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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RODE MICROPHONES, LLC, and
FREEDMAN ELECTRONICS PTY LTD.,
Petitioner,

v.

ZAXCOM, INC.,
Patent Owner.

Case IPR2025-00230 (Patent 7,711,443 B1)
Case IPR2025-00232 (Patent 10,276,207 B1)

Record of Oral Hearing
Held: March 16, 2026

Before JUSTIN T. ARBES, MIRIAM L. QUINN, and
STEPHEN E. BELISLE, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing Monday, March 16, 2026, commencing at 10:00 a.m. EDT, at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P-R-O-C-E-E-D-I-N-G-S

10:00 a.m.

JUDGE ARBES: Good afternoon. This is the combined oral hearing in Cases IPR2025-00230 and IPR2025-00232 involving Patents 7,711,443 and 10,276,207.

Can counsel please state your names for the record? Counsel for petitioner?

MR. FISHER: Yes. Michael Fisher of Dechert representing the petitioners, RODE Microphones and Freedman Electronics. With me today is --

MR. PLIES: Jeffrey Plies.

MR. FISHER: Also of Dechert --

JUDGE ARBES: Thank you.

MR. FISHER: -- representing petitioners.

JUDGE ARBES: Counsel for patent owner?

MS. CHIPPERSON: Hello. Rita Chipperson with Chipperson Law Firm PC here on behalf of patent owner, Zaxcom, Inc. With me today is Mr. Glenn Sanders, who's the client.

JUDGE ARBES: Thank you.

MS. CHIPPERSON: Thank you.

JUDGE ARBES: Per the Trial Hearing Order, the parties each have 60 minutes of total time to present arguments for both cases.

The order of presentation will be first petitioner will present its case regarding the challenged claims and may reserve time for rebuttal.

Patent owner then will respond to petitioner's presentation and may reserve time for surrebuttal.

Petitioner then may use any remaining time to respond to patent owner's presentation.

And finally, patent owner may use any of its remaining time for a brief surrebuttal responding to petitioner's rebuttal arguments only.

Two reminders before we begin. We have the parties' demonstrative exhibits and are able to view them on our screens.

To ensure that the transcript is clear and everyone can follow along, please try to refer to your demonstratives by slide number.

And also, if either party believes that the other party is presenting an improper argument, I would ask you to please raise that during your own presentation rather than objecting at the time and interrupting the other side.

Any questions from the parties before we begin? Counsel for petitioner, you may proceed. And would you like to reserve time for rebuttal?

MR. FISHER: Yeah, we'd like to reserve 10 minutes for rebuttal.

Okay. Thank you. Why don't we actually get started by turning to slide 6 of our presentation, just to provide a sense of what these patents are generally all about.

As an initial matter, you have a wearable local audio device. It records local audio.

And it also wirelessly transmits that local audio to a remote device which includes a receiver and/or a recorder.

Now in addition, the local audio is time stamped using either a master timecode or a local timecode.

There are actually two ways that this is done. The '443 patent and in particular the claims of the '443 patent are directed toward an asynchronous

mode, in which the local audio data is stamped with a time stamp based on the master timecode or referencing the master timecode.

And in contrast, the claims of the '207 are directed toward a synchronous mode in which there's a local timecode generator.

That local timecode generator is jam synchronized to a master timecode generator.

And then that local timecode generator generates local timecodes.

And the local data is actually stamped with the local timecodes. So those are two different modes of operation.

In the interest of time, why don't we go ahead and jump to slide 37.

And I'll address the individual claim elements starting with slide 38.

And I will talk about the locally generated audio and local audio data terms.

So these terms appear in all of the independent claims and therefore all of the challenged claims.

The patent owner is trying to import extra limitations into these terms.

Specifically, they want the audio to have to be separate and independent and isolated.

And they want the terms to be construed so that the audio cannot include anyone's audio other than that produced by the wearer of the local audio device.

And in addition, they would like these terms to be restricted so that the audio data has to be suitable for an independent track of audio or multi-track audio.

Now it's important to remember, of course, we're governed by the Phillips standard.

So the proper construction is going to be plain and ordinary meaning unless there is a clear disclaimer or a clear definition or lexicography in the specification.

There is no such thing here. If you look at the specification passages that the patent owner has cited, they're not definitional.

They're not restrictive in any way. They use optional language in some aspects.

For example, may be, so these terms denote that the examples that patent owner is citing are just nonlimiting exemplary embodiments.

JUDGE ARBES: Counsel, this interpretation you're proposing of audio generated near the local audio device, that is different than the District Court's interpretation, right?

MR. FISHER: So the District Court did not construe locally generated audio.

It did construe audio data as data comprising audio signals in digital form and found that no construction was necessary of local audio data other than they're a separate construction.

Sorry. No construction was necessary of local audio data beyond their separate construction of audio data as digital.

Now the digital versus analog issue is not at stake here. So I think that piece is moot.

Other than that, there really wasn't a construction in the District Court.

So I guess in that sense, it's different. But only in the sense that there is more of a construction at stake here whereas there wasn't any in the District Court.

JUDGE ARBES: Okay. Can I ask as a general matter -- we have both parties' proposals in this proceeding.

We have previous interpretations for other patents that use the broadest reasonable interpretation.

And we have the District Court's Phillips interpretation. And there are differences between those.

Are you advocating here that we should adopt or not adopt the District Court's interpretations, for instance?

MR. FISHER: We are, I suppose, not really advocating either one.

We're not really advocating that the District Court's interpretation be adopted.

The PTAB in the Lectrosonics case didn't construe either term. So there's nothing there to adopt.

We have propounded a construction for this case. I don't think we originally propounded one in the petition.

But patent owner made these terms at issue. So that's why we're here talking about claim construction.

Local audio data, we don't even think there's any construction needed.

We can probably accept no construction of either term. I guess it's data from audio generated near the audio device just to encompass the concept of the data being -- the audio being local.

So that's sort of why we have the word, near, in there. But we don't think it's essential to either construe these terms or adopt the court's construction.

And again, the Lectrosonics panel didn't even construe the terms.

JUDGE ARBES: Just as a general matter as we go through these terms, I think we would find it helpful to explain why, if you are not advocating for the District Court's Phillips interpretation, why not?

Or, if you are advocating that we should adopt something different than the District Court, why not?

MR. FISHER: Okay.

JUDGE ARBES: And specifically for this term if you could address the word near.

And is that sufficient? How near does it need to be? Is that sufficient language for us to interpret it?

MR. FISHER: Right. I understand Your Honor's concern over the use of the word near.

And I suppose I can't really specify how many feet something would have to be close to the recording unit to qualify as near.

So in that sense, I understand Your Honor's concern. Again, we don't really think these terms even need to be construed at all.

And as I alluded to earlier, with respect to the District Court's construction, there's really nothing to adopt other than the fact the data is digital which we don't have any objection to.

It's just that it's not really -- it's sort of moot in this case because there is no issue of analog versus digital.

JUDGE QUINN: So counsel, can I interrupt? It seems to me that we have also an issue of whether the terms have their plain and ordinary meaning.

And if everyone is using the same technique or just looking for the plain and ordinary meaning that we should come to the same understanding.

It looks to me like the District Court focused on not just the location but whether the creator of the audio is captured and that that is part of what local means.

I think patent owner is also proposing that locally generated audio is the one created by the wearer.

So I'm interested in finding out from you whether that is a criteria that is suitable, plain and ordinary meaning of "locally," to include that concept of not just the audio is happening around the microphone but is also the audio that is generated by the performer, creator, recorder, the one wearing the device.

MR. FISHER: Yes, Your Honor. And I understand your point. I guess I would say that there could be multiple people in the same proximity.

There could be two people standing next to each other. And it is our view that if you have the wearer of the recording device and they're talking to someone and the person is responding, that audio is all in the same local area.

So I suppose in that sense near would be sort of within the proximate range of being able to be picked up by that microphone of the wearer's device.

We do not think that the local audio data should be restricted so that it is only the audio produced by the wearer of the device.

That is something that patent owner wishes to import into the claims from nonlimiting examples in the specification.

And again, the examples that patent owner cites are not definitional.

They're not lexicography. There's no disclaimer there. These are just nonlimiting exemplary embodiments.

And it's our view that they should not be imported into the claims.

Now we have some of those examples on slide 39 where, again, these examples use that optional language.

So it is apparent that they're not intending to be definitions and they're not intending to be limiting.

I guess I would also add that if you look at patent owner's extra language at the end of each of their constructions, they want to add the requirement that the data has to be, quote, suitable for use as an independent track of audio or suitable for creation of a multi-track audio file.

Now that is actually an improper importation of the intended use or purpose of the audio into the claims and that's inappropriate.

And in fact, we actually cited a case for that proposition as well. It was the Brookhill case which you'll find on page 4 of our pre-institution reply and that's paper 10 in the '443 case.

And I would also add to that that if you look at the passage of the deposition transcript of our expert, Dr. Chris Kyriakakis, that patent owner cites on page 9 of the POR, they even acknowledge that they're talking about a passage that refers to the goal of multi-track reporting.

So again, if you look at all of the additional -- and that passage is quoted on slide 40. So you can see that there.

So again, if you look at the additional limitations that patent owner wants to add to these claim terms, they are, first of all, improperly importing nonlimiting examples from the specification.

And they're also improperly focusing on the goal of the invention rather than what the invention is, rather than what that local audio is.

Now I would say that -- sorry, does the panel have any further questions on that? Okay.

So I would add to that that patent owner is also focusing on claim 15.

And they claim that -- they contend that claim 15 somehow supports their construction, and we definitely disagree with that.

It is true that claim 15 has the additional limitation to create a single multi-track data file.

So of course, if you're looking at claim 15 that if the multi-track data file is being created, then it stands to reason that the local audio data would have to be suitable for that.

But the whole purpose of a dependent claim is that it's narrower than the independent claim.

