

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AYLO FREESITES LTD,

*Petitioner*

v.

DISH TECHNOLOGIES L.L.C.,

*Patent Owner*

U.S. Patent 11,991,234

Issue Date: May 21, 2024

Title: APPARATUS, SYSTEM, AND METHOD FOR MULTI-BITRATE  
CONTENT STREAMING

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*Inter Partes* Review No. IPR2024-00940

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**PETITIONER AYLO FREESITES LTD'S  
OBJECTIONS TO PATENT OWNER'S DEMONSTRATIVES**

Mail Stop PATENT BOARD  
Patent Trial and Appeal Board  
United States Patent and Trademark Office  
PO Box 1450  
Alexandria, Virginia 22313-1450  
Submitted Electronically via PTAB P-TACTS

Pursuant to the Board’s Order Setting Oral Argument (Paper 53) (“Order”), Petitioner Aylo Freesites Ltd (“Aylo”) and Patent Owner DISH Technologies L.L.C. (“DISH”) met and conferred regarding Aylo’s objections to DISH’s demonstratives but were unable to reach an agreement on the objections set forth below.

Aylo objects to DISH’s demonstratives as (i) constituting improper new argument under the Board’s Consolidated Trial Practice Guide (“Practice Guide”) (pp. 85-86) and the Order (pp. 3-5), *Dell Inc. v. Acceleron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (holding that the Board is obligated under its own regulations to dismiss non-responsive, untimely argument “raised for the first time during oral argument”) and/or (ii) presenting improper new evidence under the Practice Guide (pp. 85-86) and the Order (pp. 3-5), *St. Jude Med., Cardiology Div., Inc. v. The Bd. of Regents of the Univ. of Mich.*, IPR2013-00041, Paper 65 at 2–3 (PTAB Jan. 27, 2014) (holding that demonstratives cannot “rely on evidence that, although it is in the record, was never specifically discussed in” a party’s papers); *International Business Machines Corp. v. Intellectual Ventures II LLC*, IPR2015-00089, Paper 41 (PTAB Jan. 14, 2016) (holding that if slides “include citations to [exhibits] not included in the Response, Patent Owner is precluded from using them”).

Aylo Objects to DISH’s demonstratives as follows:

**1. Slide 17**

(1) Presents a new argument relating to “Leaning . . . encoding . . . and ‘then partition[ing] each source file” and that “partitioning video files in this manner” would yield “serious mistracking,” which was not made in any of DISH’s briefing, including in the cited Sur-Reply at 14; and (2) presents excerpts of and citations to EX1004 at 6:21-23, 16:30 and EX2141 ¶¶ 93-100 that were not relied on in any of DISH’s briefing and/or DISH’s citations refer to different quotes from the exhibits for a different argument and not the quotes DISH presents in the slide.

**2. Slide 18**

Presents an image and citation to EX2141 ¶¶ 93-100 that were not relied on in any of DISH’s briefing, including in the cited Sur-Reply at 14.

**3. Slide 20**

(1) Presents a new argument regarding what the Klemets reference “is directed to,” which was not made in any of DISH’s briefing, including in the cited POR at 36-37, and (2) none of DISH’s briefing rely on the cited EX1006 ¶ [0023], [0026], Fig. 2 or EX2141 ¶ 53.

**4. Slide 43**

(1) Presents a new argument that “[t]he Petition expressly relies on Leaning’s teaching of *first* encoding the content into multiple rates, *then* partitioning into subfiles,” which was not made in any of DISH’s briefing, including in the cited Sur-

Reply at 14-15, and (2) presents an excerpt of and citation to Leaning at 6:21-23 that was not relied on in any of DISH's briefing.

**5. Slide 69**

Presents excerpts of and citations to deposition transcripts (EX1025 at 127 and EX1027 at 217-218) that were not relied on in any of DISH's briefing, including in the cited Sur-Reply at 23-24 (the Sur-Reply at 23-24 cites to the same pages of the transcripts but to different line numbers than what DISH presents in the slide and for a different point).

**6. Slide 70**

Presents excerpts of and citations to deposition transcripts (EX1026 at 53, 71 and EX1027 at 113) that were not relied on in any of DISH's briefing, including in the cited Sur-Reply at 23-24.

**7. Slide 85**

Presents an excerpt of and citation to EX1027 at 238:25-239:8 that was not relied on in any of DISH's briefing, including in the cited POR at 37-40, 56, 59 and Sur-Reply at 23.

