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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. 8,145,704

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 11:06 A.M. CENTRAL  
STANDARD TIME ON OCTOBER 16, 2025, VIA ZOOM.

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| <p>1 (Whereupon, the following proceedings<br/>2 were had, to-wit:)<br/>3 (Exhibit Nos. 1001 (in '704), 1001 (in<br/>4 '753), 1003, 1023 and 1024, previously marked in<br/>5 prior deposition.)<br/>6 REPORTER'S NOTE: All quotations from<br/>7 exhibits are reflected in the manner in which they<br/>8 were read into the record and do not necessarily<br/>9 indicate an exact quote from the document.<br/>10 (All parties to this deposition are<br/>11 appearing remotely and have agreed to the witness<br/>12 being sworn remotely.)<br/>13 DR. KEVIN ALMEROTH,<br/>14 having been first duly sworn, was examined and<br/>15 testified as follows:<br/>16 DIRECT EXAMINATION<br/>17 BY MS. FULLER:<br/>18 Q. Good morning, can you please state your name<br/>19 and the record -- state your name and occupation for<br/>20 the record, please?<br/>21 A. Sure, my name is Kevin Almeroth and I'm a<br/>22 professor emeritus at UC Santa Barbara.<br/>23 Q. Dr. Almeroth, do you know why you're here<br/>24 today?<br/>25 A. I believe so.</p>                                                                            | <p>Page 4</p> <p>1 A. My dispute with Dr. Goodrich is there's<br/>2 actually multiple disputes. I think it's -- the first<br/>3 dispute is that it's limited to a single discreet<br/>4 signal.<br/>5 Q. Okay. And in -- and your opinion is that an<br/>6 output signal can be more than one signal?<br/>7 A. So principally I'm disagreeing with what his<br/>8 limitations are that he's adding to the term. As to<br/>9 what the term would mean, or at least what's sufficient<br/>10 to meet the term, it's what I've identified in<br/>11 Whitehead. As to -- and so I think your question sort<br/>12 of went to what would be sufficient to meet the claim<br/>13 as opposed to some sort of definition.<br/>14 Q. My question is just kind of nailing down what<br/>15 your dispute is with Dr. Goodrich, and that being that<br/>16 you opine that a output signal can be more than one<br/>17 signal; is that correct?<br/>18 A. Actually, I think it's -- your -- the first<br/>19 part of your question as to what my dispute with<br/>20 Dr. Goodrich is, I think it is that it -- he said it's<br/>21 limited to a single signal and I disagree with that.<br/>22 He also, and this is in Paragraph 13, he says<br/>23 that it has to be a single signal over a single path at<br/>24 a single time. So I disagree that that's a requirement<br/>25 of a single signal -- or sorry, it's -- I disagree that</p> <p>Page 6</p> |
| <p>1 Q. Okay. Is it in connection with your<br/>2 declarations you filed in IPR2024 -- IPR2024-0134 (sic)<br/>3 and IPR2024-01342. These declarations are marked as<br/>4 Exhibit 1023 and Exhibit 1024. Is that okay today if<br/>5 we refer to them as your '704 declaration and your '753<br/>6 declaration?<br/>7 A. Yes.<br/>8 Q. And, Dr. Almeroth, I have these two<br/>9 declarations uploaded in the chat; do you see them?<br/>10 A. Yes, I've downloaded 'em and I have at least<br/>11 the '704 open.<br/>12 Q. Okay, perfect. Let's start on the '704<br/>13 declaration then.<br/>14 Can you turn to Paragraph 12 of your '704<br/>15 declaration? Let me know when you get there.<br/>16 A. I'm there.<br/>17 Q. So in Paragraph 12, you state that you<br/>18 disagree with Dr. Goodrich that the claim language<br/>19 requires a single signal.<br/>20 Do you see that?<br/>21 A. I see that.<br/>22 Q. Okay. So is it your dispute with<br/>23 Dr. Goodrich on -- your dispute with Dr. Goodrich is on<br/>24 whether the output signal is limited to just one signal<br/>25 or multiple signals?</p> <p>Page 5</p> | <p>1 that's -- either of those are requirements for an<br/>2 output signal.<br/>3 Q. So an output signal can include more than one<br/>4 signal that is output and provided to the publisher; is<br/>5 that correct?<br/>6 A. I don't believe I've taken a position, at<br/>7 least in this declaration, on -- on what it would be<br/>8 limited to, or how it would be defined.<br/>9 What I have said is what's disclosed in<br/>10 Whitehead is sufficient to meet the output signal<br/>11 requirement.<br/>12 Q. And what is your -- what is your -- what you<br/>13 said in Whitehead that's sufficient to meet the output<br/>14 signal requirement, can you please describe that?<br/>15 A. Sure.<br/>16 (Court reporter interrupted for<br/>17 clarification.)<br/>18 MR. ZIVOJNOVIC: Just lodging an<br/>19 objection.<br/>20 A. So this starts in Subsection B, 2B, on<br/>21 Page 11. So there's -- there's actually a whole series<br/>22 of responses here as to -- to what it can include, and<br/>23 so I think my recollection -- and this goes back to the<br/>24 opening declaration -- my recollection is that there's<br/>25 a description of an output signal that goes to the</p> <p>Page 7</p>                                                                                                                                                                                                                        |

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| <p style="text-align: right;">Page 8</p> <p>1 mixing server. There's also an output signal that goes<br/>2 to the profile server. There's an obvious misargument<br/>3 that those two things could be combined.<br/>4 There's also analysis with respect to some of<br/>5 the disclosure in Whitehead about using the location of<br/>6 a user. So I think there's some obvious misanalysis<br/>7 around that as a possibility too.<br/>8 So I think there's multiple theories for what<br/>9 the output signal mapping could be and then within each<br/>10 there's some additional discussion based on the<br/>11 references.<br/>12 BY MS. FULLER:<br/>13 Q. So does an output signal include both data<br/>14 indicative of the selection and of data, user data, in<br/>15 your opinion?<br/>16 A. Depends on the claim. We're talking about<br/>17 '704, I'll start with 19. And I'm just going to pull<br/>18 up the patent. And it says that you have an aggregator<br/>19 that does several things, the last of which is provides<br/>20 an output signal including data indicative of the<br/>21 selection and of user data.<br/>22 So that would be the requirement of the<br/>23 output signal.<br/>24 Q. Can we turn to paragraph -- or pardon me, the<br/>25 '753 patent.</p> | <p style="text-align: right;">Page 10</p> <p>1 A. Okay. Okay, I'm there.<br/>2 Q. So in this passage it describes a RSS feed,<br/>3 can you describe what an RSS feed is, please?<br/>4 A. I forget what RSS stands for, something<br/>5 syndicated. I don't recall what it stood for, but it<br/>6 essentially referenced a series of updates or posts.<br/>7 And I think it was in a published subscribe kind of<br/>8 system where you would subscribe to your particular<br/>9 feed and then any -- any aspects of what were published<br/>10 on that feed would be sent to the subscribers.<br/>11 Q. So is an RSS feed essentially a file that<br/>12 contains media content such as news articles, blog<br/>13 posts, podcasts?<br/>14 A. In terms of the content that it has, I don't<br/>15 think it's limited to any particular kind of content.<br/>16 You referenced it as a file. On the back end, I<br/>17 suspect there could be content that was stored at a<br/>18 file. I don't recall kind of how the elements of<br/>19 syndication happen on the back end for an RSS feed. I<br/>20 think it really depends on -- on what the server does.<br/>21 Q. Is a podcast a type of RSS feed?<br/>22 A. It depends.<br/>23 Q. Depends on -- on what particular area?<br/>24 A. Well, I sus -- I suppose you could set up a<br/>25 system where you have an RSS feed and part of what it's</p> |
| <p style="text-align: right;">Page 9</p> <p>1 A. Yes.<br/>2 Q. Let me know when you get there.<br/>3 A. I'm there.<br/>4 MR. ZIVOJNOVIC: -- the declaration of<br/>5 the '753 patent --<br/>6 (Court reporter interrupted for<br/>7 clarification.)<br/>8 MR. ZIVOJNOVIC: Did you mean the patent<br/>9 itself, the '753 patent, or the declaration of the '753<br/>10 patent?<br/>11 MS. FULLER: The '753 patent.<br/>12 BY MS. FULLER:<br/>13 Q. And just to be clear for the record, I'll<br/>14 make sure that I refer to the description, so '753<br/>15 patent, '704 patent, and then if I'm doing the<br/>16 declarations it will be the '704 declaration and then<br/>17 the '753 declaration; is that good, Dr. Almeroth, for<br/>18 you?<br/>19 A. Yes.<br/>20 Q. Okay. So let me know when you get to the<br/>21 '753 patent.<br/>22 A. I've got it up.<br/>23 Q. Okay. Can you turn to Column 6, lines --<br/>24 starting at Line 14 going through 21. I'll let you<br/>25 quickly read that.</p>                                                                                                                                                                                                                                                                               | <p style="text-align: right;">Page 11</p> <p>1 sending out are podcasts. Depends then on, also you<br/>2 could have a podcast, not just as a single episode, but<br/>3 may -- like a daily podcast that together could be an<br/>4 RSS feed, they could be distributed that way.<br/>5 So it kind of depends on -- on questions like<br/>6 that, or assumptions you would make within the context<br/>7 of the system that would distribute podcasts if you had<br/>8 RSS feed.<br/>9 Q. In that passage, it also lists XML feed, do<br/>10 you have an understanding of what an XML feed is?<br/>11 A. Generally. So -- generally.<br/>12 Q. Could you please provide that understanding<br/>13 for the record?<br/>14 A. So XML feeds are a little bit more generic.<br/>15 It doesn't really say much about -- anything about the<br/>16 feed other than that it would use XML, so extended<br/>17 markup language. And that really is just literally a<br/>18 markup language for identifying objects, potentially<br/>19 tagging objects, and so you could certainly have a feed<br/>20 based on XML as opposed to some other sort of structure<br/>21 for the feed like RSS.<br/>22 Q. And then can XML feeds deliver music videos,<br/>23 for example?<br/>24 A. It's a little bit of a vague question. I<br/>25 could envision a system where music videos could be</p>                            |

