used in telecommunications so I could be

24 misremembering. Nothing specific jumps out.

25 Q. Sitting here today, do you have

1 P. RATCLIFFE

2 any understanding if Fastnets was even a
3 product that British Telecom commercialized?
4 A. Sitting here today, no. No idea.
5 Q. Sitting here today, if I were to
6 represent to you that there was a British
7 Telecom product called Fastnets, you
8 wouldn't be able to tell me what that
9 product is related to?
10 MR. GUY: Objection; foundation.
11 A. Correct.
12 Q. I am going to designate a
13 document as Ratcliffe Exhibit 1. I will
14 share it in the chat so that counsel can
15 download it. If you want to download it,
16 feel free. Otherwise, I can share it on my
17 screen. What would you prefer?
18 A. Share it on your screen.
19 Q. Okay.
20 MR. FRENKEL: Seems to be
21 downloading as something other than a
22 PDF for me.
23 MR. SHENG: I put a PDF in the
24 chat.
25 MR. FRENKEL: Oh, I see the

1 P. RATCLIFFE

2 problem. Never mind.

3 Hop, are you able to access it?

4 MR. GUY: I have it right now.

5 (So marked for identification as

6 Ratcliffe Exhibit 1.)

7 Q. Mr. Ratcliffe, do you see my

8 screen here?

9 A. I do.

10 Q. Give me a second.

11 Ratcliffe Exhibit 1 shown on the

12 screen is an article titled "Instant Video

13 Streaming." Do you see that?

14 A. I do.

15 Q. Have you ever seen this document

16 before sitting here today, do you recall?

17 A. I don't recall ever seeing this,

18 no.

19 Q. I am happy to scroll through it.

20 It is five pages long. I have some

21 preliminary questions first, okay?

22 Do you recognize the logo in the

23 top right corner to be a British Telecom

24 logo?

25 A. In 2007 it was, yes.

1 P. RATCLIFFE

2 Q. I am going to scroll to the last
3 page. The bottom right-hand corner has a
4 copyright symbol. Do you see that, or
5 copyright notice. Do you see that?
6 A. Yes.
7 Q. The copyright is registered to
8 British Telecom PLC. Do you see that?
9 A. Yes.
10 Q. There is an email listed there
11 "licensing@BT.com." Do you see that?
12 A. Yes.
13 Q. Are you familiar with that email
14 address?
15 A. No.
16 Q. Do you have any reason to dispute
17 that that is an email address that was used
18 at British Telecom?
19 A. No.
20 Q. Do you know what that email
21 address was used for or is being used for?
22 A. No idea what it is, so no.
23 Q. I will go back to the first page.
24 The top says, "Innovative research, BT
25 research and venturing." Do you see that?

1 P. RATCLIFFE

2 A. I do.

3 Q. Is that a group at British

4 Telecom, do you know?

5 A. It was. It was a research group,

6 so it is not a line of business. They deal

7 only with research -- oh, and venturing.

8 Q. And venturing you said?

9 A. Like in the title. So, their

10 role -- they were part of the business that

11 contained the researchers but also the

12 exploitation team that would be trying to

13 make money out of licensing BT's IP. So,

14 yes. This is not a -- if it came from

15 innovative research, or R&V as we call them,

16 then this is not a BT product; this is just

17 a research paper that talks about the

18 possibility of a product perhaps. But I

19 have never read it. But the source would

20 tell me that.

21 Q. Fair enough.

22 Do you have any reason to dispute

23 that this was published by British Telecom?

24 MR. GUY: Objection; foundation.

25 A. Well, I don't know where you got

it from, but certainly it looks to have been written by us. I don't know what we did with it or where we put it. But no, no reason to dispute it.

Q. Let's go to the first page. Do you see the date February 23, 2007?

A. Yes.

Q. This was after you joined British Telecom, correct?

A. Yes. I joined October 2003.

Q. And the title here, "Instant video streaming, video without the waiting," do you see that?

A. I do.

Q. I am going to scroll down to the second paragraph here.

The article says, "BT's patented Fastnets technology avoids both the delays and the effects of congestion, coupled with H.264 video technology, provides the fastest, highest quality streaming capability available."

Do you see that?

A. I do.

Q. Does that refresh your recollection at all as to what the Fastnets technology or product was?

A. No.

Q. Are you aware that BT had patented technology related to a Fastnets product?

A. I was probably aware that BT's got lots of patents that are in the video technology space.

Q. And in conducting all your searches in connection with preparing your declaration, you did not search for the product Fastnets; correct?

A. Correct.

Q. Do you have any reason to dispute what I just read from the second paragraph of Ratcliffe Exhibit 1?

A. No.

Q. Sitting here today, do you have any reason to dispute that British Telecom commercialized streaming technology that avoids both the delays and the effects of congestion?

1 P. RATCLIFFE
2 MR. GUY: Objection; foundation,
3 speculation.
4 MR. SHENG: You can limit your
5 objections to form, Hop.
6 A. Look, I don't know what Fastnets
7 was, but it looks like, you know, we had
8 something there that we were trying to sell,
9 and it had an audience and somebody put
10 together this pamphlet in order to extoll
11 the virtues of our R&V department.
12 Other than that, I have no idea
13 whether this is linked in any way, shape or
14 form to Leaning or certainly the Leaning
15 patents that we are talking about today,
16 so...
17 Q. Give me one second. I am going
18 to stop sharing for one second. I have to
19 pull something else.
20 Okay. Do you see the screen
21 again?
22 A. I do.
23 Q. You don't dispute that British
24 Telecom had what looks like something that
25 they were trying to sell and that had an

audience and somebody put together what is in Ratcliffe Exhibit 1; correct?

MR. GUY: Objection; form, speculation.

MR. SHENG: Hop, please limit your objections to form.

MR. GUY: I am entitled to a one-word objection.

MR. SHENG: And that word -- you had three words there.

MR. FRENKEL: Keep going.

MR. GUY: I said objection; speculation.

MR. SHENG: You can limit it to form, Hop.

MR. GUY: He has no foundation on this document and you keep asking him questions like he does, so I am going to make the objection.

MR. SHENG: And you should limit it to form.

Q. Go ahead, Mr. Ratcliffe.

A. I forgot the question. What is the question?

1 P. RATCLIFFE

2 MR. SHENG: That is actually what

3 Hop is trying to do with his objection.

4 Hop, please limit it to form, okay?

5 Q. You don't dispute that British

6 Telecom had what looks like something it was

7 trying to sell and had an audience and

8 someone put together what is in Ratcliffe

9 Exhibit 1; correct?

10 MR. GUY: Same objections.

11 A. Look, I can see what it says on

12 the screen. I don't doubt what it says on

13 the screen. I don't doubt that it came from

14 BT. That's it. What more do you want me to

15 say?

16 Q. Let's look at the third paragraph

17 of Ratcliffe Exhibit 1, page 1. I will read

18 it into the record.

19 "Fastnets is a high performance

20 network agnostic video streaming

21 architecture that eliminates some of the

22 worst problems of video streaming: Slow

23 start, picture freezing on network

24 congestion, and poor video quality. Use of

25 Fastnets can also potentially save

30 percent on peak bandwidth requirement."