The fact that claim 1 is silent and agnostic about whether or not the local audio data is suitable for multi-track is not remotely contradictory of claim 15.

It's completely consistent. So we disagree with that argument as well.

JUDGE QUINN: But does that matter anyway? I mean, are you contending that the prior art is suitable for creating multi-track audio files anyway?

MR. FISHER: In fact, we are. We are. I mean, we don't necessarily agree with patent owner's claim constructions.

But in all of these instances, we do believe and we contend that we have found descriptions within the prior art that meet either party's constructions.

And I can actually get into that if you look at slide 42. And I guess I would also add to that in terms of whose construction applies to these terms, in particular, the locally generated audio terms.

Patent owner has actually not disputed that those terms are met by Strub under petitioner's construction.

So I don't want to belabor that because that's actually not an issue in the case.

That has -- again, that's not been disputed. But I will point out in response to Your Honor's comment that if you even look at patent owner's construction in which they really do want that audio to be the isolated audio of only the wearer.

And that microphone is picking up sound created by the wearer, that Strub teaches that regardless.

And some examples of that can be found on slide 42. Strub repeatedly talks about the wearer being a participant in the event, not just an observer, but a participant.

So this is someone who is not like a videographer at a wedding but someone who's actually at the party talking to people and creating their own audio.

And in fact, Strub also talks about isolated solitary activities in which the wearer of the audio unit is engaging in activities such as snow skiing, waterskiing, cycling.

Maybe they're narrating their progress as they do their ski run or as they're doing their cycling.

So those are some examples within Strub which would actually meet patent owner's construction of the locally generated audio terms. Now if you look at --

JUDGE QUINN: So one question for you.

MR. FISHER: Yes, sorry. Go ahead.

JUDGE QUINN: So it seems to me, though, that this -- for claim 1 not requiring a multi-track audio file as patent owner wants the audio to be suitable for creating that.

And this is more of a technical question for you. Once you captured the various recordings from the individual's units, this multi-track can be done post-recording.

And it's something that just -- you just merge the tracks using software or something like that.

I'm familiar with GarageBand. That's how I would merge audio tracks.

But it's not something that a particular unit as it is recording that there is something special about how that is recorded other than the time stamps perhaps.

MR. FISHER: I think that's exactly the point, Your Honor. These are standard post-processing methods that have been done for ages by standard post-processing software.

And there isn't anything special about the audio that would necessarily make it, quote, suitable for use in multi-track.

You've got two recording units. Each one might be recording sounds or voices or instruments from their respective wearers.

Each of those is a separate track. That's what multi-track is, multiple tracks.

You've got your multiple tracks, and there's nothing that would prevent you from creating that multi-track recording and saving that as a multi-track file.

If, for example, let's say you had two microphones and you had three people singing.

Maybe two people are singing into one microphone. One person is singing into the other microphone.

That's still two tracks. There's nothing to say that those two tracks of audio couldn't then be combined into a single file while preserving the different sounds coming through the different tracks. And that is a multi-track recording.

JUDGE QUINN: Can we go to the wearable device?

MR. FISHER: Yes. Certainly, Your Honor. If you turn to slide 44, you can see that the parties' constructions of the wearable by a creator and wearable by a user terms are presented there.

Now for those terms, the District Court did render a construction of the wearable by a creator term.

And that construction was a local audio device suitable and in a condition to be worn by a performer whose audio is being recorded.

And you'll find that in the claim construction order which is Exhibit 1037 at pages 7 and 8.

And in fact, the court specifically rejected Zaxcom's attempt to include the phrase, the audio, in the construction.

So specifically, the court's construction does not exclude audio from any source other than the wearer.

So again, what we're talking about is you've got a single microphone.

Maybe it's picking up sound from the wearer. Maybe it's picking up sound from the person the wearer is talking to.

All of that is encompassed by the claim. And in fact, if you actually look at the difference between the parties' construction, you'll see that the only difference is the word the. Okay?

A patent owner wants to insert the word the in there, by which they're implying, again, that each local -- that each track of local audio must contain only one voice or only one instrument.

And we contend that's just not a proper construction. And the court agreed with us.

Now the PTAB panel in the Lectrosonics IPRs didn't construe either term.

And actually, I'm looking at my notes. I'm seeing that the court did not construe the second term, the wearable by a user term.

So the only prior construction is the wearable by a creator term which I recited into the record earlier.

So again, our position is that there's really no difference between the present cases and the District Court case for purposes of this term.

We consider the court's construction to be a reasonable term. We don't actually have any objection to that term.

If you compare our proposed construction to what the court provided, it's not identical but it's pretty similar and we could accept either one.

We don't really have a preference between those two. But we did provide a proposed construction for this case.

JUDGE QUINN: Correct me if I'm wrong. The District Court did construe wearable.

MR. FISHER: The District Court did separately construe wearable.

Let me take a look at that. I do have a copy of that order handy. The District Court's construction of wearable is suitable and in a condition to be worn.

The court agreed with our proposed construction of that term. Now wearable by itself as an independent term isn't -- no construction of that has been specifically requested in the IPR.

But for what it's worth, that is what the District Court's construction is.

And you'll find that on page 7 of the claim construction order. And again, that is Exhibit 1037 in the present cases. Does the panel have any further questions on that at this time?

JUDGE ARBES: Counsel, can I ask about the word creator? If I have a microphone that is picking up my voice and is also picking up background audio, am I the creator of that audio as well? And the District Court said on page 8 of the decision that although an operator might create an audio file, audio recording, or the like, it is the person vocalizing, playing an instrument, et cetera, who's creating audio.

MR. FISHER: So I think in the example that Your Honor has provided, both individuals would be creating the audio. So both of them are creators.

JUDGE ARBES: I'm sorry. Both individuals? Let's say I just have some background noise, something going on in the background and it's picking it up.

It's your position that the audio device can be picking up that as well, in addition to the voice of the person wearing the device?

MR. FISHER: Yeah, it could. If the background sound is not coming from someone, I guess there's no creator of the background sound.

But I guess it's still our position that having some background noise in the background, it doesn't somehow, like, contaminate the track and make it unsuitable for multi-track.

And we don't think that that excludes that particular situation from the definition of either locally generated audio or a local audio device wearable by a creator.

That local audio device is still wearable by a creator. Okay. So there's some background noise.

We live in the real world. There's no such thing as complete silence other than from the person wearing the device.

So it's our contention that the example you provided would still count as local audio data, at least the portion -- I mean, it would still count as local audio data.

It doesn't somehow become not local audio data just because it happens to have a little noise in the background.

JUDGE ARBES: I guess my question is -- claim 1 of the '443 patent requires that the audio device be wearable by a creator of said locally generated audio.

So that person that is wearing the device has to be the creator of the audio.

So if, in your view, that audio can be coming from someone other than the person, how is that person the creator of that audio then?

MR. FISHER: I see what Your Honor is getting at. We have no objection calling the person who is singing or playing an instrument the creator of local audio.

The dispute that we have with patent owner is that they want to exclude the situation in which you got two creators on one track.

That's why they want to insert the word the there. We're not sure we agree that that even gets them there.

But that is what they're trying to accomplish. They want to narrow the term such that if you have two people speaking into the same microphone, the device somehow becomes no longer wearable by the creator because that's not the person who creates the audio.

According to them, there's only one audio. It's got to strictly be the sounds from the person wearing the device.

And we don't agree with that. And we think that there's no basis in the specification or in any of the evidence of that.

In fact, if you turn to slide 45, we've pointed out that there's no place anywhere in the specification.

You can look at the whole thing. Nowhere does it preclude locally generated audio from including audio from performers other than the wearer.

And we're not saying that the wearer is not also producing the audio.

What's at stake here is, does it count if the wearer plus one other person is producing that sound?

We think that should be included. Patent owner apparently doesn't. That's how we're at least interpreting their position.

We would also point out -- again, we're on slide 45 -- that if you look at all of the independent claims in this case which means all of the claims, they're all comprising claims.

So they should permit local audio to be generated by other performers.

And also the term creator, especially since these are comprising, not consisting of claims, should also encompass situations where you've got one or more creator.

And that's exactly what we're talking about. We're not trying to say that a device worn by someone who's completely silent, it might be picking up audio from someone across the room.

We're not trying that that device is being worn by the creator. We're really focused on the example where you've got multiple creators all producing sound going into that same microphone. So that's really the issue here.

JUDGE QUINN: I don't know that the Article "A" -- creator to mean one or more creators gets you there because, as my colleague stated, the claim requires that it needs to be wearable by a creator.

So if you still have one or more creators, each one has to be wearing a local audio device, of which there could be more than one.

But at least we're stating who is a creator of the audio that we care about for purposes of the claim.

Whoever it is must be wearing the device. And I guess what you were saying is as long as that occurs, there could be multiple other performers, nearby speakers.

MR. FISHER: Your Honor, your audio and video suddenly cut out. I think we're having a technical problem.

(Whereupon, the above-entitled matter went off the record at 10:30 a.m. and resumed at 10:31 a.m.)

MR. FISHER: I'm sorry, Your Honor. You cut out in sort of midsentence. So I didn't hear --

JUDGE QUINN: And I don't know where I dropped off. And I guess my question to you was if we're looking at the claims to just look for who is the creator that's wearing the local audio device, as long as we have that, it doesn't matter that there are other speakers surrounding the microphone that could be captured.

That is extraneous to the claims. And I'm not sure that that matters for purposes of how the device would operate.

MR. FISHER: Well, we agree. We think that as long as someone is wearing the device and creating some sound that it shouldn't matter whether there might be other people nearby whose sound is also making it into that

microphone and being recorded regardless of whether the additional people are also wearing their own units.

But patent owner is trying to argue that if you've got any sound at all that is being picked up by that microphone other than the audio produced by the wearer of the device that somehow that brings it outside the scope of the claims.

