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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TikTok Inc.

Petitioner

v.

NTECH Properties, Inc.

Patent Owner

IPR2024-01340

U.S. Patent No. 8,145,705

and

IRP2024-01342

U.S. Patent No. 8,886,753

ZOOM PROCEEDINGS OF DR. KEVIN ALMEROTH
TAKEN BEFORE CHRISTINE SALERNO, REGISTERED PROFESSIONAL
REPORTER, GENERAL NOTARY PUBLIC WITHIN AND FOR THE
STATE OF NEBRASKA, BEGINNING at 12:00 P.M. CENTRAL
STANDARD TIME ON MAY 30, 2025, VIA ZOOM.

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8	EXHIBIT	DESCRIPTION	PAGE
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13	E X A M I N A T I O N		
14	DIRECT EXAMINATION:		
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Page 4 1 (Whereupon, the following proceedings 2 were had, to-wit:) 3 REPORTER'S NOTE: All quotations from 4 exhibits are reflected in the manner in which they 5 were read into the record and do not necessarily 6 indicate an exact quote from the document. 7 (All parties to this deposition are 8 appearing remotely and have agreed to the witness 9 being sworn remotely.) 10 DR. KEVIN ALMEROTH, 11 having been first duly sworn, was examined and 12 testified as follows: 13 DIRECT EXAMINATION 14 BY MR. PRICE: 15 Q. Good morning, how are you today? 16 A. Good morning. I'm great, thank you. 17 Q. Can you please state your full name for the 18 record? 19 A. Kevin Christopher Almeroth. 20 Q. And Dr. Almeroth, you understand why you are 21 here today? 22 A. Yes. 23 Q. And why is that? 24 A. I think this is a deposition related to two 25 patents before the PTAB related to IPRs.	Page 6 1 you access to the document that were uploaded? 2 A. I don't see how to get this from here. 3 Q. Okay. I'm just going to drop you the 4 documents into the chat then. 5 A. Okay. 6 Q. That should be easier for everybody. 7 A. Or you can just put the share file link in 8 the chat, we can try that too, whichever. 9 Q. Let me see if you can get them through the 10 chat here. 11 A. Four of them. 12 Q. There are four documents there, yeah? 13 A. Okay. Looks like the two declarations in the 14 correspondence patents for each. 15 Q. That's correct. So go ahead and download 16 them and then we can -- we can move on. 17 For the record, I have uploaded copies of the 18 patents in this case, in these two cases, so that they 19 were both marked Exhibit 1001 and the respective case. 20 And I've uploaded the two declarations that were 21 submitted in this case, they were both labeled Exhibit 22 1002 in the corresponding cases. 23 (Exhibit Nos. '753 Patent 1001 & 1002, 24 and '704 Patent 1001 & 1002, marked for 25 identification.)
Page 5 1 Q. What is an IPR? 2 A. An inter partes review. 3 Q. Okay. And is it your understanding that we 4 are here to discuss two different IPRs, today? 5 A. Yes. 6 Q. Okay. And those two IPRs, the Case Numbers 7 are IPR2024-01340 and 2 -- IPR2024-01342, correct? 8 A. Yes. 9 Q. And these cases concern U.S. Patents No. 10 8,886,753 for the 1342 case; is that correct? 11 A. Yes. 12 Q. And U.S. Patent No. 8,145,704 for the 1340 13 case, correct? 14 A. Correct. 15 Q. Okay. And did you provide declarations in 16 support of the petitions in these two cases? 17 A. I did. 18 Q. Do you have access to the share file? I put 19 some documents into that Share File. If it's easier, I 20 can just drop them into the Zoom chat. 21 A. The link that I got appears to be the upload 22 link. Let me see if there was a link that I got that 23 was just for files themselves. 24 It looks like I just got the upload link. 25 Q. Does the upload link give you -- also give	Page 7 1 Q. Dr. Almeroth, you been able to access these 2 documents? 3 A. Yes, got them downloaded, got them organized, 4 ready to go. 5 Q. Okay, perfect. 6 Do you recognize these four documents? 7 A. I do. 8 Q. Do you recognize them as the declarations 9 that you provided and the patents that are challenged 10 in the two cases we're discussing today? 11 A. That's correct. 12 Q. Dr. Almeroth, have you ever been deposed 13 before? 14 A. I have. 15 Q. Roughly how many times have you been deposed? 16 A. In the ballpark of about 200. 17 Q. Okay. So you are well aware of how this is 18 going to work, I'm going to ask you a series of 19 questions today and I'm going to need your truthful 20 answers to those questions; is that going to be a 21 problem? 22 A. No. 23 Q. Is there any reason that you cannot testify 24 truthfully today? 25 A. No reason.

Page 8 1 Q. Are you under any -- the influence of any 2 medications or drugs today that might affect your 3 ability to testify clearly? 4 A. No. 5 Q. Because this is a Zoom deposition, there's a 6 enhanced likelihood that we will begin talking over 7 each other and I want to avoid that as best as possible 8 so that we have a clean record. 9 So can you agree to let me finish any 10 question that I start before you begin your answer and 11 I'll make sure that I'm doing my best to let you fully 12 answer a question before I move on to the next one; 13 does that sound good? 14 A. Yes. 15 Q. Okay. Dr. Almeroth, do the two declarations 16 that I sent you contain all of the opinions that you 17 have formed regarding the patentability of the '704 and 18 '753 patents to date? 19 A. Likely not. They contained all of the 20 opinions that I had formed as of the date that they 21 were submitted. Since then I understand there have 22 been preliminary responses submitted by the patent 23 owner institution decisions and so I might potentially 24 have additional opinions around issues like claim 25 construction and what the board has said in its	Page 10 1 MR. ZHENG: I'll -- 2 (Court reporter interrupted for 3 clarification.) 4 MR. ZHENG: Objection, scope. 5 A. I don't specifically recall. I think I 6 received them, I don't know if I really spent any time 7 looking at them. 8 BY MR. PRICE: 9 Q. Are there any corrections to either of your 10 declarations that you would like to make before we 11 begin diving in there? 12 MR. ZHENG: Objection, form. 13 A. Not that I'm aware of as I sit here right 14 now. 15 BY MR. PRICE: 16 Q. Okay. You're not aware of any errors or any 17 typographical misstates, any other changes that you 18 wish to make to those declarations? 19 MR. ZHENG: Objection, form. 20 A. None that come to mind. 21 BY MR. PRICE: 22 Q. Dr. Almeroth, did you write these two 23 declarations? 24 A. Generally, I did. They represent my opinions 25 in these IPRs.
Page 9 1 institution decision. 2 Q. Okay. Have you reviewed the board's 3 institution decisions in these two cases? 4 A. I have. 5 Q. And have you reviewed patent owner 6 preliminary responses in these two cases? 7 A. I have. 8 Q. Are you aware there were four other cases 9 that the petitioner filed against the patent owner -- 10 MR. ZHENG: Objection -- 11 BY MR. PRICE: 12 Q. -- the same time as these two petitions were 13 filed? 14 A. It -- roughly the same time I am familiar 15 with those. 16 BY MR. PRICE: 17 Q. And you provided declarations for those cases 18 too, correct? 19 A. I did. 20 Q. Are you -- do you have any understanding of 21 what occurred in those other four cases? 22 A. Not with a significant degree of specificity, 23 generally that they were not instituted. 24 Q. Did you review the institution decisions in 25 those cases?	Page 11 1 Q. My question was not whether they represent 2 your opinion, my question was whether you wrote them. 3 Did you write these declarations? 4 A. It's the same answer. 5 Q. Can you agree with the substance of a piece 6 of writing without having written it? 7 MR. ZHENG: Objection, form and scope. 8 A. I -- it's not really a constrained 9 hypothetical, I don't see a reason why it might not be 10 possible in some circumstance. 11 BY MR. PRICE: 12 Q. So you agree that somebody could write 13 something and then you can agree to it, correct? 14 MR. ZHENG: Objection, scope, form. 15 A. It's going to be the same answer. 16 BY MR. PRICE: 17 Q. Is that what occurred here, did somebody else 18 write this and you agreed to it? 19 MR. ZHENG: Objection, asked and 20 answered. 21 A. No. 22 BY MR. PRICE: 23 Q. You actually wrote the words that appear in 24 your declaration? 25 MR. ZHENG: Objection, asked and