**8. Slide 92**

Presents excerpts of and citations to EX2024 and EX2020 ¶ 35 that were not relied on in any of DISH's briefing for any argument related to copying, including in the cited POR at 56-57 and Sur-Reply at 24.

**9. Slide 97**

Presents excerpts of and citations to EX1037 at 19:5-14 and 19:20-20:6 that were not relied on in any of DISH's briefing, including in the cited Sur-Reply at 24-26.

**10. Slide 98**

Presents an excerpt of and citation to EX1038 at 2 that was not relied on in any of DISH's briefing, including in the cited Sur-Reply at 24-26.

**11. Slide 99**

Presents an excerpt of and citation to EX1027 at 238:25-239:8 that was not relied on in any of DISH's briefing, including in the cited POR at 38, 40, 56, 59 and Sur-Reply at 21, 23.

\* \* \*

As required by the Order, a copy of each objected-to slide is attached to this paper as Appendix A.

DATED: August 21, 2025

Respectfully submitted,

By: /Frank M. Gasparo/  
Frank M. Gasparo (Reg. No. 44,700)  
Attorney for Petitioner  
VENABLE LLP  
151 W. 42nd Street, 49th Floor  
New York, NY 10036  
T 212-370-6273  
F 212-307-5598  
fmgasparo@Venable.com

## CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2025, I caused a true and correct copy of the foregoing Petitioner's Objections to Patent Owner's Demonstratives to be served via email to the counsel of record:

|                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Lead Counsel:</b><br><br>Eliot D. Williams (Reg. No. 50,822)<br>BAKER BOTTS L.L.P.<br>700 K Street, N.W.<br>Washington, D.C. 20001<br>T: 202.639.1334<br>F:202.639.1167<br>eliot.williams@bakerbotts.com<br>DishvMindGeek@BakerBotts.com | <b>Backup Counsel:</b><br><br>G. Hopkins Guy III (Reg. No. 35,866)<br>BAKER BOTTS L.L.P.<br>1001 Page Mill Road, Bldg. 1, Suite<br>200 Palo Alto, California 94304-1007<br>T: 650.739.7500<br>F: 650.739.7610<br>hop.guy@bakerbotts.com<br>DishvMindGeek@BakerBotts.com<br><br>Ali Dhanani (Reg. No. 66,233)<br>BAKER BOTTS L.L.P.<br>910 Louisiana St.<br>Houston, TX 77002<br>T: 713.229.1108<br>F:713.229.2808<br>ali.dhanani@bakerbotts.com<br>DishvMindGeek@BakerBotts.com<br><br>Thomas B. Carter Jr. (Reg. No. 76,040)<br>BAKER BOTTS L.L.P.<br>910 Louisiana St.<br>Houston, TX 77002<br>T: 713.229.1505<br>F: 713.229.7805<br>thomas.carter@bakerbotts.com<br>DishvMindGeek@BakerBotts.com<br><br>Andrew Wilson (Reg. No. 74,093)<br>BAKER BOTTS L.L.P.<br>700 K Street, N.W. |
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|  |                                                                                                                                                                                                                                                                                                                                                                           |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>Washington, D.C. 20001<br/> T: 202.639.1312<br/> F: 202.508-9336<br/> andrew.wilson@bakerbotts.com<br/> DishvMindGeek@BakerBotts.com</p> <p>Jamie R. Lynn (Reg. No. 63,666)<br/> BAKER BOTTS L.L.P.<br/> 700 K Street, N.W.<br/> Washington, D.C. 20001<br/> T: 202.639.7786<br/> F: 202.585.1026<br/> jamie.lynn@bakerbotts.com<br/> DishvMindGeek@BakerBotts.com</p> |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

DATED: August 21, 2025

Respectfully submitted,

By: /Frank M. Gasparo/  
Frank M. Gasparo (Reg. No. 44,700)  
Attorney for Petitioner  
VENABLE LLP  
151 W. 42nd Street, 49th Floor  
New York, NY 10036  
T 212-370-6273  
F 212-307-5598  
fmgasparo@Venable.com

# APPENDIX A

# Leaning's “Serious Mistracking” Issue

- Leaning discloses creating audio and video subfiles by encoding the source file at “different rates” and “then partition[ing] each source file into sub-files....”