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| <p style="text-align: right;">Page 12</p> <p>1 delivered and there's some sort of XML structure around<br/>2 the music videos that perform some function depending<br/>3 on what the system was supposed to be doing.<br/>4 Q. Can we turn to -- in '753 patent, can we turn<br/>5 to Column 11, Line -- starting at Line 31 and going<br/>6 through Line 35. I'll give you a second to read that.<br/>7 A. Okay.<br/>8 Q. So in this passage would a POSITA understand<br/>9 that a -- that video feeds are streamed to an<br/>10 aggregator and are displayed on home pages, and that a<br/>11 user can click the media content of the video feed,<br/>12 which is then provided through a channel; is that a<br/>13 correct understanding?<br/>14 A. It would seem like you're just sort of<br/>15 rephrasing what this passage says. I'm not sure if<br/>16 what you said, how it was different than what it says<br/>17 here, so I -- but the best I can say is I see what it<br/>18 says, I would certainly agree that that's something<br/>19 that's disclosed in the '753 specification.<br/>20 Q. So would you agree that existing feeds are<br/>21 provided to an aggregator on a home page?<br/>22 A. It says: A user viewing an aggregator home<br/>23 page clicks on the remote video feed presenting the<br/>24 music videos.<br/>25 It doesn't say anything about whether or not</p> | <p style="text-align: right;">Page 14</p> <p>1 channel presents various music videos in a mix of<br/>2 styles.<br/>3 And then it says: There may be one or more<br/>4 feeds to the aggregator, but within the limits<br/>5 described above -- presumably it's the limits I just<br/>6 read -- each feed contains predetermined content, not<br/>7 customized for a viewer or user.<br/>8 So at least in that example, there may be one<br/>9 or more feeds to the aggregator, and then each of those<br/>10 feeds could contain predetermined content, not<br/>11 customized for a viewer or a user. At least so far in<br/>12 this example.<br/>13 Q. So in this example, dynamic would refer to a<br/>14 feed that is changing -- or, excuse me, a feed that<br/>15 includes predetermined content and is dynamically<br/>16 changing once a user clicks on that feed?<br/>17 A. Again, I mean, there's -- there's multiple<br/>18 other paragraphs that follow this. I am not sure I've<br/>19 seen enough to be able to give dynamic a definition in<br/>20 this context, I think to a question you asked.<br/>21 At least what goes into the aggregator may be<br/>22 one or more feeds and those feeds contain predetermined<br/>23 content, but then what happens after those feeds go<br/>24 into the aggregator and what the aggregator does would<br/>25 be described in subsequent paragraphs, again at least</p> |
| <p style="text-align: right;">Page 13</p> <p>1 they would be preexisting or not, at least in this<br/>2 example.<br/>3 Q. So --<br/>4 A. I'm sorry, one last -- it doesn't really say<br/>5 in this paragraph. If you look at about Line 24, it<br/>6 says: An example using a Dynamic RSS-Feed Methodology.<br/>7 So I mean, the word "dynamic" would suggest<br/>8 that it's not already been created.<br/>9 Q. Does the word "dynamic" mean that it's not<br/>10 static, that it's constantly changing; is that what<br/>11 dynamic means?<br/>12 A. Dynamically usually used as a counterpoint to<br/>13 static as to what specifically dynamic about the<br/>14 scenario usually requires this specific context. I<br/>15 don't think I've read enough of this to figure out how<br/>16 the '753 specification is using the term "dynamic" in<br/>17 this particular context.<br/>18 Q. So you see in Line 29, it says: Each feed<br/>19 contains predetermined content, not customized for a<br/>20 viewer or user.<br/>21 The user of the feeds that are provided to<br/>22 the home page of the aggregator; is that correct?<br/>23 A. So it's describing a specific example and it<br/>24 says: In an example of multiple streams provided to an<br/>25 aggregator and then modified or concatenated, a remote</p>                                                                         | <p style="text-align: right;">Page 15</p> <p>1 for this example where it's describing a dynamic<br/>2 RSS-feed methodology.<br/>3 Q. These feeds that go into the aggregator,<br/>4 these are preexisting feeds, correct?<br/>5 A. Sorry, I didn't hear the first part of the<br/>6 question.<br/>7 Q. The feeds that go into the aggregator, these<br/>8 are preexisting feeds, correct?<br/>9 MR. ZIVOJNOVIC: Objection, form.<br/>10 A. It says: There may be one or more feeds to<br/>11 the aggregator described as containing predetermined<br/>12 content, but even in the example within the example,<br/>13 it's not limiting.<br/>14 BY MS. FULLER:<br/>15 Q. Where it says that the -- each feed contains<br/>16 predetermined content; these feeds are preexisting<br/>17 feeds, correct?<br/>18 A. In the example within the example it may<br/>19 include feeds that contain predetermined content.<br/>20 Whether or not that makes the feed itself preexisting<br/>21 or not, again, there's probably examples allowed for<br/>22 within the scope of this example where you could have<br/>23 feeds that were preexisting and did have predetermined<br/>24 content. But this example wouldn't be limited to feeds<br/>25 like that, given the language of "may" and examples in</p>                                                                                                                        |

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| <p style="text-align: right;">Page 16</p> <p>1 the paragraph and in the title.</p> <p>2 Q. Can we turn to Claim 1 of the '753 patent.</p> <p>3 A. All right, I've got it up.</p> <p>4 Q. Okay. So Claim 1 states: Providing to the</p> <p>5 client individual customized media programming based on</p> <p>6 a publisher-initiated feed responsive to the feed</p> <p>7 selection including media elements selected, ordered</p> <p>8 concatenated with the feed.</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Did you come to an understanding of what this</p> <p>12 term means when forming your opinions?</p> <p>13 A. I came to a general understanding. I don't</p> <p>14 have a specific definition for you. My understanding</p> <p>15 was based on what the words of the claim said and then</p> <p>16 ultimately comparing those to what was in the prior</p> <p>17 art.</p> <p>18 Q. In -- what was your understanding of this</p> <p>19 term?</p> <p>20 A. Just literally what the words are of the</p> <p>21 claim language, I think that they provide reasonable</p> <p>22 descriptions and terms. I don't have some substitute</p> <p>23 words for the claim language.</p> <p>24 Q. So just the plain and ordinary meaning of the</p> <p>25 term is what you apply to it?</p>                                                                                                | <p style="text-align: right;">Page 18</p> <p>1 BY MS. FULLER:</p> <p>2 Q. So a POSITA would understand that responsive</p> <p>3 to the feed selection means that the publisher</p> <p>4 generates individual customized media programming, is</p> <p>5 that responsive to the feed selection that individual</p> <p>6 media programming is generated?</p> <p>7 A. I'm not sure what you're asking.</p> <p>8 Q. A POSITA would understand, reading the claim</p> <p>9 and applying the plain meaning of this claim language,</p> <p>10 that responsive to a feed selection individual</p> <p>11 customized media programming is generated?</p> <p>12 A. I don't see anywhere in the claim language</p> <p>13 where it uses the word "generated." It says:</p> <p>14 Providing to the client individual customized media</p> <p>15 programming based on publisher-initiated feed</p> <p>16 responsive to the feed selection.</p> <p>17 Q. So responsive to the feed selection,</p> <p>18 individual customized media feed, or individual</p> <p>19 customized media program is provided; is that correct?</p> <p>20 A. If you're just reordering the words of the</p> <p>21 providing limitation to say what the limitation says</p> <p>22 already, then I would say yes. It's a little bit hard</p> <p>23 for me to track if your characterization changes the</p> <p>24 scope of the claims in any way, or at least Claim 1 of</p> <p>25 the '753 patent.</p> |
| <p style="text-align: right;">Page 17</p> <p>1 A. That is my recollection. I believe there are</p> <p>2 some terms -- there might be some terms in there that</p> <p>3 Dr. Goodrich tried to offer constructions of, so I've</p> <p>4 considered those in the different declarations.</p> <p>5 Q. So based on the plain --</p> <p>6 A. Sorry, let me -- I -- I don't remember if --</p> <p>7 if the terms that he identified, I think -- for</p> <p>8 example, he -- for the '753, he identified what a feed</p> <p>9 was and so there's some opinions in the '753</p> <p>10 declaration around the term "feed."</p> <p>11 In the original institution decision, back to</p> <p>12 the petition, I don't require -- recall if there was</p> <p>13 some discussion about any particular meaning of those</p> <p>14 terms within the phrase that you read.</p> <p>15 MR. ZIVOJNOVIC: And, Counsel, giving</p> <p>16 some leeway here, but I don't believe this is one of</p> <p>17 the limitations covered on the reply declaration.</p> <p>18 MS. FULLER: This is responsive to one</p> <p>19 of his declarations, and I'm getting to my line of</p> <p>20 questioning, so I'm going to continue with that line --</p> <p>21 my line of questioning here.</p> <p>22 MR. ZIVOJNOVIC: If it gets back to what</p> <p>23 he's applied to the declaration, proceed.</p> <p>24 MS. FULLER: Okay.</p> <p>25</p> | <p style="text-align: right;">Page 19</p> <p>1 Q. Do you see where in this limitation that</p> <p>2 says: Individual customized media programming that</p> <p>3 includes media elements?</p> <p>4 Do you see that?</p> <p>5 A. In Claim 1 I just see: And including media</p> <p>6 elements selected, ordered and concatenated, and then</p> <p>7 it goes on from there.</p> <p>8 Q. So the individual customized media</p> <p>9 programming includes more than one media element; is</p> <p>10 that correct?</p> <p>11 A. It says: Providing to the client individual</p> <p>12 customized media programming based on</p> <p>13 publisher-initiated feed responsive to the feed</p> <p>14 selection and including media elements.</p> <p>15 So now you're getting into kind of a position</p> <p>16 that Dr. Goodrich has taken, and I think I've got</p> <p>17 opinions with respect to what he said. And I don't</p> <p>18 think I've taken a specific position in the declaration</p> <p>19 as to the meets and bound of the claim. If I'm</p> <p>20 misremembering the declaration, you can probably point</p> <p>21 me to where I said much about that aspect of Claim 1.</p> <p>22 Q. Just -- just as you sit here today, reading</p> <p>23 the claim, an individual customized media programming</p> <p>24 includes media elements.</p> <p>25 Is that correct?</p>                                                                                    |

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| <p style="text-align: right;">Page 20</p> <p>1 A. It says: Providing to the client individual<br/>2 customized media programming based on a<br/>3 publisher-initiated feed responsive to the feed<br/>4 selection and including media elements, and it goes on<br/>5 from there.<br/>6 Q. So is that correct, that includes more than<br/>7 one media elements?<br/>8 A. It just says: Including media elements. As<br/>9 to -- again, in terms of trying to interpret that<br/>10 language to form some sort of construction or<br/>11 requirements of the language, I don't recall having to<br/>12 take a specific position in the declaration. So if I'm<br/>13 misremembering something and I've opined on this in the<br/>14 declaration, you would have to point me to it.<br/>15 Q. Well, let's turn to Dependent Claim 5. You<br/>16 can just look at that in the '753 patent. Let me know<br/>17 when you get there.<br/>18 A. I'm there.<br/>19 Q. Okay. So dependent Claim 5 says, recites: A<br/>20 second feed comprising the individual customized media<br/>21 programming.<br/>22 Do you see that?<br/>23 A. Yes.<br/>24 Q. Would a POSITA understand that the second<br/>25 feed has multiple media elements because the individual</p> | <p style="text-align: right;">Page 22</p> <p>1 just one media element.<br/>2 Do you see that?<br/>3 A. I do.<br/>4 Q. Okay. In Claim 5, it states that the second<br/>5 feed comprises the individual customized media<br/>6 programming.<br/>7 Do you see that?<br/>8 A. I do. It says "a second feed," okay.<br/>9 Q. And if we go back to Claim 1 where it's<br/>10 reciting the individual customized media programming<br/>11 and what that includes, it includes multiple media<br/>12 elements; is that correct?<br/>13 A. That -- that's going back and reasking the<br/>14 same question about what the scope of that claim<br/>15 includes. I don't believe I've taken positions as to<br/>16 what the scope of that term would be, other than to<br/>17 identify within the prior art grounds that it's present<br/>18 for the reasons in the declaration.<br/>19 It is interesting the paragraph you pointed<br/>20 to in 16, there's a couple of different contradictory<br/>21 opinions and that's what I'm addressing as it relates<br/>22 to Dr. Goodrich in the patent owner's response.<br/>23 Q. Based off of Defendant Claim 5 recitation of<br/>24 the second feed and what it comprises, would you agree<br/>25 that the second feed has to include more than one media</p> |
| <p style="text-align: right;">Page 21</p> <p>1 customized media programming, as recited in Claim 1,<br/>2 has more than one media element?<br/>3 A. I don't recall where I've taken a position on<br/>4 that particular question. It's -- it's a claim<br/>5 construction question, I would have to give some<br/>6 thought to.<br/>7 Q. So you're not prepared to opine on that as<br/>8 you sit here today?<br/>9 A. I'm not prepared to offer new positions on<br/>10 claim construction kind of just sitting here on the<br/>11 fly.<br/>12 Q. Okay.<br/>13 A. To the extent it was relevant for my<br/>14 analysis, it would be in the declaration. I don't<br/>15 recall I offered any opinions like that in the<br/>16 declaration, so if I'm misremembering, you can point me<br/>17 to them.<br/>18 Q. Well, let's turn to your declaration in the<br/>19 '753.<br/>20 A. Okay.<br/>21 Q. Let's go to Paragraph 16.<br/>22 A. Okay, I'm there.<br/>23 Q. Okay. Where you say: I disagree with<br/>24 Dr. Goodrich's opinion, as Dr. Goodrich's argument is<br/>25 undercut by patent owner's position that a feed can be</p>                                                                                                                     | <p style="text-align: right;">Page 23</p> <p>1 element?<br/>2 A. I -- it's going to be the same answer that I<br/>3 gave before. I think in the context of Whitehead's, I<br/>4 had identified both where it discloses that there are<br/>5 multiple media elements in the second feed, but then<br/>6 part of what's in the declaration is recognizing what<br/>7 the patent owner said about what a feed could be. So<br/>8 I've actually also applied that scope as well in terms<br/>9 of describing what the prior art discloses.<br/>10 Q. Let's turn to your '704 declaration.<br/>11 A. Okay.<br/>12 Q. Let's -- specifically let's look at<br/>13 Paragraph 28 of your declaration. Let me know when you<br/>14 get there.<br/>15 A. I'm there.<br/>16 Q. Okay. So in Paragraph 28, you opine that<br/>17 petitioner's theory is based on selecting a<br/>18 previously-created custom media channel; do you see<br/>19 that?<br/>20 MR. ZIVOJNOVIC: Objection, form.<br/>21 A. I see where it says: Petitioner's theory is<br/>22 based on selecting a previously created custom media<br/>23 channel, and then it goes on from there.<br/>24 BY MS. FULLER:<br/>25 Q. Okay. What is your definition of a</p>                                                                           |