1 answered. Page 12 2 A. With respect to the actual writing of the 3 words, in many case, yes. Obviously there's portions 4 of the declarations that cite to figures and include 5 citations. I didn't write the underlying documents 6 themselves, so those words as they appear in the 7 declaration, are not things that I specifically wrote. 8 BY MR. PRICE: 9 Q. Okay. But you drafted every other word of 10 the declarations? 11 MR. ZHENG: Objection, form, asked and 12 answered. 13 A. I don't know that I drafted every other word 14 of the declaration. Again, the best I can say is 15 ultimately the declaration represents the opinions that 16 I developed in this case. 17 BY MR. PRICE: 18 Q. Did attorneys that you worked with draft 19 portions of the declaration for your review? 20 MR. ZHENG: Objection, form, asked and 21 answered. 22 A. There might be portions in there, in the 23 declaration, things like around the legal 24 understandings as an example. 25	Page 14 1 on first, I would have spent more time on and then 2 through the process for declarations that cover patents 3 in the same family at the time would have been -- would 4 have decreased. So the first one might have been 5 closer to 50 hours, the later once potentially fewer 6 than the average. 7 BY MR. PRICE: 8 Q. Can you turn to lowercase Roman IX in your 9 expert report for the '704 patent. Native Page 10 of 10 the declaration. 11 A. Okay, I'm there. 12 Q. Is this a comprehensive list of all of the 13 evidence that you reviewed in forming your opinions in 14 this case? 15 MR. ZHENG: Objection, form. 16 A. Let's see, I believe that is a good list of 17 materials considered, and then to the extent that there 18 are other things that are contained in the declaration 19 that aren't specifically included as exhibit numbers, 20 those are also things that I would have considered. 21 And then of course I've relied on my own knowledge and 22 experience in the particular field. 23 BY MR. PRICE: 24 Q. Okay. And I note earlier you mentioned that 25 in addition to this material, you also reviewed the
Page 13 1 BY MR. PRICE: 2 Q. Okay. 3 A. Again, the -- the opinions themselves are my 4 opinions. 5 Q. So I understand that answer included sections 6 of the legal principles part of your declaration, what 7 about any of the substantive parts of your declaration, 8 did the attorneys, that you were working with on this 9 case, draft any of those sections? 10 MR. ZHENG: Objection, form, asked and 11 answered. 12 A. Beyond those particular sections as it 13 relates to other sections of the report, I don't have 14 sort of a section-by-section recollection in mind. 15 There might be other portions, but again, ultimately 16 the declaration represents the opinions I formed and 17 submitted in these two IPRs. 18 BY MR. PRICE: 19 Q. How many hours would you say you spent 20 preparing each of these declarations? 21 MR. ZHENG: Objection, form. 22 A. Probably on average in the neighborhood of 25 23 to 35 hours. As you indicated, there were multiple IPR 24 declarations, at least some of the detectives overlap 25 and so beyond an average whichever declaration I worked	Page 15 1 board's institution decisions in these two cases; is 2 that correct? 3 A. I did, but that was obviously after this 4 petition was -- and declaration were submitted. 5 Q. And I believe also you testified earlier that 6 you reviewed patent owners preliminary responses in 7 these two proceedings? 8 A. Yes, with the same caveat. 9 Q. Are there any other documents besides the 10 institution decisions and patent owner preliminary 11 responses that you reviewed after you provided your 12 declaration in this case and in preparation for today's 13 testimony? 14 A. Those are the ones that come to mind. I 15 think there was -- there might have been a -- a -- some 16 of the other documents that were part of the petition 17 at some point I probably would have looked at some of 18 those, but not that I would have used as the basis for 19 the opinions in the initially submitted declarations. 20 Q. Sorry, I just want to clarify that. 21 So you may have looked at documents in the 22 list of exhibits on -- that you provided in your 23 declaration also, in addition to the preliminary 24 response and institution decisions when preparing for 25 today's deposition; is that what you mean?

Page 16 1 A. No, since I submitted the declaration there 2 have been other documents that have been part of the 3 IPR. You listed the institution decision and the 4 patent owners preliminary response because I mentioned 5 those, but there was other documents that have been 6 produced, developed, submitted, provided by the PTAB or 7 the parties. I might have looked at some of those 8 between the time when the declaration was submitted and 9 today. 10 Q. I understand. 11 So have you reviewed any of the exhibits that 12 the patent owner in this case provided along with the 13 preliminary responses? 14 A. I suspect I have at some point. I don't 15 specifically recall, though. 16 Q. So do you recall whether or not you reviewed 17 the declaration of Dr. Michael Goodrich that was 18 provided with the preliminary response in either one of 19 these cases? 20 MR. ZHENG: Objection, form. 21 A. I think I would have looked at those if they 22 were part of the patent owner preliminary response. 23 BY MR. PRICE: 24 Q. Okay. And has any of the material that you 25 reviewed since you filed your -- you submitted your	Page 18 1 impact on the ultimate question of validity. 2 BY MR. PRICE: 3 Q. Did you say -- I'm sorry, I think I missed 4 that. Did you say the terms are not construed unless 5 they have an impact on patentability? 6 A. Not -- not beyond the plain and ordinary 7 meaning. So some -- some specific proposed 8 constructions from either parties in terms of what the 9 board has to resolve to the extent sometimes there's -- 10 I mean, it depends on the IPR. Sometimes there's an 11 underlying district court claim construction order in 12 place and those get included, but generally, it's plain 13 and ordinary meaning. 14 And then in this case, the patent owner can 15 propose constructions in its preliminary response and 16 then I'll have an opportunity to consider those and 17 potentially submit opinions in a reply declaration. 18 Q. You used the term "plain and ordinary 19 meaning," correct? 20 A. I did. 21 Q. What is your understanding of what the term 22 plain and ordinary means in the context of claim 23 construction? 24 MR. ZHENG: Objection, form. 25 A. I mean, the way that I've heard it used is
Page 17 1 declarations in these cases changed any of the opinions 2 that you provided in those declarations? 3 MR. ZHENG: Objection, form. 4 A. No, but I will also say that I haven't looked 5 at those really from the perspective of understanding 6 what the patent owner's positions are or everything 7 that the board said as it could apply to my 8 declarations. I'll have to see what the patent owner 9 says in the patent owner response and I suspect wait to 10 see if I'm asked to do a reply declaration. 11 So it's an on -- ongoing process of 12 considering materials that are part of the IPR to see 13 if there's any -- any additional opinions that I might 14 offer. 15 BY MR. PRICE: 16 Q. Dr. Almeroth, are you familiar with the 17 concept of claim construction? 18 A. I am. 19 Q. What is your understanding of how claim 20 construction is used in an inter partes review? 21 MR. ZHENG: Objection, form, scope. 22 A. I suspect ultimately that sounds like a legal 23 question. Generally my understanding would be in the 24 declarations, but I understand generally terms aren't 25 construed unless the board believes it might have an	Page 19 1 usually something like plain ordinary meaning in the 2 context of the claims and in light of the specification 3 as understood by a person of ordinary skill in the art 4 as of the priority date for the patent. 5 Q. Is it your understanding that parties can 6 raise reasonable disputes about what the plain and 7 ordinary meaning of any particular term is? 8 A. As a general -- 9 (Court reporter interrupted for 10 clarification.) 11 MR. ZHENG: Objection, form and scope. 12 A. Sorry, as a general principle, that's my 13 understanding. 14 BY MR. PRICE: 15 Q. Okay. Can you turn to Page 24 of your 16 declaration in the '704 patent case. 17 A. Okay. 18 Q. Can you review Paragraph 52 for me, please. 19 A. (Witness complies.) 20 Okay. 21 Q. When you say that you performed your 22 technical analysis of the disclosures of the prior art 23 by applying the plain and ordinary meaning of all claim 24 terms, how did you define those plain and ordinary 25 meanings?

Page 20 1 A. As understood by a person of skill in the art 2 in the context of the claims in light of the 3 specification, including prosecution history as would 4 be understood by that person as of the date identified, 5 which I think is the date of provisional for the two 6 patents. 7 Q. Did you write out in words the plain and 8 ordinary meaning of any of the claim terms of the '704 9 patent, that you actual -- 10 MR. ZHENG: Object to form -- 11 (Court reporter interrupted for 12 clarification.) 13 MR. PRICE: I'm sorry, I'm not done with 14 the question. 15 MR. ZHENG: I'm sorry, go ahead. 16 BY MR. PRICE: 17 Q. -- that you actually applied in your 18 analysis? 19 A. To my recollection, I don't believe I did. 20 But I don't have the declarations memorized, so I would 21 defer to what they say. 22 Q. Can you please review Paragraph 54 of the 23 '704 declaration. 24 A. (Witness complies.) 25 Okay.	Page 22 1 BY MR. PRICE: 2 Q. But in some instances, would you say that you 3 did have to have a particular definition in mind? 4 MR. ZHENG: Objection. 5 A. We would have to look at a claim or not. I 6 mean, to my recollection, I don't recall having to have 7 some specific definition in mind in terms of performing 8 my analysis. 9 BY MR. PRICE: 10 Q. Will you please turn to Page 24 of your 11 declaration for the '753 patent case. 12 A. Sorry, what page? 13 Q. Page 24. 14 A. All right, I'm there. 15 Q. Okay. I have the same questions about this 16 section as I did for the last one, so just bear with 17 me. 18 When preparing your declaration in this case, 19 is it correct to say that you applied the plain and 20 ordinary meaning of all claim terms? 21 A. It is -- who knows if it will be sufficient. 22 I did the exact same thing for the two declarations. 23 Q. I think that's sufficient. 24 A. Okay. 25 Q. We won't belabor the point.
Page 21 1 Q. Do you see where you wrote that the prior art 2 discloses or renders obvious the challenge claims under 3 any reasonable potential claim interpretation? 4 A. Yes. 5 Q. Did you evaluate the space of all reasonable 6 potential claim interpretations in your declaration? 7 MR. ZHENG: Objection, form. 8 A. I think in a general sense I did. If you 9 look at what the claims say and require and what the 10 prior art describes, I think I've attempted to consider 11 any reasonable potential claim interpretations. 12 BY MR. PRICE: 13 Q. Okay. If I ask you about what you believe 14 the plain and ordinary meaning of a given claim term 15 is, do you think you'll be able to tell me what that is 16 in our conversation today? 17 MR. ZHENG: Objection, form. 18 A. I -- it will depend on the term in general. 19 I -- as you indicated in an earlier question, I don't 20 believe I've set forth what particular definitions 21 should be, and it really is a determination of whether 22 or not the prior art would disclose the limitation. So 23 in most instance, I didn't have to have particular 24 definitions in mind as part of my analysis. 25	Page 23 1 All right, Dr. Almeroth, can you do me a 2 favor and open up the '704 patent for me. 3 A. (Witness complies.) 4 Okay, I've got it open. 5 Q. All right. Can you turn to Claim 1 of the 6 '704 patent. It's going to be all the way in the back 7 of the patent. 8 A. I'm there. 9 Q. Okay. Do you see where Claim 1 recites: 10 Receiving by an aggregator data relating to a plurality 11 of media streams? 12 A. I do. 13 Q. In forming your opinions about the 14 patentability of the '704 patent, did you come to an 15 understanding of the plain and ordinary meaning of the 16 term "aggregator"? 17 MR. ZHENG: Objection, form. 18 A. Not in terms of a formal definition. 19 BY MR. PRICE: 20 Q. Did you come to an understanding of the 21 meaning of the term without a formal definition? 22 MR. ZHENG: Objection, form. 23 A. I'm not sure what that would include. I 24 think there's -- let me find a paragraph. I think 25 there's one that talks about some discussion of at