Do you see that, Mr. Ratcliffe?

A. Yes.

Q. Sitting here today, do you have any reason to dispute that British Telecom commercialized streaming technology that eliminates some of the worst problems of video streaming: Slow start, picture freezing on network congestion and poor video quality?

MR. GUY: Objection; form.

A. I am sure somebody had that aspiration. You know, I wouldn't doubt it if Fastnets was a product and others in the company knew what it was and, you know, knew what it did. But sitting here today, as I mentioned so many hours ago, I can't recall any other video product that BT sold.

So looking at Fastnets' pamphlet does not suddenly trigger a Eureka moment in my head and say oh, yeah, I remember Fastnets now.

I am sure if I did a search and I had more time I could look more into it.

1 P. RATCLIFFE

2 But I haven't and I didn't and I don't know
3 what it is.
4 Q. And that is important. You did
5 not search for Fastnets in connection with
6 preparing your declaration; correct?
7 A. Correct.
8 Q. Okay. I have got one more
9 question for you for now. Key: One more
10 question for now.
11 A. You said that before.
12 Q. Did I? I am not sure if I did.
13 But let's go to page 2 of this
14 document.
15 A. Okay.
16 Q. And I want to go to the heading
17 that says, "How it works." Do you see that
18 heading, "How it works"?
19 A. I do.
20 Q. I will read the first sentence of
21 the first paragraph under that heading into
22 the record.
23 "The key feature of Fastnets is
24 the patented use of SP (switching) frames to
25 switch between multiple video streams

1 P. RATCLIFFE

2 encoded at different data rates."

3 Did I read that correctly?

4 A. Yeah. We pronounce it "day-ta,"

5 but yes, I will accept it.

6 Q. Sitting here today, do you have

7 any reason to dispute that British Telecom

8 commercialized streaming technology where a

9 key feature was the patented use of

10 switching frames between multiple video

11 streams encoded at different data rates?

12 MR. GUY: Object to form.

13 A. That was the aspiration of the

14 article so I don't doubt it. Somebody

15 somewhere must have had reason to write

16 those words.

17 MR. SHENG: Very good.

18 Mr. Ratcliffe, I have more questions for

19 you but I want to be respectful of

20 Mr. Frenkel and his client's time. Now

21 would probably be a good time for a

22 two-minute break if you need one. I

23 defer to you and also defer to

24 Mr. Frenkel. For now -- I want to

25 reserve my time to come back if we have

1 P. RATCLIFFE
2 more time. For now, I will hand you off
3 to Mr. Frenkel.
4 Thank you for your time.
5 MR. FRENKEL: I would like to go
6 off the record for two or three minutes
7 to get more organized and make it go
8 more efficiently if that is okay.
9 THE WITNESS: Sure.
10 MR. FRENKEL: Thank you.
11 THE VIDEOGRAPHER: Going off the
12 record, the time is 12:15.
13 (Recess.)
14 THE VIDEOGRAPHER: Back on the
15 record, the time is 12:18.
16 EXAMINATION BY
17 MR. FRENKEL:
18 Q. Good afternoon, Mr. Ratcliffe.
19 Mr. Sheng was asking you questions on behalf
20 of his client, Aylo, and I am asking you
21 questions on behalf of other IPR's for other
22 DISH patents on behalf of my clients, fuboTV
23 and MasterClass.
24 You have been a lawyer at BT
25 since 2003. Is that right?

A. Yes.

Q. And so earlier we looked at the Leaning patent application, which was filed in 2001. That was before your time, right?

A. Yes.

Q. As a lawyer at BT, one of the tasks that you are involved in is licensing patents?

A. Yes.

Q. And licensing patents often involve sending letters to other companies; right?

A. Assertion letters, you mean?

Q. Assertion letters; yes?

A. Yes.

Q. And sometimes when you send letters you mention specific patents; correct?

A. Yes.

Q. But there are other times when you refer to the BT portfolio in general. Is that right?

A. In assertion letters?

Q. Yes.

P. RATCLIFFE

A. Possibly, yes.

Q. And you have been involved -- first, BT has been a plaintiff in patent litigation in the United States; correct?

A. Yes.

Q. Is it fair to say it has sued over a dozen companies in the United States?

A. I think that's a bit high, but --

Q. Okay.

A. Not that many. We are not that litigious.

Q. Has BT sued Apple?

A. No.

Q. BT has licensed Apple, though; correct?

A. Yes.

Q. And BT has licensed Microsoft?

A. I am not sure.

Q. BT has sued Comcast though, right?

A. Yes.

Q. You were personally involved in that litigation, correct?

A. Yes.

1 P. RATCLIFFE

2 Q. Comcast is a company that you are
3 aware of that has streaming video, right?
4 A. Yes.
5 Q. And BT has sued Vimeo; is that
6 right?
7 A. We did, yes.
8 Q. In fact, that case is still going
9 on, correct?
10 A. Well, it's now reduced. It is
11 against IAC and match.com but not the Vimeo
12 element.
13 Q. I stand corrected. But Vimeo was
14 a defendant in that litigation at one point?
15 A. Yes.
16 Q. I am not going to ask you about
17 any specifics about any specific license
18 agreement because I understand you would
19 consider that to be BT confidential
20 information, right?
21 A. Yes.
22 Q. But is it fair to say that at
23 least some of your license agreements with
24 some of the licensees are portfolio
25 licenses?

1 P. RATCLIFFE

2 A. Patent portfolio licenses, yes.

3 Q. And those would necessarily

4 involve any issued patents; correct?

5 A. Yes. They would necessary

6 encumber issued patents. Yes.

7 Q. Mr. Sheng showed you a

8 declaration that he asked you questions

9 about, Exhibit 2143. I am just going to put

10 in the chat -- assuming I can figure out how

11 to do so -- one second.

12 (Pause.)

13 Q. I think Mr. Sheng didn't mark as

14 an exhibit for your declaration Exhibit 2143

15 but I would like to mark as Exhibit 2 --

16 hopefully this goes into the chat -- if you

17 could download that?

18 (So marked for identification as

19 Ratcliffe Exhibit 2.)

20 Q. Let me know when you have it.

21 A. I got it.

22 Q. Did you sign separate

23 declarations for the different IPR's, or did

24 you just sign one declaration and then it

25 was used for the different IPR's, if you

1 understand the question?
2 A. Yeah. I just signed the one. I
3 haven't seen this header page on the
4 declaration I signed.
5 Q. Okay. But other than the header
6 page, the rest of it, as far as you know, is
7 the same declaration you were just
8 testifying about with Mr. Sheng, right?
9 A. Yes, it looks to be. Yeah.
10 Q. Just for the record, Exhibit 2 is
11 what has been introduced by DISH in the IPR
12 as Exhibit 2143, and I am using the version
13 that is associated with IPR 2024-917. But
14 as you just testified, all your declarations
15 should be the same for all three
16 fubo/MasterClass cases and the Aylo case,
17 right?
18 A. I believe so, yes.
19 Q. Paragraph 6 of that
20 declaration -- we talked about this
21 earlier -- says you have reviewed
22 WO 0249343, which you refer to as the '343
23 Application, which is a patent application
24 filed by BT, right? And Mr. Sheng put that
25

1 P. RATCLIFFE

2 up on his screen before, right?