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| <p>Page 24</p> <p>1 "previously created custom media channel"?<br/>2 A. Well, here I'm referencing what the<br/>3 petitioner's theory is so I believe it's the petitioner<br/>4 that described what the previously created custom media<br/>5 channel would need to be. And there might be some<br/>6 discussion of that up front, one second, let me look.<br/>7 I believe it is in Paragraph 4 and it says:<br/>8 Patent owner seeks to construe media stream as, quote,<br/>9 continuous sequence of media data, end quote. And then<br/>10 adding a requirement that the media stream must include<br/>11 a plurality of media elements at the time selected from<br/>12 a plurality of media stream.<br/>13 And so I think that's what the patent owner<br/>14 is describing in terms of its requirement that I'm<br/>15 describing in Paragraph 28.<br/>16 Q. So a previously created media stream is a<br/>17 concatenated set of media elements; is that correct?<br/>18 MR. ZIVOJNOVIC: Objection, form.<br/>19 A. If you're asking me what -- what petitioner's<br/>20 definition of that term is, it's the petitioner that<br/>21 used that term in its construction. I think that's in<br/>22 Paragraph 4 and it's the requirements that I describe<br/>23 in Paragraph 4 as what I think that patent owner is<br/>24 describing.<br/>25</p> | <p>Page 26</p> <p>1 and what Dr. Goodrich is trying to do is, is in<br/>2 Paragraph 4 of the declaration.<br/>3 BY MS. FULLER:<br/>4 Q. Okay. So then in Paragraph 28 where you<br/>5 opine petitioner's theory is based on selecting a<br/>6 previously-created custom media channel, you're opining<br/>7 or testifying that petitioner's theory for output<br/>8 mapping 1 and 2 is based on a previously created custom<br/>9 media channel; is that correct?<br/>10 MR. ZIVOJNOVIC: Objection, form,<br/>11 misstates testimony.<br/>12 A. I don't understand the question. I think --<br/>13 BY MS. FULLER:<br/>14 Q. I'm trying to understand petitioner's output<br/>15 mappings 1 and 2 theory, and it states that<br/>16 petitioner's theory is based on selecting a previously<br/>17 created custom media channel; do you see that?<br/>18 A. Yes.<br/>19 Q. So is output mappings 1 and 2, that -- those<br/>20 mappings are based on the selection of a previously<br/>21 created custom media channel; is that correct?<br/>22 A. Applying the patent owner's -- so what this<br/>23 is saying is -- I understand that the patent owner has<br/>24 offered a construction that I disagree with, but under<br/>25 the theory where I have adopted, or that that is an</p>        |
| <p>Page 25</p> <p>1 BY MS. FULLER:<br/>2 Q. So a previously created media -- so a<br/>3 previously created custom media channel is based off of<br/>4 Paragraph 4's requirements --<br/>5 MR. ZIVOJNOVIC: Objection, misstates<br/>6 the testimony --<br/>7 BY MS. FULLER:<br/>8 Q. Is that a correct understanding of what you<br/>9 just testified to?<br/>10 MR. ZIVOJNOVIC: Objection, form.<br/>11 A. No, what I -- you were asking me -- so just a<br/>12 little context. You were asking me what the definition<br/>13 of a previously created custom media channel is. I --<br/>14 what my response was, I think that's a term that the<br/>15 patent owner actually used. So I can try and<br/>16 reconstruct what I think the patent owner's definition<br/>17 of that term is. I don't think it's a term or<br/>18 requirement that I've used or that I think is in the<br/>19 claim, so I'm struggling a bit to give you my own<br/>20 definition for a term that was created by the patent<br/>21 owner.<br/>22 But from the perspective of the patent owner<br/>23 using that term and how it's using that term to create<br/>24 a requirement around what a media stream is, that<br/>25 description of what the patent owner is trying to do,</p>                                                                                        | <p>Page 27</p> <p>1 accurate claim construction for what a media stream is,<br/>2 it's disclosed under both of petitioner's theories for<br/>3 having a previously created custom media channel or<br/>4 stream. And so it -- this is a portion of the<br/>5 declaration where I'm assuming even if the patent owner<br/>6 is right, which I disagree with, the requirements<br/>7 identified by the patent owner are disclosed in<br/>8 Whitehead.<br/>9 Q. Thank you for clarifying that for me.<br/>10 Can we turn to Paragraph 45 of your '704<br/>11 declaration.<br/>12 A. Okay, I'm there.<br/>13 Q. Okay. So is output signal mapping 2, is that<br/>14 based on a user's manual updates to profile 160 in<br/>15 Whitehead; is that correct?<br/>16 A. My recollection is that a manual update was<br/>17 only one of the ways in which the profile could be<br/>18 updated that would result in the generation of an<br/>19 output signal. I thought there was some discussion<br/>20 about there was additional things like history that<br/>21 could go into the profile and then those things could<br/>22 be provided as part of some other action taken by the<br/>23 users.<br/>24 So my recollection is that it's not limited<br/>25 to just a manual action by the user.</p> |

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| <p>Page 28</p> <p>1 Q. But where you state the user selected profile<br/>2 160 cors --<br/>3 (Court reporter interrupted for<br/>4 clarification.)<br/>5 Q. Where you state that the user selects a<br/>6 profile 160 corresponding to a particular custom media<br/>7 channel 170 to update, that's a manual update by the<br/>8 user, correct?<br/>9 A. The user selection would be a user action.<br/>10 I'm not sure of the role that manual would play in that<br/>11 characterization.<br/>12 Q. The user is going in to update the profile<br/>13 160, correct?<br/>14 A. In the example here, the user is selecting a<br/>15 profile corresponding to a particular custom media<br/>16 channel to update.<br/>17 Q. Okay. And that's what output signal mapping<br/>18 2 is based upon, correct?<br/>19 A. That is one aspect of output signal mapping<br/>20 2. My recollection is that the mechanism for how the<br/>21 update to the profile is generated and what<br/>22 specifically selected has some flexibility to it. It's<br/>23 not limited to a particular way in doing the update.<br/>24 Q. And what is your recollection on that?<br/>25 How -- how can Whitehead system do updates to profiles</p>                                                                                              | <p>Page 30</p> <p>1 updated based on a user selecting a profile.<br/>2 So, for example, a user could select a<br/>3 profile when they come into the system and say, okay,<br/>4 it's me as opposed to my daughter. And so based on the<br/>5 selection of the profile, I can either do, to use your<br/>6 word, a manual update to some aspect in the profile.<br/>7 The profile could be keeping log information, like the<br/>8 time I logged in and the location that I was logging in<br/>9 from. That would be information that would be kept<br/>10 in -- in the profile. So it may not need to be done or<br/>11 entered by me manually but as a result of the actions<br/>12 that I've taken as part of selecting that profile.<br/>13 And then it goes on and kind of the rest of<br/>14 the paragraph that there are aspects of the profile<br/>15 like my name, say whether or not I'm older than 18<br/>16 years and, yeah, generally what feeds I'm interested<br/>17 in, what content I'm interested in, what my location<br/>18 would be. And some of these are the details that are<br/>19 then described in the rest of Paragraph 45.<br/>20 So far we're really just limited to<br/>21 Paragraph 45. There are other disclosures that go back<br/>22 to the original declaration that relate to this<br/>23 limitation as well that I can -- can point to.<br/>24 Q. So in Paragraph 45, you say that it would<br/>25 have been obvious to send an identifier of the selected</p> |
| <p>Page 29</p> <p>1 160?<br/>2 A. I think that would go back to the original<br/>3 declaration in terms of what aspects of Whitehead I'm<br/>4 relying on. I don't have that declaration kind of --<br/>5 and the different citations in mind, but my<br/>6 recollection is it was described in that original<br/>7 declaration.<br/>8 Q. So in Paragraph 45 you do talk about a<br/>9 select -- or profile updates in the body of that<br/>10 paragraph; do you see that?<br/>11 A. Sorry, could you repeat the question?<br/>12 Q. In Paragraph 45, you do discuss selections of<br/>13 a profile 160; do you see that?<br/>14 A. Yes, the user selects a profile 160, it's<br/>15 kind of the first sentence to 45.<br/>16 Q. Okay. Given that this is one of the ways,<br/>17 can you please elaborate of this process in Whitehead?<br/>18 A. Not sure what kind of elaboration you're<br/>19 asking for. I mean, it describes it sort of<br/>20 functionally at this level, the mechanics of how the<br/>21 user could select a profile and how it could be updated<br/>22 I think go to both the disclosures in Whitehead and<br/>23 then the understanding a person of skill in the art<br/>24 would have based on the different ways in which a<br/>25 system could be created in which a profile could be</p> | <p>Page 31</p> <p>1 channel alongside any new user profile information to<br/>2 profile server 165.<br/>3 Do you see that?<br/>4 A. I see one mention of 165. I don't see where<br/>5 I say it would be obvious. It says that a POSITA would<br/>6 have understood that a profile includes that<br/>7 information and that it would be necessary or obvious<br/>8 to send the identifier alongside any new user profile<br/>9 information to profile server 165.<br/>10 Q. So based on this statement, you're opining<br/>11 that an identifier would be sent to profile 165; is<br/>12 that correct?<br/>13 A. It would be necessary or obvious to send an<br/>14 identifier of the selected channel alongside any new<br/>15 user profile information to profile server 165.<br/>16 Q. And then when profile server 165 receives the<br/>17 identifier, is it correct then that profile a -- 160 is<br/>18 sent to mixing server?<br/>19 A. So updating a profile 160 on the profile<br/>20 server would cause the mixing server to receive a<br/>21 message from profile server 160, that a custom channel<br/>22 profile 160 had been created or revised, and it goes on<br/>23 from there.<br/>24 Certainly you could send that aspect in the<br/>25 profile. I think it's based on an understanding of</p>                                                                                                                                                                                    |

