

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AYLO FREESITES LTD,

Petitioner,

v.

DISH TECHNOLOGIES L.L.C.,

Patent Owner.

Case IPR2024-00940

Patent 11,991,234 B2

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

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

PATENT OWNER'S EXHIBIT LIST

Ex. No.	Description of Documents
2001	U.S. Patent App. Pub. No. 2004/0030547 by Leaning et al. ("Leaning US")
2002	Redline Comparison of Leaning and Leaning US
2003	U.S. Pat. 8,868,772 ("the '772 Patent")
2004	Reserved
2005	Reserved
2006	Reserved
2007	337-TA-1265 ITC Investigation Commission Opinion
2008	Reserved
2009	Reserved
2010	Reserved
2011	Dave Marshall, <i>Compression: Video Compression (MPEG and others)</i> , Cardiff University, http://users.cs.cf.ac.uk/Dave.Marshall/Multimedia_CM0340/PDF/11_CM0340_MPEG_Video.pdf
2012	ITU-T Recommendation H.261 1993
2013	ISO/IEC 11172-2:1993(en), Information technology — Coding of moving pictures and associated audio for digital storage media at up to about 1,5 Mbit/s — Part 2: Video
2014	U.S. Patent No. 6,002,440 ('440 Patent)
2015	ISO/IEC 11172-3:1993(en), Information technology — Coding of moving pictures and associated audio for digital storage media at up to about 1,5 Mbit/s — Part 3: Audio
2016	NPB-P16992EP-O1-Letter from opponent
2017	US6806909
2018	Peloton ABR.mp4
2019	HTTP The Definitive Guide - Chapter 4
2020	Declaration of Inventor Robert Drew Major
2021	MOVE Networks Streaming Media Technology
2022	MOVE Networks Technology Overview
2023	Sling TV Emmy Award (CX-1084)
2024	MOVE Awarded Fundamental Patent (CX-1122)
2025	MOVE Networks Article (CX-0013)
2026	OnHollywood 100 (CX-1078)
2027	OnHollywood 100 Winner (CX-1079)

2028	OnMedia 100 Winner (CX-1080)
2029	Red Herring Global 100 (CX-1081)
2030	MOVE Networks TechCrunchies Finalist (CX-1082)
2031	MOVE Networks Makes Web TV Watchable (CX-0046)
2032	ABC.com Makes Watching TV at Work Better (CX-1106)
2033	MOVE Networks, a next-gen content distribution platform (CX1134)
2034	Better than YouTube (CX-0045)
2035	Long-Form Video Gaining Viewers (CX-1115)
2036	Move Over Joost (CX-1125)
2037	Coming Faster Than You Think (CX-1110)
2038	WSJ Pushing to Bring TV to the Internet (CX-1128)
2039	CNN Level 3 Collaborates with MOVE (CX-1113)
2040	The Sport Page ESPN 360 (CX-1132)
2041	E-Mail 5/15/2007 (CX-1047C)
2042	E-Mail 6/16/2007 (CX-1049C)
2043	E-Mail 11/26/2007 (CX-1050C)
2044	ABC Big Move Away from Flash (CX-1116)
2045	Disney ABC Throws Down (CX-1130)
2046	The Lowdown on Apple (CX-1131)
2047	AOL and CBS Put Online HD (CX-1109)
2048	MOVE Quality Solution (CX-1121)
2049	ABC Becomes First Network HD Streamer (CX-1112)
2050	ABC.com to Stream HD Video (CX-1108)
2051	ABC Adds Full Screen Mode to Online Shows (CX-1104)
2052	MOVE Networks Releases Live Streaming (CX-1123)
2053	ABC Offering Full Screen Streaming HD (CX-1105)
2054	Level 3 Streams and Other News from SMW (CX-1114)
2055	Microsoft Unlocks Power of the Web (CX-1092)
2056	[Reserved]
2057	Disney Backs Video Start-Up (CX-1111)
2058	Here Comes More HD Video (CX-1077)
2059	E-Mail 1/20/2009 (CX-1146C)
2060	MOVE and Microsoft Term Sheet (CX-1051C)
2061	To the Ends of the Earth (CX-1074)
2062	MOVE Gets Streaming Patent; Are Adobe & Apple Hosed? (CX1120)
2063	DISH's Motion for Preliminary Injunction, <i>DISH Techs. v. MG</i>

