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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STINGRAY GROUP INC. AND STINGRAY MUSIC USA, INC.,
Petitioner,

v.

EDWIN A. HERNANDEZ-MONDRAGON,
Patent Owner.

IPR2025-00349 (Patent 10,123,074 B2)
IPR2025-00350 (Patent 10,524,002 B2)
IPR2025-00351 (Patent 11,140,441 B2)

Record of Oral Hearing
Held: March 12, 2026

Before: TERRENCE W. MCMILLIN, JASON M. REPKO, and BRIAN P. MURPHY, *Administrative Patent Judges*.

APPEARANCES:

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The above-entitled matter came on for hearing on March 12, 2026, commencing at 1:00 p.m.

P R O C E E D I N G S

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JUDGE REPKO: This is an oral hearing for IPR2025-349, IPR2025-350, IPR2025-351. I'm Judge Repko. I'm joined by Judges McMillin and Murphy. Judge McMillin has the file and he can see the podium, but he can't see the display screen. So, you know, you need to announce the slides that you're on and anything you're referencing on the display screen for him.

At this time we'd like Counsel to introduce themselves at the podium and anyone with them. So I'll begin with Petitioner's Counsel.

MR. JUGLE: Steven Jugle for Petitioners, Stingray Group, Inc., and Stingray Music USA, Inc.

JUDGE REPKO: Thank you.

Patent Owner?

MR. DROLET: Good afternoon, Your Honors. Rob Drolet for Patent Owner, Dr. Edwin Hernandez-Mondragon. And with me today is Dr. Hernandez-Mondragon.

JUDGE REPKO: Thank you. All right. So our hearing order gave each party 90 minutes to present their arguments. We have a timer behind me, and I'll set that for each party. And the light changes to yellow when you have -- you're nearing the end of your time, whether opening or rebuttal. You've run out of time when the light is red.

Petitioner's Counsel will begin, followed by Patent Owner's Counsel. Both parties may reserve some rebuttal time, but you may not

reserve more than half your time for the rebuttal, unless there's some special circumstance you could bring to my attention. If you have objections, please wait and raise them during your rebuttal. Don't interrupt the other presenter.

With that, I'm going to invite Petitioner's Counsel to begin at the podium, and I'll need to know how much time you wish to reserve for rebuttal.

MR. JUGLE: I'll be reserving about a half an hour. So let's go with 60 minutes for the opening presentation and a half hour for rebuttal.

JUDGE REPKO: Thank you. Tell me when you're all set up, and I'll start the clock.

MR. JUGLE: All right. I'm ready.

JUDGE REPKO: You may begin.

MR. JUGLE: Steven Jugle, for Petitioners. Starting at Slide 2, I'm going to go through a brief overview of the challenged patents. So at a high level the challenged patents all share the same specification. And they're directed to a method for obtaining content from a webpage and assembling that content into a media stream for delivery to a content provider.

Patent Owner amended the claims during prosecution to describe this process, and specifically to almost every -

JUDGE MURPHY: Counsel, just do me a favor, please.

MR. JUGLE: Sorry.

JUDGE MURPHY: Reference the slide for the court reporter.

MR. JUGLE: Thank you.

Moving on to Slide 4, during prosecution the Patent Owner

amended the claims, and this amendment finds its way into almost every single dependent claim with one exception. And that amendment calls for rendering a webpage by a browser, and then generating a temporal sequence of screen captures of the rendered webpage, and then assembling a media stream from those screen captures.

According to the challenged patents, and I'm at Slide 5 now, this rendering and screen capture process can be implemented using commonly known software tools. For example, browsers using WebKit, which is the underlying software behind Safari, or it says any other browser capable of rendering HTML. Likewise, the capturing process can be done using tools similar to PhantomJS or simply capturing screen frame buffers from a machine running any software tool. So those methods for rendering and screen capture will be commonly known. Likewise, the assemble -- the patent describes the assembly step as being performed by commonly known tools such as FFmpeg, VLC, or any proprietary tool that can multiplex audio and video files into an MPEG transport stream.