3 A. Yes.

4 MR. FRENKEL: I am just going to

5 introduce that as an exhibit for this

6 deposition, so let's -- it is uploading.

7 Exhibit 3, which should be

8 uploaded now, is what has been produced

9 in the IPR's as Exhibit 1004.

10 (So marked for identification as

11 Ratcliffe Exhibit 3.)

12 Q. Exhibit 3 here is the '343

13 Application you referred to in your

14 declaration; is that right?

15 A. Yes.

16 Q. Were you involved in the

17 prosecution, patent prosecution of this

18 application?

19 A. No.

20 Q. In fact, you don't do patent

21 prosecution at all, right?

22 A. Correct.

23 Q. Did you ever, as part of your

24 investigation in this case, you said you

25 looked into whether or not this exhibit,

1 P. RATCLIFFE

2 this '343 Application, had ever been
3 commercialized. That was your testimony,
4 right?
5 A. Yes.
6 Q. Did you ever look to see whether
7 this patent application resulted in an
8 issued patent?
9 A. No, not specifically. On our
10 records it shows as a cognate with another
11 patent. It shows -- both of those show up
12 as being, having patents -- well, they were
13 all dead except for Japan. But no, not
14 specifically. No.
15 Q. As a licensing attorney, you
16 would never go to another company and
17 threaten them with a patent application,
18 right? You would do it with an issued
19 patent; is that fair to say?
20 A. I wouldn't get far if I did it
21 with an application. But yeah, I wouldn't
22 want to, that's for sure.
23 Q. So without going into details,
24 you testified earlier that an outside law
25 firm had done an analysis of a Leaning

patent. Is it fair to say that they wouldn't have done it based on this application we are looking at here in Exhibit 3; they would have done it based on an issued patent, right?

A. Yes.

MR. FRENKEL: I am going to put into the chat what we are going to designate here as Exhibit 4 to the Ratcliffe declaration --

(Reporter clarification.)

MR. FRENKEL: -- the deposition.

(So marked for identification as Ratcliffe Exhibit 4.)

Q. Let me know when you are able to download Exhibit 4 and open it.

A. I got it.

Q. Exhibit 4, for the record, is European Patent EP 1342363 B1. Do you recognize this as being a patent with inventors Anthony Leaning and Richard Whiting?

A. Yes.

Q. If you look on the top of the

first page, in the right-hand column, do you see something about two lines down that says "International Application Number"?

A. Yes.

Q. It says PCT/GB 2001/005543?

A. Yes.

Q. And if you can turn back to Exhibit 3, on the left-hand column, do you see that to be the same international application number for what you called the '343 Application?

A. Yeah. The last digits are, yes. Obviously, it is GB 01 rather than GB 2001, but yes.

Q. Would you understand that Exhibit 4 would be a patent that issued from the Leaning application?

A. Yes.

Q. Do you see the title says, "Transmission and Reception of Audio and/or Video Material," right?

A. Yes.

Q. And when you are in discussions with potential licensees -- yes. Let me

1 P. RATCLIFFE

2 start that over.

3 When you are in discussions with

4 potential licensees, you are focusing on the

5 claims of the patent to determine whether

6 there is potential infringement, right?

7 A. Yes.

8 Q. If you could turn to page 15 of

9 the PDF and also has a 5 on the bottom of

10 the page --

11 A. Exhibit 3 or 4?

12 Q. Exhibit 4. Thank you.

13 A. Okay.

14 Q. In the fact, Claim 1 --

15 earlier -- I have this written down. You

16 said you understood that the Leaning patent

17 related to sharing audio and video files in

18 a server that are shared.

19 Do you remember that testimony?

20 A. Yes.

21 Q. But Claim 1 here, at least of

22 this EP patent, says "a terminal for playing

23 audio or video material," right?

24 A. Yes.

25 Q. I am not going to ask you to

interpret claims on the fly, but you understand saying "audio or video" is different than saying "audio and video"?

A. Yes.

Q. Did you ever look to see whether there was a U.S. patent that issued based on the same international application that we saw in Exhibit 3?

A. In preparing for this declaration?

Q. In preparing for the declaration, yes.

A. No.

MR. FRENKEL: Let me put in the chat Exhibit 5 here.

(So marked for identification as Ratcliffe Exhibit 5.)

A. Okay, I have got it.

Q. And this patent is U.S. Patent 7,447,791. Do you see that?

A. Yes.

Q. And the title is the same as what we have looked at in Exhibits 3 and 4 -- well, strike that.

1 P. RATCLIFFE

2 The title is -- yes, it is the
3 same as what we looked at in Exhibit 4,
4 anyway. "Transmission and Reception of
5 Audio and/or Video Material." Right?
6 A. Yes.
7 Q. The same two inventors, Anthony
8 Leaning and Richard Whiting; correct?
9 A. Yes.
10 Q. And the PCT number about halfway
11 down the left-hand column on the first page
12 is the same as the international application
13 number we saw in Exhibit 4 and Exhibit 3,
14 right?
15 A. Yes.
16 Q. And if you could turn to column
17 17 of the patent, which is where the claims
18 start?
19 A. I am there.
20 Q. And this also -- the claim there
21 relates to audio or video, right?
22 A. Yes.
23 Q. Do you know when the Leaning
24 patent that we are looking at in Exhibit 5
25 here expired?

P. RATCLIFFE

A. No.

Q. And you didn't look that up as part of your work for the declaration, right?

A. No, I don't believe so, other than I knew it was dead but I didn't look up when it died or how it died. No.

Q. Well, you referenced you knew it was dead. What did you know was dead?

A. That the Leaning patent was -- was no longer -- was no longer valid in the U.S. I think that's what -- because some of my investigations identified -- Leaning had lots of patents, didn't just have this one, or certainly had more than one. And so my searches for "Anthony Leaning patents" in my own files came up with, you know, false hits because he would have been involved in other inventions that may have been part of assertion activities, and he may have been involved in this invention.

And I believe one of them, one of the patents that he was the inventor for that we were looking at for assertions had a

1 P. RATCLIFFE

2 Japanese equivalent that was still alive,
3 and I wasn't sure whether that was giving me
4 a false positive or not.
5 But in any event, I came to the
6 view -- I didn't know that it was dead all
7 around the world. I believed it was no
8 longer alive in the U.S., and then I was
9 looking at had we ever asserted it, you
10 know, against companies and --
11 Q. When did you do this analysis
12 about possible assertion of the Leaning
13 patent?
14 A. As part of the prep for the
15 declaration, because I was concerned around
16 making statements that we have never
17 asserted it. I know we have never licensed
18 it as a named patent license, but I was
19 worried as to whether it was true that we
20 had never asserted it.
21 And I believe one of my original
22 versions, I had included a statement that we
23 hadn't asserted or licensed it, and I had to
24 correct that because I believe we did assert
25 it whilst it was alive. But for whatever

1 P. RATCLIFFE

2 reason, it never got all the way through to
3 licensing as a named patent.
4 Q. But when did you assert it when
5 it was alive?
6 A. I think -- I think that was Vimeo
7 in 2016.
8 Q. And were you looking at asserting
9 then a U.S. patent at that time?
10 A. Yes. We would have done. You
11 know, it would have been part of the pack.
12 I don't know -- I didn't get beyond that
13 because, again, this wasn't, you know, cover
14 all the bases, BT is under attack response.
15 You know, this was nothing to do
16 with BT; I was just trying to be helpful to
17 a law firm asking a question for help. So,
18 I just investigated whether -- you know,
19 what had we done with this particular
20 Leaning patent? Looking at our records, our
21 online records when it comes to licensing
22 and assertions, commercialization, as we
23 would call that. But yes.
24 Q. When you -- let's go back to your
25 Exhibit 2 that we were just looking at,

1 P. RATCLIFFE

2 which is your declaration?