	<i>Premium Ltd et al.</i> , No. 2:23-cv-552-HCN-DAO, D.I. 19.
2064	Official Report of the One Hundred Seventy-fifth Semiannual General Conference, The Church of Jesus Christ of Latter-day Saints (Oct. 1, 2, 2005).
2065	Apple and MOVE NDA Agreement 11/15/2006 (CX-1137C)
2066	Apple and MOVE NDA Agreement (CX-1085C)
2067	E-Mail on 2/23/2009 (CX-1219C)
2068	Microsoft Invests in Net Video (CX-1087)
2069	MOVE Networks Publishing System (CX-1247C)
2070	Silverlight Shines (CX-1090)
2071	Exemplary Claim Chart Illustrating MOVE Networks' Use of Invention
2072	[Reserved]
2073	Excerpt of Deposition of David Ericson in <i>In re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same</i> , Inv. No. 337-TA-1265 (taken Jan. 6, 2022)
2074	MOVE Crosses the Hour Threshold
2075	Readies Online HD Shows as Streamlettes (CX-1107)
2076	Delivering a Better Viewing Experience
2077	MOVE Adaptive Stream
2078	Utah Valley Entrepreneurial Forum Hall of Fame 2013
2079	Utah Technology Hall of Fame 2005
2080	ABC TV New Player Rocks
2081	E-Mail 1/23/2008 (CX-1052C)
2082	ABC.com Streamlettes (CX-1133)
2083	MOVE Networks Newsroom (CX-1124)
2084	ABC.com Readies Online HD (CX-1135)
2085	Metrics Point to Maturation of Online (CX-1117)
2086	More Money Pouring Into Rich Media (CX-1118)
2087	MOVE Put Mass Back Into Mass Media (CX-1126)
2088	E-mail 2/25/2008 (CX-1053C)
2089	E-mail 5/14/2008 (CX-1055C)
2090	2010 EchoStar 10-K (CX-0052)
2091	E-Mail 8/26/2008 (CX-1059C)
2092	Microsoft Extends Vision (CX-1148)
2093	DISH's Motion to Terminate Against Peloton
2094	Joint Motion to Partially Terminate Against Mirror
2095	DISH Petition to Rescind Limited Exclusion Order Against iFit

2096	MOVE Networks Awarded Fundamental Patent (CX-1091)
2097	[Reserved]
2098	Default Protective Order
2099	Declaration of Gregory Smith
2100	Declaration of David Ericson
2101	Supplemental Declaration of David Ericson in <i>Aylo Freesites Ltd v. DISH Technologies L.L.C.</i> , IPR Nos. 2024-00043, -00044, -00045, -00046, -00146.
2102	Transcript of Deposition of David Ericson in <i>Aylo Freesites Ltd v. DISH Technologies L.L.C.</i> , IPR Nos. 2024-00043, -00044, -00045, -00046, -00146 (taken Sept. 19, 2024)
2103	Baseball Tests Online Broadcasts, NY Times (CX-1151)
2104	E-Mail 5/12/2007 (CX-1218C)
2105	E-Mail 5/25/2007 (CX-1198C)
2106	[Reserved]
2107	E-Mail 7/25/2008 (CX-1101C)
2108	E-Mail 6/2/2008 (CX-1056C)
2109	E-Mail 2/22/2008 (CX-1054C)
2110	E-Mail 7/22/2008 (CX-1057C)
2111	[Reserved]
2112	Video Support (CX-0103)
2113	Microsoft Announces New Support for Silverlight (CX-1093)
2114	Move Networks Powers Seven of Top Ten Online Broadcast TV Networks (CX-1201C)
2115	[Reserved]
2116	E-Mail 2/2/2009 (CX-1196C)
2117	E-Mail 2/13/2009 (CX-1197C)
2118	E-Mail 6/14/2007 (CX-1199C)
2119	E-Mail 4/21/2008 (CX-1200C)
2120	Display Commemorating BYU.tv Launch Using Move ABR Technology
2121	Fox Switches (Ericson Dep. Exhibit 1)
2122	Delivering a Better Viewing Experience (CX-1102)
2123	Declaration of MOVE President and CEO John Edwards
2124	Deposition Testimony of John Edwards in <i>In re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same</i> , Inv. No. 337-TA-1265 (taken Nov. 12, 2021)
2125	Declaration of E. Flaucher of Microsoft in <i>In re Certain Fitness</i>