At Slide 7 I have an overview of -- in my slides an overview of the primary prior art. I'm going to skip over that in the interest of time and move directly to Slide, I think it's 17, where we'll start the invalidity analysis.

I'm going to begin with primary art reference, Avellan, as it applies to Claim 1 of the '074 Patent. This claim is fairly representative of the vast majority of the remaining independent claims across all three patents. So I'm going to talk about it first. Then I'll discuss a few of the nuances that are

made in other independent claims, as well as the dependent claims of the '074 Patent, and any dependent claims of the other two patents that depend from similar claims to Claim 1.

So at Slide 19, beginning with element 1A of Claim 1. This element requires receiving from a content provider a request for at least one media stream for playback on a broadcast media channel. Avellan's user computers can request media streams for delivery via broadcast device 102, which is passed through receivers 132 to its gateway server 134.

At Slide 20, the gateway receives the request from broadcast device 102 and broadcast receiver 132. This request is then processed at the gateway server 134, which obtains contents for the web, for the stream from the internet 150 or browser 152.

Slide 21. The claim -- the second part of Element 1A says that "wherein at least one of the media streams includes a plurality of multimedia items of different types." So Avellan discloses that it can broadcast live-streaming television feeds and other live content. And it gives some examples of those, such as country music or military television. So live-streaming television, movies, are going to include a plurality of multimedia items because they'll have video, they'll have audio. And likewise, something like a country music station is going to have multiple country music songs and probably an identifier of what song you're listening to, the channel you're on, et cetera. So we -- so Avellan meets the plurality of multimedia items.

Next, at Slide 22, Element 1B requires obtaining "content

corresponding to the plurality of multimedia items from at least one source offering the content in at least one first format." Avellan discloses that it obtains content from the internet or private cloud. So that's the internet 150 or private cloud 152. This is similar to how the challenged patents describe obtaining content, which it describes as obtaining content from websites or cloud-based servers.

JUDGE MURPHY: Well, in Avellan, what is the content being captured here?

MR. JUGLE: So it can be webpages. It discloses that it captures webpages. And those webpages can include live-streaming such as CNN, ESPN. There could be other content it captures, I don't think it's limited to webpages, but that's a form that it explicitly discloses.

JUDGE MURPHY: And what's your response to Patent Owner's argument that Avellan only transmits static webpages?

MR. JUGLE: Well -

JUDGE MURPHY: Not the underlying content, if you will.

MR. JUGLE: I think that that is just not accurate, and we're going to get to that shortly. But at a high level, Avellan discloses taking a series of screen captures for moving content such as video or live-streaming, and saving a series of those screen captures. And then transmitting that as a broadcast. And its purpose is to provide that broadcast to its downstream users. So it's not just transmitting a static image. It's transmitting all of what it captures.

JUDGE MURPHY: All right. Take us through that in detail,

please.

MR. JUGLE: All right. So on my way there, I'm going to just briefly touch on Element 1C at Slide 23, which is rendering a webpage by browser using the content. Avellan discloses that there's a browser software in 106, residing on the gateway server, and it explicitly discloses that that browser can render webpages. So 1C is met. All right.

JUDGE REPKO: So is it rendering the webpage for the purpose of capturing it?

MR. JUGLE: That's correct.

JUDGE REPKO: Can you point to a citation from Avellan -- Avellan, I guess, where it says that?

MR. JUGLE: So yeah, so in this -- in the cited portion I have, it says it "renders webpages, images, and documents from the network. The gateway server then images those webpages," so it's referring to the webpages, "to a video or image frame format." And Avellan -

JUDGE REPKO: Full webpage, but I'm talking about the streaming part of that webpage.

MR. JUGLE: So -

JUDGE REPKO: The sequence of images that define streaming content, not just a static webpage.