Page 24 1 least in the context of the prior art references, what 2 the -- what there would include functionality that 3 would be consistent with how that term is used in the 4 '704 patent. 5 Paragraph 74 of the '704 declaration, I 6 generally don't read paragraphs into the record but 7 this one is pretty -- or the part I want to read is 8 pretty short. 9 It says that: I note that the '704 patent 10 specification described an aggregator as providing a 11 presentation element to user 1 120 and 2 130, end 12 quote, for content from different media feeds, and then 13 it goes on to -- to provide some additional description 14 there. 15 That's probably the extent to which I've 16 referenced the '704 patent in the context of at least 17 describing what the aggregator is as it's described in 18 the specification. But I wouldn't identify that as 19 a -- as a formal plain and ordinary meaning for the 20 term. 21 BY MR. PRICE: 22 Q. Can you perform -- can you establish a formal 23 plain and ordinary meaning of the term? 24 MR. ZHENG: Objection, form, scope. 25 A. I don't believe I have in the declaration.	Page 26 1 ordinary meaning, I guess for each term, like 2 prepositions and things like that, I'm not sure that 3 there's a particular meaning as opposed to what the 4 limitation means as a whole or what it would cover or 5 require. 6 BY MR. PRICE: 7 Q. You understand that you are establishing an 8 opinion that the prior art discloses an aggregator, 9 correct? 10 A. I have offered such an opinion. 11 Q. Okay. And the evidence that you provided to 12 prove that, for example, Whitehead discloses an 13 aggregator is that it includes a presentation element, 14 correct? 15 MR. ZHENG: Objection, form. 16 A. Could you repeat the question? 17 BY MR. PRICE: 18 Q. I said: You are -- you provide an opinion 19 that Whitehead discloses an aggregator because it 20 included a presentation element, correct? 21 MR. ZHENG: Objection, form. 22 A. That is incomplete. 23 BY MR. PRICE: 24 Q. How is it incomplete? 25 A. That's not all of what I considered in terms
Page 25 1 I'm not really prepared to do that on the fly sitting 2 here right now. 3 BY MR. PRICE: 4 Q. Okay. So is it your opinion that so long as 5 a device provides a presentation element to a user, 6 that is sufficient to establish that the device is an 7 aggregator? 8 MR. ZHENG: Objection, form. 9 A. That seems incomplete. 10 BY MR. PRICE: 11 Q. Okay. So what is it missing? 12 A. Really the analysis is what the requirements 13 of the claim are. 14 Q. Well, the claim requires an aggregator, 15 right? 16 A. Claim 1 of the '704 patent does. 17 Q. So Claim 1 of the '704 patent requires an 18 aggregator, right? 19 A. I -- it actually requires steps to be 20 performed by an aggregator. 21 Q. Okay. And it's your opinion that every term 22 in the '704 patent has a plain and ordinary meaning, 23 correct? 24 MR. ZHENG: Objection, form. 25 A. I mean for certain terms there are plain and	Page 27 1 of evidence or requirements for the aggregator. 2 Q. What other requirements of an aggregator are 3 there that you established that Whitehead teaches? 4 A. For Claim 1 of the '704 patent, it's all of 5 the requirements in Claim 1. 6 Q. An aggregator is a device, right? 7 MR. ZHENG: Objection, form. 8 A. I -- I mean, it seems like I would have to go 9 back and check whether it could -- could -- is a device 10 or is limited to a device or includes software or not. 11 I don't think I've taken a position as to the metes and 12 bounds of whether it's hardware or software or some 13 combination of those two. 14 BY MR. PRICE: 15 Q. Okay, but when you're pointing to, in the 16 prior art is satisfying, the aggregator is a device, 17 correct? 18 MR. ZHENG: Objection, form. 19 A. It does include a device, at least with 20 respect to Claim 1 of the '704 patent. It's a device 21 that's performing the method steps identified in Claim 22 1. 23 BY MR. PRICE: 24 Q. Is it your opinion that the term "aggregator" 25 is defined by the steps that it performs in the context

Page 28 1 of Claim 1 or is it your opinion that the term 2 aggregator has a plain and ordinary meaning in the art? 3 MR. ZHENG: Objection, form. 4 A. I don't think I've offered an opinion one way 5 or another on that question. 6 BY MR. PRICE: 7 Q. But you told me that every claim term has a 8 plain and ordinary meaning in these two patents, 9 correct? 10 A. I don't think I said that. 11 Q. Okay. Isn't that what it says in Paragraph 12 52 of your declaration, that you applied the plain and 13 ordinary meaning of all claim terms? 14 MR. ZHENG: Objection, 15 mischaracterization. 16 A. It says I'm applying the plain and ordinary 17 meaning of all claim terms. 18 BY MR. PRICE: 19 Q. Is aggregator a claim term? 20 A. I would think it would be a claim term. 21 Q. What is the plain and ordinary meaning of 22 aggregator that you applied in your analysis? 23 MR. ZHENG: Objection, form, asked and 24 answered. 25 A. Yeah, as I testified to multiple times, I	Page 30 1 It's the process I've used in IPRs before, it's the 2 same process the PTAB uses. 3 BY MR. PRICE: 4 Q. Can you expand on what you mean by "it's the 5 same process that the PTAB uses"? 6 MR. ZHENG: Objection, form. 7 A. Sure. For the '704 patent, it's in the 8 institution decision starting on about Page 7 of the 9 document. 10 BY MR. PRICE: 11 Q. I'm sorry, was that your full answer? 12 A. Yes. 13 Q. What are you pointing me to on -- in this 14 institution decision? 15 A. The claim construction section. 16 Q. What specifically is responsive to my 17 question in this section? I mean, you're pointing me 18 to an entire section of a brief here. Where does it -- 19 where does this document say that you don't have to 20 establish what -- you don't have to come to an 21 understanding of what the plain and ordinary meaning of 22 a term is before opining that it's taught in the prior 23 art? 24 MR. ZHENG: Objection, form. 25 A. That was not my testimony as to why I would
Page 29 1 didn't have a specific definition of an aggregator in 2 mind. I was really looking to what the plain and 3 ordinary meaning of the claims are and whether or not 4 that's something that would be disclosed or taught or 5 obvious based on the prior art references. 6 BY MR. PRICE: 7 Q. I'm sorry, I don't think I understood that. 8 You established a plain and ordinary meaning 9 of the claims or the terms of the claim when you 10 performed your analysis? 11 A. I used the plain and ordinary meaning in the 12 context of performing my analysis of claim terms and 13 claim limitations. 14 Q. Okay. So you came to an understanding of the 15 plain and ordinary meaning of the term aggregator; is 16 that right? 17 MR. ZHENG: Objection, form, asked and 18 answered. 19 A. I -- not some formal definition. 20 BY MR. PRICE: 21 Q. I didn't -- I'm sorry, I didn't ask about a 22 formal definition, but in order to do your analysis, 23 is -- did you have to form an understanding of what the 24 plain and ordinary meaning of the term "aggregator" is? 25 A. Not with -- not with a degree of specificity.	Page 31 1 point to the institution decision. 2 BY MR. PRICE: 3 Q. Okay, so why are you pointing to the 4 institution decision? 5 A. My recollection is you asked the question 6 about what the board did with respect to claim 7 construction, what process it used. 8 Q. Okay. And what process did it use? 9 A. The one described starting on Page 7 of the 10 institution decision, under the section on claim 11 construction. 12 Q. So what does that have to do with the opinion 13 that you provided, though? 14 A. I'm answering your question. I'm not sure 15 why -- I mean, you're the one who asked what process 16 the board uses for claim construction, so that's why 17 I'm pointing to -- 18 Q. Well, because you told me that you use the 19 same process that the board used. 20 A. Yes. 21 Q. Did you -- did you write what the board 22 provided in their institution? I'm -- I'm confused. 23 MR. ZHENG: Objection, argumentative. 24 BY MR. PRICE: 25 Q. I'll ask this a different way, I think we can