3 A. Yes.

4 Q. It says here in paragraph 9,

5 "After reviewing the '343 Application, I

6 contacted current serving researchers in

7 BT's R&D center at Adastral Park. I

8 contacted the BT archives and I reviewed all

9 available records concerning BT's own

10 commercialization and licensing activities."

11 Do you see that?

12 A. Yes.

13 Q. One of those -- in order to --

14 sorry. Scratch that.

15 Did you provide the '343

16 Application to the current serving

17 researchers in Adastral Park?

18 A. No, I don't think so. Because I

19 went through the patent attorney of record,

20 the current patent attorney of record. It

21 wasn't Barry Lloyd, who was the chap who

22 drafted this.

23 But Chi Fi Lau is the current

24 patent attorney of record and he is the chap

25 who will have the contacts and video

researchers. So Chief will do all of our patent drafting for video. So I went through Chief to ask, what do we know about Leaning? What do we know about the patent? Anybody got any contact details for them? Because they are not on the directory, either of the inventors.

So I went through Chief, and Chief went through the current head of video and his team as to what they knew. But I didn't provide -- because there will be au fait with patents. If they needed to see a copy of it, they could have done. But it was more to do with the inventors and, you know, the productizing it, if you will, than the patent itself.

Q. For the court reporter's sake, can you spell Chi Fi Lau?

A. C-H-I, F-I, L-A-U. Three names, Chief, Fi, Lau.

Q. Do you know what head of video that Mr. Lau contacted?

A. Yes, yeah. Steve Appleby. He is the head of our research team in Adastral

Park.

Q. Do you know how that is spelled?

A. A-P-P-L-E-B-Y.

Q. Eventually, though, you -- okay. Is it Mr. Lau who then looked to see whether there were any commercialization activities in the Adastral Park records?

A. No, no. That's what I checked on our online files. Chief -- Chi Fi Lau; we call him Chief. Chief gave me the names or asked the questions of the researchers that I wanted ask around do we have contacts for the inventors? Do we know where they are? Can we speak to them?

They came back saying no, got no contacts for them but they do have a contact for their boss. That was it.

Q. You said you looked up Voyager 2000, right?

A. Yes.

Q. Did you look up any later iterations of Voyager 2000?

A. Not if it was called something else. It was that name that came in the

1 P. RATCLIFFE

2 email that was asked.

3 Q. And that was the email from

4 Mr. Lynn, right?

5 A. Yeah, in February 2025.

6 Q. So you didn't look up Voyager

7 2100, for example?

8 A. No.

9 Q. You didn't look up Voyager 2110?

10 A. I didn't look up anything other

11 than Voyager 2000.

12 Q. Were you aware that there was a

13 BT Voyager Digital Media Player?

14 A. No. I am not surprised, but I am

15 not aware.

16 Q. How about, have you ever heard of

17 something called a BT iPlayer?

18 A. No.

19 Q. There is a set-top box called

20 iPlayer. That is not something that you

21 looked at?

22 A. No.

23 Q. You just went on what Mr. Lynn

24 had told you?

25 A. Exactly.

1 P. RATCLIFFE

2 Q. Okay. So back to Exhibit 2. You
3 did speak to Mr. Mike Whybray, although,
4 speak -- you said you e-mailed with him.
5 Did you actually speak to him?
6 A. No. Just email.
7 Q. How many emails back and forth
8 were there?
9 A. Two.
10 Q. And you believe that he is
11 retired from BT?
12 A. Yeah, I believe so.
13 Q. Do you know when Mr. Whybray left
14 BT?
15 A. No.
16 Q. Do you know for a fact that
17 Anthony Leaning no longer works for BT?
18 A. Yes.
19 Q. How do you know that?
20 A. Because he is not in our
21 directory of current serving employees.
22 Q. Do you know when he left BT?
23 A. No.
24 Q. How about Richard Whiting? Do
25 you know when he left BT?

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2 A. No.

3 Q. All right. Then it says

4 Mr. Whybray, in paragraph 10 "informed me

5 that although the audio teachings of the

6 '343 Application were commercialized as part

7 of internal trials, the video teachings of

8 the '343 Application were never

9 commercialized."

10 Do you see that?

11 A. Yes.

12 Q. Did you ask Mr. Whybray how he

13 knew that audio teachings were

14 commercialized?

15 A. He was -- no, not in great

16 detail, because it was a very generic

17 question I was trying to give a generic

18 answer to, coming from Baker Botts.

19 But the answer seemed to be

20 around the BT conferencing team or the

21 alignment between the research and the BT

22 conferencing function that was occurring at

23 the time, and so they -- I believe, my

24 understanding of what Mike was saying was

25 because it was conferencing that they were

really working for, then the audio was seen as probably the priority implementation rather than the video. And this is just Mike telling me what he knew at the time when he was working in that team trying to do the things that they were doing.

Q. You didn't send him any -- did you send him a copy of the '343 Application?

A. I might have done. I can't remember. I might have done. I probably did because, you know, otherwise he'll have been thinking, "What the hell are you talking about?"

Q. Did you send him a copy of any articles from -- sorry. Scratch that.

This was from almost 25 years ago, right?

A. Yes, probably. Yeah.

Q. And you don't know how long he's been gone from BT?

A. I don't.

Q. So is it possible that something could have been commercialized after he left BT?

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A. Anything is possible.

Q. Okay. And you didn't send him any articles that he wrote from the time to refresh his recollection?

A. No.

Q. All right.

A. I didn't have any articles that he wrote from the time, so you are educating me if you tell me he's written all these documents.

As I say and have said repeatedly, this was a generic unsolicited email in that we were just trying to give a quick answer to and nothing more. So I am as shocked as you that I am here today doing this.

Q. No good deed goes unpunished.

A. Ain't that the truth.

Q. When you say here "commercialized as part of internal trials," what does that mean to you? That is part of your declaration in paragraph 10?