MR. JUGLE: Correct. So next, and this is in the same paragraph continuing on, I'm at Slide 24 from the citation I had on the previous slide. So Avellan at column 4, lines 65 through column 5, line 4, says, "The gateway server images those webpages to video frame format. This is

preferably done by taking an image of the entire webpage from top to bottom." So there it says it gets the entire webpage, not just stuff that is on the screen, but the whole webpage.

And I'm going a little out of order with Element 1D because it gets to the temporal part in Avellan next. So okay, so then Avellan says immediately after that, at column 5, lines 5 through 12, that "in addition, webpages often have information which is rendered over a period of time such as video, streaming information or an animated display. Accordingly, the gateway continuously captures images of the webpage until it detects a repeating pattern of the information on webpage." In other words, until the video stops.

JUDGE REPKO: Are you interpreting that as when the video stops or as the webpage changes in some way? Like the video can provide a sequence of frames within the static webpage. Where does it talk about the frames of the video in the webpage?

MR. JUGLE: So it's telling you that it's continuously capturing the entire webpage with a video on it. So you're going to be capturing the frames of that video. The claims don't require that you are only capturing specifically frames of a video on a webpage. It says that you just generate a temporal sequence of screen captures of the rendered webpage. So if you're capturing the webpage and the webpage has a video on it, as the video changes you're capturing new images, and that's your temporal sequence of screen captures of the rendered webpage.

JUDGE REPKO: Why would you want to capture the entire

webpage when only a portion of it's moving? Say you have a video playing within a larger screen, why would you want to capture the static part of it? Why would Avellan want to do that?

MR. JUGLE: Avellan doesn't go into it in great detail. I think at the time you have a fixed capture space, you're not -- different websites have videos located at different places on the screen. So I'm only, you know, surmising here, but at the time of Avellan specifically directing a capture to just the video portion of a webpage, it might have been more efficient for what they were trying to do to capture the whole page. Because part of the purpose of Avellan was sending a broadcast of a webpage to a downstream user so the user could view that entire webpage on a dumb browser that wouldn't have to do all the heavy lifting of rendering the webpage.

JUDGE REPKO: So if a video is playing within the webpage, your position is, Avellan does not specifically teach capturing just that video.

MR. JUGLE: I don't think what we're relying on, Avellan teaches that, no.

JUDGE REPKO: So in your view the entire webpage is like a -- it's like a movie of the entire static part and moving part, if there is any moving parts.

MR. JUGLE: That's correct.

JUDGE REPKO: Like if there is any, you know, animation or something on the screen. What part of Avellan discusses that? Apart from what you just showed me. We have to make some inferences from that,

right, from what you've shown me because it doesn't really talk about the streaming part --

MR. JUGLE: Well, so it's -

JUDGE REPKO: -- in column 5 --

(Simultaneous speaking.)

MR. JUGLE: -- it says that you're capturing webpages that have information, which is rendered over time, and you're continuously capturing that. So I think just on the basis of it, it's changing over time and you're continuously taking screenshots, at times you're going to capture that moving image.

JUDGE REPKO: So webpages often have information in the, such as, video. So that information that's rendered over a period of time is the video streaming information and animated display.

MR. JUGLE: Right. So those are examples of information that could be on the webpage that changes over time.

JUDGE REPKO: So when it's detecting that repeating pattern of information on the webpage, you're talking about the repeating pattern that's created by the video playing?

MR. JUGLE: Well, if a video's playing it's not a repeating pattern. Our interpretation of -- because it says it captures the images until it detects a repeating pattern. So a repeating pattern over time would be something like motion ceases, because it's repeating then.

JUDGE REPKO: And just stops.

MR. JUGLE: It just stops.

JUDGE REPKO: So then how would it handle streaming video like a broadcast, like something on CNN or ESPN, like you pointed to?

MR. JUGLE: Well, in that case you wouldn't have a repeating pattern, you'd have a changing pattern, so it would continue to capture to generate its stream.

JUDGE REPKO: Okay. And where does it discuss that? Is it line 10, that continues over a period of time, is that what you're referring to, a repeating -

MR. JUGLE: So I'm -

JUDGE REPKO: -- pattern?