	<i>Devices, Streaming Components Thereof, and Systems Containing Same</i> , Inv. No. 337-TA-1265
2126	Declaration of Peter Ratcliffe
2127	Declaration of Mark Mitchell
2128	Deposition Testimony of Mark Mitchell in <i>In re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same</i> , Inv. No. 337-TA-1265 (taken Nov. 12, 2021)
2129	Transcript of Deposition of Dr. Houh (February 6, 2025)
2130	Level 3 and Move 6.22.07 (CX-1071C)
2131	Request for Comments 8216, “HTTP Live Streaming,” Pantos & May (2017 ed.)
2132	Deposition Testimony of Greg Smith in <i>In re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same</i> , Inv. No. 337-TA-1265 (taken Nov. 12, 2021)
2133	Leaning Demonstrative.mp4
2134	<i>Aylo Freesites Ltd v. DISH Technologies L.L.C.</i> , IPR2024-00940, Paper 1 (Petition 1 of 2).
2135	segment_cif_001.h261.mp4
2136	akiyo_cif_full.y4m.mp4
2137	Request for Comments 2068, “Hypertext Transfer Protocol – HTTP/1.1,” Fielding et al. (Jan. 1997)
2138	Request for Comments 2616, “Hypertext Transfer Protocol – HTTP/1.1,” Fielding et al. (June 1999)
2139	U.S. Patent No. 6,678,332 (Gardere et al.)
2140	BT turns on to TV, <i>The Register</i> (Nov. 2, 2001).
2141	Declaration of Dr. Kevin Jeffay ISO POR-IPR2024-00918 (Public)
2142	EchoStar Acquires Move
2143	Declaration of Peter Ratcliffe Esq
2144	CX-1170C - Deposition of Ericson
2145	[Reserved]
2146	[Reserved]
2147	[Reserved]
2148	Petitioner’s Reply (Paper 51) with Highlighting
2149	Supplemental Declaration of Dr. Henry Houh (EX1026) with Highlighting

Patent Owner DISH Technologies L.L.C. (“PO”) moves to strike the arguments, opinions, and evidence in Petitioner’s Reply (Paper 45) (“Reply”) and the Supplemental Declaration of Dr. Henry Houh (EX1022) (“Houh2”) that easily could have been presented in Petitioner’s original Petition. *See* 37 C.F.R. § 42.23(b). Neither the claims of the ’234 Patent nor the Leaning reference has change. Yet, Petitioner now tries to excuse its decision to ***entirely ignore*** (*see* POR, 2) Claim 12’s “continuous presentation” limitation in its Petition (“Pet.”) by arguing for the first time in Reply that “continuous presentation” doesn’t matter—it is non-limiting. Hedging its bet, Petitioner also asserts that it already addressed this limitation. But this is belied by its need to cobble together different parts of the Leaning reference never before cited and to introduce new obviousness modifications—supported by approximately thirty pages of new expert testimony—to retroactively fill in the voids in the Petition. Petitioner’s failure to make a *prima facie* case of obviousness in its Petition is fatal, and the fact this deficiency is identified in the POR is not a legitimate basis for Petitioner to resuscitate its case with entirely new invalidity rationales.

These new materials appear at Reply, 1-14, 16-18 and Houh2, §§III-VI, and VIII, as shown through highlighting in EX2148 and EX2149, respectively. They should therefore be struck pursuant to 37 C.F.R. § 42.23(b).

I. APPLICABLE LAW

“Unlike district court litigation—where parties have greater freedom to revise

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

II. ARGUMENT

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

Now realizing its Petition completely ignored Claim 12’s “continuous presentation” limitation,¹ Petitioner argues for the first time in Reply that this limitation is “aspirational” and “not required.” Reply, 1, 2, 12. This argument not only contradicts Petitioner’s prior assertion that “no constructions are necessary” (Pet., 12), it thumbs its nose at the well-settled edict that judges “must give meaning to ***all the words*** in [a patent’s] claims,” *Exxon Chem. Patents, Inv. v. Lubrizol Corp.*, 64 F.3d 1553, 1557 (Fed. Cir. 1995), and that a construction that reads limitations out of a claim “would be contrary to the principle that ***claim language should not***

¹ As explained in the Patent Owner’s Response (“POR”), Petitioner incorporated by reference element 1[D] (which does ***not*** recite “continuous presentation”) for element 12[E] (which ***does*** recite “continuous presentation”) as if ***neither*** element included a “continuous presentation” requirement. POR, 2 (citing Pet., 31-34, 49).