A. I am trying to distinguish between what some companies would consider

1 P. RATCLIFFE

2 commercialized meant and what it means in
3 BT, because we are not a manufacturer. When
4 we think of something being commercialized,
5 or when our researchers, more particularly,
6 think of something being commercialized,
7 they are talking about testing and trialing;
8 they are not talking about making and
9 selling.
10 And so I was trying to make that
11 clear distinction between what we meant when
12 we say -- yes, we were using it in Adastral
13 Park, even the audio elements, then it is
14 likely to be on a half-baked product which
15 is not from a Huawei or Cisco or whomever.
16 It is not always the case that it's going to
17 be ready to be rolled out in the production
18 world. It is just, does this thing do what
19 we think it does, you know, on paper? Can
20 we get it to perform in that way? It is a
21 very different scenario to what other
22 companies might mean when they think
23 commercialized. So, that is what I was
24 trying to distinguish.
25 Q. So commercialized as part of

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2 internal trials would include an effort that
3 were made by BT itself but not necessarily
4 by a third party working on behalf of BT.
5 Is that fair to say?
6 A. It could have been. It depends
7 what it was and what form it needed to take
8 in order to be tested. Like I said before,
9 if it was just our software, then we could
10 have done it all ourselves. But if this
11 thing needed somebody's hardware and then,
12 you know, the thing implemented in such a
13 way as to be encapsulated in a hardware or
14 firmware or whatever, then we would need a
15 third party to come in and help us achieve
16 that.
17 So, it is --
18 Q. Let me ask this a different way.
19 You were looking at BT's own records of what
20 it did as opposed to looking at third-party
21 records of what they may have done to test
22 BT's technology?
23 A. Correct.
24 Q. Okay?
25 A. But I didn't license any third

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2 party to test my technology. They could
3 have done it on our behalf or they could
4 have done it and infringed our IP and I
5 didn't know about it. But there is no
6 record that says BT licensed Huawei for
7 Huawei to test this kit.
8 Q. Again, BT had other products that
9 you didn't look at, right?
10 A. Yeah, absolutely. Yeah, yeah.
11 Absolutely.
12 So you agree that the Leaning EP
13 patent that we looked at in Exhibit 4 and
14 the Leaning U.S. patent we looked at in
15 Exhibit 5 were both licensed as part of
16 portfolio licenses.
17 MR. GUY: Objection; form.
18 A. 2004? Yes. They probably were.
19 But you need to understand that the
20 portfolio licenses that we struck were with
21 companies for them to infringe in their
22 products. So, it wasn't -- you know, it
23 wasn't with a "I make anything.com and I'll
24 infringe all your patents.com." It was
25 like, for instance, a Huawei. And if a

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2 Huawei made a video product and that video
3 product infringed this patent, then our
4 patent would have been included in that
5 portfolio license.
6 If they didn't make a video
7 product, then they wouldn't have benefited
8 from the license, hence the qualifier on my
9 belief as to whether it was included in
10 portfolio. It certainly wasn't excluded.
11 Q. Right. But you testified that
12 your portfolio licenses would generally
13 include all issued U.S. and EP patents,
14 right? At times, right?
15 A. I never said those words. They
16 are far too articulate for me. But as I
17 say, they would have included, in theory,
18 all of the patents in the portfolio. But as
19 I said before, to the extent that the
20 licensee infringes them in its products that
21 it sells and makes and uses rather than
22 anybody that touches its products is now
23 benefiting from a license in BT's patents.
24 So in theory, it's included. But
25 in practice, you'd have to look at the

1 P. RATCLIFFE

2 licensee and see whether they are actually
3 infringing that patent.
4 Does that make sense?
5 Q. Did you -- sorry to interrupt.
6 A. I was asking, does that answer
7 make sense to you?
8 Q. Sorry. Yes.
9 Did you look at all patent
10 licenses that BT has entered into as part of
11 your preparation for this declaration in
12 Exhibit 2?
13 A. I looked at the records on which
14 we record patent licenses, and we are
15 required on those records to identify
16 patents that are named in the patent
17 license. So, looking through those records,
18 which is an online search, I could confirm
19 that there were no hits for any license for
20 any of the 826097 or 826165 cognate, which
21 is our internal records for this Leaning
22 patent.
23 There were no hits there. I
24 couldn't find any license that specifically
25 called it out. I know, because I drafted

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2 them, I know the portfolio licenses would,
3 in theory, capture them. But I couldn't
4 find any other license with a link to 826097
5 or 826165.
6 Q. What that means is you looked to
7 see whether they were named patents but you
8 didn't look at the definitions of BT patents
9 in each of these licenses to see whether
10 they would have been included. Is that
11 right?
12 A. No, that's not right.
13 Q. How did I get that wrong?
14 A. The definitions of BT's patents
15 has nothing to do with anything, so forget
16 that. Whether this particular U.S. '791 is
17 included in any of BT's portfolio licenses,
18 then you'd say the assumption is yes,
19 because it was a valid BT patent at the time
20 the portfolio license was signed. But the
21 licensee, the beneficiary, needs to be
22 making products that infringe this patent in
23 order to benefit from that license.
24 So assume it's in but only if the
25 licensed products require the license.

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2 Q. And you didn't do the analysis on
3 a license-by-license basis to see whether
4 any particular licensee was making products
5 that would have violated the Leaning
6 cognate?
7 A. Yeah. I didn't do that because
8 this wasn't a BT assertion; this was BT
9 answering an unsolicited email.
10 Q. Let me shift gears. Mr. Sheng
11 put in front of you Exhibit 1, which related
12 to something called BT Fastnets. Do you
13 remember that?
14 A. Mm-hmm.
15 Q. And I think you testified that
16 you didn't do any searching relating to
17 Fastnets as part of preparation for the
18 declaration; is that right?
19 A. Correct.
20 MR. FRENKEL: I will put in front
21 of you what I will call Exhibit 6 here.
22 (So marked for identification as
23 Ratcliffe Exhibit 6.)
24 Q. Let me know when you have that
25 up.

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2 A. Okay.

3 MR. FRENKEL: For the record,

4 Exhibit 6 is an article called "Mobile

5 Video-Streaming." It looks like, in the

6 lower left-hand corner, it is in

7 something called the BT Technology

8 Journal, Volume 21, Number 3, from

9 July 2003.

10 Q. Do you see that?

11 A. I do.

12 Q. What is the BT Technology

13 Journal?

14 A. It is an internal document that

15 our researchers publish papers in.

16 Q. Is this something that was

17 searched as part of preparation for your

18 declaration by anybody?

19 A. No.

20 Q. Do you see -- I am not going to

21 go through the whole paper, but right below

22 the authors -- let me go through the authors

23 first. Strike that.

24 The full names of the authors are

25 on the back page. So if you can turn to the

last page, one of the authors is Matthew Walker. Do you know him at all?

A. No.

Q. How about Mike Nilsson, N-I-L-S-S-O-N?

A. I know of Mike. Mike is the chap who gave me Mike Whybray's email address.

Q. How did you connect with Mike Nilsson?

A. Through Chief. So, Mike works for Steve Appleby.

Q. So Chief -- which is Mr. Lau, right?

A. Yes, Mr. Lau.

Q. He put you in touch with Mike Nilsson --

A. No. Chief asked the questions that I wanted the researchers to answer, around Leaning and Whiting and Voyager 2000. And Mike came back, via Chief, to say I have got an email address for Mike Whybray, do you want it? And I said yes, please. And he came back and gave me Mike's email address. That was it.