In order to provide for rate switching, the person preparing the file for loading onto the server prepares several source files - by encoding the same PCM file several times at different rates. He then partitions each source file into sub-files, as before. These can be loaded onto the server in separate directories corresponding to the different rate, as in the following example structure, where “008k”, “024k” in the directory name indicates a rate of 8 kbit/s or 24 kbit/s and so on.

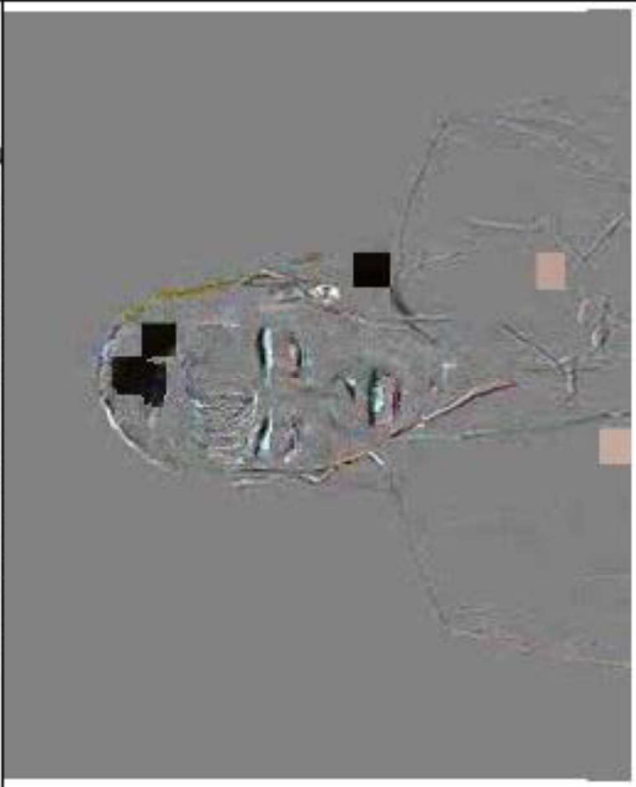
EX1004 at  
6:21-23

- But Leaning acknowledges that partitioning video files in this manner would prevent the decoder from properly decoding any video received after a rate switch, yielding “serious mistracking” in the decoded video:

In the case of inter-frame coding systems such as the ITU H.261 standard, which do not provide for the frequent, regular inclusion of intra-frames, this is not possible. This is because – taking rate-switching as an example, if one were to request sub-file n of a higher bit rate recording followed by sub-file n+1 of a lower bit-rate recording, the first frame of the lower bit-rate sub-file would have been coded on an inter-frame basis using the last decoded frame of sub-file n of the lower rate recording, which of course the terminal does not have at its disposal – it has the last decoded frame of sub-file n of the higher rate recording. Thus serious mistracking of the decoder would occur.

EX1004 at  
16:30

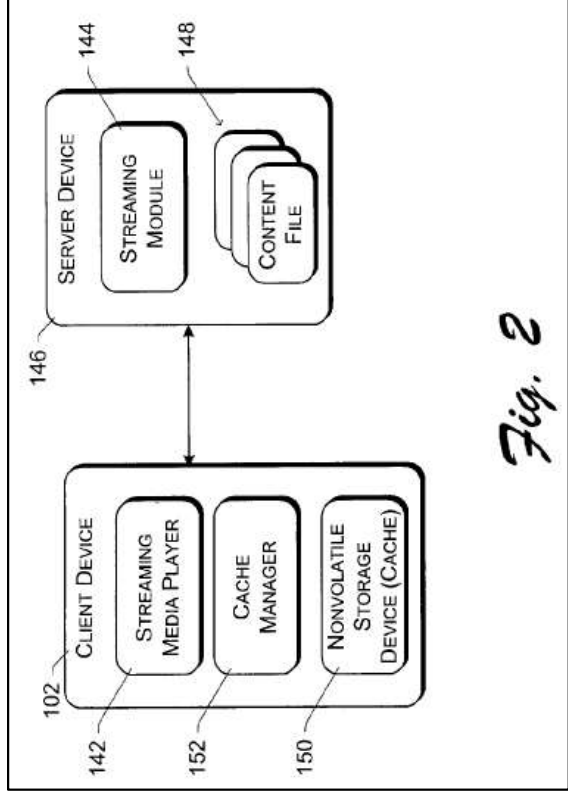
# Leaning’s “Serious Mistracking” Issue

| Properly Decoded Frame                                                               | Frame With “Mistracking”                                                            |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
|  |  |

Sur-Reply at 14; EX2141 (Jeffay Declaration), ¶ 93-100

# U.S. Patent Pub. No. US 2003/0236906 (“Klemets”)

Klemets is directed to a technique for “[c]lient-side caching of streaming media content.” Klemets describes that “[d]ifferent pieces of streaming media content are illustrated as different files 148.” Klemets alternatively describes that “a piece of streaming media content may be stored as multiple files.”