MR. JUGLE: Right. So at line -- I apologize, I don't have the lines in front of me in my presentation. I can grab the reference if you like. So that's at line 5 of column 5.

JUDGE MURPHY: So that's Avellan, column 5, line 5 -

MR. JUGLE: Right, through -

JUDGE MURPHY: -- continuing.

MR. JUGLE: Through -- continuing, at least through line 12. So at the end of that, it says, "The gateway will be certain to capture all of the information on a webpage even if that webpage information continues over time."

JUDGE REPKO: So would that be the static part of the webpage? I'm looking at, again, column 5, lines 10 through 12. So it's -- one way you could potentially read this is that it's saying the static parts, if they're continuing, if they continue to be displayed unchanged, it's going to capture

that continuously. In the previous line it's only talking about repeating animations, right? Like you're talking about something that repeats over a short period of time -

(Simultaneous speaking.)

MR. JUGLE: I -- no, I think it's broader than that. I think it says, look, websites can have information that renders over a period of time. Whether that's a video that renders over two hours or an animation that renders over 15 seconds. Avellan discloses all of that. And it says you can continuously capture those images to capture all that information. So as long as your video information is continuing, you're going to be continuously capturing that information. And that's, to be certain to capture all of the information even if that information continues over a period of time, like a video that continues over a period of time.

JUDGE REPKO: Why would they use the words “even if”? It doesn't really suggest -

MR. JUGLE: Well, because it's -

JUDGE REPKO: -- that it's like looking at something that's a continuing animation. It seems like that -- you know, even if the static image continues to be displayed. Because the previous sentence talks about repeating patterns. It -- it's -- we know that the -- we don't think it's repeating. You're saying that the video streaming information, animated display -- if it's streaming, that's not repeating. ESPN, CNN, that's not repeating. So that particular sentence doesn't say anything about -- doesn't speak to the feature that you're relying upon. That would be line 7, 8, and 9

of column 5, right?

MR. JUGLE: Right.

JUDGE REPKO: So that's out of it. So we're basically just pinning everything on lines 10, 11, and 12. And I'll repeat what it says. "The gateway server will be certain to capture all the information on the webpage." You're talking about everything. You're not talking about a portion of a webpage, you're talking about the entire webpage, "even if that information continues." It seems like one way to read that could be, the previous sentence was talking about animations that repeat. And that sentence talks about static parts that don't repeat, that stay the same, even if it continues. So how would you respond to that?

MR. JUGLE: I don't think so. I think you have to read that in reference to the entire paragraph, which talks about, again, capturing video by continuously -- by -- sorry. Like it -- right. The whole paragraph is talking about capturing information which is rendered over time, such as video. And I think this sentence about continuously capturing the information -- capturing all the information, even if that information continues over time, is talking about that same subject of this paragraph. It's not talking about the preceding sentence, which from my interpretation, I mean, I -- like I said, we've interpreted this as: It's continuously capturing something that's changing until it stops and it detects a repeating pattern in the stopped image.

JUDGE REPKO: Is this the only sentence that you have in the entire reference that talks about, you know, capturing something that's a

stream, and taking images of that stream?

MR. JUGLE: No. So -

JUDGE REPKO: Are there any other parts of --

(Simultaneous speaking.)

MR. JUGLE: So there are other parts of the reference. And there's other examples in Avellan. So at Slide 27 as an example, it talks about a "large number of viewers choosing to select a hockey game," as an example. And that's at column 8, lines 34 through 36. And that is immediately after it gives an example of other types of content from webpages that it can image, such as live television feeds, movies, music downloads, or ESPN. If it's broadcasting a hockey game, you have to be seeing that video some way, right? And the way Avellan discloses that you do that is you are imaging the webpage continuously.

JUDGE REPKO: But does it say it's imaging that hockey game, or streaming or anything other than going back to column 5 that we've talked about?

MR. JUGLE: So column 5 is the main support for the imaging continuously.