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2 Q. It says Mike Nilsson, on this
3 description here, it says, "He is a
4 chartered engineer currently working in the
5 advanced video services team within BT Exact
6 at Adastral Park."
7 Let me stop there. What is BT
8 Exact?
9 A. It is an old name for a part of
10 BT which has taken many guises, including
11 research and venturing. So it is just an
12 internal name of a part of the business
13 that, back in 2003, had things to do with
14 research. But it is part of the BT group of
15 companies. I don't even think it is a
16 separate company. It is just a name of a
17 department within the company.
18 Q. Is this the department that Mike
19 Whybray worked for?
20 A. Don't know. See, Mike worked in
21 conferencing. I don't know whether
22 conferencing was in BT Exact or whether
23 conferencing was in another part of BT. So,
24 back in 2003, no idea.
25 Q. How about Anthony Leaning? Do

1 P. RATCLIFFE

2 you know if he worked at BT Exact?

3 A. Don't know. No idea. Probably,

4 but I don't know.

5 Q. It says here, about Nilsson, "He

6 represents BT in the ITU-T where he is the

7 editor of recommendation H.245."

8 Do you understand that is

9 referring to a standards body?

10 A. Yes.

11 Q. And do you know what H.245 is or

12 what?

13 A. I don't know what H.245 is. No

14 idea.

15 Q. In any case, this mobile

16 video-streaming article is not something

17 that you sent to Mike Whybray as part of

18 your discussion with him?

19 A. No. I didn't even know this

20 article existed until you put it up to me.

21 Q. You testified earlier that you

22 were familiar with adaptive bitrate

23 streaming, right?

24 A. ABR. I have heard of it, yes. I

25 don't think I impressed Philip with my

1 P. RATCLIFFE

2 explanation, but I have heard of ABR.

3 Q. If you can just turn to page 6 of

4 the PDF, which has 197 in the lower

5 right-hand corner.

6 A. Page 6?

7 Q. Yes.

8 A. Where are the page numbers?

9 Q. Just turn to the page with 197 in

10 the lower right-hand corner.

11 A. Got you.

12 Q. Do you see it is referring to

13 Fastnets in Section 4?

14 A. I do, yes.

15 Q. It says, "The section provides an

16 overview of the Fastnets system developed by

17 BT," right?

18 A. Yes.

19 Q. It says, "Fastnets is a

20 multimedia streaming system designed to

21 overcome the characteristics of IP

22 networks," right?

23 A. Yes.

24 Q. Under 4.2, "Key technology

25 components," if you look at the fifth bullet

1 P. RATCLIFFE

2 down, do you see it says "uses bit-rate
3 switching for adaptation-efficient and
4 effective"?
5 A. Yes.
6 Q. You didn't ask Mike Whybray about
7 this in determining whether the Leaning
8 patent was commercialized in the video
9 space?
10 A. No.
11 Q. Okay.
12 A. No, I didn't. Nobody mentioned
13 ABR at all until today when it came to this.
14 So, I have no idea the ABR link. They
15 merely spoke about Voyager 2000, which I
16 looked for, and they spoke about the Leaning
17 and Whiting patent, which I asked about the
18 inventors and I got the name of the guy who
19 led the team. That was it.
20 Q. Okay. And then if you look at
21 the -- just back to the last page and
22 finishing off the other inventors --
23 MR. GUY: Sorry. The last page
24 of Exhibit 6? Is that where you are?
25 MR. FRENKEL: Yes. Sorry. Let

me rephrase.

Q. On the last page of Exhibit 6, back to where it has the pictures of the four authors of this article.

A. Yes.

Q. The third author is Tim Jebb, J-E-B-B. Have you ever met him?

A. No.

Q. Have you ever run into him as part of your licensing practice?

A. No. No. The only one there I know is Mike. Maybe Rory. I have probably come across Rory on calls. So I think Rory is still around. But Mike Nilsson and Rory -- the other two, Matt Walker and Tim Jebb, they don't spring a memory in me.

Q. By Rory, you mean Rory Turnbull, yes?

A. Yes.

Q. Do you see that Mr. Nilsson also had a paper with Mr. Whybray? If you look at Reference 12, just to the left of these pictures?

A. With Kasai H, Nilsson M, Jebb T,

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2 Whybray M.

3 Q. With Jebb, too?

4 A. Yes.

5 Q. Did you look at that paper at

6 all?

7 A. No.

8 Q. Let's look at that one real

9 quick.

10 A. Okay, but I haven't looked at it.

11 MR. FRENKEL: I am loading it

12 into the chat.

13 (So marked for identification as

14 Ratcliffe Exhibit 7.)

15 A. Exhibit 7?

16 Q. Yes, if you can open that.

17 A. Got it.

18 Q. Exhibit 7, for the record, is

19 titled, "The Development of a Multimedia

20 Transcoding System for Mobile Access to

21 Video Conferencing"?

22 A. Yes.

23 Q. This is in a paper that looks

24 like it says, "Special issue on Mobile

25 Multimedia Communications" in some journal

1 P. RATCLIFFE

2 called the IEICE Trans-something

3 Communications. Do you see that?

4 A. Yes.

5 Q. This is dated in October 2002,

6 right?

7 A. Yes.

8 Q. Does this appear to be the paper

9 that is being cited in Reference 12 in

10 Exhibit 6?

11 A. Yes.

12 Q. Anyway, looking at Exhibit 7 and

13 turning to the last page, you see there is a

14 picture of Mike Whybray?

15 A. Yes.

16 Q. From 2002?

17 A. I don't know when the picture is

18 from, but it is in that 2002 article.

19 Q. The second-to-last sentence says,

20 "He currently leads a team at BT Exact

21 Technologies developing video coding and

22 multimedia streaming applications"?

23 A. Yes.

24 Q. Does this refresh your

25 recollection as to whether Mr. Whybray was

1 part of BT Exact?
2 A. No. I never knew whether he was
3 or not. I don't doubt it because it's a
4 part of the business where researchers often
5 sit. BT Exact. We have called it TSO. We
6 have called it many different things.
7 Research and venturing. It changes its
8 name. Today it is called Networks or --
9 Q. Just to close this out, you
10 didn't show Mr. Whybray this article to try
11 to refresh his recollection as to whether
12 they were trying to commercialize the
13 Leaning application in the video space?
14 A. I didn't. But, you know -- and
15 again, two emails. There was nothing to
16 suggest he was having a hard time
17 remembering or to suggest that his memory
18 would be improved if only I could locate a
19 paper he had written with Mike Nilsson back
20 in the day.
21 Q. Okay.
22 A. But I didn't know that this
23 existed. You know, great it does, because
24 if anything, it just makes what he said more
25

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2 believable rather than he forgot.

3 MR. FRENKEL: We are about

4 24 minutes before the scheduled end of

5 this deposition, so what I would like to

6 do is go off the record for about three

7 or four minutes, look at my notes and

8 make sure there is nothing else.

9 THE WITNESS: Okay. I will have

10 a comfort break and come back on.

11 MR. FRENKEL: Sounds good.

12 THE VIDEOGRAPHER: Going off the

13 record, the time is 1:07.

14 (Recess.)

15 THE VIDEOGRAPHER: Back on the

16 record, the time is 1:13.

17 MR. FRENKEL: Since Mr. Sheng let

18 me have that time, I am going to finish

19 my questions now and let him finish up

20 since I asked to go to make sure I got

21 all my questions in.