EX1006, Fig. 2

EX1006 (Klemets), ¶ [0023], [0026]; EX2141, ¶153; POR at 36-37.

# New Modification No. 2: Encode Sub-Files to Begin With I-Frames

- For New Modification No. 2, Petitioner proposes modifying Leaning's sub-files to each begin with an ***I-Frame***. Reply, 5-6; Sur-Reply at 14-15.

The Petition expressly relies on Leaning's teaching of ***first*** encoding the content into multiple rates, ***then*** partitioning into subfiles

- d. 1[A][3]: "wherein each copy of the digital content is divided into a plurality of streamlets, each of the plurality of streamlets of a corresponding copy comprising a different portion of the digital content during presentation,"

Leaning teaches 1[A][3]. Leaning describes that each copy (version) is divided into a plurality of streamlets (sub-files) because Leaning describes, after encoding into several different versions, "partition[ing] each source file into sub-files." EX1004, 6:21-22. Leaning further describes "dividing the material into a sequence of sub-files" (EX1004, Abstract) such that the larger audio or video file "is divided into smaller files before being stored on the server 1" (*id.*, 3:5-6).

Pet p. 24

In order to provide for rate switching, the person preparing the file for loading onto the server prepares several source files - by encoding the same PCM file several times at different rates. He then partitions each source file into sub-files, as before. These can be loaded onto the

Leaning 6:21-23

# Petitioners' Hyper-Focus on Speculative "Blips" and "Stalls"

PO Sur-Reply, at 23-24

6 Q. Okay. So your technology doesn't  
7 ensure that viewers will never experience  
8 buffering or stalling, correct?  
9 MR. GUY: Objection, form.  
10 THE WITNESS: Yeah, we can't --  
11 I -- can't ensure it. Just like cable  
12 and satellite, you can get  
13 pixelization and see little black  
14 dots. It -- there's -- it's number of  
15 nines imperfection that were -- we  
16 have a lot of. We had way more than  
17 anyone else had. In terms of all the  
18 things we did to guarantee, we did  
19 some very clever and hard things to,  
20 hell or high water, try and keep the  
21 video continuous and --- yet quality.  
22 We did way more than anyone else was

EX1025, 127 (Major Dep. Tr.)

24 Q. And so Move's technology was  
25 attempting to provide reliable video 218  
1 D. Ericson  
2 viewing over the internet, but it wasn't  
3 required.  
4 Do you agree?  
5 MR. SHEPARD: Objection. Form.  
6 A. I don't agree with the way it was  
7 -- you are saying it because no technology  
8 is 100 percent reliable. So every patent  
9 in that way in my view would be unreliable.  
10 Like nothing is reliable -- right? Your  
11 car is going to break down. Everything  
12 else. All those components are patentable.  
13 So it was trying to accomplish reliability.  
14 If it was able to do so with absolute  
15 perfection, then, great. But to my  
16 knowledge, I have never seen a technology  
17 or anything that man has created that is  
18 perfect.

EX1027, 217-218 (Ericson Dep. Tr.)

# Petitioners' Hyper-Focus on Speculative "Blips" and "Stalls"

PO Sur-Reply, at 23-24

11 Q. Okay. You did say in your  
12 deposition that the MOVE Network's Viewer  
13 would prevent the stream from buffering.

14 Is that right?

15 A. Yes.

16 Q. Does that mean that there was

17 never any buffering at all for any viewers  
18 who ever looked at the MOVE Network stream?

19 MR. LYNN: Objection. Form.

20 A. No. That's -- I mean, obviously,  
21 if a network connection completely failed,  
22 there would definitely be buffering.

EX1026, 53 (Mitchell Dep. Tr.)

EX1026, 71 (Mitchell Dep. Tr.)