JUDGE REPKO: Is it the only support? Again, we have these -- we know that these webpages have live-streaming feeds, movies, music downloads, ESPN. Column 8 tells us that. But the issue is, is that being captured? Are all the frames of that live-streaming feed, movie download, whatever you're going to call it, is that being captured? Or is column 5 the only place where it says that?

MR. JUGLE: Give me a second.

JUDGE REPKO: Just that sentence. Again, looking at column 5, line 10. I'll give you a moment. If you want to -

MR. JUGLE: No.

JUDGE REPKO: -- respond in the rebuttal, that's fine. If you don't have it at your fingertips, but -

MR. JUGLE: So -

JUDGE REPKO: Again, if you could work in other parts of Avellan that would help us better understand your position, that would be -

JUDGE MURPHY: Yeah, could you turn to your next slide, 28?

MR. JUGLE: Yes.

JUDGE MURPHY: I was just looking and tell me if that impacts or answers Judge Repko's question.

MR. JUGLE: So look, I think it does. Because how Avellan discusses capturing webpages, is taking images of those webpages. It doesn't describe creating a video broadcast by another means, right? And it says that it can provide things like hockey broadcasts. So to do that by capturing images of webpages, you're going to have to create a temporal sequence of screen captures. And that's what Avellan describes at columns 5 -- or column 5, lines 5 through 12.

And then for example, our expert opined that if you want to show a hockey game, screen capture time one, followed by screen capture time two, is going to illustrate a dynamic change such as the movement of the players. So if Avellan's disclosure of broadcasting this hockey game or broadcasting

live TV by virtue of doing it by webpage captures, especially understood with -- in connection with its explanation at column 5, we think discloses this element.

JUDGE REPKO: And again, I'll go back. If it's like column 5, column 5 says repeating, hockey game isn't repeating, it changes. And if it's the other sentence that you're relying upon, if there is a possible reading that that is just the static images. So if you could find something other than that one sentence that potentially could be read multiple ways to help your point, I'd like to see that.

MR. JUGLE: Okay.

JUDGE REPKO: You may proceed with your presentation.

MR. JUGLE: Okay. Thank you.

Moving on to our Slide 28. Claim 1 requires assembling at least one media stream using the temporal sequence of screen captures and providing at least one media stream to the content provider. So Avellan discloses that its gateway can assemble the captured images into a digital video format. That's at Avellan column 5, 12 through 15, and 5, 16 through 22.

So another place that Avellan discloses, it discloses that it's capturing multiple images. So at column 5, 15 -- or 16 through 22, it's saying, "In non-limiting aspect of the invention, a web to HD video protocol may be used to capture and transmit images, audio of a webpage, including a full multimedia webpage regardless of the size original format." So it's saying that it's transmitting images. It is not saying that it transmits a static

image. And I think that even though -- I'm sorry, I'm back to Slide 26.

This passage at the beginning of column 5, lines 5 through 12, read in isolation may be open to multiple interpretations. We don't think it is read in reference to the entire reference, because what we think it clearly discloses is that you're taking multiple screen captures to capture any of the live content that it consumes.

All right, I'm moving on to slide -- let's see. Oh, finally, that stream that is created from those images is then broadcast via broadcast transmitter 132 and broadcast device 102, to the downstream users 106. Or 104, excuse me.

Next, at Slide 29, I will discuss a few of the other independent claims that make small variations on Claim 1 of the '074 Patent, as well as the dependent claims. So I'm going to start with the '074 Patent at Slide 30. Our analysis is Claim 1 also applies to Independent Claims 12 and 17. Dependent Claim 8 adds a few limitations that require detecting a change in a website and updating the screen captures. So Avellan at column 8, line 63 through column 9, line 6, discloses this.

It says that the "gateway server can track updates. It then can continuously or periodically compare the broadcast data stored in the cache with the broadcast data stored at the networks 150 and 152, and recapture any broadcast data which is updated. As the information is updated, the broadcast data is compressed, saved to a cache and broadcast to the user computers." So it's updating its screen captures and then -- in response to a change, and then it's broadcasting the new -- the updated screen captures out

to the user computers.