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| <p style="text-align: right;">Page 32</p> <p>1 what a person of skill in the art would have as to what<br/>2 information was perceived at the profile server and<br/>3 then what actions Whitehead describes in those<br/>4 particular citations as happening as a result.<br/>5 So at least some of the profile would be<br/>6 sent, including the portions relevant for performing<br/>7 the functions identified, and that would be kind of in<br/>8 that -- as identified in that last sentence on that<br/>9 page.<br/>10 Q. So an identifier would be sent to profile 165<br/>11 to trigger updating in profile 160 -- on profile 165;<br/>12 is that correct?<br/>13 A. I think that's too narrow of a<br/>14 characterization of the possibilities that are<br/>15 described both in this paragraph and then in an<br/>16 understanding of the person of skill in the art would<br/>17 have as to the functionality that's disclosed and<br/>18 taught within Whitehead, but I think at least that is a<br/>19 scenario contemplated by Whitehead in terms of<br/>20 information that could be sent from the user as part of<br/>21 their profile update, what would then go to the user<br/>22 profile server and then ultimately what would go onto<br/>23 the mixing server.<br/>24 Q. And what would go onto the mixing server is a<br/>25 message from profile server 165 that a custom channel</p> | <p style="text-align: right;">Page 34</p> <p>1 Q. Okay. In forming your opinion, did you come<br/>2 to a conclusion of what Whitehead is directed to and if<br/>3 so could you provide that on record today?<br/>4 A. What it's directed to, I believe that would<br/>5 be back in the original declarations. I have 'em on<br/>6 electronic version I can pull up, I'll start with the<br/>7 '704.<br/>8 The discussion of Whitehead is on Page 32 of<br/>9 Section 4. It's got a bunch of paragraphs, starting at<br/>10 Paragraph 62 on Page 32, talks about what Verizon was<br/>11 doing, talks about what Whitehead describes. It has at<br/>12 least a couple of paragraphs there. I could read those<br/>13 into the record if you want me to, otherwise I think<br/>14 that that's probably a good first place to start with<br/>15 respect to what Whitehead is directed to.<br/>16 Q. Let's go to Whitehead specifically which --<br/>17 Exhibit 1003 but I'll refer to it as the Whitehead<br/>18 patent.<br/>19 Do you see in Column 2 starting at Line 7, it<br/>20 talks about a "customer premise"?<br/>21 A. Yes. Yes, customer premise 101.<br/>22 Q. And this customer premise includes a TV<br/>23 player, a TV, a set-top box, which content processing<br/>24 device 110, a home router and a customer computer.<br/>25 Is it fair to say that based off of this</p> |
| <p style="text-align: right;">Page 33</p> <p>1 profile 160 has been created or revised; is that<br/>2 correct?<br/>3 A. I don't think that that's all of the<br/>4 information that would have been sent. It goes on at<br/>5 the top of the next page in the same paragraph, it<br/>6 says: The mixing server receives both an identifier<br/>7 for the custom media channel. The profile pertains to<br/>8 and other user data including a user's name and the<br/>9 user's interests.<br/>10 Q. Receiving both an identifier for the custom<br/>11 media channel the profile pertains to, is that within<br/>12 profile 160?<br/>13 A. I don't see why it wouldn't be. That's<br/>14 certainly something you could include in the profile<br/>15 and would be included in the profile.<br/>16 Q. So it's your opinion that when mixing server<br/>17 130 receives profile 160, it receives both an<br/>18 identifier and user data that's in profile 160; is that<br/>19 correct?<br/>20 A. I think you're summarizing kind of the last<br/>21 sentence of Paragraph 45. I think that sentence at the<br/>22 end of Paragraph 45 is correct.<br/>23 Q. Let's -- I think I uploaded Whitehead, which<br/>24 is marked as Exhibit 1003.<br/>25 A. Okay, I pulled that up.</p>                                                                                                                                   | <p style="text-align: right;">Page 35</p> <p>1 customer premise that Whitehead is directed to home<br/>2 entertainment for a user?<br/>3 A. So two responses. The first of which is your<br/>4 characterization about what's included in Figure 1,<br/>5 Column 2, Line 4, is -- describes it's an exemplary<br/>6 system. It says: Displaying information in supporting<br/>7 customer media channels.<br/>8 Figure 1 has certain components to it, but<br/>9 then the specification of Whitehead goes on to describe<br/>10 different configurations of what that network is.<br/>11 With respect to the -- and then Point No. 2,<br/>12 with respect to whether or not Whitehead could be used<br/>13 in the scenario that you identified, I think a person<br/>14 of skill in the art would certainly understand that<br/>15 that's something that could be used in the context of<br/>16 Whitehead, and I forget exactly what you said.<br/>17 Q. Home entertainment.<br/>18 A. For home entertainment. I think that's<br/>19 certainly something that could -- could be supported<br/>20 within an embodiment of Whitehead.<br/>21 Q. Can we turn to passage, or Column 8, starting<br/>22 at Line 45 and going to 51.<br/>23 You can take a second to -- to read that<br/>24 passage and let me know when you're done.<br/>25 A. Okay.</p>                                          |

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| <p style="text-align: right;">Page 36</p> <p>1 Q. So based on this passage, would appear --</p> <p>2 POSITA understand that Whitehead's custom media channel</p> <p>3 170 is streamed on a real-time or near real-time basis?</p> <p>4 A. Your question is not specific in terms of</p> <p>5 which aspect of Whitehead are you referring to?</p> <p>6 Q. I'm referring to this passage where it's</p> <p>7 describing a customized -- a custom media channel that</p> <p>8 is -- that includes multiple media -- multimedia files</p> <p>9 retrieved by mixing server 130 from a database and</p> <p>10 sequentially streamed as a single custom media channel</p> <p>11 170 to content processing device 110 or computer 105</p> <p>12 possibly in response to a user request for a custom</p> <p>13 media channel on a real-time or near real-time basis.</p> <p>14 So my question is: Based on that passage,</p> <p>15 what Whitehead's custom media channel 170 is streamed</p> <p>16 on real -- in real-time or near real-time?</p> <p>17 A. So part of what you read, though, is talking</p> <p>18 about delivery from 156 to 130 and then 130 ultimately</p> <p>19 to 110. So there are different delivery phases for</p> <p>20 content that's on the media database 156 through the</p> <p>21 mixing server.</p> <p>22 It says that you have "files that are</p> <p>23 retrieved by mixing server 130 from the database 142,</p> <p>24 and/or 156 and sequentially streamed." And so one</p> <p>25 aspect for how that content is provided from 156 to 130</p> | <p style="text-align: right;">Page 38</p> <p>1 control aspects of what you can do with content that's</p> <p>2 being delivered to a particular player from a</p> <p>3 particular server usually and so it deals with -- in</p> <p>4 the context how to -- the format and structure, or the</p> <p>5 commands that go back and forth, but ultimately the</p> <p>6 mechanics of how the delivery is affected is based on</p> <p>7 the underlying delivery protocol.</p> <p>8 Q. Is a stream available for immediate playback</p> <p>9 without having to download the media file?</p> <p>10 A. I don't understand the context of the</p> <p>11 question. Are you asking generally or in some aspect</p> <p>12 of Whitehead or '704, '753 patents?</p> <p>13 Q. What a POSITA would understand a stream to</p> <p>14 mean, is it available for immediate playback?</p> <p>15 A. It depends. Gosh, it depends on the context.</p> <p>16 Streaming is one of those generally used words, so I</p> <p>17 could think of -- for example, if you're watching a</p> <p>18 football -- a live football game, there's still things</p> <p>19 like a seven-second delay to cut out bad words. So you</p> <p>20 could have a live stream like that. You could also</p> <p>21 have a service like YouTube where it appears to be</p> <p>22 streaming but you're using a protocol like TCP where</p> <p>23 the expectation is you're going to deliver the whole</p> <p>24 file but you can start to access the file before it's</p> <p>25 fully delivered.</p> |
| <p style="text-align: right;">Page 37</p> <p>1 is described as sequentially streamed, that can be</p> <p>2 using a protocol like TCP for downloading the content,</p> <p>3 it could also include things like streaming on an</p> <p>4 as-needed basis and then it's sequentially streamed as</p> <p>5 a single custom media channel to content processing</p> <p>6 device, possibly in response to a user request.</p> <p>7 So I -- I want to be careful not to interpret</p> <p>8 "sequentially streamed" to be limited to a particular</p> <p>9 delivery technology or not. There are different ways</p> <p>10 of streaming things, so we have to be careful with the</p> <p>11 use of that term.</p> <p>12 Q. So in Column 6, Line 7, Whitehead discloses</p> <p>13 streaming protocol RTSP; are you familiar with that</p> <p>14 protocol?</p> <p>15 A. Yes.</p> <p>16 Q. And can you explain a little bit on what that</p> <p>17 protocol is or how it provides media content through</p> <p>18 streaming?</p> <p>19 A. Yes, so RTSP is mainly used for control and</p> <p>20 that's what it says: It should allow control such as</p> <p>21 supported by real-time streaming protocol to allow</p> <p>22 skipping between clips of content, pausing or stopping</p> <p>23 playback of the channel.</p> <p>24 RTSP is an IETF, an Internet Engineering Task</p> <p>25 Force, or request for comments, and it's more about the</p>                                                                                                                                 | <p style="text-align: right;">Page 39</p> <p>1 So within different paradigms for how</p> <p>2 streaming can be achieved, a person of skill in the</p> <p>3 art, even in the timeframe of the two patents at issue</p> <p>4 here, the concept of streaming could involve different</p> <p>5 technologies to actually perform the delivery.</p> <p>6 Q. Can we go to Column 2 of Whitehead, Lines 25</p> <p>7 through 30. I'll let you quickly read that passage.</p> <p>8 A. Did you say 2, 25 --</p> <p>9 Q. Of Whitehead's patent.</p> <p>10 (Court reporter interrupted for</p> <p>11 clarification.)</p> <p>12 MS. FULLER: Pardon me, so Column 2,</p> <p>13 Lines 25 through 30 of the Whitehead patent and I'll</p> <p>14 let Dr. Almeroth read that quickly.</p> <p>15 A. Okay.</p> <p>16 BY MS. FULLER:</p> <p>17 Q. Okay. So in this passage Whitehead describes</p> <p>18 that information is collected through a user interface</p> <p>19 for submitting to a profile server 165.</p> <p>20 What are the benefits of submitting user</p> <p>21 information to a profile server?</p> <p>22 MR. ZIVOJNOVIC: Objection, form.</p> <p>23 A. So you missed the portion where it says:</p> <p>24 Submitting such information to a mixing server and/or a</p> <p>25 profile server.</p>                                                                                                                                                                                                                                                     |

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| <p style="text-align: right;">Page 40</p> <p>1 In terms of the benefits of a profile --</p> <p>2 sending to a profile server, it depends on the context.</p> <p>3 I think again sort of in the timeframe of these two</p> <p>4 patents, the benefits and tradeoffs of having a profile</p> <p>5 server versus say using a mixing server were -- were</p> <p>6 well known.</p> <p>7 Using a profile server specifically, it --</p> <p>8 again, it depends on how the system is deployed, but</p> <p>9 you could use a central repository where all of the</p> <p>10 profiles are maintained. That might have advantages</p> <p>11 depending on what the system administrator wants to do</p> <p>12 with that profile information. Obviously there are</p> <p>13 other ways and other places that that information could</p> <p>14 be stored, and there's advantages to doing it other</p> <p>15 ways as well.</p> <p>16 So it depends a bit on the actual deployment,</p> <p>17 but at the end of the day, advantages and disadvantages</p> <p>18 of including profile information at various locations</p> <p>19 in a network architecture would have been known to a</p> <p>20 person of skill in the art.</p> <p>21 BY MS. FULLER:</p> <p>22 Q. So are you familiar with the client server</p> <p>23 architecture?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. So in this architecture, you have the</p> | <p style="text-align: right;">Page 42</p> <p>1 it relates to the user profile. Based on the user</p> <p>2 being able to select a profile and then providing that</p> <p>3 information to a profile server in order to select a</p> <p>4 profile and to provide updates to that information,</p> <p>5 it's an explicit disclosure of including information</p> <p>6 within the content processing device or the various</p> <p>7 embodiments related to the different components that</p> <p>8 can be located in that customer location.</p> <p>9 So and -- sorry, I think those are the ones</p> <p>10 that come to mind. I think the declarations, including</p> <p>11 back to the original file declarations with the</p> <p>12 petition go into a bunch of those details more</p> <p>13 succinctly than I can just recall sitting here right</p> <p>14 now.</p> <p>15 MS. FULLER: Okay. Let's go off the</p> <p>16 record.</p> <p>17 (At 12:10 p.m. Central Standard Time -</p> <p>18 Recess was taken.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                   |
| <p style="text-align: right;">Page 41</p> <p>1 client devices and then you have the server side</p> <p>2 devices such as servers and databases, correct?</p> <p>3 A. Probably.</p> <p>4 Q. Yeah.</p> <p>5 So in Whitehead's system as described, a</p> <p>6 profile server 165 is -- is essentially a database that</p> <p>7 receives information in this client server</p> <p>8 architecture?</p> <p>9 A. I could envision a scenario where you're</p> <p>10 implementing Whitehead where the profile server could</p> <p>11 be a database and it certainly could receive</p> <p>12 information from -- from users, but to be clear, it's</p> <p>13 obviously not the only place that you could store</p> <p>14 profile information --</p> <p>15 Q. And where --</p> <p>16 A. -- as -- sorry, as articulated by other</p> <p>17 disclosures within Whitehead.</p> <p>18 Q. And where are the other places in Whitehead</p> <p>19 that is expressly disclosed where profile information</p> <p>20 could be stored?</p> <p>21 A. My recollection is terms of expressly</p> <p>22 disclosed, certainly here it describes a mixing server.</p> <p>23 I believe you had already asked about some of the</p> <p>24 paragraphs with respect to the content processing</p> <p>25 device, and information that would be stored there as</p>                                                                 | <p style="text-align: right;">Page 43</p> <p>1 (At 12:16 p.m. Central Standard Time -</p> <p>2 with all parties present as before, the following</p> <p>3 proceedings were had, to-wit:)</p> <p>4 BY MS. FULLER:</p> <p>5 Q. Welcome back.</p> <p>6 Can we go to your '704 declaration again and</p> <p>7 particularly Paragraph 28. I want to revisit that</p> <p>8 paragraph.</p> <p>9 Let me know when you get there.</p> <p>10 A. I'm there.</p> <p>11 Q. Okay. So where it states --</p> <p>12 (Court reporter interrupted for</p> <p>13 clarification.)</p> <p>14 Q. Where it states, "Petitioner's theory is</p> <p>15 based on selecting a previously-created custom media</p> <p>16 channel."</p> <p>17 So I'm still trying to understand where this</p> <p>18 comes from because nowhere in Dr. Goodrich's</p> <p>19 declaration, or the patent owner response, is there a</p> <p>20 previously created custom media channel term used. So</p> <p>21 can you please provide the basis for -- for this term</p> <p>22 and what you mean by it?</p> <p>23 A. Sure.</p> <p>24 MR. ZIVOJNOVIC: Objection, form, asked</p> <p>25 and answered.</p> |