Page 32 1 head it off. 2 So I'm looking at Page 7 of the institution 3 decision for the '704 patent; are you there with me? 4 A. Yes. 5 Q. Okay. So the first line says: Petitioner 6 serves that, quote, no express constructions are 7 required, end quote. 8 Do you see that? 9 A. I do. 10 Q. Is that what you're talking about with the 11 board using the same claim construction process that 12 you used? 13 MR. ZHENG: Objection, form. 14 A. No. 15 BY MR. PRICE: 16 Q. Okay. So why are you pointing me to this 17 part of the institution decision? 18 A. You asked me the question: What process did 19 the board use, so... 20 Q. I asked the process -- I asked why -- what 21 process the board used because you told me it was the 22 same process that you used. 23 A. Which is generally to use the plain and 24 ordinary meaning and then the board will determine if 25 there's some term that ultimately needs to be construed	Page 34 1 it have to do? 2 MR. ZHENG: Objection, form. 3 A. So that's not what I said earlier. 4 BY MR. PRICE: 5 Q. Okay, do you want to go back and review the 6 testimony? 7 A. Oh, absolutely, I 100 percent didn't say that 8 that's what the aggregator has to do. I said that 9 there's a paragraph in the report, 74, that pointed to 10 what the specification describes about the aggregator. 11 I did not identify that as a requirement for the 12 aggregator. 13 Q. Okay. So what is the requirement for an 14 aggregator that would allow the board to understand 15 that it's taught in the prior art? 16 MR. ZHENG: Objection, form. 17 A. So what would allow the board to understand, 18 for example, you were asking about Claim 1 of the '704 19 patent earlier, it's a method of generating media 20 programming for display on a client, and it includes a 21 number of steps to be performed by the aggregator. The 22 question for the board would be whether or not the 23 prior art discloses, or teaches, or would render 24 obvious, each of those steps as described being 25 performed by an aggregator.
Page 33 1 based on either what the patent -- the petitioner says 2 or the patent owner says. 3 Q. Okay. But do you agree that the plain and 4 ordinary meaning is a thing that has to be established 5 before it can be applied? 6 MR. ZHENG: Objection, form. 7 A. It's not my -- sorry. 8 BY MR. PRICE: 9 Q. Sorry, and whether or not you write it out 10 in, you know, formally in words, do you agree that you 11 have to determine the plain and ordinary meaning of a 12 claim term before you determine that it's been taught 13 in the prior art? 14 MR. ZHENG: Objection, form. 15 A. At least for my process what's important is 16 to understand what the claim language says. In large 17 part you take the claim language at face value, so as 18 you indicated in your question, it's not some formal 19 definition that you need to write out in order to 20 undertake an invalidity analysis in the context of an 21 IPR. 22 BY MR. PRICE: 23 Q. Okay. So earlier you told me that an 24 aggregator has to provide a presentation element to a 25 user, but that's not all it has to do; what else does	Page 35 1 BY MR. PRICE: 2 Q. Exactly. So what is an aggregator? 3 MR. ZHENG: Objection, asked and 4 answered. 5 A. I don't have some specific definition for 6 what an aggregator is. From the perspective of working 7 through my invalidity opinions for Claim 1, it would be 8 a determination of whether or not the different prior 9 art and the prior art grounds discloses what's required 10 by the claim limitation. 11 BY MR. PRICE: 12 Q. Okay. But the claim limitation requires an 13 aggregator, right? Not just the steps that it 14 performs? 15 A. If -- again, your question isn't specific to 16 a particular claim. 17 Q. I'm asking about Claim 1. We've been on 18 Claim 1 this whole time. 19 A. The question's not specific about Claim 1 in 20 the context of the question doesn't indicate that the 21 context is the same. 22 Q. I'm sorry, Dr. Almeroth, you arguing back to 23 me is not going to get us anywhere today. 24 My question is about Claim 1. Claim 1 25 recites an aggregator, right?

Page 36 1 A. It does include the term "aggregator". 2 Q. Okay. It also includes steps that the 3 aggregator must perform, correct? 4 A. It also includes steps that an aggregator 5 must perform. 6 Q. Does the term "aggregator," by itself, have a 7 plain and ordinary meaning in the art that we are 8 concerned with today? 9 MR. ZHENG: Objection -- 10 BY MR. PRICE: 11 Q. Can you find it in a dictionary? 12 MR. ZHENG: Objection, form, asked and 13 answered. 14 A. I don't recall offering an opinion like that 15 in the context of this declaration. 16 BY MR. PRICE: 17 Q. Right -- sorry. 18 A. So if there's a paragraph you can point me to 19 that offers an opinion like that then that will help me 20 answer these questions. 21 Q. Well, no, that's the problem here is that 22 that doesn't exist and that's what I'm looking for. 23 You told me that you applied the plain and 24 ordinary meaning of every claim term, you told me that 25 the term "aggregator" is a claim term. I'm asking you	Page 38 1 definition. It's based on what the patent claims 2 require an aggregator to do specifically in the context 3 of Claim 1 in the '704 patent. 4 BY MR. PRICE: 5 Q. Is it your opinion that any device that 6 performs those functions listed in Claim 1 of the '704 7 patent is by definition an aggregator? 8 MR. ZHENG: Objection, form. 9 A. I don't believe I've offered an opinion like 10 that. I -- it seems to contemplate a hypothetical. 11 BY MR. PRICE: 12 Q. There's no hypothetical. 13 My question is: Does the -- do the steps 14 performed by the aggregator define what the plain and 15 ordinary meaning of an aggregator is in the '704 16 patent? 17 MR. ZHENG: Objection, form. 18 A. I'm not sure how to answer that question. 19 BY MR. PRICE: 20 Q. Okay. All right, sticking on Claim 1 of the 21 '704 patent, same limitation -- overall limitation; do 22 you see where it refers to a plurality of media 23 streams? 24 A. Yes. 25 Q. In forming your opinions about the
Page 37 1 what the plain and ordinary meaning of the term 2 "aggregator" is in your expert opinion? 3 A. I don't have some specific definition that I 4 can give for you off the top of my head. I would have 5 to give it some thought. 6 Q. Okay. And that's thought that you didn't 7 give it before you provided your opinion that Whitehead 8 teaches an aggregator? 9 A. I didn't try and come up with some formal 10 definition of an aggregator before doing my analysis. 11 It wasn't necessary to have some formal definition of 12 an aggregator in order to do my analysis. 13 Q. Again, Dr. Almeroth, I'm not asking you for 14 formal definition. I'm asking for your working 15 understanding of what the plain and ordinary meaning of 16 that term is as you applied it in your analysis? 17 MR. ZHENG: Objection. 18 BY MR. PRICE: 19 Q. Can you do that today or are you telling me 20 that you didn't do that before and you can't do it 21 today? 22 MR. ZHENG: Objection, form, asked and 23 answered. 24 A. What I can say is I haven't done a formal 25 definition with respect to any sort of working	Page 39 1 patentability of the '704 patent, did you come to an 2 understanding of the meaning of the term "media 3 stream"? 4 A. Not with respect to some specific claim 5 construction. 6 Q. That's not what I asked. 7 I asked if you came to an understanding of 8 the plain and ordinary meaning of the term "media 9 stream"? 10 A. It's the same answer. 11 Q. I'm sorry, that's not responsive. 12 I'm asking: Did you come to an understanding 13 of the plain and ordinary term of -- of the term "media 14 stream". 15 MR. ZHENG: Objection, asked and 16 answered. 17 A. Same answer. 18 BY MR. PRICE: 19 Q. What is a media stream? 20 A. I'm not sure if you're asking in a general 21 sense or how that term should be construed in the 22 context of Claim 1 of the '704 patent. 23 Q. Does the term "media stream" have a plain and 24 ordinary meaning in the art? 25 MR. ZHENG: Objection, form.