[*be*] ***treated as meaningless***,” *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 951 (Fed. Cir. 2006). At a minimum, Petitioner was obligated to do so in its Petition.

Further, Petitioner cannot credibly argue that PO’s reading of “continuous presentation” is new or unexpected. PO reads “continuous” as anyone would—*i.e.*, as excluding disruptions, interruptions, and delays. *See, e.g.*, POR, 3 (“Leaning lauds the benefits of clearing its buffer and ***interrupting*** playback” while the “Patents specify avoiding the exact type of ***delay*** inherent in prior art buffering techniques like Leaning’s.”), 10 (“The Challenged Patent discloses ***avoiding disruptions*** and achieving continuous playback”), 21 (“Leaning ... cannot disclose ‘shifting ... to achieve continuous playback’ if it actually ***disrupts*** playback at every shift.”). In other words, “continuous” is the opposite of “discontinuous.” The International Trade Commission (“ITC”) applied a similar meaning in the same claim construction ruling relied on in the Petition. Pet., 12 (citing EX1009, 61-64).

In that ruling, the ITC’s Chief Administrative Law Judge (“ALJ”) provided a clear interpretation of the plain and ordinary meaning of “continuous playback” and how it was “concede[d], at least in concept, [that] a person of skill may have understood what it means to ‘achieve continuous playback’ (***uninterrupted*** viewing of the content).” EX1009, 63. The Chief ALJ also held that “continuous playback” is achieved by “shifting” between streamlets of different quality, which also is consistent with PO’s plain and ordinary meaning of this limitation. *Compare*

EX1009, 59 (“[T]he phrase ‘*continuous playback* of the video’ is the goal sought through the ‘*determinations to shift*’ playback quality”)² with POR, 7-9 (“To allow for ... *continuous playback* of content ... the Challenged Patent ... “*shift[s]* between different bitrates in response to changes in network conditions ...”). Petitioner relied on the exact portion of the ITC’s claim construction ruling where this discussion appears in the Petition and, therefore, cannot feign surprise to see an identical, plain and ordinary reading of “continuous presentation” in the POR.

Because any deviation from the plain and ordinary meaning of a term could and should have been addressed in the Petition, Petitioner’s new claim construction arguments at Reply, 2-3, and Houh2, §III, should be struck.

B. Petitioner’s Untimely Modification to Leaning to Avoid Performing Its “Clear Buffer” Command Should Be Struck.

Petitioner tacitly admits the Petition failed to address the “continuous playback” language in limitation 12[E] by claiming, in its Reply, that it addressed this language in arguments for entirely different limitations—specifically limitations 1[C][1]-[2]. Reply 13-14. Petitioner pivots from its express reliance on Leaning’s “flowchart showing successive determinations to shift up or shift down” for limitation 12[E] (Pet., 29, 32-33) and its mandate that a playback-disrupting “Clear Buffer” command be executed. Instead, Petitioner now argues that the “Clear

² The “goal” language in this quote does nothing to diminish that “continuous playback/presentation” is limiting. That “goal” must be “achieve[d]” to practice the claims, as the claims expressly recite.

Buffer” command is merely “optional.” Reply, 3-4 But Petitioner goes well beyond its discussion of limitations 1[C][1]-[2], citing for the first time a purportedly obvious “further modification” of Leaning’s audio rate-shifting process in which the sound card is “run **continuously** at the highest rate envisaged” and the sub-files are “**up-sampled** to this highest rate before or after the buffer” (EX1004, 14:29-31), after which there is purportedly “no need to clear the buffer” (Reply, 4).

Neither the newly cited passage from Leaning nor its “further modification” is mentioned **anywhere** in the Petition. And the assertion that such a modification would eliminate the need to clear the buffer is derived solely from Dr. Houh’s post-Petition *ipse dixit* pronouncements. Reply, 4 (citing Houh2, §IV.A). In other words, Petitioner points for the first time to a different section of Leaning (14:29-33) and its expert uses that section for the first time to develop an entirely new obviousness modification of Leaning (where Leaning’s “clear buffer step is **optional**”) based on newly-asserted knowledge in the art (“...a POSITA would understand...”). “Shifting arguments in this fashion is foreclosed by statute, [Federal Circuit] precedent, and Board guidelines.” *Wasica Fin. GmbH v. Cont’l Auto. Sys., Inc.*, 853 F.3d 1272, 1286–87 (Fed. Cir. 2017). Petitioner’s new arguments and opinions, which appear at Reply, 3-5 and Houh2, §IV.A, should therefore be struck.