And we disagree with that. We think as long as the wearer is making some sound and it's being picked up by that device, it doesn't matter whether there might be other sounds also picked up and recorded by that device.

JUDGE BELISLE: Counsel, this is Judge Belisle. You may have answered this indirectly.

But do either of the specifications that are at issue here say anything about how it's possible to isolate the audio to a single source?

MR. FISHER: Not to our knowledge. We're not aware of anything in the specifications that deals with that.

JUDGE BELISLE: Short of an acoustic mask, I'm interested to know how it's possible to isolate my audio from somebody standing right next to me who's talking to me.

MR. FISHER: That is an interesting technical question, Your Honor.

I don't think the specifications of the challenged patents talk about that.

And that's another reason why we don't think that's what the claims mean.

There's actually nothing in the specification that suggests that the audio has to be isolated.

And so again, that's our view on that. Was there anything else on the construction of the wearable by a creator terms? Okay.

Now I would also point out that if you look at the Strub reference, it actually discloses these terms under either party's construction.

We do have some examples on slide 46 which I believe is focusing more on the petitioner's construction.

But I think that part is pretty clear from the briefing. And I don't want to spend too much time on that.

Instead, let's go ahead and jump to slide 49 in which we would like to make the point that Strub meets those terms even under patent owner's construction.

And the reason is for some of the examples that I cited earlier where Strub discloses, for example, in columns 47 and 70 which you can see the excerpts on slide 49.

Strub discloses someone wearing the recording unit while riding a bicycle.

Strub talks about wearing those units during waterskiing and snow skiing.

These are, again, solitary activities where there isn't anyone else's audio being picked up by that microphone.

And in fact, it is isolated. It is only the wearer's audio. Again, we don't think the terms should be construed to only that.

But even if they are, Strub still meets them. Any other questions on those terms at this time?

JUDGE QUINN: No, but I'd like to jump into something related.

I noticed that all of these activities that Strub discloses, that they are all outdoor activities.

I think I read somewhere, maybe on the enablement argument patent owner made, that Strub does not envision really being able to work in-

building where the GPS signals -- and this may go to the master timecode limitation where your master timecode is coming from the GPS, but in-building coverage where GPS signals is nearly impossible for more than a minute.

So what is your response to that in -- to the master code limitation?

MR. FISHER: In terms of whether Strub meets those limitations?

JUDGE QUINN: Yes.

MR. FISHER: Well, first of all, I guess we do have a claim construction issue with those terms.

And I think at some point, we should get into that. I would say that there is nothing in the patents that suggests that the claim devices have to work under all circumstances.

And certainly, there are no claim limitations that specify that the devices have to work inside or in a shielded environment.

I mean, whether or not you're going to pick up a GPS signal in a building probably depends on how much metal the building has.

If you're in a wooden building, you probably receive the GPS signal just fine.

But it doesn't really matter because that's not part of the claims. The claims don't actually require that.

Now in terms of enablement, we're unaware of any case that says that a prior art reference has to be enabling at all times.

And again, the focus is the claim. So you just have to enable the claims.

You don't have to enable a device to work in all circumstances, even circumstances on which the claims are silent, which they are here, because, again, there's no indoor-outdoor limitation in any of these claims.

So I guess that's how I would respond to that in terms of enablement.

JUDGE QUINN: And you're not relying on the synchronization pulse of Strub, right? You're relying on GPS?

MR. FISHER: For these cases, for the '230 and '232 cases, we have cited the GPS as the master timecode generator.

I know that the synchronization pulses came up in the '557 case which is not currently pending.

But for these cases, it's the GPS. And also, there is an example in Strub of a SMPTE timecode source as well.

So we would also throw that in. But certainly, we are citing the GPS satellites as master timecode generators and the GPS signals as master timecodes. Sorry, Your Honor. Was there anything else on that?

JUDGE QUINN: No, it's okay. We can turn to construction on that.

MR. FISHER: Certainly. I think that's actually a good segue into claim construction of master timecode generator and master timecodes.

So if you look at what the District Court did, and this actually highlights the important difference between the asynchronous and synchronous modes that are described and claimed in the challenged patents and also described in Strub.

The District Court's construction was based on the -- was focused on the asynchronous embodiments of the specification.

And specifically, the District Court construed a master timecode generator as a producer of master timecodes.

But importantly, the court construed master timecodes as codes synchronizing audio samples.

And you can see that in the claim construction order. Again, that's Exhibit 1037 at pages 6 and 7.

Now in contrast if you look at what the Lectrosonics panel did in the PTAB, that panel construed master timecode generator as a producer of a plurality of master timecodes controlling other timecode generators.

So that's the synchronous mode. Now that panel didn't render a construction of master timecodes.

But I think the point is that they did render a construction of master timecode generator which is actually inconsistent with what the court did.

And you can find that construction in the Lectrosonics final written decisions, Exhibit 1017 of page 13 and Exhibit 1018 of page 10.

And that inconsistency actually highlights the issue here and the differences between the two different embodiments that are disclosed and claimed -- actually, frankly, claimed differently in the two patents at issue here.

So the asynchronous mode, which is what the court used when rendering its claim construction, is what's claimed in the '443 patent.

And specifically, if you look at claim 1 of the '443, it says that the stamped local audio data includes at least one time stamp to reference at least a portion of said local audio data to at least one of said master timecodes.

So again, that audio data is being stamped using the master timecodes, not using something generated by a local clock. Now that claim makes -- sorry, go ahead, Your Honor.

JUDGE QUINN: Go back a second. Can you explain to me why you see the District Court's construction as only applying to the asynchronous embodiment?

MR. FISHER: Because it says that the codes synchronize the audio samples.

It does not say that the codes are synchronizing a local timecode generator which is then generating additional timecodes to synchronize the sample.

JUDGE QUINN: Right, but --

MR. FISHER: Those samples are being -- sorry, go ahead.

JUDGE QUINN: But isn't a master timecode always used for synchronizing audio samples, whether it's from different recorders or from internally the same -- I'm not sure how that's different.

Because you're still using eventually the master timecode to synchronize audio of different tracks.

MR. FISHER: Right. I understand Your Honor's point on that. I guess it kind of raises the question as to the clarity of that construction if it's going to be interpreted that way.

If the construction is codes synchronizing audio samples, maybe that could be interpreted as synchronizing directly or indirectly, which I guess would be fine.

I suppose that would cover -- I suppose that would be broad enough to cover both of those embodiments.

And if it's clear that that's actually what it covers, sure, I think that would be reasonable.

And if this panel believes that that is sufficiently clear enough and that that is how it's being applied, then I suppose we'd have no objection to that.

We're just sort of wondering if that's actually clear enough. But if the Board feels that it's clear enough, then perhaps that would be fine.

JUDGE QUINN: Well, maybe the issue is that we don't really need to specify what the timecode is being used for because each claim has other

surrounding limitations that specify how the master timecode is being used for that particular embodiment of the invention.

MR. FISHER: We agree, Your Honor. And in fact, we don't think any construction of these terms is actually necessary.

We had to come up with a counter proposal because patent owner wants the terms construed.

But we don't think the terms actually need to be construed. We certainly don't think that the terms should be construed to require only the synchronous mode in which you have to have a local timecode generator that is synchronized to the master timecode generator because that's fine for the '207 patent.

If you look at claim 17 of the '207, that is directed to the synchronous embodiment.

But if you're requiring a local timecode generator and an additional timecode generator, then you're actually -- it makes no sense with the '443 claims which are directed to the other mode.

In fact, if you look at -- and I would direct the Board's attention to our slide 51 where we provided passages of the specification.

In this case, it's the '443. I believe all this material is also in the spec of the '207 as well.

But you can see that what it's describing is the asynchronous embodiments in which the audio data is directly stamped with the master timecodes, right?

So if you're actually instead using the master timecodes to synchronize a local timecode generator, some kind of local clock, and then you're using the local timecodes to synchronize or to stamp the audio samples, and you're going to insert that into the very definition of what a

master timecode is or a master timecode generator is, then these passages of the specification don't make any sense.

It actually contradicts them because they're talking about something different.

So we would agree that a more sensible approach would be either not to construe these terms at all or to construe them without specifying exactly what the timecodes are doing.

Does the panel have any further questions on that claim construction issue? Okay.

So I guess I would say -- I would also point out that -- why don't we flip to slide 52.

It's actually undisputed that Strub discloses a master timecode generator and master timecodes under petitioner's construction.

This is one of the things the patent owner has not challenged. But again, I think that's clear from the briefing anyway.

So why don't we go ahead and jump to slide 54. And we would like to make the point that even under patent owner's construction, Strub and Woo still teach these terms.

And the reason why is that Strub contains examples where it's talking about the synchronous mode that to which patent owner would like to limit these claim terms.

And I will refer you specifically to the passages on slide 54 from Strub, column 63.

And there's another passage that goes from column 79 to 80. And the passage from column 63 says, clock drift occurs if the recording unit is blocked from the GPS satellites.

Now the most reasonable understanding of that is that clock drift -- again, because it's using the conditional if.

Well, that means that clock drift does not occur if the recording unit is not blocked from the GPS satellites.

Similarly, the passage from column 79 to 80 says that missed synchronization will only exist --

JUDGE ARBES: Counsel, going to column 63, I think you're reading out "even if."

It doesn't just say if the recording unit is blocked. It says "even if."

MR. FISHER: Right. But it's talking -- what it's talking about here, if you look at the passage right before that, it says, the recording unit need only be exposed to a GPS satellite for about a minute to enable the time signals to begin.

So what it's talking about is you expose that unit to a GPS signal and it synchronizes the clock.

So there's definitely a local clock being synchronized by those master timecodes.

And that is actually backed up by the additional discussion in the second quote that goes from column 79 to 80.

It says, again, mis-synchronization will only exist if one or more recording units are shielded from a GPS transmitter system.

So that means that mis-synchronization will not exist as long as you're getting a clear GPS signal.