22 Thank you for your time. I will

23 turn it back over to Mr. Sheng.

24 FURTHER EXAMINATION BY

25 MR. SHENG:

1 P. RATCLIFFE

2 Q. Mr. Ratcliffe, I only have a few
3 more questions for you. Could you turn to
4 paragraph 10 of your Exhibit 2143 or your
5 declaration? Whichever copy you want to
6 refer to will work for my line of questions.
7 A. Okay. I have it in front of me.
8 Q. In paragraph 10 you state that
9 Mr. Whybray informed you that the audio
10 teachings of the '343 Application were
11 commercialized as part of internal trials.
12 Do you see that?
13 A. Yes.
14 Q. And I believe Mr. Frenkel asked
15 you something similar but I am still a
16 little bit confused as to what you meant
17 here by "internal trials."
18 A. That it was a trial done by our
19 researchers rather than, as far as I am
20 aware, a trial done by our line of business
21 with real customers on the end of it.
22 So, it was part of the BT
23 conferencing testing, if you will, testing
24 and trialing rather than commercial trials.
25 That was my understanding of what Mike was

saying occurred for that patent when he was head of that team.

Q. And you state here that the video teachings -- according to Mr. Whybray, the video teachings of the '343 Application were not commercialized. Correct?

A. Yeah. That is what he said.

Q. And the video teachings of the '343 Application, when you say that they were not commercialized, are you referring specifically to internal trials only?

A. No. Just generally. You know, Mike was answering on whether they were commercialized. And as a researcher, commercialized, to him, will mean putting into practice in order to test it, trial it in research rather than selling it to a customer.

And he was able to confirm that as part of BT conferencing, because that is you who was paying for the research, they were focusing on the audio side of things. So it was my understanding that they were working with third parties in order to test

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2 the audio side of things. But because it
3 was BT conferencing, which is audio, not
4 video at the time, there was no appetite or
5 funding or opportunity to commercialize, if
6 you will, the video side of things at that
7 time.
8 Q. So you believe that the reason
9 the video -- I am sorry. Give me one
10 second.
11 You believe the video teachings
12 of the '343 Application were not
13 commercialized because of funding? Fair?
14 A. Well --
15 MR. GUY: Objection; form.
16 A. That -- they weren't the words
17 from Mike. Mike's words were, "We were
18 working for conferencing. Audio was the
19 priority. We commercialized audio --" or
20 his recollection was we commercialized
21 audio, which I believed meant trials --
22 because they are researchers -- trials for
23 putting it into practice with third parties.
24 Not necessarily, but probably.
25 And why the video is probably --

he was just saying not video. We were working for conferencing; that was it. And I am drawing the dots and saying, well, that is probably because conferencing at that time was focusing on audio and didn't have the time and probably not the budget for the video in that particular team.

But that's me joining the dots, not Mike attesting to that.

Q. So Mike never explained to you why BT did not commercialize the video teachings; correct?

A. Correct. He never explained.

Q. We can agree at least that BT commercialized the audio teachings, correct, of the '343 Application? Correct?

A. That's what Mike said, yes.

Q. In that same paragraph, I recall earlier you testified that one of the original drafts of your declaration said that the '343 Application had never been asserted against anybody. And you testified something along the lines of that you had to correct the draft.

1 P. RATCLIFFE
2 Do you remember that testimony?
3 A. I do.
4 Q. Okay. So I want to understand
5 what happened. So, Baker Botts, they
6 prepared your draft declaration in the first
7 instance; correct?
8 A. Yes.
9 MR. GUY: Objection; form.
10 Q. They put it together for you and
11 they presented you a draft for your
12 signature. Correct?
13 A. Correct.
14 Q. And you went through each
15 paragraph and you noted things that weren't
16 accurate that needed to be corrected. Is
17 that fair?
18 A. Yes.
19 Q. And you noted things that needed
20 to be deleted because you thought they were
21 inaccurate; fair?
22 MR. GUY: Objection; form.
23 A. Yes, but on that one, on the
24 assertion point, I added it and then I took
25 it away. So this was not something from --

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2 Baker Botts didn't say, "You never asserted
3 it" and I am saying, "Ah, we did."
4 This was me saying, "We never
5 asserted it or licensed it" and then in a
6 later draft saying, "Actually, I think we
7 did assert this one. I want to take that
8 word out."
9 Q. That makes sense.
10 So, do you recall what edits in
11 paragraph 10 that you made other than the
12 assertion point that you just mentioned?
13 A. No. That was the bit that kept
14 me up at night because I remember waking up
15 at 3 a.m. thinking. "Shoot. Let me check
16 again on this."
17 I have heard of Leaning. As I
18 said before, he has other patents, so not
19 just this one -- other video patents, not
20 just this one. But I have heard of him and
21 I was trying to join the dots as to where
22 I've heard of him and whether, when I heard
23 of him, in assertion -- which is my world --
24 it's this patent or another one.
25 But I don't recall what other

edits. The assertion one was the one that kept me up. The other ones I can't remember, but certainly there were others in that paragraph.

Q. So you had heard of Anthony Leaning in your time at British Telecom outside of this declaration, outside of these IPRs. Correct?

A. Yeah, yeah. When we talk about patents in BT, we often refer to them by the first inventor surname.

Q. Were you -- sorry. I cut you off there. Were you done?

A. Yes, I am done.

Q. Is it fair to say Mr. Leaning was a well-known inventor at British Telecom?

MR. GUY: Objection; form.

A. Not particularly, but he was -- he had come across my desk. Beyond my desk, I don't know. You know, whether Mike Nilsson would say he was plurific? I don't know. We have had many brilliant inventors at BT. I am not sure whether Anthony makes the top ten. But certainly, Leaning patents

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2 have crossed my desk, which is the assertion
3 desk when I wear that hat.
4 Q. Is it possible that Mr. Leaning
5 is within the top ten of your list of
6 prolific inventors at BT?
7 A. Why not? He is certainly ahead
8 of Ratcliffe.
9 Q. I sense some jest in that answer
10 of yours. But a serious question: Do you
11 consider Mr. Leaning a prolific inventor at
12 BT?
13 A. No, I don't --
14 MR. GUY: Objection to form.
15 A. I don't consider him prolific. I
16 do know there are other Leaning patents and
17 I do know that Leaning is a name that's
18 crossed my desk in the past, which caused me
19 to look and look and look again,
20 particularly on the assertion one.
21 I knew the answer on the
22 licensing one, but the assertion one is more
23 difficult to be -- to be accurate on because
24 we don't record every assertion. We will
25 record every license we grant, but we won't

1 necessarily record every assertion or,
2 indeed, every patent that we include in an
3 assertion. Very difficult to identify
4 those. But I have heard of him.
5 Q. You mentioned litigation that BT
6 pursued against Vimeo earlier. Do you
7 remember that?
8 A. I do.
9 Q. Was Vimeo one of the companies
10 that the Leaning patents were asserted
11 against?
12 A. I think so. Back in 2016, IAC
13 struck Vimeo. I believe the Leaning and
14 Whiting patent was included at some stage in
15 that assertion.
16 Q. What did you mean by -- you said
17 IAC struck Vimeo? What were you referring
18 to there?
19 A. Vimeo is owned by a company
20 called IAC.
21 Q. I see. So, BT sued Vimeo, which
22 was owned by IAC at the time; correct?
23 A. Yes.
24 Q. Do you recall what the subject
25

matter of that litigation was?