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

Petitioner fabricates additional new invalidity theories from whole cloth to

address the temporal and content-based playback discontinuities created by Leaning's "Clear Buffer" command—each of which individually precludes "continuous presentation." POR, 12-17. Because no single modification to Leaning is sufficient to prevent both types of disruption on its own, Petitioner added multiple new arguments for making these modifications, supported by extensive new expert testimony at a point in the proceeding where PO is no longer able to introduce new evidence of its own. This amplifies the prejudice to PO and shifts the burden to PO to address new invalidity theories at this late stage without rebuttal evidence.

1. Decoding in Software + Encoding with I-Frames

Petitioner attempts to address the **temporal** discontinuities inherent in Leaning's "Clear Buffer" command by arguing that the need for **sound** cards to clear their buffers (and interrupt playback) is eliminated when Leaning's **audio** rate-shifting process is modified for **video** because video is decoded "using software," rather than hardware (*i.e.*, a sound card). Reply, 5-6. This purportedly eliminates the "re-setting" of the sound card. *Id.*, 5. Petitioner then attempts to address the **content-based** discontinuities that would remain even if the sub-files were converted to video by further modifying Leaning's sub-files to begin with **I-Frames**. *Id.*

Each of these significant and complicated modifications to Leaning is entirely new to the Reply. There is no discussion whatsoever of "hardware," "software," or "re-setting" sound cards anywhere in the Petition. Nor is the portion of Leaning

discussing video with I-Frames (16:17-23) cited anywhere in the Petition.

The full extent of the Petition's discussion of applying Leaning's **audio** rate-shifting process to **video** was a cryptic citation to Leaning stating this "may" be possible. Pet., 20 (citing EX1004, 16:6-10). Petitioner never discussed **how** this might be done—namely, how to address the "further implications [*i.e.*, serious problems]" that Leaning itself identifies a few lines later. EX1004, 16:17-18. The arguments and testimony Petitioner now introduces to address these omissions appear at Reply, 5-6 and Houh2, §IV.B and should be struck.

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

Although Petitioner's second, new invalidity theory is at least rooted in Leaning's **audio** rate-shifting process, like Petitioner's prior arguments, it requires: (1) the extrapolation of a new playout time (T_P), in combination with (2) a nonsensical interpretation of Leaning in which "Clear Buffer" is read to mean waiting for the buffer to clear on its own, rather than actively clearing the buffer, as Leaning expressly teaches. EX1004, 11:19-20. The former is needed to address temporal discontinuities, while the latter is needed to address content-based discontinuities. Both are entirely new.

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

Petitioner extrapolates a T_P that would fundamentally alter the way Leaning's buffer operates. The new T_P would cause Leaning's buffer to store only one sub-

file before beginning playback, rather than storing three sub-files (*i.e.*, 3 x four-second subfiles must be stored to satisfy Buffer Fullness > 10 seconds), as described in Leaning’s exemplary embodiment. Reply, 7-9. This allegedly avoids **temporal** discontinuities by allowing playback to begin immediately, rather than waiting for three sub-files to load into the buffer first. *Compare id. with* POR, 12-15.

Petitioner’s new, 3-second T_P appears nowhere in Leaning or the Petition. Instead, it was calculated by Petitioner from Leaning’s reference to 4-second sub-files and the possibility that those sub-files could be sized “between 30% and 130% of the playout time.” Reply, 8 (quoting EX1004, 12:33-34). But a 4-second sub-file is more than 130% of a 3-second T_P (*i.e.*, $\frac{4 \text{ sec.}}{3 \text{ sec.}} \times 100$ yields 133.33%). Moreover, loading only a single, 4-second sub-file is inconsistent with Petitioner’s own argument that “Leaning’s player requests **a plurality of sub-files** ... until the buffer exceeds T_P seconds.” Pet., 47. Petitioner’s new and contradictory arguments in this regard appear at Reply, 7-9 and Houh2, §IV.C and should be struck.

b) Decoding, as Opposed to Clearing, the Buffer

Despite heavily relying on the “Stepup” function in Leaning’s flowchart, the Petition does not address the “Clear Buffer” command central to this function, or how it might be modified to eliminate or avoid playback disruptions. Pet., 31-33. Petitioner nevertheless argues in its Reply that executing the “Clear Buffer” command would result in the contents of the buffer being **read** (*i.e.*, “decoded” and