As long as that recording unit is picking up a GPS signal, it's going to synchronize that local clock.

So that actually meets even patent owner's construction of the master timecode generator and master timecode terms.

I would also point out that Woo is even more specific. It has a jam synch process that you can see on slide 55 which allows a timecode generator.

That's the local timecode generator, to follow the timecode off another source.

Well, that other source is a master timecode generator. So Woo again discloses the synchronous mode to which patent owner wants to limit these terms.

Again, we don't think the term should be thus limited, but they're met either way.

Did Your Honors have anything else on those terms? Okay. Why don't we jump ahead to slide 67 in the interest of time and talk about body pack.

The District Court did render a construction of body pack as a small box housing a transmitter.

The term was not construed in the Lectrosonics IPRs. We believe the court got this wrong.

And in fact, depending on what happens at trial, we may actually appeal that construction.

The problem is that the court's construction limits the term to the preferred embodiments.

But the court found no basis in the intrinsic evidence for doing that.

Remember, we're under the Phillips standard. If there's nothing in the intrinsic evidence that represents a disclaimer or a definition or lexicography, you're just supposed to go with plain and ordinary meaning.

The court didn't do that. Instead, the court relied exclusively on the declaration of Zaxcom's expert and the extrinsic evidence that expert cited.

And you can see that analysis, if you want to call it that, in the claim construction order, Exhibit 1037 at page 8.

So again, we don't agree with the court's interpretation of that extrinsic evidence.

But we also want to point out that evidence is not of record in the present case.

So the Board should not rely on it. And for that same reason, we submit the Board should not rely on the -- or give any weight to the court's construction.

Now in contrast, we have propounded a plain and ordinary meaning definition.

I don't think we requested construction of it. But we had to provide a proposal.

And so we did. We went to the dictionary. We didn't find the word body pack.

We did find the word pack. And we figured, well, we'll take the definition of pack.

We need to recognize that the term is not merely pack but body pack.

So we just took that dictionary definition of pack from Exhibit 1058 which you can see on slide 67.

And we just modified it to specify that that pack is worn on the body.

So that's a compact bundle of equipment arranged for convenience for carrying on the body.

But in contrast, patent owner is trying to import nonlimiting examples from the specification.

You can see some of those on slide 69. Again, similarly to the other specification passages that they have cited for other terms, these also contain

optional language in the depicted embodiment, may in one aspect, one embodiment, and things like that.

And none of them say anything about a small box. We would also submit that even the passages that they cite don't support their construction that requires the device to be a small box.

JUDGE QUINN: So that -- sorry. So that's my question to you.

You added to your construction the word, compact. And in comparison to small -- I mean, you suggest terms of relative degree like compact with respect to what or small in comparison with what?

(Simultaneous speaking.)

MR. FISHER: Sorry. Go ahead, Your Honor.

JUDGE QUINN: No, I don't see where that is supported in the intrinsic record, and I wanted to know where did you come up with that.

MR. FISHER: Well, I guess our understanding is if you look at the overall specification, it has to be compact enough to be worn.

But I understand Your Honor's concern about the word, compact.

So if the Board wished to render a construction that didn't include the word, compact, we think that would be okay too.

JUDGE QUINN: So you think that it needs to have some reference to size rather than a form factor that is suitable for being worn.

MR. FISHER: I don't think so, Your Honor. I would say that as long as it's suitable for being worn, as long as it's -- I mean, look, if it's huge, it’s not suitable for being worn. So that's our only concern there.

JUDGE QUINN: And what is the difference then between wearable, which is also suitable for being worn, and the concept of adding to that structure because the term has the word, pack, in it?

So it connotes that there has to be some sort of encasement or enclosure.

MR. FISHER: Yeah. In the case of Strub, the backpack itself is the housing or enclosure.

I do want to -- I see that I'm sort of out of -- running out of time and I did want to reserve the 10 minutes for the end.

I'm happy to keep going, however, if Your Honor wishes to talk about it further.

JUDGE QUINN: No, that's all right.

Okay. All right. So I guess we'll just reserve the rest of our time then. Thank you.

MS. CHIPPERSON: Good morning.

JUDGE ARBES: Counsel for petitioner -- or sorry, counsel for patent owner, would you like to reserve time for rebuttal?

MS. CHIPPERSON: Yes, 10 minutes, please. Okay. Thank you.

So I'd like to start out with a quote from the Supreme Court that we included in our surreply.

The inventor -- and they're referring to drafting a patent specification -- may begin at the point where his invention begins because what is well known does not need to be described.

And that's what I think we're seeing here. And I think that's the disconnect between our position and petitioner's petition.

Multi-track recording is not something that you define by pulling a definition out of Merriam-Webster's.

It's a specific field of audio recording. And that is recognized throughout the record, both by patent's experts and by petitioner's experts and their exhibits.

So the idea with multi-track recording is that each individual person who's being recorded is independently recorded.

All of those tracks are sent simultaneously to a special type of recorder.

This isn't your iPhone or whatever. This is a special type of recorder that has recording paths.

And it'll receive four paths of audio. In real time, it combines those four paths of audio to create a multi-track data file.

That's what this means in the art. We did not have to describe that in the specification because it's known.

It's known in the industry. And the Supreme Court reiterates that.

So petitioner's expert in Exhibit 2119 recognized this, saying the goal in multi-track recording is to isolate as much as possible and capture individual instruments or voices on separate tracks. Our --

JUDGE BELISLE: Counsel, can I just interrupt you?

MS. CHIPPERSON: Yes.

JUDGE BELISLE: That statement of isolated as much as possible, to me, right there it says it's not feasible to isolate truly a given person's audio.

And to the extent where you're saying nothing else is being recorded except my voice.

If anyone in this room speaks right now, to some degree, this microphone is probably going to pick it up.

And if it doesn't, if the person is right next to me, it's definitely going to pick it up, at least in my opinion.

So how does isolate -- how are you getting to the definition of isolate such that it means excluding everything but one source?

MS. CHIPPERSON: Yeah, that's a great question, and it's in the specifications.

Zaxcom has microphones that are positioned to capture the individual performer.

And each performer has the local audio device, the body pack. And the microphone is positioned to capture that specific performer.

And in their expert's deposition, we went through this. And he talked about being at a Duran Duran concert and Simon Le Bon has his own microphone.

And everybody else has their own microphone. So you're correct that it's not a 100 percent you won't pick up artifacts of other people.

But that's why their own expert says the goal is to isolate as much as possible.

And their expert talks about it in his deposition as well that it's about how you position and turn the microphone.

Strub teaches literally the exact opposite. It teaches social recording where you turn the microphone to capture the whole entire group.

The person who's wearing the local audio device, the purported local audio device, may speak or may not speak.

But the idea is to get multiple viewpoints. And the key is that if the three of us are in this group and we're out hiking and I'm capturing everything that's happening, there's no way later on to go pull out each of our individual audio and independently edit them.

So for example, in the movie industry, if you have a lead actor, a lot of times you'll want that lead actor's voice to be louder than the person in the shopping mall, the stand in.

So this is really the essence of multi-track recording. It's a whole art in and of itself.

And even in concerts, if you ever notice when the band is on stage and then there'll be the big mixing board in the middle of the audience, that's real time mixing.

And that's in the '207 patent. We show mixer 109. It's not relevant in the claims.

But the idea is that they are taking different pieces. If it's a drum solo, the audio engineer is going to increase the audio of that solo and he's going to drown out the other things.

And that's the whole essence of it. Strub doesn't allow that. Woo doesn't even teach audio. It teaches video.

And it's the same thing, video from a plurality of viewpoints. So they're almost more concerned with something like surround sound.

What did it look like from all of these different locations. That's not multi-track recording.

Multi-track recording is we're going to get the best soundtrack because we individually edit the characteristics of each person's audio.

And I can actually read you petitioner's expert -- or sorry, petitioner's submitted Exhibit 1046.

And it says, source audio signals are input to a multi-channel mixing board, one source signal per channel.

The mixing board permits individual control of gain, effects, pan, and equalization for each channel such that the recording engineer can modify individual channels to achieve the desired total sound effect.

Thus, the purpose of the mix is to combine the different instruments as recorded on different channels to achieve a total sound effect as determined by the recording engineer.

So that's petitioner's own exhibit. And again, their own expert said the goal is isolate as much as possible.

So none of this is described in the specification, although I will read you a few sections where we specifically talk about this type of architecture because it's known.

It's in the title. It's in the abstract. When we say that it is a multi-track data file and multi-track data recording, that's all known from the art.

And it was recognized by petitioner's experts in evidence and our expert in evidence.

JUDGE ARBES: Counsel, can you respond to petitioner's pointing to instances in Strub of a person perhaps being isolated from other individuals, skiing, bicycling, things of that nature?

MS. CHIPPERSON: Sure. Well, first off, those are not isolated activities.

They're not solitary activities. Nothing teaches that. Snow skiing, you're on a mountain with other people.

Waterskiing, someone is pulling the boat. Cycling is often done in group activities.

But the biggest question about this is if you only use one Strub unit to capture isolated audio, now there's no recorder receiver.

And that's required by all of the claims of the '207 patent and a few of the claims of the '443 patent because petitioners are relying on one of the Strub units to also perform the function of remote recorder and receiver.

So it really just kind of falls apart. And Strub's abstract teaches against that.

It teaches social recording, social meaning more than one person, so --

JUDGE ARBES: But I guess the point being made then -- I understand your point about social recording.

But if you have two instances or two people that are waterskiing, one on the boat and one actually skiing, that -- the unit that is picking up the audio from skiing is far enough away from the other one that it might not pick up any audio from the other one.

That the individuals can be distanced far enough apart that it really becomes isolated individual audio.

MS. CHIPPERSON: Yes. And that's actually contradicted by Strub itself.