Page 40 1 A. I -- it has varied meanings. Usually it 2 depends on the context in which the term is used to 3 determine any sort of precision about what the term 4 means. 5 BY MR. PRICE: 6 Q. Okay. In the context of the '704, is there a 7 plain and ordinary meaning of the term "media stream"? 8 MR. ZHENG: Objection, form. 9 A. There is. 10 BY MR. PRICE: 11 Q. And what is it? 12 A. I haven't tried to give it a specific 13 definition. 14 Q. Did you apply a particular meaning of the 15 term "media stream" in your declaration? 16 A. It's going to be what I've testified to 17 earlier. I didn't come up with some formal definition 18 of -- or specific definition of what a media stream 19 would need to be. I think the declaration speaks for 20 itself as to the analysis of -- that I performed in 21 terms of identifying different aspects of the prior art 22 as to what would constitute -- whether or not that 23 would be a media stream. In other words -- 24 Q. But you -- 25 A. -- just like all of this analysis, I can	Page 42 1 A. I'm not prepared to give you a claim 2 construction opinion as to what the term "media stream" 3 should mean in the context of Claim 1 of the '704 4 patent. 5 BY MR. PRICE: 6 Q. Can you turn to Paragraph 78 of your 7 declaration in the '704 case. 8 A. Okay. 9 Q. Is it your opinion that Whitehead teaches 10 that custom media channel 170 is a media stream because 11 it can be streamed to content processing device as a 12 single multimedia file? 13 MR. ZHENG: Objection, form. 14 A. I don't think my opinion is limited to just 15 that characterization. 16 BY MR. PRICE: 17 Q. Are there other characterizations that would 18 make something a media stream? 19 MR. ZHENG: Objection, form. 20 A. In the abstract potentially. 21 BY MR. PRICE: 22 Q. What in the abstract potentially could also 23 be a media stream besides the multimedia file that can 24 be streamed? 25 MR. ZHENG: Objection, form.
Page 41 1 identify examples from the prior art and offer an 2 opinion that that would at least be an example of what 3 a media stream would be in the context of the validity 4 analysis without having to come up with some definition 5 that identifies the metes and bounds of a claim term. 6 Q. Okay. So you didn't establish an objective 7 or even working definition of what a media stream was 8 before you determined that it was taught by the prior 9 art, correct? 10 MR. ZHENG: Objection, form. 11 A. I'm not sure what that question means, but 12 I've described the analysis that I've done in the 13 report. If the analysis that I've done in the report 14 sufficiently meets the requirements of your question 15 for describing what a media stream is, then I have. 16 If you're asking for something more in terms 17 of specific definition or formal definition or working 18 definition as to whether or not that means, I don't 19 recall offering something of that particular nature in 20 the declaration. 21 BY MR. PRICE: 22 Q. All right. Can you do that today? Can you 23 tell me what a media stream is in the context of the 24 '704 patent? 25 MR. ZHENG: Objection, form, scope.	Page 43 1 A. So again, the -- the last couple of questions 2 and this one assumes something that I said that I 3 didn't say. I didn't say that a media stream would 4 simply be a single multimedia file that can be 5 streamed. That's part of the evidence that I cited to 6 with respect to Whitehead. That's not all of it. 7 Further in terms of what else could 8 constitute a media stream, I would point to disclosures 9 in Christoffolo as an example of what I've also pointed 10 to as media stream in some of the other prior art. 11 If you're asking what else could be a media 12 stream beyond that, that's not a question I tried to 13 answer in the context of these declarations so I would 14 have to give it some thought. 15 BY MR. PRICE: 16 Q. Is it your testimony that a multimedia file 17 that can be streamed is sufficient to establish a media 18 stream? 19 MR. ZHENG: Objection, form. 20 A. I don't think I've offered that opinion in 21 the declaration. I think that's incomplete in the 22 context of at least Whitehead, which is the subject of 23 Paragraph 78. 24 BY MR. PRICE: 25 Q. Okay. If it's -- if you need more than a

Page 44 1 multimedia file that can be streamed, what else do you 2 need to establish that something is a media steam? 3 MR. ZHENG: Objection, form, scope. 4 A. It would depend. I haven't really offered a 5 formal opinion on -- on what the metes and bounds of 6 what would need to be included in order to make it a 7 media stream. I've pointed to a variety of disclosures 8 in Whitehead that provide evidence that there's an 9 example of a media stream and there's a plurality of 10 media streams disclosed in that reference as it would 11 be understood by a person of skill in the art. 12 BY MR. PRICE: 13 Q. I think that wasn't an answer to my question. 14 Is it sufficient to establish that Whitehead 15 teaches a media stream if it teaches a multimedia file 16 that can be streamed? 17 MR. ZHENG: Objection, form, asked and 18 answered. 19 A. I would have to give that question some 20 thought. It's -- it's attempting to isolate a 21 disclosure from Whitehead and determine whether or not 22 it was sufficient. I would have to give some thought 23 to that. I consider all of Whitehead, including the 24 portions I've cited to. 25	Page 46 1 recitation of a plurality of media steams provides 2 antecedent basis for the subsequent recitation of the 3 plurality of media steams? 4 MR. ZHENG: Objection, scope. 5 A. I would have to look. I don't believe I've 6 offered an opinion like that in the declaration. If 7 I'm misremembering it, then you can point me to where 8 I've addressed that issue in the declaration. 9 BY MR. PRICE: 10 Q. No, you didn't address that in the 11 declaration, so I'm asking you to do it now. Can you 12 do that now, please? 13 MR. ZHENG: Objection, form. 14 A. I'm not prepared to do that on the fly right 15 now. 16 BY MR. PRICE: 17 Q. You're not prepared to read the claim and 18 tell me whether or not it's your understanding of the 19 claim -- that you think is unpatentable, whether or not 20 the term: A plurality of media streams provides 21 antecedent basis for the subsequent recitations of the 22 plurality of media steams? 23 MR. ZHENG: Objection, form, scope. 24 A. I'm not prepared to develop a new opinion 25 like that on the fly sitting here right now.
Page 45 1 BY MR. PRICE: 2 Q. Okay. Sticking with Claim 1, can you go back 3 in -- of the '704 patent, can you go back and pull that 4 up again? 5 A. I've got it up. 6 Q. Are you familiar with the phrase "antecedent 7 basis"? 8 A. I am. 9 Q. What is your understanding of the phrase 10 "antecedent basis"? 11 MR. ZHENG: Objection, form, scope. 12 A. Just from a general sense, usually when there 13 is a definite article like "the," it would refer to 14 something earlier in the claim. 15 BY MR. PRICE: 16 Q. Okay. So in Claim 1 of the '704 patent, do 17 you see the first limitation after the preamble says: 18 Receiving by an aggregator dating -- sorry, data 19 relating to a plurality of media steams? 20 A. I do see that. 21 Q. Okay. Do you see the last limitation where 22 it says the media programming comprising concatenated 23 elements of plurality of media steams? 24 A. I see that. 25 Q. Is it your understanding that the first	Page 47 1 BY MR. PRICE: 2 Q. Okay. And this is something that you didn't 3 consider when providing your declaration in this case? 4 A. I didn't recall doing so. You seem to 5 represent that I didn't, so based on either that 6 representation -- or based on that representation and 7 the fact that I don't recall having done that, then 8 it's likely not in the declaration. But if I'm -- I 9 don't have the full scope of the declaration memorized 10 so if I'm misremembering some portion of it, I would 11 defer to what the declaration says. 12 Q. I mean, you're more than welcome to refer to 13 your declaration for any questions that I'm asking. 14 But my question here is about the scope of a claim that 15 you're opining is unpatentable, and I'm asking whether 16 or not you can tell me, sitting here today, whether 17 it's your understanding of whether or not the term: A 18 plurality of media steams provides antecedent basis for 19 the subsequent recitation of the terms the plurality of 20 media steams in the context of Claim 1 of the '704 21 patent? 22 MR. ZHENG: Objection, form, scope. 23 A. It's the same answer I gave when you asked 24 the question already. 25

Page 48 1 BY MR. PRICE: 2 Q. You can't read the 15 lines of Claim 1 and 3 tell me your opinion? 4 MR. ZHENG: Objection, form, asked and 5 answered. 6 A. It's the same answer I gave when you asked 7 the same question. 8 BY MR. PRICE: 9 Q. And why can't you do that, Dr. Almeroth? Is 10 it because you're incapable? 11 MR. ZHENG: Objection, form 12 argumentative. 13 A. It would seem like it's a new opinion, unless 14 you can point me to some paragraph in the declarations 15 where I've done that previously. So forming new 16 opinions about claim scope and antecedent basis is 17 something I would have to give some thought to. 18 BY MR. PRICE: 19 Q. Okay. I'm giving you the opportunity to give 20 it some thought. Is that something that you can do for 21 me today? 22 MR. ZHENG: Objection, form, scope. 23 A. Likely not in the context of -- of the -- a 24 deposition. 25	Page 50 1 that, but that doesn't take a position one way or 2 another whether or not there's actually antecedent 3 basis. So I would actually look through the 4 limitations of the claim to see what I pointed to as 5 the plurality of media streams and see how the -- that 6 analysis relates those plurality of media streams from 7 the receiving element through the subsequent 8 limitations. 9 My recollection, at least for Whitehead, is 10 that it talks about a plurality of media streams in a 11 couple of different ways, and ultimately what's 12 provided to the client media -- or the client is the 13 media programming that comprised a concatenation of 14 those media streams under the theories that I 15 identified, and I think for Claim 1, it was primarily 16 the second theory. 17 As to whether or not there's antecedent 18 basis, that goes to a question of patent validity that 19 is not one that I believe I addressed in the context of 20 this declaration. 21 BY MR. PRICE: 22 Q. You didn't provide an opinion on the validity 23 in your declaration? 24 A. Oh, no, the question of whether or not 25 there's antecedent basis can have an impact on things
Page 49 1 BY MR. PRICE: 2 Q. Okay. And just to be clear, when coming to 3 your opinion that this claim is unpatentable, you're 4 telling the patent office that it's unpatentable, 5 right? 6 A. I am. 7 Q. Okay. You didn't consider whether the plain 8 and ordinary meaning of the claim requires an 9 understanding where the term: A plurality of media 10 streams provides antecedent basis for the subsequent 11 recitations of the same term; you didn't do that? 12 A. What I did -- 13 MR. ZHENG: Objection, form -- sorry. 14 (Court reporter interrupted for 15 clarification.) 16 MR. ZHENG: Objection, form, asked and 17 answered. 18 A. What I did was what I thought was required 19 and is included in the context of the declaration. To 20 the extent there's some portion of the opinions that 21 attempt to relate whether or not it's the same 22 plurality of media streams or not, I think it would be 23 included in the opinions in the declaration. 24 I could have, for example, assumed that there 25 was antecedent basis and performed an analysis based on	Page 51 1 like indefiniteness and I didn't provide those kinds of 2 invalidity opinions to the PTAB in this IPR. 3 Q. Okay. In coming to your understanding of 4 what is claimed in Claim 1 of the '704 patent, did you 5 consider whether or not the steps require certain 6 ordering? 7 MR. ZHENG: Objection, form. 8 A. My recollection of the analysis that's 9 contained in the initial declaration is that there was 10 not an assumption for Claim 1 of the '704 patent that 11 there was a particular ordering requirement. 12 BY MR. PRICE: 13 Q. Okay. Is it your understanding of whether or 14 not antecedent basis for a term can provide evidence 15 that a person of ordinary skill in the art would 16 perceive an ordering in a patent claim? 17 MR. ZHENG: Objection, form, scope. 18 A. In the abstract sense, that sounds like a 19 legal conclusion. I don't believe that's the kind of 20 legal conclusion that I've offered in this declaration. 21 BY MR. PRICE: 22 Q. Okay. But you're working under the 23 assumption that these claim limitations do not have to 24 be executed in any particular order? 25 MR. ZHENG: Objection, form,