A. It was multifaceted. It is still ongoing. So, there were several patents. We are still going off the Match.com with their dating app, and we go to trial in October for that one.

But for the Vimeo portion of the assertion, it was the video product that we were asserting against. But ultimately, I believe memory -- this was 2016, and I think we dropped the litigation pretty early on. And I think we dropped it because they just weren't practicing the invention, I think, rather than it was some kind of IPR that knocked it out.

So, yeah, I think so. But again, that is an imperfect recollection on the spot.

Q. Am I correct, though, that BT asserted the Leaning patent against Vimeo's video product?

A. I believe so, yes. Yeah, yeah. That's why we would have used Leaning in this particular one. I believe so. And

that's why that caused me to take out, that and the other company that we were considering asserting against. I am not sure how far down the line we got, whether we actually issued letters or we didn't, which is where I got my recollection of do you know what the Leaning, you know, patent is about with the audio and video. And/or, or whatever.

So, it was that document. But I believe so. I believe it was the video service of Vimeo -- because that is all it does, all it did. It had a video-streaming product and we were asserting at least this one.

Q. BT did not limit the Leaning patent to Vimeo's audio; correct?

A. I don't recall the specifics. I really don't. I just remember the patent itself was included certainly at some stage in the pack, which caused me to edit.

But again, this is me just answering an unsolicited email. I have done no more investigation into it because I have

not known what's behind the curtain.

Q. You testified a minute ago that the reason you made that change about the assertions is you said something along the lines of it keeping you up at night. Do you remember something like that?

A. I do.

Q. Was there any other edits that you made with respect to any portions of your original drafts -- of the original drafts that kept you up?

A. To be honest, the whole thing. I was -- it was, "Would you mind putting together a short declaration? We can draft it for you and that will be the end of it --" at least that was my takeaway -- to, "Sure, I can help, I will do that." And then you sign it and then suddenly you need to be deposed and it is going to take three and a half hours and "where the hell did this come" from curve ball.

So, that bit kept me up as to what have I got myself into here? Was it no good deed goes unpunished, I think our

1 P. RATCLIFFE
2 colleague just said?
3 Other than that, nothing
4 specific. There is nothing in my
5 declaration other than that assertion point
6 where I thought I am just not sure about
7 that.
8 Q. So at the time you signed your
9 declaration, you were not aware you would
10 have to sit for a deposition. Is that fair?
11 A. Correct.
12 MR. SHENG: I would love to go
13 through paragraph by paragraph of your
14 declaration and ask you specifically if
15 you recall what edits were made to each
16 one, but I recognize that we are three
17 minutes shy of the end time that we
18 promised you.
19 I do want to just make clear that
20 we reserve our objection or our right to
21 pursue the drafts and the
22 correspondence. Mr. Ratcliffe, that
23 fight will not involve you; I don't
24 think it will involve you. That is
25 something we can take up with Baker

1 P. RATCLIFFE

2 Botts.

3 Thank you for your time. I am

4 sorry that -- it seems clear to me at

5 least -- that you feel you have been

6 dragged into something that you weren't

7 expecting, that it sort of turned into

8 something that is a little stressful for

9 you. So, I apologize for that. I thank

10 you for your time.

11 I will pass the witness and

12 Mr. Guy might have some questions for

13 you.

14 MR. GUY: First of all,

15 Mr. Ratcliffe, I want to thank you for

16 your time. I really appreciate your

17 participation. I hope you will continue

18 to feel that you can respond to

19 unsolicited emails without too much fear

20 in the future.

21 I certainly do not have three and

22 a half hours of questioning for you.

23 EXAMINATION BY

24 MR. GUY:

25 Q. With respect to your declaration,

1 P. RATCLIFFE
2 is there anything you would like to edit or
3 change about it at this time?
4 A. No. Nothing.
5 Q. Going to this 2006-2007 assertion
6 about Vimeo --
7 (Reporter clarification.)
8 A. 2016.
9 Q. 2016. Was the Leaning patent
10 actually asserted in litigation? Did you
11 sue somebody on that, or you just don't
12 recall?
13 MR. SHENG: Objection to form.
14 A. I don't recall.
15 Q. So your concern in saying it had
16 never been asserted had to do with your
17 recollection not being clear about that. Is
18 that fair?
19 MR. SHENG: Objection to form.
20 A. Yes. I knew -- I knew it was
21 included in a pack of patents that were
22 ready to go and be asserted against Vimeo at
23 2016. I couldn't find the final documents
24 that we used.
25 You know, to be honest, again, I

didn't know what was behind the curtain so I just wanted to convince myself, had we ever asserted it? Because I put in the text we had never asserted, we had never licensed it other than portfolio licenses. And it was enough for me to stop looking when I realized it was in a pack. I didn't need to go the extra mile and say but did it finally make the docket because, as far as I was concerned, yes, we had asserted it.

And then there was the other document that I referred to in 2017 written by outside lawyers on the same patent, albeit not a U.S. one. So, that was enough for me to say okay, I am going to err on the side of caution here. We did assert it but we have never licensed it.

MR. GUY: Okay. I have no further questions. Thank you very much again.

THE WITNESS: Okay.

MR. SHENG: Thank you, Mr. Ratcliffe.

THE WITNESS: Thank you all.

1 P. RATCLIFFE
2 THE VIDEOGRAPHER: This concludes
3 the video deposition of Peter Ratcliffe.
4 Going off the record, the time is 1:32.
5 (Transcript orders requested.)
6 MR. SHENG: For Venable, we'd
7 like to get the rough right away and the
8 fastest you can give us the final.
9 MR. FRENKEL: The same with
10 Latham. The rough right away and the
11 final as soon as you can.
12 MR. GUY: We are fine with
13 regular time, a rough and regular final
14 regular.
15 [TIME NOTED: 1:33 p.m.]
16
17 _____
18 PETER RATCLIFFE
19
20 SUBSCRIBED AND SWORN TO
21 BEFORE ME THIS_____DAY
22 OF_____, 2025.
23
24 _____
25 NOTARY PUBLIC

1
2 CERTIFICATION
3
4
5 I, DEBRA STEVENS, a Notary Public
6 for and within the State of New York, do
7 hereby certify:
8 That the witness whose testimony as
9 herein set forth, was duly sworn by me; and
10 that the within transcript is a true record
11 of the testimony given by said witness.
12 I further certify that I am not
13 related to any of the parties to this action
14 by blood or marriage, and that I am in no
15 way interested in the outcome of this
16 matter.
17 IN WITNESS WHEREOF, I have hereunto
18 set my hand this 16th day of May, 2025.
19
20 _____
21 DEBRA STEVENS, RPR/CRR
22
23 * * *
24
25

1
2 WITNESS ERRATA SHEET
3
CASE NAME: Aylo v. DISH
4 DATE OF DEPOSITION: May 15, 2025
WITNESS NAME: PETER RATCLIFFE
5
PAGE/LINE(S)/ CHANGE REASON
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