And we include this in our patent owner response at page 10 where basically Strub says that recorders may be sufficiently far removed that the audio cannot be blended in any meaningful way.

So our position is that Strub teaches away. So first of all, it teaches social recording.

It's not anticipating isolated recording. If it was, it wouldn't spend multiple paragraphs talking about how to position the microphones so that it's picking up the audio that's received or heard by the person wearing the device.

But we feel like it literally says that that is probably not going to create good audio or useful audio.

And also during the deposition of petitioner's expert, we asked about this.

And so I basically said -- I don't remember if it was the Duran Duran concert.

But he described that in certain scenarios, the camera that's videoing everything, they will capture this scratch or ambient audio, right?

And that's a fallback position because each performer is independently miked so that you can get that individual editing capability that I talked about earlier.

But literally what he says is a multi-track recording based on those, my words, ambient and scratch microphones wouldn't have been very good.

The intent was not to just record for the sake of recording but to have useful content.

So he recognized that Strub is capturing this group audio. If there's four people in the group, every track has all four people.

That is not multi- track. Multi-track says if there's four people -- if there are four people, each one has their own microphone.

Isolate as much as possible. You're right. It may not be perfect.

But even there, the expert said isolate as much as possible. And that way, you can independently edit each of the sources.

It might be a little easier to understand in the context of a band as well.

Maybe you want the saxophone slightly louder than the drums in certain areas.

This is the essence of multi-track recording and mixing. Do you have any other questions on --

JUDGE QUINN: So I have a question for you. The claims don't capture those words.

And my question to you is if we don't agree that just the phrase, locally generated audio, has all of these additional constraints on how audio is created, do you have any dependent claims that speak to this feature? Or I mean, I'm thinking is an issue that the claims -- I would rather see in the claim these limitations specifically recited to distinguish from the prior art or at least have a negative limitation in which you have the creator of the locally generated audio without other nearby noise or things to that effect.

Are there other claims that speak to this feature? Because it seems to me, like, the plain and ordinary meaning of these things, even if understood by one person of skill in the art to have multiple uses such as the one you described, they don't really capture what you just said.

MS. CHIPPERSON: So Your Honor, respectfully, I disagree. I believe the claim language does capture that.

And I think that's what the District Court picked up on when they construed local audio device wearable by a creator of said locally generated audio.

They found that that meant a local audio device suitable and in a condition to be worn by a performer whose audio is being recorded. So --

JUDGE QUINN: I understand that. But I don't see the District Court having found that the locally generated audio has to exclude any other speaker.

And that's what you're asking us to do here because of Strub. And that's what my question was.

Do you have any other dependent claim that has that level of detail as to exclude other speakers' noise, whatever that is, from the audio that the microphone picks up?

MS. CHIPPERSON: Well, our claim 15 related to a multi-track data file, my argument is that multi-track has that known meaning.

And multi-track data file does not mean just any file with multiple tracks.

It has a known meaning in the art. And by looking at the evidence presented by both parties, I think that mean is very clear.

And when they talk about Strub, the other issue, Strub, even if you use one of the units as a recorder receiver, it is only receiving one recording path.

And that's whatever it's videoing. It may receive other files over receiver and save them to the hard drive.

But that's collocating files. That's not having two recording paths where they're coming in and being merged together real time which is what every multi-track system works like.

And even petitioners have an exhibit that talks about these recording paths.

Let me just pull that up. Exhibit 1066 requires that a multi-track recording system is a recording system in which the medium has two or more recording paths which can carry the same or different materials.

So in the Zaxcom system, the recorder is a multi-track recorder. There are multiple paths, one per local audio device.

And the recorder automatically combines those upon receipt. Here, there's only a single recording path and you may collate some other files on the hard drive for post-processing.

But that's really not the essence of multi-track recording. So the other problem is that if you don't capture the individual inputs initially from each of the performers, you can't fix it later.

It's kind of garbage in, garbage out. So you can't fix that in post-processing because you'd have to go to the audio which is the group as a whole and extract each individual audio out.

And that's just not really something that can be done which is the reason for the entire field of multi-track audio recording.

JUDGE BELISLE: Counsel, this is Judge Belisle. Can you just read back whatever you were just quoting, what was that source and what is it you had just read?

MS. CHIPPERSON: That is petitioner's Exhibit 1066 which is a definition of multi-track recording system.

JUDGE BELISLE: And what was that definition?

MS. CHIPPERSON: It is a recording system in which the medium has two or more recording paths which may carry the same or different material but are played at the same time.

JUDGE BELISLE: Okay. So that definition is such that those different tracks might actually have the same material?

MS. CHIPPERSON: The different tracks? Are we talking about Strub, or --

JUDGE BELISLE: No, I'm talking about the definition you just read. What is the same material part of that?

MS. CHIPPERSON: Well, you can have two microphones on the same performer.

So I think sometimes they'll do something like that. But my point was really not that section but the fact that there has to be two or more recording paths which neither Strub nor Woo teach. Did I answer your question?

JUDGE BELISLE: Yes. Just within the definition, it strikes me that you may have two microphones picking up sounds that are emanating from the same thing, basically multiple microphones.

And they're picking up audio that is not isolated or distinct to that given microphone.

And yet the -- you can take those two tracks and still combine them.

So I want to get back to this isolated -- within patent owner's construction of locally generated audio, what happens to the case if it's not -- we don't agree this isolated term should be there?

MS. CHIPPERSON: Well, there's a lot of issues with the case. So first of all --

JUDGE BELISLE: How about just on that feature, though? What is the importance of isolated to that aspect of your argument?

I'm having trouble with why or how this locally generated audio has to be isolated.

And so if we were not to agree that this term should be interpreted with this isolation feature, on that aspect of the feature of the claim and the art that's being applied, what argument do you have left that the art doesn't show this particular feature?

MS. CHIPPERSON: Well, I mean, in Strub and Woo, a person wearing the local audio device does not even necessarily need to participate.

So it's very much a stretch to say, well, it might happen. It could happen.

But the question is, what was the motivation of a person of skill in the art to combine the references?

Because we have to be really careful here, I think, to look at the petition and whether it's met its burden.

Because petitioners argue that Strub discloses everything alone. But they have not put forth a ground for '102, anticipation.

They've relied solely on obviousness which is a combination of Strub and Woo.

So they need to describe that motivation. If they don't have that motivation, it falls apart.

So it kind of begs the question of multi-track recording, if the goal is to isolate audio as much as possible as per their expert, why would a person of skill in the art turn to two references that talk about social recording of a group as a whole, nothing about isolated audio, nothing about independent audio.

And in Woo's case, and largely Strub as well, they're really video references, not even audio references.

So I really think the petition really just fails as a whole to show that motivation.

And in the petition, the petitioners talk about matching synchronization as the motivation to combine.

But they don't ever identify what components of Strub are actually coupled to components of Woo.

And you would think that in that case, Strub would disclose everything.

And then they would say, okay, but it doesn't have matching synchronization.

So that's what we pulled from Woo. But that's not the argument they make.

They argue both references include everything related to synchronization which I would argue means there is no motivation to combine.

This is different from the prior Lectrosonics IPRs. Well, first of all, they did try to argue that Strub alone was anticipatory under '102.

They lost on that, but they did try. But they were very clear in that case that Figure 5 is the master -- Figure 5 of Woo is what would be the master timecode generator and that would feed a Strub recording unit.

There is nothing in these petitions that say anything like that. And the petitions actually rely and say that the master timecode generator are the GPS satellites.

But Woo teaches that that is range information. GPS satellites have no ability to output timecode.

And it actually is taken in by the DSP in the Woo GPS receiver. And then there's some manipulations made with the one pulse per second that we discussed in our patent owner response.

And that's actually what creates the master timecode that then can be fed to a video camera.

And it doesn't say audio. It says video. But then petitioners also equate the local audio device in Woo to be the GPS receiver, the generator 43, and the recording unit.

But Woo teaches that the master timecode is actually created within the receiver.

So if you put these things all together, they're arguing -- basically, they're saying that the component that creates the master timecode is in their local audio unit which doesn't really make any sense.

Because it's required to be received, in some cases, wirelessly from the master timecode generator.

So I just really think that there hasn't been a prima facie case of obviousness made in these petitions.

It's a lot of pieces with no coherent explanation of how they're combined or the motivation to combine.

And the motivation was not matching synchronization. It was creating a system that could record audio without the data corruption and loss that occurs in wireless transmission systems.

And that piece is filled in by the local audio recording. So prior art multi-track recording systems did not have the local audio component.

So if you were on a site, and our experts talk about this extensively, and both of our experts have extensive experience in the field.

One was just honored. They have an award after him because he passed away since.

He actually testified for us. But these are people who are integral to the field and know this field inside and out.

And they -- sorry, I lost my train of thought here. Give me one second.

JUDGE ARBES: Actually, Counsel, can I just ask --

MS. CHIPPERSON: Yeah, sure, thank you.

JUDGE ARBES: -- a question before we move on. Putting aside for the moment petitioner's arguments based on Strub alone for the master timecode generator.

Your position as I understand it is that the mapping that petitioner does to Woo is different than the mapping that Lectrosonics did in the previous IPRs, right?

MS. CHIPPERSON: Absolutely.

JUDGE ARBES: Okay.

MS. CHIPPERSON: Yes, there's no argument in the petitions that the master timecode -- so Figure 5 in Woo -- because I know there's a lot of information in this case.

Figure 5 of Woo talks about how you take the signal, the information from the GPS satellite and then manipulate it to get a SMPTE timecode.

And that's what they argued. Here, the petitions literally say the master timecode generator is the GPS satellite.

That also fails because we have a dependent claim 27 that requires the master timecode generator to be integral to remote control units.

So clearly, you can't take a GPS satellite and put it inside a remote control unit.

And I do remember where I had lost my train of thought. So back before this invention when they were filming a movie, they would be out on site.

And sometimes people are in cars or whatever. And you're limited depending on the time period.