With regard to the remaining dependent claims of the '074 Patent, they have well known and common features. For example, use of audio multimedia items, the use of metadata, the use of common standards such as MPEG. I'm not going to address these in the interest of time. Specifically, if you have any questions about particular dependent claims, I'm happy to address them. But otherwise, I am going to move to the '002 Patent. It is the same thing with the challenged claims here. Claim 1 adds some common standards such as MPEG and HLS.

The remaining dependent claims also add common and well-known features, unicast addresses rendering in parallel, use of virtual machines. So briefly discussing Claim 1 of the '002 Patent, for example, it adds separate elements that require the use of HTTP live-streaming, referred to as HLS, and rendering in parallel using multiple threads.

JUDGE MURPHY: Counsel, you're referencing Slide 33 now?

MR. JUGLE: Yes. I'm sorry.

So during prosecution the examiner concluded that the use of HLS wasn't known -- or was not new. It was known. And the petition cites the Ma reference, which is also in the field of media distribution for the use of that well-known protocol. Likewise, at Slide 34, the requirement of rendering in parallel using multiple threads was well known. We rely on the Fain reference for that, which is a manual about Java programming. And it makes a note that Java can start multiple threads or execute things that run in parallel, and as well as a statement that any web browser works in a

multithreaded mode.

And I believe our expert opined on this as well, multithreading was well known at the time of these patents. It wasn't a big technical hurdle to implement this into the gateway servers of Avellan. Likewise, for the '441 Patent, the dependent claims that depend from the independent claims for which Avellan is a primary reference also recite well-known and common features. Again, virtualization, audio and video multimedia items, metadata, channel identifiers, the use of MPEG, and that the content provider is a satellite operator, the use of failure monitoring. We think these are common and well known.

So moving to 37 as a summary, the remaining dependent claims for which Avellan is a primary reference add well known and common features. Patent Owner doesn't seem to contend that they invented any of these features, which are routinely implemented by people of skill in the art. And those features are either directly disclosed in Avellan or plainly disclosed in the cited primary -- the cited secondary references. Very briefly, I'm going to touch on a couple of Patent Owner's attempts to distinguish Avellan that we believe are unavailing. So at Slide 39, the first is the contention that Avellan's content provider does not initiate the request.

The claims don't require this. It's not in the language of the claims. The challenged patents and the specification don't require -- don't describe the request as being initiated or originating at the content provider. So Patent Owner, we think, is adding a limitation that's unsupported by the claims or the specification. They haven't pursued a specific claim

construction. They just said this falls into the plain ordinary meaning of that term. They didn't seek to amend the language. We just don't think it's supportable that the content provider has to initiate the request.

Likewise, in their response, Patent Owner argued that Avellan did not disclose a browser that rendered a webpage. But column 4 of Avellan specifically discloses that the Browser 106 that resides at the gateway, renders webpages. There's more differences -- areas of disagreement. I'm going to skip over them for now and go directly to the Farber reference at Slide 53, in the interest of time. So I'm going to talk about Farber as it applies to Claim 1 of the '441 Patent. This, I believe, is the only independent claim that does not hold onto the temporal sequence of screen captures limitation that was added to the previous claim I talked about during the prosecution.

So at Slide 54, Claim 1 of the '441 Patent requires creating a plurality of multimedia assets at a caching unit. Farber discloses an audio broadcast system that performs the claimed method. And I want to be clear on something here. We're pointing to the audio broadcast system of Farber, of which there's two embodiments as the caching unit. Not simply the storage unit that is added in one of the embodiments as the sole caching unit, because the whole system performs the method, which is all that's required by the claim. And that system includes storage, which the caching unit and as a claim can do, but it is more than just the block of the storage unit.

All right. Farber discloses that it can cache and transmit music channel broadcasts over networks such as a cable television network or a

satellite network.