“play[ed] out”), rather than being **cleared** (i.e., “emptied, flushed, erased, etc.”). Reply, 9; cf. EX2141, ¶ 49. According to Petitioner, this avoids the **content-based** discontinuities that PO identifies as resulting from Leaning’s “Clear Buffer” command. Compare Reply, 9 with POR, 15-17. This argument is also a dramatic shift for Petitioner—it directly contradicts Dr. Houh’s prior, unequivocal testimony that one would **clear** the contents of the buffer in Leaning’s audio rate-shifting process because the content already in the buffer would sound distorted if **read** out at the new rate instead of being cleared. EX2129, 98:3-14 (“[T]he reason to **clear the buffer** is that if the data in the buffer were at ... a different sampling rate ... and the sampling rate was changed ..., you would either get an octave lower or octave higher.”). Petitioner’s new and contradictory arguments in this regard appear at Reply, 9 and Houh2, §V and should be struck.

D. Modifying Leaning to “Arrange” Based on “Play Time”

Faced with the fact that “Leaning only disclos[es] its sub-files being started and played back in the order in which they are received” (POR, 24), Petitioner fabricates yet another new invalidity theory to address the “arranging” limitation recited in Claim 1 (Reply, 11). Petitioner disregards that Leaning’s sub-files do not need “arranging” because they are requested in sequential order according to their file names (e.g., 000000.bin, 000001.bin, 000002.bin, *et seq.*) and, instead, proposes a new modification of Leaning in its Reply to (1) read the “play time,” rather than

the file name, of the sub-file and then (2) “arrang[e]” the subfiles in temporal order. Reply, 11. Petitioner points to a previously uncited portion and embodiment³ of Leaning to support this new modification. Reply, 11 (citing EX1004, 21:30-22:3). It is discussed at Reply, 10-11, 18-19 and Houh2, §§V, VIII and should be struck.

E. Petitioner’s Belated Invalidity Theories Are Not Excused by an Alleged “New” Claim Construction.

Because there is nothing new or unexpected about PO’s adoption of the plain and ordinary meaning of “continuous presentation” (*see supra*, 3-4), there is no basis for Petitioner’s new obviousness theories under *Axonics* or any other precedent. Reply, 15-16. Like the late-moving party in *Axonics*, it was Petitioner, not PO, who first argued that “the Board need not construe any terms” and then reversed course by including a lengthy, self-serving claim construction argument in its next filing. *Axonics v. Medtronic*, 75 F.4th 1374, 1378-79 (Fed. Cir. 2023). By contrast, PO applied the plain and ordinary meaning of “continuous presentation” conceded by its opponent in a preceding claim construction ruling, of which Petitioner was clearly aware. *See supra* 3. Thus, Petitioner’s belated invalidity theories should be struck.

III. CONCLUSION

The portions of pages 1-14, 16-18 of Petitioner’s Reply highlighted in EX2145 and §§III-VI, and VIII of Houh2 highlighted in EX2146 should be struck.

³ The newly cited embodiment is directed to addressing the situation where playback of live content is occurring faster than the content is being recorded. EX1004, 21:3-22:5. Nowhere does the Petition rely on, much less cite to, this portion of Leaning.

Dated: July 7, 2025

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CERTIFICATE OF SERVICE

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

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APPENDIX OF ARGUMENTS IN CO-PENDING IPR PROCEEDINGS

Argument / IPR Proceeding	Pages of Motion			
	IPR2024-917	IPR2024-918	IPR2024-919	IPR2024-940
Petitioner’s Belated Claim Construction Should Be Struck.	2-5	2-5	2-5	2-4
Petitioner’s Untimely Modification to Leaning to Avoid Performing its “Clear Buffer” Command Should Be Struck.	5-7	5-7	5-7	4-5
Decoding in Software + Encoding with I-Frames	NA	NA	NA	6-7
Changing Playout Time (Tp) + “Playing Out” Contents	7-9	7-9	7-9	7-9
Using Previously-Undisclosed Encoding Techniques	9-10	9-10	9-10	NA
Modifying Leaning to “Arrange” Based on “Play Time”	NA	NA	NA	9-10
Modifying Leaning to Address “B-Frames”	10	NA	NA	NA
Petitioner’s Belated Invalidity Theories Are Not Excused by an Alleged “New” Claim Construction	NA	NA	NA	10