You're limited to how far an actor can go before they go out of range.

And then the multi-track recorder is no longer picking up that audio.

So before they had the local recording, if an actor went out of range, the audio was not able to make it to the multi-track recorder.

And so it wasn't there. So they had to retake the scene and refilm it again or at least refilm the actor who went out of range and then remix it.

So because the multi-track recorder in that scenario is pulling all the actor's audio and immediately creating the soundtrack for the movie real time.

So the whole crux of this invention, local recording, the audio doesn't make it to the recorder.

I can now go pull that audio, put it into the remote track, and I don't have to refilm the scene.

And the timecodes are nice but they're not the inventive point. They're just a tool to make it easier to fix that remote audio.

But the key was the local audio and the backpack combined with the simultaneous transmission to the remote reporter.

And just to segue for a second into secondary considerations, I know that with Lectrosonics IPRs, they thought that the secondary considerations were tied to the replacing limitation.

(Whereupon, the above-entitled matter went off the record at 11:19 a.m. and resumed at 11:20 a.m.)

MS. CHIPPERSON: Okay. So I just want to point out one thing on the secondary considerations based on what I just said that I just want to note that we have new evidence of secondary considerations that has occurred since the time of the prior Lectrosonics IPR decision.

Both are copying by competitors. One is Lectrosonics which is now owned by petitioners.

The other is a company called Sound Devices. And both of those companies in their press releases touted the ability to locally record while simultaneously transmitting.

We also go through extensively -- we're limited for time, so I won't read you out everything.

But the face of the awards talks about local recording. And they call it a belt pack, not a body pack.

But they're referring to the body pack. And I really believe that with Lectrosonics IPR decisions, we need to keep that in perspective.

And I argue in my slides that the District Court construction should really be more controlling than their construction because it uses the Phillips standard where the other court was using the BRI standard, so number one.

But number two, I was involved as backup counsel at the time. And I think it's important to know what the court was deciding there because it was a different evidentiary record, different patents. But that case turned on --

JUDGE ARBES: You're talking about the Lectrosonics --

MS. CHIPPERSON: Yes, the Lectrosonics IPRs. That case largely turned on the word, combine, and how the specific claim language revolving around combine.

And the court was struggling there because they thought combined covered two different embodiments, one with the remote transmission and the ability to repair.

But they also thought that it covered post-processing combination of the audio as well.

So it wasn't that they didn't believe there was a nexus to the original claim set.

It was that there was a nexus to one of the two embodiments associated with combine.

So we don't have that language here. And the attorney in that case decided to amend the claims and heavily focus on the replacing limitation.

So it's our position that if that's what the Board focused on, that was somewhat driven by the fact that the attorney decided to make that the core theme of the amended claims.

And I don't know what they would have decided in the case here before us today because the claims are much, much different.

We have different dependent claims which we would argue limit how you can construe these terms because you don't want to construe any terms in a way that would render a dependent claim meaningless. And they don't have some of those claims in that case.

JUDGE ARBES: Counsel, I did have a couple questions about secondary considerations I wanted to ask.

You mentioned a few times that it was the combination of the local recording and the simultaneous wireless transmission, right?

MS. CHIPPERSON: Mm-hmm.

JUDGE ARBES: I understand -- so the claims of the '443 patent, I believe, say "in real time."

But where is the simultaneous concept in the '207 patent claims? I didn't see that in those claims.

MS. CHIPPERSON: Let me just pull that up.

JUDGE ARBES: And does that matter?

MS. CHIPPERSON: Without looking at it, I would argue that it doesn't matter because the key here, what I think you want to look at, when someone chose to combine references to create the Zaxcom invention, right, what were they trying to solve?

They were trying to solve the problem where a recording system would lose data and then need to re-record an event.

That problem is actually fixed solely by the local recording in the local audio device.

Because once you have that -- people knew how to fix audio before the Zaxcom's invention.

But they didn't have the audio to do that repair because there was no local recording.

So I would argue that even if you don't have the simultaneous transmission, it's really just the presence of that local recording of the audio and the body pack that solved all these problems.

And that's why it's touted by Zaxcom's competitors. They still continue to copy the one that's out there from Lectrosonics.

So what happened was in the prior Lectrosonics IPRs, we had accused them of infringement, they pulled the product after the final written decision.

But then in August 2025, they reintroduced a new product that we argue is infringing.

But they limit it to outside the U.S. market because our patent protection is confined to the U.S.

So to this day, competitors are still doing this. Sound devices is the same thing, but they don't allow someone to wear the unit.

That's their way of trying to avoid infringement. But you can see that there's definitely industry praise for this.

And I noted in my papers when we asked petitioner's expert about what did you do to prevent audio loss prior to this invention, his response was crossing fingers.

Like, there was nothing. I mean, this was really truly revolutionary.

I mean, we can look back at it now in hindsight and say, okay, it's just local recording.

But it really decreased the cost of filming and the ease of filming tremendously.

JUDGE ARBES: Just a couple more quick questions.

MS. CHIPPERSON: Sure.

JUDGE ARBES: One, you mentioned that there is new evidence in these proceedings as compared to the Lectrosonics IPRs.

You mentioned copying. Is there anything else that is different? Some of the declarations do appear to be the same.

MS. CHIPPERSON: Yes, the declarations are very similar. So --

JUDGE ARBES: Anything else other than the copying evidence you pointed us to?

MS. CHIPPERSON: I think those are the only two things that are different, yes, the new Lectrosonics product and the new sound devices product.

JUDGE ARBES: And can you respond to petitioner's argument that in some of the evidence of industry praise that you pointed to, which does talk about the combination of the two things, local recording and wireless transmission, also mentions other things like digital transmission, a file format, file protection, unique file directory structure, that there are other things that that mentions as well?

And so you don't have a nexus just because of that combination. Can you respond to that?

MS. CHIPPERSON: Sure. Well, our testimony talks about the fact that the awards were provided for the TRX 900.

And that includes the local recording, simultaneous transmission, and, yes, some of those other features.

But the nexus is really to the product as a whole and those features are present there.

JUDGE ARBES: But some of those other features are not claimed, whereas arguably the combination of the two things is in the claim.

(Simultaneous speaking.)

MS. CHIPPERSON: Yes, some of the other features like the remote control is also given praise.

They are claimed in some of the dependent claims as well as things relating to the time codes in some of the praise as well.

But if you look at the two most recent pieces of evidence from the competitors who are copying, they solely call out the local recording with the simultaneous transmission.

And I did think some of the slides were a little misleading on petitioner's side, respectfully.

Just it would highlight some things. But right next to it is the local recording and the body pack.

So it's literally on the face of the award. But I'm sure you'll see that when you look at that evidence. Any other questions on that?

JUDGE BELISLE: Counsel, this is Judge Belisle. Perhaps just to help me have a bigger picture, the invention and the prior art, I just had just a broad question here.

Back in 2005, bands, orchestras, what have you go on stage. Individual instruments would be miked.

Individuals -- anybody who's going to open their mouth would have a microphone.

And all of those feeds would go up to a main assembler. And am I correct that part existed at the time of this invention, multiple speakers, multiple microphones, each person being miked, each instrument being miked?

MS. CHIPPERSON: Yes.

JUDGE BELISLE: And all of those feeds coming up to the big booth with all the mixing and such to be able to be assembled into a single sound?

MS. CHIPPERSON: Yes. That is multi-track recording. And I would just say that instead of what you're referring to as an assembler is usually the mixing board.

JUDGE BELISLE: Mixing?

MS. CHIPPERSON: Yes.

JUDGE BELISLE: So the invention brought in on those individually miked, whether it be instruments or people, this feature of recording that sound while it's also being transmitted, is there more? Or is that -- that's the invention?

MS. CHIPPERSON: Well --

JUDGE BELISLE: That's the tweak of what was going on?

MS. CHIPPERSON: That really solved the problem. But to solve the problem to the level needed for the motion picture industry, the timecodes were very instrumental in just the ease of which those audio samples could be combined, the speed and making it easier for post-processing.

JUDGE BELISLE: So timecodes weren't being used prior to this invention for mixing audio signals?

MS. CHIPPERSON: That I don't know that I could -- do you mean specifically with multi-track recording, or --

JUDGE BELISLE: Right. When you have multiple --

MS. CHIPPERSON: I mean, timecodes --

JUDGE BELISLE: -- audio sources.

MS. CHIPPERSON: -- were being used in the industry regularly.

I know for -- most often, you don't record your audio with a video camera.

So I know the SMPTE code had been used to drive a camera and an audio device to try to synch the audio to the video.

But I can't really speak to whether it was being used to combine.

I mean, there was no backup. So my guess, and I'm just guessing, is no, because how could you if there was no backup audio.

If nobody had thought of creating the backup audio, then I don't think anybody thought about putting timecodes on the back of audio to facilitate fixing your remote track.

JUDGE BELISLE: And the timecodes that -- those timecodes are tied to the audio while it's being recorded?

MS. CHIPPERSON: Yes, that's the stamped and unstamped local audio data.

JUDGE BELISLE: And then those timecodes are used if you happen to be able to piece together those audio sources later --

MS. CHIPPERSON: Yes.

JUDGE BELISLE: -- to be able to go back and take one and blend it with another because now they're all stamped. So you know where they go.

MS. CHIPPERSON: Exactly.

JUDGE BELISLE: Okay.

MS. CHIPPERSON: Yeah.

JUDGE BELISLE: Thank you.

MS. CHIPPERSON: Sure. Okay. If there are no other questions on that, I'll move to body pack.

JUDGE QUINN: I do want to ask you what is your response to the claim construction issue.

And we want to focus on primarily here with the master timecode and petitioner's assessment that the District Court's claim construction focused on a particular matter in which to use the master timecode and that we should look to do something different. What is your assessment of that?

MS. CHIPPERSON: Well, I think the claim language is pretty clear and the specification is pretty clear that the master timecode generator is meant to control the local timecode generator.