Page 52 1 mischaracterization. 2 A. I did not take a claim construction position 3 as to whether or not there was an ordering of steps 4 requirement in the context of Claim 1 of the '704 5 patent. 6 BY MR. PRICE: 7 Q. Okay. So you neither established there's an 8 ordering or that there's not an ordering required, 9 correct? 10 MR. ZHENG: Objection, form, 11 mischaracterization. 12 A. In terms of a claim construction position, I 13 don't believe I offered an opinion with respect to 14 ordering requirements for Claim 1 of the '704 patent. 15 BY MR. PRICE: 16 Q. Do you see where Claim 1 of the '704 patent 17 recites: Accessing by the aggregator over a network 18 the plurality of media streams? 19 A. I see that. 20 Q. Does the term "accessing," as used in the 21 context of this claim limitation, have a plain and 22 ordinary meaning in the art? 23 MR. ZHENG: Objection, form. 24 A. It would. 25	Page 54 1 A. Sure. It's about Paragraph 128 and 129. 2 Q. Are you -- are you going to tell me what 3 accessing? 4 A. Oh, do you want me to just read this 5 paragraph? 6 Q. Well, you don't have to read it verbatim, but 7 I do want an answer -- answer to the question, so 8 whatever form you want to give the answer to the 9 question is what -- which is: What is it that 10 Whitehead teaches, for example, that constitutes 11 accessing by the aggregator over a network the 12 plurality of media streams? 13 A. It's what I've written in Paragraphs 128 and 14 129, I can read those to you if you would like. That's 15 what my opinion is. 16 Q. I -- what in your opinion is the difference 17 between -- sorry, withdraw that. 18 Is it your opinion that the accessing by the 19 aggregator over the network of the plurality of media 20 streams can occur before the aggregator determines a 21 temporal sequence of media programming comprising the 22 media streams? 23 MR. ZHENG: Objection, form. 24 A. Your question was not specific as to whether 25 or not that's the way that Whitehood -- Whitehead could
Page 53 1 BY MR. PRICE: 2 Q. And what would it be? 3 A. I don't have a formal definition that I've 4 developed for purposes of this claim construction. 5 Q. Okay. So how is the board supposed to know 6 whether or not what the prior art is doing constitutes 7 accessing a plurality of media steams in order to give 8 any weight to your opinion? 9 MR. ZHENG: Objection, form. 10 A. So what I've done is I've looked at what's in 11 Whitehead, as an example, and I've determined whether 12 or not it provides disclosures of whether or not what 13 I've identified as the aggregator would be accessing 14 the plurality of media streams over a network. 15 BY MR. PRICE: 16 Q. Okay. And can you tell me what -- 17 A. I'm not done. 18 Q. Sorry. 19 A. So I can go to that section and point you to 20 the particular disclosures on why I think that that 21 element would be met without providing some formal 22 definition or the metes and bounds of what the claim 23 would require. 24 Q. That's exactly what I was going to ask you to 25 do. Can you go do that for me?	Page 55 1 work, or whether or not that's what would be sufficient 2 to meet the Claim 1 of the '704 patent. 3 BY MR. PRICE: 4 Q. Yeah, my question is: Do you read Claim 1 to 5 require that the aggregator determines a temporal 6 sequence in media programming before accessing the 7 plurality of media streams? 8 MR. ZHENG: Objection, form. 9 A. So that goes to a claim scope question and a 10 requirement as to whether or not at least a couple of 11 the steps in Claim 1 have an ordering requirement. I 12 don't believe that's an opinion I've offered in the 13 declaration -- 14 BY MR. PRICE: 15 Q. Okay. 16 A. -- or that I'm -- or that I'm prepared to 17 offer sitting here right now. 18 MR. PRICE: We've been going for about 19 an -- a little over an hour, is it a good time for a 20 10-minute break? 21 THE WITNESS: Of course. 22 (At 12:11 p.m. Central Standard Time - 23 Recess was taken.) 24 25

Page 56 1 (At 12:26 p.m., Central Standard Time 2 with all parties present as before, the following 3 proceedings were had, to-wit:) 4 BY MR. PRICE: 5 Q. Dr. Almeroth, can we return to Claim 1 of the 6 '704 patent, please. 7 A. I am there. 8 Q. All right, do you see the very last 9 limitation where it says: The media programming 10 comprising concatenated elements of the plurality of 11 media streams? 12 A. Yes. 13 Q. What do you understand that term to mean? 14 A. I -- I don't have a formal definition for 15 what a concatenated elements of the plurality of media 16 stream should be. Again, I've pointed to something, at 17 least in the Whitehead ground, where they all get put 18 into the same file, one after another, so that's a good 19 example of what concatenated elements of the plurality 20 of media streams would be. 21 Q. Is it your understanding that an element can 22 be a stream, a media stream? 23 MR. ZHENG: Objection, form. 24 A. I don't want to restate the question so maybe 25 you can repeat it and -- to make sure I understand what	Page 58 1 would disclose that portion on limitation. 2 Q. So is it your opinion that -- and this is 3 going to be a hypothetical, so -- so bear with me, 4 'cause I think it jives with your analysis. 5 Say Whitehead has, for example, a plurality 6 of media streams, we'll stipulate to that for this 7 hypothetical. If Whitehead concatenated those media 8 streams back to back, without any other -- without any 9 other processing, let's say, would that be media 10 programming comprising concatenated elements of the 11 plurality of media streams? 12 MR. ZHENG: Objection, form, scope. 13 A. I generally try and answer hypotheticals up 14 to the point where you said "without any other 15 processing." 16 BY MR. PRICE: 17 Q. Let me give you an idea of the kind of 18 processing I'm talking about. 19 Is it your opinion that concatenated, the 20 concatenated elements -- withdrawn. 21 It is not your understanding that an element 22 has to be a subset of a particular media stream, 23 correct? 24 MR. ZHENG: Objection, form. 25
Page 57 1 you're asking. 2 BY MR. PRICE: 3 Q. Is it your understanding that an element can 4 be a media stream? 5 MR. ZHENG: Objection, form. 6 A. So if you mean in this context an example of 7 what might be an element, an element could be a media 8 stream, though I think I probably need to hear your 9 question one more time, whether or not you said "is" a 10 media stream or "could be" a media stream. 11 BY MR. PRICE: 12 Q. Yeah, let's say the latter is my question. 13 A. Is -- if the question is "is," I think that 14 goes to a claim scope question and whether or not it 15 would be limited to a media stream. And I don't think 16 I've taken a position as to whether or not it would be 17 limited to a media stream or not. 18 Q. Okay. Right, that wasn't my question. 19 My question was: Can an element be a media 20 stream? 21 A. Okay. So I think it can be. I think I've 22 pointed to examples of where part of what gets 23 concatenated in Whitehead are themselves media streams. 24 So I think there's some examples in Whitehead like that 25 and I've pointed to those as support for why Whitehead	Page 59 1 BY MR. PRICE: 2 Q. Like a video clip, for example? 3 A. I think that goes to claim construction. I 4 don't think I've taken a position one way or another 5 on -- on that question. 6 Q. Okay. So you have not considered whether or 7 not the term element can be a subset of a media stream, 8 but I think you have taken the position that an element 9 could be the entire media stream; is that an accurate 10 recitation of your opinions to date? 11 MR. ZHENG: Objection, form. 12 A. No. 13 BY MR. PRICE: 14 Q. Okay, can you -- can you straighten me out, 15 then? 16 A. Sure. So when you start using terms like 17 "is" or "has to be," that starts sounding like it's a 18 claim scope question, and whether or not the claims are 19 limited to being interpreted in a particular way. 20 Those are the kinds of positions I haven't taken in the 21 context of these declarations. 22 What I have pointed to is examples in 23 Whitehead that are sufficient to meet this limitation. 24 I'm going to try and summarize what I've pointed to 25 based on memory, so I would defer to kind of what the