8 At the time in 2006, was your  
9 technology so improved that literally no  
10 one who was using your technology would  
11 experience freezing?

12 A. No.

13 MR. SHEPARD: Objection. Form.

14 A. The answer is no. Just like  
15 today. I still can't watch satellite TV  
16 sometimes. I mean, I don't know what the  
17 point of the thing is. No technology is  
18 perfect.

EX1027, 113 (Ericson Dep. Tr.)

3 Q. Would you also agree that the  
4 MOVE player's video playback would  
5 sometimes be interrupted as a result of  
6 buffering?

7 MR. LYNN: Objection. Form.

8 A. I mean, as I stated before, in  
9 certain cases -- certain extreme cases,  
10 that is a possibility. Just like --

# MOVE's (and Later, Sling's) Emmy Award Recognizing MOVE's Technology

POR, at 37-40, 56, 59;  
PO Sur-Reply, at 23

At the 71<sup>st</sup> annual Technology & Engineering Emmy Awards, **Sling TV** won the Emmy Award in the category of "Pioneering Development of Large Scale, Cloud Served, Broadcast Quality, Linear Channel Transmission" – April 19, 2020

EX2006 (Jeffay Declaration), ¶¶[217], [280]; EX2023 (Sling Emmy Article)

"I know [this] because the MOVE assets that were acquired [by EchoStar] were literally the technology that Sling TV was running on. So it went from DISH Anywhere to Sling TV from MOVE Networks. We didn't like start from scratch. ***It was the exact same technology and deployed infrastructure that was the basis of all three.***"

EX1027 (Ericson Dep.), 238:25-239:8



# Objective Evidence Supports Copying

POR, at 56-57  
PO Sur-Reply, at 24

“Following [Move’s] market introduction in 2006, practically every major online video provider – including Akamai, Apple, Adobe, LimeLight, Microsoft, Netflix, Widevine, and several others – has deployed an adaptive bit rate architecture inspired by our inspiration. We are pleased to see that the USPTO has recognized our technical achievements that make quality IP video delivery a reality.”

EX2024 (MOVE Awarded Fundamental Pat.)

**“Adaptive bitrate streaming was brought to the fore by Move Networks and now being pushed by Adobe, Microsoft, and Apple, is one of the more interesting things going on in video today.”**

EX2046 (The Lowdown on Apple)

“The most significant recognition of all, however, is that almost all video streaming that happens over the Internet today for live or on-demand content is based on the Adaptive Bitrate approach that we invented. The then-current state-of-the-art approaches used by others have been pretty much abandoned.”

EX2020, ¶ 35

# BT's Chief IP Lawyer Confirmed Leaning Was Never Commercialized

PO Sur-Reply, at 24-26



EX1036 (BT Article)

“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 ... was not something they were interested in; they were more interested in a Leaning patent and whether we had commercialized the Leaning patent.”

“And in the course of those communications, when I spoke to [the inventors’] line manager, Mike Whybray, Mike Whybray identified ... that an audio product was trialed when the Leaning patent was first invented, if you will, around that time...[H]e followed up by saying but no video product was commercialized.”

EX1037 (Ratcliffe Dep. Tr.), 19:5-14, 19:20-20:6.

**Mr. Ratcliffe Researched The Leaning Reference, Not “Voyager 2000”**

# If FastNets is Leaning, then the Challenged Patent is Non-Obvious

PO Sur-Reply, at 24-26

**The Challenged Claims Require “automatically requesting by the client device.”**

Cf. '234 Patent, cl. 12

The same feature is used to achieve a near-instant start. The server streams initially at 8Kbps (in this example), which can be displayed immediately with little or no buffering (it's not needed at this low rate). This gives surplus capacity that can be used to build up a buffer in the background, and after a few seconds, the server can switch up to the 30Kbps stream. In practice, the users rarely notice the initial reduced quality unless they are looking for it; it takes a few seconds to assess quality, by which time the quality has built up.

EX1038 (BT Article), at 2.

**FastNets Uses Intelligent Servers, Not An Intelligent Client**



EX2151 – Demonstrative Exhibit – Not Evidence

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# Sling TV Evolved Out of MOVE's Technology

POR, at 38, 40, 56, 59;  
PO Sur-Reply, at 21, 23

*Sling TV and MOVE's Player used "the exact same technology and deployed infrastructure."*

EX1027 (Ericson Dep.), 238:25-239:8