In the Lectrosonics IPRs, they focused on the word, master. And did that necessarily mean that you have control over someone else?

I think that this District Court analysis is really kind of disregarding the word, master, and its plain meaning.

JUDGE QUINN: So you disagree with the District Court's claim construction also?

MS. CHIPPERSON: Yes, on that aspect, I do.

JUDGE ARBES: And Counsel, can you -- perhaps the parties can clarify what interpretations of the District Court you agree with and which interpretations you do not agree with.

MS. CHIPPERSON: Well, I already mentioned the local audio device wearable by a creator of locally generated audio.

We agree with that. That's essentially our suggestion minus one word.

For a body pack, I want to make a note about that. We here in this proceeding have proposed a definition of a small box housing a transmitter capable of being worn on a belt or in a pocket.

In the District Court litigation, different legal team, we coordinate.

But they did not include the latter half of that, the capable of being worn on a belt or in a pocket.

So the District Court actually agreed completely with patent owner.

We just had proposed two different definitions of body pack. So I do think that they got the body pack definition right.

But I do believe that our evidence in this case which is a little bit different than what they presented does show that it should be also capable of being worn on a belt or in a pocket.

And even the Emmy award says, local recording in the belt pack.

This was kind of, again, a known thing in the industry. And I know petitioners had argued that's not shown anywhere in the spec.

But Figure 3B shows a picture of a small body pack, a box with a transmitter.

And I've cited case law in my -- I'm looking at slide 21 right now that even a drawing alone can support a definition of a claim term.

And there's a few situations where petitioner refers to nonlimiting examples.

But I just want to kind of call out here that that's not really the case law.

We're not required in a specification to disclaim everything. I think the more important thing is that where things are called nonlimiting examples, there's nothing in the specification that points to an example that is different from what we are asserting.

So nowhere in the specification does it teach that a local audio device is capturing the audio of more than the person who's wearing it.

And there's language throughout the specification. So to say, well, that's a nonlimiting example under the Phillips standard the specification governs, I would say the converse is true.

If you want an interpretation of a claim term, it should be taught by the spec and the spec doesn't teach that.

And I think as far as -- it's really mostly just the master timecode construction that we would disagree with.

Otherwise, I think we were pretty much in agreement with the District Court's claim construction. Any other questions on that? Okay.

And I'll just talk a little bit more about body pack. Again, like I said, Figure 3B shows a small box housing a transmitter.

This specification states that the digital wireless audio transceivers may be manufactured in the form of body packs such as those typically worn by news announcers, performers, and the like.

So clearly, it has to be something small enough that we know that when we watch news announcers and performers, we don't see their audio gear.

So it has to be small enough to not be -- to be compliant with that part of the specification.

Our Exhibit 2020 also is a definition from Bosch Security Systems, wireless microphone basics which defines body pack as a transmitter you can wear on a belt clip or in your pocket.

And our position is that any construction which the body pack is too large to be worn or on a belt or put in a pocket is inconsistent with the patent specifications.

Backpacks are not typically worn by news announcers, performers, and the like.

And the construction cannot be divorced from the specification and the record evidence.

Petitioner's demonstrative 67 defines body pack as a compact bundle of equipment arranged for convenience for carrying on the body.

But that definition does not come from an audio field but was actually made up by petitioner's expert.

He took the definition of the word, pack, from a nontechnical dictionary, Merriam Webster, and then modified it himself to account for body.

But body pack is a well-known term in the art in the audio recording industry.

And its naming should be grounded in the technical context of the patent and not a generalized dictionary definition that sweeps broadly across society.

By relying on the nontechnical dictionary and modifying it in this way, the petitioner's constructions fail to reflect how a person of skill in the art in the audio recording field would understand the term.

JUDGE ARBES: Counsel, does the specification describe Figure 3B as a body pack?

MS. CHIPPERSON: Yes, I believe so. But let me confirm. Yes, it is in column 10.

I'm looking at the '443 patent. Oh, sorry. My computer is fighting out on me.

It says local audio devices 102 may be body packs such as the local audio device 102 depicted in Figure 3B.

And I'll just note there's some testimony earlier about the use of may.

But in relation to body pack, the word may has been used to say the local audio devices may be a body pack.

It's not they may include a transmitter. It's that they may be a body pack. So just for the record. Does that answer your question?

JUDGE ARBES: Yes. And so your position is that Figure 3B is an example of something that would be a body pack?

MS. CHIPPERSON: Yes.

JUDGE QUINN: So can I go back to wearable? I think that we have also claim construction from the District Court and prior IPRs here.

I didn't hear you say that you disputed or had any contentions with the prior constructions.

But you did propose a construction in this IPR that includes the notion of the wearability by the creator of the person who generates the audio.

If we disagree with you that it needs to be further narrowed and deviate from what our predecessors and also the District Court have already found, your arguments of Strub –that it does not disclose a wearable device – seem to hinge on claim construction.

So that wouldn't seem to get you a difference with the prior art. What else do you have on wearability if we don't go with your construction and Strub's disclosure?

MS. CHIPPERSON: Yes. Thank you, Your Honor. Well, first of all, the reason that I said that is because even though the District Court found wearable to be suitable and in a condition to be worn, they then later construed that other term with the word wearable in it to pull the language around which I think supports our interpretation.

And I believe that language or some form of it is in all of the claims.

So even if wearable alone, if you feel that construction is correct and the District Court's claim construction, when you look at the construction of the term wearable with the surrounding language, I believe it still supports our case.

The other thing as well is that I went through this in the surreply.

But Strub doesn't teach that the device itself is wearable. And it constantly refers to the backpack as something the device can be put into.

And it never refers to that as actually part of the device. So the claims require that the local audio device be wearable, not that it can be put in something that is capable of being worn.

And this is very similar to the prosecution history where the examiner cited a Niagara 5 product as a local audio device.

And then the claims were amended to wearable. And the examiner found that the Niagara 5 was not wearable.

But the Niagara 5 was able to be carried in a soft case with a shoulder strap that was sold with the Niagara 5 product.

And the reason being presumably that the product itself was no wearable.

But there was a carrying case but not the product. And that product was about 8 and a half inches by 4 inches by 11 and a half and it weight about 7 to 9 pounds.

And the examiner said that was not wearable. So in this case, I don't see that being any different.

And I think the prosecution history precludes a finding that the local audio device is wearable.

JUDGE QUINN: But I'm torn here because in prior IPRs the construction of wearable has been already determined by the District Court, the construction being "suitable and in a condition to be worn".

If we go with that, a prior panel has already found that Strub discloses that limitation which is almost identical to what you have in this case. So how do we deviate from that finding?

MS. CHIPPERSON: Well, first off, a different claim construction standard. They were brought as reasonable interpretation.

Here, we're using the Phillips standard. And the District Court has construed the term but has not yet obviously found that Strub is wearable.

So also the prosecution history argument that I just presented to you was not made in the Lectrosonics IPRs until about the surreply stage.

And so in the Lectrosonics IPRs, there were three total. One kind of went first, and then there was a second and third that were coupled together.

And actually, the prosecution history argument was never made in the first one.

And then in the second and third, it was not made until surreply stage.

So even thought it was eventually somewhat referenced to, they did not have that in front of them.

And I think if they had, they would've come to a different conclusion.

JUDGE QUINN: So you want us to take notice of the prosecution history to make what kind of determination?

This is a claim construction issue. Once we find what the claim means, we just apply it to the art.

And it seems to me a predecessor panel just applied the construction to the prior art.

If the prosecution history argument you're making does not alter the construction of the term, then we're in the same boat as our previous panel, that Strub has wearability.

So what are you telling us to do with the prosecution history here specifically?

MS. CHIPPERSON: What I'm saying is that the backpack is wearable.

But the backpack is not part of the local audio device. And the local audio device itself is not wearable without being put into a backpack.

And that I believe the prosecution history supports that finding otherwise that because the unit can be put in a backpack would make it wearable would be inconsistent with what the examiner himself believed when we added the word, wearable, to the claim because it was the exact same scenario.

The Niagara 5 could be put in a backpack to be worn. But the examiner found that it was not wearable.

So if you come to that conclusion, it's my opinion you'll be in direct conflict with the prosecution history.

So I don't think it's about claim construction. It's about the fact that the backpack is wearable, not the local audio device.

JUDGE BELISLE: Counsel, this is Judge Belisle. Even in your own construction, the transmitter is in a small box. I mean, a small box is not your invention, is it?

MS. CHIPPERSON: Are we talking about the body pack construction now?

JUDGE BELISLE: Yeah. I'm looking at what appears to be patent owner's construction of a body pack.

It says, a small box housing a transmitter capable of being worn on a belt or in a pocket.

The transmitter is in the box. How is that different than the prior art taking the device and putting it in a backpack?

MS. CHIPPERSON: Because the box is actually a part of the local audio device.

And also, I want to distinguish between wearable and body pack because I know there's some discussion in petitioner's papers where they kind of mix the two together.

But body pack is a dependent claim. So our position is that whatever you find for wearable, body pack has to add an additional limitation because it's in a dependent claim. Does that answer your question?

JUDGE BELISLE: Enough.

MS. CHIPPERSON: Okay. And I'm way over time. So I think I'll stop now unless anyone has another question.

JUDGE QUINN: Thank you.

MR. FISHER: Okay. Thank you, Your Honors. The first point that I want to raise, I want to point out that counsel has now made some arguments that you can't put a GPS satellite in a remote control unit.

And it looks like there was some material on that in their slides. That relates to claim 27.

That argument was waived. It's untimely. If you look at the POR, there's no mention of that argument in there.

And in fact, there's no mention of claim 27 at all. So try to bring that argument now is, again, too late. It's untimely.

Counsel has also raised a bunch of new arguments about additional competitors who have allegedly copied the Zaxcom product.