Page 60 1 analysis is exactly in the declaration, but I have 2 pointed to instances where you have broadcast streams, 3 at least portions of those are concatenated together, 4 and then you can also interpose advertising in between 5 kind of those portions of media streams, as one example 6 of sources of media, that can be packaged or 7 concatenated together based on the requests that come 8 into the system. 9 So it's really just focused on what it in 10 Whitehead is describing that would meet the limitation 11 as opposed to defining metes and bounds and 12 requirements of the claims. 13 Q. Is it your opinion that the term -- that a 14 media stream has to have some sort content associated 15 with it? 16 MR. ZHENG: Objection, form. 17 A. Again, that gets into a claim requirement as 18 to what it needs to have. I pointed to instances in 19 Whitehead where it does have content, I've pointed to 20 other examples within Whitehead too, depending on kind 21 of how the claim term is interpreted, but I haven't 22 taken a position on what it needs to require in order 23 to satisfy the requirements of any claim in the '704 or 24 '753 patents. 25	Page 62 1 A. You said it with such authority, I was 2 like... 3 Okay. 4 Q. I believe you did provide some construction 5 of this term; is that right? In your declaration? 6 A. I would have to see, I'm not sure I would 7 have characterized it as a construction, but maybe I'm 8 misremembering what I said about this. 9 If you've got a paragraph, that would be 10 helpful. 11 Q. Yeah, I'm getting it for you. 12 A. Thank you. 13 Q. So Paragraph 94 of your '704 patent 14 declaration. 15 A. Yeah, I'm not sure I'd call that a claim 16 construction, it's -- it's part of what the aspect of 17 what an output signal should be. 18 Q. I'll refer you to Paragraph 93 as well where 19 you talk about what a POSITA would have known in terms 20 of what the output signal does or does not require, 21 correct? 22 MR. ZHENG: Objection, form. 23 A. Yes, I think that's -- that definitely goes 24 to what a -- what the understanding of a person in the 25 skill of the art would be. I don't think it defines --
Page 61 1 BY MR. PRICE: 2 Q. Okay. So you haven't considered whether or 3 not a media stream can have no media that is 4 streamable? 5 A. Whether -- actually I think I have considered 6 it in the context of what Whitehead discloses. 7 Whitehead does identify lists of items, but I believe 8 what I've pointed to is how those lists are 9 representative of content and then it's the content 10 itself, the aggregation of that content that's -- that 11 is what meets the requirements in Claim 1. 12 So I think I've considered some different 13 options for what could be a media stream in the context 14 of the declaration and then not taken a specific 15 position on whether or not the claims are limited to -- 16 to one of the disclosures from Whitehead. 17 Q. Okay, returning to Claim 1 of the '704 18 patent, you see where it recites: Providing an output 19 signal including data indicative of this selection end 20 of user data? 21 MR. ZHENG: Objection, form. 22 A. I'm not sure we're in Claim 1 of the '704 23 Patent. Sorry, did you -- 24 BY MR. PRICE: 25 Q. I'm sorry, I'm on Claim 19 now. My fault.	Page 63 1 it just says it -- it's my opinion a POSITA would not 2 believe it's a requirement of an output signal to do 3 that transmission in a single message. 4 And then to be clear, I do address the 5 scenario where if it's assumed to be a requirement, 6 where that would be in the prior art grounds. 7 BY MR. PRICE: 8 Q. I understand your position on why you believe 9 that the output signal does not need to include data 10 indicative of the selection end of user data; would you 11 explain that to me? 12 A. Sure, that doesn't sound like an opinion I've 13 offered in the declaration, where... 14 Q. Is -- are you drawing a distinction between 15 an output signal and a message? 16 MR. ZHENG: Objection, form. 17 A. I -- those are not the same terms. 18 BY MR. PRICE: 19 Q. In your opinion, what is the difference 20 between an output signal and a message -- I'm sorry, 21 and a single message? 22 MR. ZHENG: Objection, form. 23 A. I don't know that I can give you some list of 24 differences between those. What I can say is I don't 25 think an output signal would be understood by a person

Page 64 1 of skill in the art to be limited to a single message, 2 or a single packet, or something like that. You can 3 send a signal and in the implementation could be more 4 than one packet or message, that's kind of the key to 5 the opinion. I don't think that a person of skill in 6 the art would understand a signal to be limited to one 7 message or one packet or one -- one transmitted thing. 8 BY MR. PRICE: 9 Q. Do you have any evidence to support that 10 understanding of both the term "signal" and "message" 11 in your declaration? 12 MR. ZHENG: Objection. 13 A. Again, because I don't think it's really a 14 claim construction position, it's really just 15 describing what the understanding of a person of skill 16 in the art would understand. 17 I guess to the extent it becomes a claim 18 construction dispute, which I think it seems to be, 19 based on the POPR or the institution decision, I mean, 20 it's something I might develop an opinion on and 21 provide specific support for in the reply. But given 22 that it's not a specific claim construction position in 23 this declaration, I don't think I have any particular 24 support other than just saying that's -- that's my 25 understanding of what a POSITA would believe.	Page 66 1 the patent owner does take that position, then I think 2 I would have an opportunity to describe why I think the 3 construction advocated for by the patent owner would be 4 incorrect. 5 Q. Dr. Almeroth, you understand that a statement 6 as to the scope of a claim is a claim construction art, 7 right? 8 MR. ZHENG: Objection, form. 9 A. I mean, the statement is what it is. Whether 10 or not you want to characterize it as a claim 11 construction position that needs to have support, I 12 mean, I've told you what -- what kind of my position is 13 and what I've done in this declaration and what I would 14 expect to do in the future. 15 BY MR. PRICE: 16 Q. Dr. Almeroth, don't all positions that you 17 take require support? 18 A. No. 19 MR. ZHENG: Objection, form. 20 BY MR. PRICE: 21 Q. No? 22 A. No. 23 Q. Not all positions that you take require 24 support? 25 A. Correct. That's a very broad statement, I
Page 65 1 BY MR. PRICE: 2 Q. But Dr. Almeroth, is it what a POSITA would 3 believe about the scope of claims, right? 4 A. It is, but it's -- it's also saying -- it's 5 not a formal claim construction position in the sense 6 of defining what it is, it's saying here is something 7 that I think a POSITA would believe would be within 8 scope of the claims. And so again, it's an example of 9 what would be within scope where you could have the 10 signal implemented as multiple messages. 11 To the extent it's going to evolve into a 12 claim construction where the term "signal" means it has 13 to be in one packet or one message, that seems like a 14 position that the patent owner is taking and so I think 15 I would have an opportunity to understand what support 16 the patent owner provides for that and then provide a 17 response to that. 18 Q. Dr. Almeroth, you understand that you are 19 making the distinction here between an output signal 20 and a message, right? 21 A. No, I think you're misinterpreting this. 22 What I'm saying is a person of skill in the art would 23 not understand the claim to be limited in a particular 24 way. And so if we're going to -- if it's going to be a 25 dispute that says, no, it is limited in that way and	Page 67 1 can tell you that I live in a certain address, I don't 2 think it would be disputed. I don't know that you 3 would need support for that. In the context of the 4 patent, an assumption or a statement about what the 5 priority date is is not something that would 6 necessarily need support. 7 In this case, I'm saying what I've said, I 8 don't think it's -- that the claim would be limited in 9 that particular way and I've offered that opinion. And 10 then I've also said, assuming it is interpreted to not 11 be that way, then I've provided that support. 12 So I've handled both scenarios in the 13 declaration already and so now if patent owner is going 14 to take some specific position, I believe I would have 15 an opportunity to respond to what those opinions are. 16 And, you know, that's my understanding of the 17 way that -- that an IPR process works. I guess there's 18 always an opportunity to object to opinions I would put 19 into the reply, but I mean that's -- that's really 20 neither here nor there in the context of what I've 21 expressed in this declaration. 22 Q. Fully understood. 23 When you use the term "message" here, what do 24 you mean by the term "message"? 25 A. It's sort of a general concept of the way

Page 68 1 that you might implement something, some sort of 2 communication. You can think of a message as kind of 3 it could be an application message, I don't -- could be 4 implemented in a number of packets. It's not again 5 sort of some specific term that I'm trying to offer in 6 any specific sense. 7 Q. Is an example like an HTTP response would be 8 an example of a message in the way that you're using it 9 here? 10 A. That could be an example of a message. 11 Q. Okay. And typically, you know, messages like 12 that are going to be broken up over multiple packets if 13 the size of the message exceeds the size of a packet; 14 is that correct? 15 A. Yes. 16 Q. Okay. Can you have, in your opinion, an 17 output signal that transmits one message, including the 18 selection stop transmitting have another output signal 19 that transmits the user data and have that satisfy the 20 requirement that you have -- that the aggregator 21 provides an output signal including data indicative of 22 the selection end of user data? 23 MR. ZHENG: Objection, form, scope. 24 A. So if I understand your question, you're 25 asking about whether or not a hypothetical system would	Page 70 1 to claim construction and I don't believe identify 2 offered a specific claim construction. 3 Q. I mean, is an output signal two output 4 signals? 5 MR. ZHENG: Objection, form. 6 A. That goes to a different element of claim 7 construction where when you have "a" or "and" meaning 8 one or more, whether or not it's each signal has to 9 meet all of the requirements of the signal or whether 10 or not you can have multiple signals that can 11 accomplish the requirements of the signal. 12 BY MR. PRICE: 13 Q. Are you relying on a particular legal 14 framework here? 15 A. For whether or not a or a -- it's just based 16 on experience. I think it's come up in a couple of 17 cases that I've worked on, and so it's -- it's 18 something when I do cases in the district court, it's 19 something I'm aware of and sometimes asked questions 20 about. 21 Q. All right. Great that you're aware of that. 22 Have you ever read the case Salazar, the AT&T Mobility, 23 LLC, which is at 64 F 4 1311? 24 MR. ZHENG: Objection, form, scope. 25 A. Does not ring a bell as something as a case
Page 69 1 be sufficient to meet the requirements of, I think 2 we're on Claim 19 of the '704 patent. It's a bit 3 vague, but what I could say is in the context of 4 Whitehead, if it sent two separate messages, two 5 separate packets, in the context of the disclosures I 6 think they would be understood to be part of the same 7 signal that Whitehead is describing. 8 BY MR. PRICE: 9 Q. What's the basis for that opinion? 10 A. The basis for that opinion is in part how 11 Whitehead describes the communication that's taking 12 place. It's -- there's a couple of citations in 13 Paragraph 93 and 94, and whether or not you would 14 implement the teachings of Whitehead with a single 15 message, a single packet, multiple packets, multiple 16 messages, it's all part of the communication at this 17 step in the process as it's described in Whitehead for 18 communicating information to the mixing server. 19 Q. So that was not my question. 20 My question was not about what Whitehead 21 teaches, my question was about what Claim 19 requires. 22 MR. ZHENG: Objection, form. 23 BY MR. PRICE: 24 Q. What is -- what is an output signal? 25 A. I don't have a specific definition. It goes	Page 71 1 I've read. 2 BY MR. PRICE: 3 Q. Before you provide another claim construction 4 argument along these lines, I would suggest that you 5 read that case, if you don't mind. 6 MR. ZHENG: Objection, form. 7 A. Okay. 8 BY MR. PRICE: 9 Q. Can we turn now to the '753 patent. 10 A. Yes. 11 Q. Let me know when you're at Claim 1. 12 A. I was on the face, I am turning to Claim 1. 13 Okay, I'm there. 14 Q. Do you see where Claim 1 recites: Delivering 15 by aggregator to a client a list of feeds? 16 A. I see that. 17 Q. When forming your opinions about the 18 patentability of the '753 Patent, did you come to an 19 understanding of the meaning of the term "feed"? 20 MR. ZHENG: Objection, form. 21 A. Not in some formal way. Again, I use the 22 same process in terms of looking at Whitehead and what 23 it discloses in determining whether or not I think that 24 would be sufficient for at least as an example of what 25 a feed was.