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| <p style="text-align: right;">Page 44</p> <p>1 A. So going back to Paragraph 4. It has a<br/>2 portion that reads: While PO seeks to construe media<br/>3 stream as, quote, continuous sequence of media data,<br/>4 end quote, PO's focus is on adding a requirement that,<br/>5 quote, the media stream must, dot, dot, dot, include a<br/>6 plurality of media elements at the time selected from a<br/>7 plurality of media streams.<br/>8 So what patent owner and Dr. Goodrich are<br/>9 advancing as part of their construction of media stream<br/>10 is a requirement that the media stream exist at the<br/>11 time it's selected. And so the point that I'm<br/>12 addressing in this paragraph here is, as it says in the<br/>13 couple of sentences before in Paragraph 28, it says:<br/>14 To the extent Dr. Goodrich is arguing that there is no<br/>15 selectable custom media channel until after a profile<br/>16 has been created, this is a strawman.<br/>17 It says: The petition never mapped providing<br/>18 the entire profile at the time a custom media channel<br/>19 is first created to the claimed user data. The<br/>20 petitioner's theory is based on selecting a<br/>21 previously-created custom media channel and then<br/>22 providing either updates or portions of the profile --<br/>23 skipping the parenthetical -- or a locally-stored copy<br/>24 of profile to the mixing server.<br/>25 So what it's describing is that there are</p> | <p style="text-align: right;">Page 46</p> <p>1 the opening declaration and also described in other<br/>2 paragraphs here.<br/>3 Q. But in these dec -- in your declaration<br/>4 for -- for your subheader's response to arguments<br/>5 purporting to apply to output signals mappings 1 and 2<br/>6 under patent owner's construction of output signal.<br/>7 And that also in subheader response to arguments<br/>8 purports to --<br/>9 (Court reporter interrupted for<br/>10 clarification.)<br/>11 MS. FULLER: Am I -- can we go off the<br/>12 record for a second.<br/>13 BY MS. FULLER:<br/>14 Q. Okay, Dr. Almeroth, so is your declaration<br/>15 then responding to petitioner's constructions of output<br/>16 signal?<br/>17 A. It does.<br/>18 Q. Okay. So your theory, or your opinions here<br/>19 in your declaration, are based on the assumption that<br/>20 patent owner's -- okay, patent owner's construction of<br/>21 output signal is correct in that, or construction of<br/>22 media stream is also correct?<br/>23 MR. ZIVOJNOVIC: Objection, document<br/>24 speaks for itself.<br/>25 A. The declarations respond to multiple</p>                                                                                                                                                                                                                                                                                                        |
| <p style="text-align: right;">Page 45</p> <p>1 streams disclosed in Whitehead that are already created<br/>2 and already modified, and modified, modifiable, as part<br/>3 of what's included in the theory.<br/>4 So this is trying to address Dr. Goodrich's<br/>5 response that Whitehead cannot receive profiles after<br/>6 the selection of a media stream because, quote, the<br/>7 profiles are used to generate the channels.<br/>8 Q. So your petitioner's theories then are based<br/>9 off of a custom media channel that was previously<br/>10 generated; is that correct?<br/>11 MR. ZIVOJNOVIC: Objection, asked and<br/>12 answered. Vague.<br/>13 A. So there are multiple theories. Some of the<br/>14 theories include the assumption that Dr. Goodrich's<br/>15 claim construction is correct, even though I disagree<br/>16 with it, to demonstrate that even if Dr. Goodrich were<br/>17 right about his claimed construction around the term<br/>18 "media stream," there are scenarios disclosed in<br/>19 Whitehead where that is the case. And "that is the<br/>20 case" meaning that there is a previously-created custom<br/>21 media channel.<br/>22 Since the -- I don't believe his claimed<br/>23 construction is correct and the claims are not limited<br/>24 to media streams that exist before the request is made,<br/>25 there are other scenarios described in the context of</p>                                                             | <p style="text-align: right;">Page 47</p> <p>1 positions that the patent owner has taken, some of<br/>2 which are around claim construction, some of which are<br/>3 incorrect interpretations as to what Dr. Goodrich<br/>4 alleges the prior art discloses, or the understanding<br/>5 of a person of skill in the art would have had. I<br/>6 think it -- it does speak for itself in terms of what<br/>7 the opinions are that I'm responding to.<br/>8 BY MS. FULLER:<br/>9 Q. Can we go back to -- so these<br/>10 previously-created custom media channels, they're built<br/>11 on earlier profile versions; is that correct?<br/>12 A. Previously-created custom media channels<br/>13 could be based on particular profiles or information<br/>14 that would be contained in a profile. In other words,<br/>15 I don't think Whitehead is limited to only creating<br/>16 custom media channels for particular users. You could<br/>17 have, for example, the custom media channel for people<br/>18 interested in watching football in the New York area.<br/>19 And so I -- my recollection is that Whitehead<br/>20 is not limited with respect to when a<br/>21 previously-created custom media channel is created.<br/>22 Q. To create a custom media channel, a profile<br/>23 version is provided to the mixing server, correct?<br/>24 A. I don't recall the details. I would have to<br/>25 go back and look. I think it's in the -- the original</p> |

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| <p style="text-align: right;">Page 48</p> <p>1 declaration that had a walk-through of kind of what the<br/>2 steps were.<br/>3 Q. Well, we can go to Whitehead, let's walk<br/>4 through Whitehead.<br/>5 So let's go to column 11, Line 40, starting<br/>6 at Line 40 and let me just say it states: A mixing<br/>7 server receives an instruction, a message triggering it<br/>8 to create one or more custom media channels based on<br/>9 one or more custom channel profiles 160.<br/>10 Do you see that?<br/>11 A. I do see that.<br/>12 Q. Okay. And then in Column 12, Lines --<br/>13 starting at Line 8 it says: Various mechanisms that<br/>14 may be used for sending and receiving messages to and<br/>15 from mixing server 130 are known, e.g., a database<br/>16 trigger in a database storing profiles 160 may cause a<br/>17 message for mixing server to be sent to a queue manager<br/>18 such as IBM WebSphere MQ sold by International Business<br/>19 Machines Corp. which in turn queues and sends a message<br/>20 to mixing server.<br/>21 Receipt of these messages may then cause<br/>22 mixing server to invoke a process for creating or<br/>23 modifying one or more custom media channels based on<br/>24 profile 160 provided in that message.<br/>25 So based on these passages, Whitehead's</p>                                        | <p style="text-align: right;">Page 50</p> <p>1 Q. Where are these other passages that you say<br/>2 exist in Whitehead that describe creations of profiles,<br/>3 can you point me to those passages?<br/>4 A. Sure. So going to -- I'll start with the<br/>5 '704 declaration, the opening declaration, Paragraph 38<br/>6 talks about user selection and user profile information<br/>7 sent to the publisher, same thing in Paragraph 39,<br/>8 Paragraph 58, it's more about the state of the art. 62<br/>9 is about -- and '3 is about Whitehead, 64.<br/>10 And then you get into the specific limitation<br/>11 walk-through starting with Claim 19 that starts at<br/>12 Paragraph 73, and then there are discussions about the<br/>13 profile and what it includes and where it comes from in<br/>14 Paragraph 74. There's a whole series of citations for<br/>15 each of these kinds of things.<br/>16 And then you can basically search through for<br/>17 the word "profile" and it walks through every place<br/>18 where I think the profile is relevant in what's<br/>19 necessary to disclose the limitation as understood by a<br/>20 person of skill in the art as it's disclosed in<br/>21 Whitehead.<br/>22 Q. Sorry, I didn't want to cut you off, but let<br/>23 me just clarify: Are you in the opening declaration --<br/>24 A. Yes.<br/>25 Q. -- when you're -- okay.</p> |
| <p style="text-align: right;">Page 49</p> <p>1 system provides a profile 160 message to invoke the<br/>2 creation of a custom media channel, correct?<br/>3 A. So couple of responses. One, I think you<br/>4 mostly read those passages correctly, I think they say<br/>5 what this say. I think attempting to take those<br/>6 passages in isolation and create a characterization of<br/>7 what Whitehead discloses is wrong.<br/>8 I think there are other disclosures in<br/>9 Whitehead that I've relied on to create a description<br/>10 as to what a person of skill in the art would<br/>11 understand the reference to disclose.<br/>12 Those are all set forth pretty clearly in the<br/>13 initial declaration. And then the reply declarations<br/>14 go through and respond to Dr. Goodrich and patent<br/>15 owner.<br/>16 If you're trying to take portions of<br/>17 Whitehead out of context of the entire reference for<br/>18 things that I didn't specifically rely on for, then I<br/>19 think you're going to get an incomplete picture of what<br/>20 Whitehead suggests or teaches.<br/>21 And so the best I can say is that those<br/>22 passages say what they say and it addresses both what<br/>23 those passages mean in the context of Whitehead<br/>24 specifically in the opening declaration and in the<br/>25 reply declarations.</p> | <p style="text-align: right;">Page 51</p> <p>1 So Paragraph 38 of the opening declaration<br/>2 does not discuss Whitehead, it discusses the '704<br/>3 patent. Same for 39, and then --<br/>4 A. Right.<br/>5 Q. Let's just break down the other paragraphs<br/>6 that you had referenced.<br/>7 You said 58?<br/>8 A. 58 is part of state of the art.<br/>9 Q. Okay. What was the next one?<br/>10 A. 62.<br/>11 Q. Okay, so 62 does not disclose anything about<br/>12 the creation of a custom media channel 170 in<br/>13 Whitehead.<br/>14 What's the next paragraph that...<br/>15 A. Let's see, 63.<br/>16 Q. 63, okay. So in this one it says: Creating<br/>17 a custom media channel based on a user profile and<br/>18 providing the custom media channel upon a request from<br/>19 a user, correct?<br/>20 A. Sorry, I wasn't reading along with you but I<br/>21 see what 63 says.<br/>22 Q. Where, besides this abstract, does Whitehead<br/>23 describe how a pro -- a custom media channel is<br/>24 created?<br/>25 A. Let's see, I -- I mean, it's hard for me to</p>                                                                                                                                                                                                                                                                                                           |