I don't think any of that is actually of evidence in the case, and it shouldn't be given any weight.

Counsel should not be allowed to testify about her experience with the prior Lectrosonics matters and to provide comments on a bunch of other stuff that's actually not of evidence in the case.

JUDGE ARBES: Counsel, can I ask one question about secondary considerations and industry praise in particular?

Patent owner has pointed to some language in some of the exhibits that does appear to discuss or to mention the combination of the local

recording with the simultaneous wireless transmission, and that was being praised.

There does appear to be some language to that effect. How do you respond to that?

MR. FISHER: I think counsel mentioned something about that. I'm not sure what exhibit she was referring to.

As an initial matter, I would point out that if you look at the awards and you look at the praise, they list many different aspects of the product.

And counsel, we even heard counsel say that the industry praise was for the product. But --

JUDGE ARBES: Let me point to one specific example. Exhibit 2038 in the '232 case at page 11, at the very beginning, it says that Zaxcom invented a production tool that married wireless transmission with a recording device located within the actor's body pack.

And there are a number of other instances that talk about those two things together.

Why is that not persuasive evidence of industry praise for something that is claimed? It has a nexus to what is claimed.

MR. FISHER: So I see Your Honor referring to the engineering Emmys. Which page did Your Honor refer us to again?

JUDGE ARBES: Page 11.

MR. FISHER: Page 11.

JUDGE ARBES: About the fifth line down.

MR. FISHER: Okay. Right. So that talks about a bunch of features.

It talks about the conversion from analog to digital. So analog to digital is emphasized.

It marries wireless transmission with a recording device. Okay. That is a feature.

But then if you go down lower in that same exhibit which I believe we cited in one of our slides, it specifically said, not for a single component but for the system as a whole. The engineering Emmy goes to Zaxcom.

And you can see a long bullet point list of features that went into the engineering Emmy, many of which have nothing to do with any of the claim limitations in this case, the unique audio file format.

JUDGE ARBES: That's my question then, Counsel. Are you saying that in order to show nexus, something like this that's being relied on for industry praise cannot mention any other features?

Because it appears from some of the exhibits that we have mention at the very beginning the combination of the two things.

And then it also mentions other features as well. Is a patent owner wholly unable to prove nexus then in a scenario like that? How do you view that?

MR. FISHER: It's a matter of degree, Your Honor. You look at this lengthy list of features that went into that Emmy, the file format, the broadcast wave format, the full range microphone audio capture, being able to remotely control the gain of the amplifier.

If you look at the parts of this that appear in the claims, it's a small number of these features.

And so we think that it should get less weight. We're not saying that there's not a single claimed feature in here.

It's just when you look at the overwhelming number of other features, the claimed features don't matter as much as they would if they were the

only ones or if they were one of only a few. So I guess that's how I would respond to that.

JUDGE ARBES: Nexus can be proven, but there is a weak showing of nexus in your view?

MR. FISHER: Weak I think is the right word, Your Honor.

JUDGE ARBES: Okay.

MR. FISHER: I also want to take issue with a few other things that counsel said.

She claims that Strub's backpack contains the audio device. But it is not the audio device.

The backpack is the housing of the audio device. And if you look at Strub column 8, lines 10 to 14, it refers to recording units 105 to 108.

And then if you look at what it's referring to in Figure 1, it's pointing to the backpack.

So the backpack plus the stuff inside is the recording unit. We also take issue with Zaxcom's contention that Woo doesn't teach audio.

If you do a search on audio in Woo, you'll get 22 hits. I won't recite them all here.

But it talks about audio all over that reference. And she said the same thing about Strub, that it is largely a video reference.

That's hard to believe when you get 370 hits if you search for the word, audio, within Strub.

Counsel, also claimed that there's no argument in the petition that a GPS is a master timecode generator.

I don't see how counsel can say that. If you look at the petition at page 38, it talks about the GPS satellites in both Strub and Woo as being master timecode generators. So I just --

JUDGE ARBES: On that point, patent owner had also pointed out that mapping to the GPS satellites is different than the mapping in the Lectrosonics IPRs. Is that correct?

MR. FISHER: That may be true. I don't recall exactly how Lectrosonics did that mapping.

Let's see if there's anything else. Counsel claims that Strub contradicts the idea that I guess boat would be far enough away not to pick up audio from the water skier as Your Honor mentioned.

And she cited the POR at page 8. I don't see it there. I don't think it says that.

In fact, I don't think I see any citations of Strub on that page of the POR.

Counsel also referred to the scratch audio as a fallback position if you're recording a concert.

And I guess my response to that is who cares if you have a scratch track and the scratch track wouldn't be as good.

That doesn't mean that you can't have two singers singing into the same microphone. Pretty sure I've seen that a lot of times.

Counsel also said that the nexus for purposes of objective indicia is to the product as a whole.

Well, we're talking about the validity of a patent, not the validity of a product.

So that just also goes to show that there's a lot of stuff in the product that doesn't really have a nexus to the challenged claims.

JUDGE ARBES: Do you agree, Counsel, that the product has all of the claimed features?

You may have more, but it has at least the claimed features, right?

MR. FISHER: I don't know if it's been proven that Zaxcom's product has all the claimed features.

I don't know if that analysis has been done in this case. So I don't actually know the answer to that. I don't think that's been proven, but I'm not sure.

I actually don't have anything else specifically that I want to cover unless Your Honors have anything else that you want to ask.

JUDGE ARBES: Thank you.

MR. FISHER: Okay. We'll go 19 seconds early then.

MS. CHIPPERSON: We did argue that GPS is not able to be internal to the remote control on page 13 of the surreply for the '443 patent.

I don't believe it's in the other one because it did not have that claim 27.

As far as the nexus, I'd just like to say that even though some of the earlier words do reference other features, the latest two exhibits from competitor copying literally only highlight the local recording with simultaneous transmitting showing how important that is.

Also with the body pack, the box is actually the electronic housing that houses those components.

But alternatively, I'll read you some language from Strub about the backpack.

Strub makes clear that the components of the recording unit -- I'm quoting from Strub -- are positioned within a backpack.

That's Strub 16:49-43. And then in another section, it says, part of the recording unit is located with other parts in a backpack. That's 65:15 to 22.

And it also states, and most of the components of the recording unit are enclosed within backpack 601.

So that's 67:31 to 33. It's very clear throughout Strub that the local audio device is put in a backpack.

It's not a backpack. There is one embodiment, 700, that wasn't relied on in the petition.

The petition only relied on embodiments 100 through 300. And that is something that has backpack style straps but no zipper to put things inside of it.

But it looks like they used that for the recreational version of Strub where they hang, like, the -- the picture looks like they hang the box on the back of it.

But they do have backpack style straps. That's the only embodiment where they slightly reference a backpack. But again, it's not a backpack. It's backpack straps.

And then as far as audio being mentioned, audio is a subcomponent of video.

So I'm not surprised that audio is not mentioned multiple times. But it's a completely different field.

There's a reason that manufacturers focus on video products or audio products and sometimes both but usually not, especially in this space of multi-track recording.

And as far as the scratch tracks and the ambient tracks, they are relevant because that's what Strub and Woo teaches.

I mean, Strub and Woo are at their heart video cameras with one pick up to pick up the audio of everything in front of it and everything that's seen.

So that is the definition of scratch track, ambient track. It's the exact same analogy to what their expert discussed in deposition that it's one audio source, add a camera, picking up the whole entire event.

So it is definitely as we've testified earlier to use that audio to try to parse out individual performers or instruments.

To try to independently edit it is just not feasible from a technological perspective.

And we believe the record shows on both sides that in every case, multi-track is meant to be the individual editing of these sources.

And I'll just read a couple more language sites from the patents that kind of talk about why our claim construction does require this.

For the '443 patent, column 12, lines 27 through 28, it talks about one or more performers each don a local audio device such as local audio device 102.

And then column 13, lines 18 through 21, audio from multiple local audio devices may be transmitted to a multi-track recorder for recording of the audio event while each local audio device records its performers' audio.

Column 15, lines 19 through 21, the audio received from each of the local audio devices, e.g., the local audio device of each performer, may be combined to create one more multi-track audio files that are stored with master timestamps.

JUDGE ARBES: Counsel, can I ask about the word performer?

The instances of the specification that you're pointing to here use the word, performer, repeatedly.

But that's only in some of the dependent claims. In the independent claims -- I think either say user or creator.

How does that impact our analysis when the independent claims cover someone who may not necessarily be a performer, just a user?

MS. CHIPPERSON: Yes. I mean, most -- I think the use of user is fairly limited.

When we talk about creator and performer, I think those are very similar in that the performer is the one creating the performance. The creator of the audio is the one creating the audio. So --

JUDGE ARBES: And user is a bit broader then?

MS. CHIPPERSON: Well, I don't believe so because I think we have to -- under the Phillips standard, we have to interpret it in the full scope of the specification.

And again, I'll just go back to the fact that it's our position that if the Board construes claims in a way that isn't taught by the specification that exceeds what the construction should be because the construction should be dictated by the specification.

I mean, we're making a lot of -- well, petitioner is making a lot of hypotheticals and what if this, what if that.

But I think under Phillips, you really have to look at what the patent owner taught.

And the patent owner consistently taught performers multi-track recording, a one-to-one ratio of that local audio device to the performer, independent editing.

And so I think even users should be interpreted consistent with creator and performer because I don't think there's anything in the specification that supports a different interpretation.

We don't ever talk about someone donning a local audio device to record a group. I think it's pretty clear.

And the petitioner is here because I don't have anything else unless anyone has any other questions.

JUDGE QUINN: Nothing else from me.

JUDGE ARBES: Thank you, Counsel.

MS. CHIPPERSON: Okay. Thank you.

JUDGE ARBES: We thank both parties for their arguments today, and the cases are submitted.

(Whereupon, the above-entitled matter went off the record at 12:05 p.m.)

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