Page 72 1 BY MR. PRICE: 2 Q. Do you agree that a feed must include media 3 elements? 4 MR. ZHENG: Objection, form. 5 A. It -- that -- because you used the word 6 "must," it sounds like a claim construction 7 requirement. I don't believe I've taken a position one 8 way or another and whether or not it must include media 9 elements. I think I've actually considered whether it 10 needed to or not, both of those options in the context 11 of my declaration. 12 BY MR. PRICE: 13 Q. Can you point me to where you did that? 14 A. Sure. All right, I'll just do the -- 15 claim -- sorry, Paragraph 73 is a starting place. 16 Q. Okay. So where did you discuss whether or 17 not the term "feed" implies that there must or must not 18 be media elements? 19 MR. ZHENG: Objection. 20 A. So you've used the term "must" in your 21 question, it's kind of the verbs I'm looking for, or 22 adverbs. What I've done in 73 is identify from 23 Whitehead what I think is a list of media feeds and 24 then describe the examples in Whitehead that I think 25 meet that requirement under at least a couple of	Page 74 1 claim construction kind of on the fly. I need some 2 time to go through and do that analysis. 3 BY MR. PRICE: 4 Q. Okay. And to be clear, that's something that 5 you didn't consider when drafting the declaration in 6 the first place, correct? 7 A. So now you've used the word "consider." I 8 think as I testified to, I considered different 9 interpretations of what that term could mean, and then 10 dealt with those in different interpretations in the 11 context of the declaration. 12 Q. Is one of your mappings drafted with the 13 assumption that the feed does include media elements 14 and one of the mappings drafted with the assumption 15 that it does not need to include media elements? 16 MR. ZHENG: Objection, form. 17 A. I'm not sure it's kind of that formal in 18 terms of a drafting kind of is -- is the theory here or 19 not, it's that I've considered what the list of media 20 feeds can be and you see in 73 there's a bunch of 21 different citations for what that list of media feeds 22 is described as in the context of Whitehead. I think 23 Whitehead, for what that list can be and how it's 24 displayed to the user, provides some fairly open-ended 25 disclosure that a person of skill in the art would
Page 73 1 different mappings there. 2 So there's a couple of options described 3 within Whitehead for what can actually be displayed to 4 a user that they can select from, and that it starts 5 kind of on Paragraph 73 and then goes on. 6 I guess maybe the sim -- the simple version 7 is you added the word "must" which gets into claim 8 construction and that's the position I haven't taken in 9 this. 10 BY MR. PRICE: 11 Q. Okay, so you -- thank you. So you have not 12 taken a position on whether or not a feed must include 13 media elements, is that what you're telling me now? 14 MR. ZHENG: Objection, form. 15 A. Where it must include media elements gets 16 into a claim construction. I don't believe I've 17 offered that opinion in the declaration. 18 BY MR. PRICE: 19 Q. Okay. And you can't tell me now, based on 20 your experience as an expert in the art and having 21 reviewed the intrinsic record, whether or not the way 22 the term "feed" is used in the '753 Patent requires 23 that it include media elements? 24 MR. ZHENG: Objection, form. 25 A. I am not prepared to form new opinions on	Page 75 1 understand as disclosing a list of media feeds under a 2 variety of different interpretations as to what that 3 term would need to include. 4 BY MR. PRICE: 5 Q. Okay. But you didn't -- 6 A. Sorry, I didn't -- and I do think that 7 covers -- in those portions it covers whether or not 8 that list of media feeds would have media elements as 9 part of the list of media feeds itself. It's certainly 10 something that you could display as part of describing 11 what that list of media feeds would be. 12 Q. Okay. But you have not, and are not, willing 13 right now to take a position on whether or not a feed 14 must include media elements, right? 15 MR. ZHENG: Objection, form. 16 A. From the claim construction perspective, that 17 is correct. 18 BY MR. PRICE: 19 Q. Do you remember earlier when we talked about 20 antecedent basis? 21 A. Yes. 22 Q. Okay. Can you turn back to Claim 1 of the 23 '753 Patent. 24 A. I am there. 25 Q. All right. Do you see the very last

Page 76 1 limitation that says: Concatenated with the feed that 2 are responsive at least in part to the user 3 information? 4 A. I see that. 5 Q. What does the term "the feed" in that 6 limitation refer back to in terms of antecedent basis? 7 MR. ZHENG: Objection, form. 8 A. The best I can say is I can pull up the 9 declaration and see what I pointed to as being 10 sufficient. Let me -- let me see if that gives any -- 11 turns the example of what's identified in Whitehead 12 into a -- some sort of claim construction position or 13 not. 14 So this would start around Paragraph 90 of 15 the '753 declaration where I deal with this limitation. 16 It looks like I'm just describing what from Whitehead 17 would be sufficient to meet the requirements of the 18 claim. I don't see anything there that takes a 19 particular claim construction position on the 20 antecedent basis of the feed. 21 BY MR. PRICE: 22 Q. Okay. And sitting here today, you're -- you 23 can't look at the text of Claim 1 and tell me what you 24 understand the antecedent basis to be, correct? 25 MR. ZHENG: Objection, form.	Page 78 1 (At 2:18 p.m., with all parties present 2 as before, the following proceedings were had, 3 to-wit:) 4 MR. PRICE: Thank you for your time 5 today, Dr. Almeroth. I have no further questions. 6 MR. ZHENG: No questions for me. 7 (Discussion off the record.) 8 (Court Reporter requests counsel to 9 confirm their purchase and transcript orders for 10 the record:) 11 MR. PRICE: We should have a standing 12 order. 13 MR. ZHENG: Just a standing order. 14 (Discussion off the record.) 15 MR. ZHENG: Electronic copy and then we 16 don't need anything rush and no rough. 17 MR. PRICE: We'll take a rough and no 18 need to rush it. 19 COURT REPORTER: Tomorrow morning. And 20 do you need it rushed? 21 MR. PRICE: Rushed, five day. June 6th 22 is the date that we said we needed it by. 23 (1:20 p.m. Central Standard Time - 24 Adjournment.) 25 ** ** *
Page 77 1 A. Not from a claim definiteness perspective. 2 Normally the -- kind of the standard process is you 3 look back through the claim to see what it would be 4 referencing. I think in the context of the declaration 5 I've assumed, or at least considered, where it -- it is 6 referring to the feeds that are identified in the list 7 of feeds. 8 MR. PRICE: Okay, I think this is a good 9 time for another short break; does that work for 10 everyone? 11 THE WITNESS: Yes. 12 (At 2:04 p.m. Eastern Standard Time - 13 Recess was taken.) 14 15 16 17 18 19 20 21 22 23 24 25	Page 79 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

1	C E R T I F I C A T E
2	STATE OF NEBRASKA)
3	: ss.
4	COUNTY OF LANCASTER)
5	I, Christine M. Salerno, Registered Professional
6	Reporter, General Notary Public within and for the
7	State of Nebraska, do hereby certify that the
8	foregoing testimony of DR. KEVIN ALMEROTH was taken
9	by me in shorthand and thereafter reduced to
10	typewriting by use of Computer-Aided Transcription,
11	and the eighty (80) pages contain a full, true and
12	correct transcription of all the testimony of said
13	witness, to the best of my ability;
14	That I am not a kin or in any way associated
15	with any of the parties to said cause of action, or
16	their counsel, and that I am not interested in the
17	event thereof.
18	IN WITNESS WHEREOF, I hereunto affix my
19	signature and seal this 2nd of JUNE, 2025.
20	
21	
22	Christine M. Salerno, RPR
23	GENERAL NOTARY PUBLIC
24	Registered Professional Reporter
25	My Commission Expires: October 02, 2027.

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