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| <p style="text-align: right;">Page 52</p> <p>1 say all of the paragraphs that are responsive, I would<br/>2 probably search through the opening declaration for<br/>3 creating a custom media channel or use of a profile.<br/>4 I'm not exactly sure what the scope of your<br/>5 characterization would include.<br/>6 Q. Well, you -- you testified that there exists<br/>7 other portions in Whitehead that describe creating a<br/>8 custom media channel, so I just want to try to nail<br/>9 down where those other portions are.<br/>10 So if you need --<br/>11 A. Okay.<br/>12 Q. -- a few minutes to -- to look at your<br/>13 declaration, feel --<br/>14 A. I'll just -- I mean, I'll search through for<br/>15 the words "custom media channel." It's in<br/>16 Paragraph 64. It's in Paragraph 74, 76, 77, 78, 79,<br/>17 80, 81, 83, 84, 85, 87, 88, 89, 90, 91, 92, 93, 95, 96,<br/>18 98, 99, 100. I mean, it's in just about every<br/>19 paragraph. I can keep going if you want.<br/>20 Q. Let's go to Paragraph 99 of your opening<br/>21 declaration. Let me know when you get there.<br/>22 A. Okay, I'm there.<br/>23 Q. So in this paragraph, you dis -- this<br/>24 paragraph discloses creating custom media channel 170.<br/>25 Do you see that?</p>        | <p style="text-align: right;">Page 54</p> <p>1 media channel.<br/>2 So based upon that passage, a profile is sent<br/>3 beforehand in which triggers the custom media channel<br/>4 creation, correct?<br/>5 MR. ZIVOJNOVIC: Objection, misstates<br/>6 the document and vague.<br/>7 A. So first of all it says: Various mechanisms<br/>8 that may be used for sending and receiving messages to<br/>9 and from mixing server are known, and then, e.g., and<br/>10 then you started to read the example there. So I think<br/>11 it's an open-ended description about the different<br/>12 mechanisms that could be used.<br/>13 And then it describes a particular scenario<br/>14 on how that mechanism could be implemented, but of<br/>15 course it's not limited to that disclosure, that<br/>16 exemplary disclosure.<br/>17 And then this gets back to kind of<br/>18 Paragraph 28 with respect to creating, it appears some<br/>19 sort of requirement in the claim language about when<br/>20 profiles are expected to be created, which as I express<br/>21 isn't tied to a specific requirement in the claim<br/>22 language.<br/>23 BY MS. FULLER:<br/>24 Q. But would you agree, based off of Whitehead's<br/>25 passages that you cited to in Paragraph 99, that a</p>                                                                                                                 |
| <p style="text-align: right;">Page 53</p> <p>1 A. It does. I do.<br/>2 Q. Okay. So in this paragraph, you cite to<br/>3 Columns 1138 through 1217; is that correct?<br/>4 A. I do in this paragraph.<br/>5 Q. Yeah.<br/>6 A. Plus Figure 4.<br/>7 Q. These are -- Columns 1138 through 1217<br/>8 discusses the embodiments where messages from the<br/>9 database tri -- or cause a mixing server to proc --<br/>10 create or modify custom media channel 170, correct?<br/>11 A. I think it's more than that. If you're<br/>12 trying to read the first Step 405 it says: Mixing<br/>13 server 130 receives an instruction, e.g., a message<br/>14 triggering it to create one or more custom media<br/>15 channels 170, based on one or more custom channel<br/>16 profiles 160.<br/>17 Q. But is your opinion, based on how Whitehead<br/>18 creates custom media channel, based upon passages<br/>19 starting at Column 40 through Line -- Column 12,<br/>20 Line 17; is that correct?<br/>21 A. Part of what I cite to is Figure 4,<br/>22 Column 11, Line 38 through Column 12, Line 17.<br/>23 Q. And in Column 12, Line -- starting at Line 9,<br/>24 that's where it discusses that you have a trigger from<br/>25 a database that causes mixing server to create a custom</p> | <p style="text-align: right;">Page 55</p> <p>1 profile is sent to trigger the creation of a custom<br/>2 media channel?<br/>3 A. No. It says: Various mechanisms can be used<br/>4 for sending and receiving messages, and then, e.g., so<br/>5 it actually describes one example. The one example is<br/>6 the database trigger and a database storing profiles<br/>7 160 because a message for mixing server to be sent to a<br/>8 queue manager, which in turn queues and sends messages<br/>9 to a mixing server, that's the example that's given in<br/>10 those particular lines. But it's pretty clear from the<br/>11 disclosure it's only intended to be exemplary.<br/>12 Q. Are you aware of other ways in Whitehead that<br/>13 a custom media channel is created without a profile<br/>14 trigger?<br/>15 A. I don't recall exactly what was in the<br/>16 declaration. I believe there are additional<br/>17 disclosures in the declaration.<br/>18 Q. But sitting here today, you don't recall what<br/>19 was in your direct -- declaration and -- is that<br/>20 correct?<br/>21 A. So I understand this isn't a memory contest,<br/>22 so if there's some portion of the declaration you want<br/>23 to point me to, I can look. We're also back in the<br/>24 opening declaration, which I didn't spend a lot of time<br/>25 reviewing in preparation for this deposition. So I</p> |

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| <p style="text-align: right;">Page 56</p> <p>1 believe I have responses in both the opening<br/>2 declaration and the reply declaration.<br/>3 Q. Since you have the open dec -- your opening<br/>4 declaration available to you, I'll give you some time<br/>5 to look where in your declaration you opined on other<br/>6 ways that a custom made -- custom media channel can be<br/>7 created without a profile being sent beforehand?<br/>8 A. You have to tell me what limitation you think<br/>9 that's relevant to. Where -- where other ways need to<br/>10 be disclosed in order to meet a particular limitation.<br/>11 Q. Let's talk about limitation 19B3 in your<br/>12 Paragraph 99.<br/>13 MR. ZIVOJNOVIC: Counsel, just to<br/>14 clarify, are you limiting the witness just to the<br/>15 opening declaration?<br/>16 MS. FULLER: I'm giving the witness an<br/>17 example of where he should be looking as he asked me<br/>18 that I needed to provide him where he should be<br/>19 looking, so this is just an example of a starting<br/>20 location for him.<br/>21 A. I don't see where in Claim 19B3 there's a<br/>22 requirement as you have articulated it.<br/>23 BY MS. FULLER:<br/>24 Q. In Paragraph 99 you talk about Whitehead's<br/>25 process of creating a custom media channel. In this</p>                                                                                                                                    | <p style="text-align: right;">Page 58</p> <p>1 Q. Is there any other ways, besides a profile<br/>2 being sent to mixing server, does mixing server create<br/>3 a custom media channel?<br/>4 A. Paragraph 30 of the '704 reply declaration.<br/>5 I think the first sentence of this paragraph is the<br/>6 same characterization that you're asking about from<br/>7 Column 12 where it -- a custom media channel is<br/>8 generated only from profile 160. Second sentence:<br/>9 This argument ignores Whitehead's other embodiments<br/>10 where content processing device sends a request for a<br/>11 custom media channel 170 to mixer 130.<br/>12 Even in the embodiment identified by<br/>13 Dr. Goodrich, the profile message from profile server<br/>14 165 to mixing 1 -- mixing server 130 is triggered by a<br/>15 corresponding message from content processing device to<br/>16 profile server 165, and then it includes a number of<br/>17 citations, 1140 through '45, 1029 through '67, and 1161<br/>18 through '63.<br/>19 And it says -- I mean, one of the sentences<br/>20 that's quoted here towards the end of that Paragraph<br/>21 630: In some embodiments, the trigger to create a<br/>22 custom media channel results from a user request to<br/>23 access the channel. That's 1029 through '67.<br/>24 So that paragraph includes cites to other<br/>25 places in the specification that describe other ways in</p> |
| <p style="text-align: right;">Page 57</p> <p>1 process, there is profile server, a profile 160 that is<br/>2 sent before to create the custom media channel. It<br/>3 also says -- you testified, there's other ways for<br/>4 sending and receiving messages. So I want to<br/>5 understand where these -- where in Whitehead or where<br/>6 in your declaration you expressly disclosed these other<br/>7 ways?<br/>8 A. I don't understand how this is a requirement<br/>9 for the claim language, so whether or not there are<br/>10 other ways that are disclosed in Whitehead is a<br/>11 starting point, but I don't see a requirement in Claim<br/>12 19B3 where it describes a requirement as to when the<br/>13 user profile is created.<br/>14 Q. I'm talking now about Whitehead and how<br/>15 Whitehead creates a custom media channel. And in that<br/>16 creation in Paragraph 99 that you had -- discuss, it's<br/>17 in Whitehead's path Column 11 -- Column 11 through<br/>18 Column 12. And in that passage it talks about a<br/>19 profile message being sent to mixing server 165 to<br/>20 create the custom media channel, correct?<br/>21 A. If you're back to what Column 12 at Line 8<br/>22 describes, it says: Various mechanisms that may be<br/>23 included, and then it has an e.g., so that's certainly<br/>24 one place in Whitehead that describes sending and<br/>25 receiving of messages to and from the mixing server.</p> | <p style="text-align: right;">Page 59</p> <p>1 which custom media channels can be generated.<br/>2 Q. Okay. So this is -- your Paragraph 30 is<br/>3 where you're providing other ways that customized media<br/>4 channel can be generated, correct? Based off of these<br/>5 passages in Paragraph 30?<br/>6 A. I think that's at least one of the paragraphs<br/>7 that I got to.<br/>8 Q. Can we go to your -- let's -- let's go to the<br/>9 '753 patent again.<br/>10 A. Okay.<br/>11 Q. Let me know when you get there.<br/>12 A. I'm there.<br/>13 Q. Is there any embodiment in the '753 patent<br/>14 where there is no feed existing at the time a user<br/>15 select -- makes a selection?<br/>16 A. For something that specific, I would have to<br/>17 look through the specification. I don't recall if<br/>18 there's something in there like that, so -- and I don't<br/>19 recall if I addressed that in the declaration. If I<br/>20 did, you'd have to point me to the paragraph.<br/>21 Q. So sitting here today, you're not prepared to<br/>22 testify on whether there's an embodiment that you're<br/>23 aware of where a user selects a -- selects something<br/>24 other than a feed in a list?<br/>25 A. So you asked me a characterization of a</p>                                                                                                                                                                     |

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| <div>Page 60</div> <div>1 disclosure from the '753 spec, I don't have the '753<br/>2 spec memorized, so it would be hard for me to go<br/>3 through and find relevant portions of your<br/>4 characterization on the fly. It would take a fair<br/>5 amount of time to go through and do that.<br/>6 To the extent I needed to do it as part of my<br/>7 analysis to render the opinions that are included in<br/>8 the reply declarations, then there would be some<br/>9 disclosure of that in the reply declaration. Otherwise<br/>10 I would need some -- some time.<br/>11 Q. Well, if you would like the time, you can<br/>12 have it right now to -- to look through the '753<br/>13 patent.<br/>14 A. If you're asking me to perform a new analysis<br/>15 on the fly sitting here in the context of a deposition,<br/>16 it's not something I'm prepared to do.<br/>17 Q. Okay. So just to get this, you're not<br/>18 prepared today to opine on whether this embodiment<br/>19 where something other than a feed is selected?<br/>20 MR. ZIVOJNOVIC: Objection, misstates<br/>21 testimony, declaration speaks for itself.<br/>22 A. So I already answered that. I said to the<br/>23 extent your characterization applies to something<br/>24 that's already in the declaration, then I think the<br/>25 declaration speaks for itself.</div> | <div>Page 62</div> <div>1 (At 1:07 p.m. Central Standard Time -<br/>2 with all parties present as before, the following<br/>3 proceedings were had, to-wit:)<br/>4 BY MS. FULLER:<br/>5 Q. Dr. Almeroth, let's go to back your<br/>6 declaration, the '704 declaration, Paragraph 30.<br/>7 A. Okay.<br/>8 Q. Okay. So in Paragraph 30 you say Whitehead<br/>9 Column 9, 32 through 37.<br/>10 A. Yes, I see that.<br/>11 Q. You want to go to that column and read that<br/>12 passage quickly.<br/>13 A. Okay.<br/>14 Q. So that column says: As discussed further<br/>15 below, playlist 205 is generally generated upon a user<br/>16 request for custom media channel 170.<br/>17 As "discussed further below," is that in<br/>18 relation to the Figure 4 process?<br/>19 MR. ZIVOJNOVIC: Objection, document<br/>20 speaks for itself.<br/>21 A. I don't see where Figure 4 is being<br/>22 introduced yet. I don't think it's limited to<br/>23 Figure 4.<br/>24 BY MS. FULLER:<br/>25 Q. Well, it states: As discussed further below,</div>                                                                                                        |
| <div>Page 61</div> <div>1 If you're asking me to form a new opinion<br/>2 based on reviewing the entirety of the '753 patent, I<br/>3 would have to go through and spend some time to do<br/>4 that. I'm not really prepared to do that in the<br/>5 context of the deposition.<br/>6 MS. FULLER: Okay. Let's go off the<br/>7 record.<br/>8 (At 1:00 p.m. Central Standard Time -<br/>9 Recess was taken.)<br/>10<br/>11<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <div>Page 63</div> <div>1 playlist 205 is generally generated upon a user request<br/>2 for custom media channel 170.<br/>3 Then in Column 11 it states: And Step 405,<br/>4 mixing server 130 receives an instruction, a message<br/>5 triggering it to create one or more custom media<br/>6 channels 170 based on one or more custom channel<br/>7 profiles 160. In some embodiments, the trigger to<br/>8 create a custom media channel results from a user<br/>9 request to access that channel.<br/>10 Do you see that?<br/>11 A. I do.<br/>12 Q. Okay. So in Column 9 where it says: As<br/>13 discussed further below, playlist 205 is generally<br/>14 generated upon a user request for custom media channel<br/>15 170. That user request is in relationship to Figure 4,<br/>16 correct?<br/>17 A. I disagree.<br/>18 Q. And why do you disagree?<br/>19 A. 'Cause it doesn't say it's limited to<br/>20 Figure 4.<br/>21 Q. It says "as discussed further below," and<br/>22 "further below" would be Figure 4 in reference to a<br/>23 user request, correct?<br/>24 A. I disagree.<br/>25 Q. Where else would the discussion of a user</div> |

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| <p style="text-align: right;">Page 64</p> <p>1 request for custom media channel 170 be discussed in</p> <p>2 Whitehead?</p> <p>3 A. I think you're misinterpreting what Whitehead</p> <p>4 says. It says: As discussed further below playlist</p> <p>5 205 is generally generated upon a user request for</p> <p>6 custom media channel.</p> <p>7 With respect to "as discussed further below"</p> <p>8 and its relationship to the generation of that</p> <p>9 particular request, the next paragraph says: Further</p> <p>10 in some embodiments, playlist 205 is generated on a</p> <p>11 scheduled basis and so it's not -- when it says "as</p> <p>12 discussed further below," it's not jumping over all of</p> <p>13 those paragraphs to Figure 4, it's describing</p> <p>14 subsequent discussions of the generation of playlist</p> <p>15 205.</p> <p>16 Ultimately, I disagree with the</p> <p>17 characterization that this portion of the specification</p> <p>18 is limited to the Figure 4 embodiment or example.</p> <p>19 Q. But the Figure 4 embodiment is discussing</p> <p>20 upon a user request for custom media channel 170; is</p> <p>21 that correct?</p> <p>22 A. Figure 4 says what it says. In the portions</p> <p>23 of Figure 12 that you pointed to, it says: Various</p> <p>24 mechanisms can be used. It has an e.g. there, it's</p> <p>25 intended to be open-ended and that's how a person of</p> | <p style="text-align: right;">Page 66</p> <p>1 characterization.</p> <p>2 Q. What is this -- what else is this discussing</p> <p>3 besides creating custom media channel profile 160?</p> <p>4 A. I mean, you can read it. There's more there</p> <p>5 than that limited characterization.</p> <p>6 Q. Can you provide -- can you say what is more</p> <p>7 in these passages than creation of a custom media</p> <p>8 channel profile 160?</p> <p>9 MR. ZIVOJNOVIC: Objection, asked and</p> <p>10 answered.</p> <p>11 A. Sure, I'll just read the thing for you:</p> <p>12 Further, a user accessing profile server via content</p> <p>13 processing device 110 could be automatically logged in</p> <p>14 to profile server 165 according to a unique or</p> <p>15 substantially unique identifier stored in content</p> <p>16 processing device.</p> <p>17 That doesn't have anything to do with</p> <p>18 creating a new channel profile.</p> <p>19 Next in Step 310: Profile server 165</p> <p>20 provides a user interface, e.g., a webpage or some</p> <p>21 other GUI, which allows the user to create a new</p> <p>22 channel profile or to select a preexisting profile to</p> <p>23 modify.</p> <p>24 Just in that sentence, there's at least three</p> <p>25 different concepts. One, the fact that there's a user</p>                                                                                                                                                                                |
| <p style="text-align: right;">Page 65</p> <p>1 skill in the art would understand it.</p> <p>2 Attempting to limit Whitehead to the words in</p> <p>3 the document is not a proper analysis as to the</p> <p>4 understanding a person of skill in the art would have.</p> <p>5 Q. Go to Column 10, Lines 29 through 69. I'll</p> <p>6 let you read that quickly.</p> <p>7 MR. ZIVOJNOVIC: You said Column 10,</p> <p>8 which lines again?</p> <p>9 MS. FULLER: Lines 29 through 67.</p> <p>10 A. Okay.</p> <p>11 BY MS. FULLER:</p> <p>12 Q. So this column is in relation to a user</p> <p>13 creating a profile 160, correct?</p> <p>14 A. I don't think it's limited to that. There's</p> <p>15 other disclosures in these paragraphs. I think that's</p> <p>16 an incomplete characterization.</p> <p>17 Q. This passage discusses profile server 165,</p> <p>18 correct?</p> <p>19 A. In some of the paragraphs it talks about 165.</p> <p>20 Q. These passages are in relation to creating a</p> <p>21 custom media channel profile 160, right?</p> <p>22 A. That, again, I think is an incomplete</p> <p>23 characterization of the disclosure here.</p> <p>24 Q. Why is it incomplete?</p> <p>25 A. Because it is. There's more here than your</p>                                                                                                                                                                           | <p style="text-align: right;">Page 67</p> <p>1 interface that's provided to a user, could be a webpage</p> <p>2 or some other kind of graphical user interface. It</p> <p>3 wouldn't be limited to the creation of a new channel</p> <p>4 profile, it could be used for other functionality. So</p> <p>5 the description of the interface mechanism that would</p> <p>6 be made available to a user is not limited to the</p> <p>7 creation of a new channel profile.</p> <p>8 Also, there's the idea of selecting a</p> <p>9 preexisting profile: If a pre-existing profile 160 is</p> <p>10 selected, then profile server 165 retrieves information</p> <p>11 related to the profile 160 from persistent storage in</p> <p>12 preparation for displaying such information to the</p> <p>13 user.</p> <p>14 So that discloses information about what the</p> <p>15 profile server has, aspects of the fact that you can</p> <p>16 have persistent storage there, it can store a variety</p> <p>17 of different kinds of information.</p> <p>18 Next in Step 315: The profile server may</p> <p>19 generate a user interface that includes a form or the</p> <p>20 like that includes fields for displaying and updating</p> <p>21 information for profile 160.</p> <p>22 So that describes what the profile server is</p> <p>23 able to generate, and it can generate a user interface</p> <p>24 not limited to updating information for profile 160.</p> <p>25 It talks about fields that may be included in</p> |

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| <p style="text-align: right;">Page 68</p> <p>1 a custom channel profile are discussed elsewhere<br/>2 herein, below with respect to Step 320, so that<br/>3 cross-cites other portions of the specification that<br/>4 isn't limited to the creation of a profile, new channel<br/>5 profile.<br/>6 Next is Step 320: User provides information<br/>7 for profile 160, e.g., by entering information to one<br/>8 or more fields in a webpage provided as described above<br/>9 with respect to Step 315.<br/>10 So it talks about being able to enter<br/>11 information as related to a profile. It describes<br/>12 again the webpage as an example of ways of which<br/>13 information could be entered, not limited to the<br/>14 creation of a profile.<br/>15 It goes on: For example, the user may<br/>16 indicate an interest in receiving a particular media<br/>17 file, or set of media files, every time the file or<br/>18 files are updated in a content source.<br/>19 Again, that goes to user preferences, some of<br/>20 which could be included in a profile, but not<br/>21 necessarily needs to be. Similarly, the user may<br/>22 indicate an interest in receiving content broadcast<br/>23 from a particular content source on a particular day at<br/>24 a particular time.<br/>25 Again, expressing the different kinds of</p> | <p style="text-align: right;">Page 70</p> <p>1 is overly narrow.<br/>2 Q. Again, it's overly narrow besides the fact<br/>3 that I am stating that: Figure 3 illustrates an<br/>4 exemplary process 300 for creating a custom media<br/>5 channel 160.<br/>6 I'm just trying to understand why it would be<br/>7 overly narrow if I'm stating what the passage<br/>8 describes?<br/>9 MR. ZIVOJNOVIC: Objection,<br/>10 argumentative, form.<br/>11 A. I don't understand the question. I mean,<br/>12 when you read from the specification you generally read<br/>13 it accurately, and then when you attempt to interpret<br/>14 the understanding a person of skill in the art would<br/>15 have, based on the reading of the passage, you apply an<br/>16 overly narrow characterization.<br/>17 BY MS. FULLER:<br/>18 Q. Anywhere in this passage discuss a message<br/>19 that is sent to create a custom media channel?<br/>20 A. Could you be more specific in what you mean<br/>21 by "passage," which -- which portion?<br/>22 Q. In Col -- in Column 10, Lines 29 through 69,<br/>23 does it discuss anywhere where there is a message to<br/>24 create a custom media channel?<br/>25 A. I don't recall looking specifically. I'll</p> |
| <p style="text-align: right;">Page 69</p> <p>1 media that a user could be interested in.<br/>2 And it then goes on to identify a particular<br/>3 example, talks about the structure of what the webpage<br/>4 and the user interface could look like. And then goes<br/>5 on to be able to identify categories of information<br/>6 that could be listed in a webpage, again not<br/>7 necessarily tied to the creation of a new user profile,<br/>8 but additional information that's relevant to the ways<br/>9 in which a user can express what their particular<br/>10 interests are.<br/>11 So I think that that passage contains<br/>12 significantly more information than a limitation of a<br/>13 characterization of creating a new channel profile.<br/>14 BY MS. FULLER:<br/>15 Q. This process is, as Figure 3 in Column 10,<br/>16 Lines 4 through 5 say: Figure 3 illustrates an<br/>17 exemplary process for creating a custom media channel<br/>18 profile 160, and it goes through the steps of that<br/>19 creation.<br/>20 Whether it's creating a profile 160 or<br/>21 modifying the profile 160, what is -- what is included<br/>22 is a profile in this process and this passage is<br/>23 discussing a profile that is being created or modified,<br/>24 correct?<br/>25 A. I think your characterization of the passage</p>    | <p style="text-align: right;">Page 71</p> <p>1 give it a once-over to see if there's something that<br/>2 jumps out.<br/>3 And sorry, it was a message to do what?<br/>4 Q. To create a custom media channel.<br/>5 MR. ZIVOJNOVIC: Objection, vague.<br/>6 A. Sure, I mean, it -- it goes through and<br/>7 describes creating a custom media channel profile, it<br/>8 identifies different components, it talks about the<br/>9 functionality of those components. And generally the<br/>10 exchange of messages that happen through the process of<br/>11 a user interacting with a profile, that can include<br/>12 identifications of specific channels as identified by<br/>13 examples towards the bottom of the column.<br/>14 I don't see why the process of creating a<br/>15 profile, some of the information that is exchanged<br/>16 between the user interface doesn't include the kind of<br/>17 information that I've identified for the requesting of<br/>18 a custom media channel.<br/>19 MS. FULLER: All right. Let's go off<br/>20 the record for five minutes for a break.<br/>21 (At 1:22 p.m. - Central Standard Time,<br/>22 Recess was taken.)<br/>23<br/>24<br/>25</p>                                                |

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| <p style="text-align: right;">Page 72</p> <p>1 (At 1:26 p.m. Central Standard Time,<br/>2 with all parties present as before, the following<br/>3 proceedings were had, to-wit:)<br/>4 MS. FULLER: So I just realized it is<br/>5 2:30, 11:30 your guys' time, can we break for -- I'm<br/>6 going to break for lunch, for an hour lunch, and then<br/>7 we can come back on the record.<br/>8 THE WITNESS: I don't want to break for<br/>9 lunch. I'd rather just keep going and finish the<br/>10 deposition. It's 11:30 in the morning I'm not ready<br/>11 for lunch.<br/>12 MS. FULLER: Well, I control the<br/>13 deposition and I'm going to break for -- for lunch<br/>14 right now.<br/>15 MR. ZIVOJNOVIC: The witness controls<br/>16 the deposition. The witness is asking, as a courtesy,<br/>17 to finish this. This deposition has already gone two<br/>18 and a half times as long as you originally told us it<br/>19 would. I don't see a reason why -- why you would not<br/>20 take the witness' request and finish it up.<br/>21 MR. PRICE: Let's go off the record,<br/>22 please.<br/>23 (Discussion off the record.)<br/>24 MR. ZIVOJNOVIC: So I'm to understand<br/>25 that we are going off the record due to a -- if it's</p> | <p style="text-align: right;">Page 74</p> <p>1 (At 2:30 p.m. Central Standard Time -<br/>2 with all parties present as before, the following<br/>3 proceedings were had, to-wit:)<br/>4 MS. FULLER: Dr. Almeroth, thank you for<br/>5 understanding my medical condition I was in, and<br/>6 appreciate that. But at this time, I have no further<br/>7 questions, so thank you.<br/>8 THE WITNESS: Sure.<br/>9 MR. ZIVOJNOVIC: Couple of questions on<br/>10 redirect.<br/>11 CROSS-EXAMINATION<br/>12 BY MR. ZIVOJNOVIC:<br/>13 Q. Dr. Almeroth, if you could please go to your<br/>14 '753 declaration, specifically Paragraph 16.<br/>15 A. Okay, one second.<br/>16 Okay, I'm there.<br/>17 Q. Do you recall being asked about this<br/>18 paragraph by counsel for patent owner?<br/>19 A. Yes.<br/>20 Q. And do you recall testifying that your<br/>21 opinion is not limited in Paragraph 16 to the second<br/>22 feed being just a single media event?<br/>23 A. Yes.<br/>24 Q. Now, if you could please scroll down to --<br/>25 (Court reporter interrupted for</p>                                                               |
| <p style="text-align: right;">Page 73</p> <p>1 okay for me to say, by questioning attorney, but if you<br/>2 want to say, I don't want to include any privacy --<br/>3 MS. FULLER: I have a medical issue that<br/>4 I have to take care of that will require a little bit<br/>5 of time to take care of right now.<br/>6 MR. ZIVOJNOVIC: And so per discussion,<br/>7 we're going to go off the record for longer than<br/>8 expected, this deposition is going longer than it was<br/>9 originally expected. The parties agree that I may talk<br/>10 to Dr. Almeroth during this unusual break if he can<br/>11 figure out his next steps. And with that, we can go<br/>12 off the record.<br/>13 (At 1:30 p.m. Central Standard Time -<br/>14 Recess was taken.)<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p>                                                                                                                                                                                                                                                                                                                                                                                                   | <p style="text-align: right;">Page 75</p> <p>1 clarification.)<br/>2 Q. If you could please scroll down to the<br/>3 annotated version of Figure 2 in your declaration.<br/>4 A. Okay, I'm there.<br/>5 Q. And do you see here that you highlight in<br/>6 green one box numbered 155?<br/>7 A. Yes.<br/>8 Q. Next to the green highlighted box 155, do you<br/>9 see two more boxes highlighted, 155, then one box<br/>10 highlighted, 140, and then another box highlighted,<br/>11 155?<br/>12 A. Yes.<br/>13 Q. Would your analysis and opinions change if<br/>14 you had colored those additional boxes also green as<br/>15 part of the second feed?<br/>16 A. No, it's -- it -- those additional boxes<br/>17 could be green, it would be instances where you have<br/>18 multiple meet elements as part of the second feed.<br/>19 Q. If you could please now go to Paragraph 19 in<br/>20 your declaration.<br/>21 A. Okay.<br/>22 Q. And do you recall being asked by counsel for<br/>23 patent owner about Whitehead using the word "streaming"<br/>24 in one example to describe transmitting a custom media<br/>25 channel?</p> |

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| <p style="text-align: right;">Page 76</p> <p>1 A. I do.</p> <p>2 Q. And do you recall also testifying that there</p> <p>3 are different protocols that could be used for this</p> <p>4 streaming?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Now, in Paragraph 19, it's a long paragraph</p> <p>7 so bear with me, if you could go about two-thirds of</p> <p>8 the way down to the sentence starting: Where an eight</p> <p>9 clip custom media channel, and let me know when you're</p> <p>10 there?</p> <p>11 A. Just passed it, one second.</p> <p>12 Okay, I'm there.</p> <p>13 Q. All right, so in your declaration you address</p> <p>14 an example in Whitehead where an eight clip custom</p> <p>15 media channel is transmitted as a single multimedia</p> <p>16 file, right?</p> <p>17 A. Yes.</p> <p>18 Q. And if we go on and read the rest of the</p> <p>19 sentence, you go on to write: And quoting and</p> <p>20 transmitting that file may require up to four minutes.</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. Now, if we go to the start of this whole</p> <p>24 paragraph, do you see in Line 4, the sentence starting:</p> <p>25 By having the user just wait?</p>                                                                                                                                                                                                                              | <p style="text-align: right;">Page 78</p> <p>1 Whitehead describes.</p> <p>2 MR. ZIVOJNOVIC: All right, no further</p> <p>3 questions.</p> <p>4 MS. FULLER: I have a -- questions,</p> <p>5 redirect.</p> <p>6 REDIRECT EXAMINATION</p> <p>7 BY MS. FULLER:</p> <p>8 Q. Dr. Almeroth, can we go to Whitehead,</p> <p>9 Column 14, Line 23 through 26. I'll let you read that</p> <p>10 really fast, let me know when you're done.</p> <p>11 A. Okay, I'm there.</p> <p>12 Q. Okay. What is a "progressive download"?</p> <p>13 A. A progressive download is usually where</p> <p>14 you're downloading a file, but depending on the</p> <p>15 structure of the file you can start to view portions of</p> <p>16 it after some other portion of the file is downloaded.</p> <p>17 Q. So the progressive download where media can</p> <p>18 begin to play immediately after a small portion has</p> <p>19 been downloaded?</p> <p>20 A. I wouldn't characterize it as immediately.</p> <p>21 It's different than other technologies in the sense</p> <p>22 that you have to download enough of a portion to be</p> <p>23 able to do the play back, and that generally requires</p> <p>24 downloading all of the decoder specifications as well</p> <p>25 as quite a few frames of video. So it could take</p>                                           |
| <p style="text-align: right;">Page 77</p> <p>1 A. Yes.</p> <p>2 Q. How does the user wait that you're addressing</p> <p>3 there relate to the four minutes required to encode and</p> <p>4 transmit a file?</p> <p>5 A. Regardless of -- of whether or not you're</p> <p>6 streaming or downloading, there's going to be an</p> <p>7 initial delay. It's going to be on the order of</p> <p>8 minutes, or as it says at the end of this paragraph, at</p> <p>9 least -- even assuming an order of magnitude shorter,</p> <p>10 it's still going to be on the order of 40 seconds or</p> <p>11 so.</p> <p>12 And so the point is that you're going to have</p> <p>13 to -- the user is going to have to wait some amount of</p> <p>14 time, regardless of whether or not you are streaming or</p> <p>15 whether or not you're downloading, just as part -- part</p> <p>16 of the whole preparation process. And then so that --</p> <p>17 that ties to the sentence but having the user just wait</p> <p>18 is -- is not advantageous use of that point, of that</p> <p>19 period of time.</p> <p>20 Q. And now that counsel for patent owner flagged</p> <p>21 the use of the word "streaming" elsewhere in Whitehead,</p> <p>22 does that change your conclusions about the 240-second</p> <p>23 delay?</p> <p>24 A. No. Even if you're going to stream, you</p> <p>25 still have to go through the preparation phase that</p> | <p style="text-align: right;">Page 79</p> <p>1 several seconds to a minute depending on the size and</p> <p>2 quality of the video and the type of network you're on.</p> <p>3 Q. So in a progressive download, though, you're</p> <p>4 not downloading the whole media file and waiting for</p> <p>5 that download to finish before a channel is played,</p> <p>6 correct?</p> <p>7 A. Typically in a progressive download, you</p> <p>8 don't have to fully download the file before you can</p> <p>9 start to play it. You have to download some</p> <p>10 potentially significant portion of it.</p> <p>11 Q. It states in that -- in that line: Next in</p> <p>12 Step 440 mixing server 130 delivers isochronously</p> <p>13 streams or progressive downloads.</p> <p>14 Is a stream different than a download?</p> <p>15 MR. ZIVOJNOVIC: Objection, misstates</p> <p>16 the document.</p> <p>17 A. It talks about isochronously delivering</p> <p>18 streams or progressively downloading media content.</p> <p>19 Those can be different technologies.</p> <p>20 BY MS. FULLER:</p> <p>21 Q. And how is a stream different than a</p> <p>22 download?</p> <p>23 A. In this context, probably not significantly</p> <p>24 different. The way I generally think about these</p> <p>25 things are you have things like it's a spectrum where</p> |

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| <div>Page 80</div> <div>1 on one end of the spectrum you have kind of pure</div> <div>2 streaming, like say a TV broadcast and then you have a</div> <div>3 full download on the other end of the spectrum, and</div> <div>4 there's all sorts of terms kind of in the middle of the</div> <div>5 spectrum or towards edges. Progressive download is one</div> <div>6 of them, isochronously delivering streams is another.</div> <div>7 But as you move away from the edges, there's</div> <div>8 usually some amount of downloading and startup delay in</div> <div>9 the delivery of video before you can even start</div> <div>10 playback. And that's independent of any sorts of</div> <div>11 delays around building it, encoding the file,</div> <div>12 representing the combination of media elements.</div> <div>13 MS. FULLER: Okay, thank you, and no</div> <div>14 further questions.</div> <div>15 MR. ZIVOJNOVIC: No further questions</div> <div>16 for me either.</div> <div>17 (Court Reporter requests counsel to</div> <div>18 confirm their purchase and transcript orders for</div> <div>19 the record:)</div> <div>20 MR. ZIVOJNOVIC: Yes, we would like to</div> <div>21 reserve the right for the witness to review the</div> <div>22 transcript and provide an errata.</div> <div>23 So yes, we would also like to get a</div> <div>24 copy, rough transcript whenever you get a chance, and</div> <div>25 then for the final transcript -- I guess what is your</div> |  |
| <div>Page 81</div> <div>1 standard time?</div> <div>2 (Discussion off the record.)</div> <div>3 MR. ZIVOJNOVIC: Rough whenever you get</div> <div>4 a chance, the final whenever it's ready, you don't need</div> <div>5 to rush it.</div> <div>6 MS. FULLER: I have orders in, but I</div> <div>7 believe it's rough and expedited by the 27th.</div> <div>8 (2:45 p.m. Central Standard Time - Adjournment.)</div> <div>9 ** ** ** **</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |

|    |                                                     |
|----|-----------------------------------------------------|
| 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-two (82) pages contain a full, true  |
| 12 | and correct transcription of all the testimony of   |
| 13 | said 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 27th of OCTOBER, 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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