JUDGE MURPHY: Counsel, let me just -- to go back to your last point. Is that in your petition? Did you make clear what you were relying on for the caching unit?

MR. JUGLE: Yeah. I believe so, because this is -- it -- the -- all of these actions are occurring at a caching unit, and the petition points to the functionality of the system to satisfy all the limitations of the claim. So I think that's clear in the petition.

JUDGE MURPHY: But your point is you're relying on the audio system being, excuse me, described in Farber?

MR. JUGLE: That's correct.

All right. At Slide 55, "Each music channel includes audio data and an accompanying user interface that displays a channel and song." So that's from Farber. Those music channels are the multimedia assets of the claim. Next, Element 1B is "Determining there's sufficient storage space from multimedia asset at the caching unit." And Farber discloses an embodiment of its audio system that includes a storage/play -- storage/playout device 150. And it says that, "In applications where playout is desired at a later time, the storage playout device 150 may be implemented utilizing many methods, including any rewritable storage media."

Slide 57, so this element isn't connected to any other elements of the claim. There's no requirement on when it falls in time. There's no dependency on this being executed before something else happens. The

mere act of retrieval of the playback at a later time is an indication that there was sufficient storage space. We think it's inherent in Farber's disclosure. Like I said, the determination doesn't need to be made at a particular point in time or have any dependencies upon it.

It doesn't even say that you have to have sufficient storage space without overwriting something else. It just says there's sufficient storage space. If you can store and play a file back, there was sufficient storage space, that's an inherent determination.

JUDGE MURPHY: But Patent Owner's point is that, you know, the law of inherency for anticipation is strict, right? Must necessarily always be the case, not just a probability or in most cases. So here, why is it necessarily present, the element of determining sufficient storage?

MR. JUGLE: So I want to be clear on something. I think Patent Owner's inherency argument is directed to some of the obviousness arguments we made, which is, hey, it's common in systems to make a determination before you store something, and it would be --

JUDGE MURPHY: Well, that's Vermeulen in combination.

MR. JUGLE: That's Vermeulen in combination.

JUDGE MURPHY: That's Ground 2, right? I just --

MR. JUGLE: That's Ground 2 --

(Simultaneous speaking.)

MR. JUGLE: So with Ground 1, the playback itself -- sorry, I apologize.

JUDGE MURPHY: Yeah. Go ahead.

MR. JUGLE: The playback itself, if that occurs, there's sufficient storage space. You couldn't play back if there wasn't space to store the file.

JUDGE MURPHY: But what if you can't play the entire file back? What if you loaded several multimedia files and the last one didn't fully load -

MR. JUGLE: It -

JUDGE MURPHY: -- you can't play it back. How would you know?

MR. JUGLE: -- so I think this -- it doesn't say that there's -- if -- one, it doesn't say that there's enough space for the entire multimedia asset. That's our take on it. This is a very broad term. It's unconnected to the rest of the claim. And if you can do that playback, you have an inherent determination that's indicated by the fact that playback is occurring that there was sufficient space.

But as you mentioned, Ground 2 at Slide 58, even if the board doesn't agree with us, we think it's obvious to combine Farber with Vermeulen, which is directed to a system for storing content in web-based systems and network-based systems. Vermeulen discloses that it has a nodepicker that can assess whether there's sufficient storage space prior to storage to develop a right plan.

And Mr. Lipoff opined on this as well, this is a common known feature. It's something -- commonly known feature. It's something that happens at an incredibly low level of almost every computer system we use. If you save a file on Windows, it just does it. So this isn't beyond the skill of

a POSITA to implement into -

JUDGE MURPHY: Counsel, just a technical question for you. Your Ground 2, which is obviousness over Farber and Vermeulen, the challenge is to Claims 1 and 2 in this '441 Patent, right? But Claim 7 is not included in Ground 2, although it is included in Ground 1. So if we don't agree that there's an inherent disclosure of this limitation in Claim 1, what does that mean for Claim 7?

MR. JUGLE: Well, we think since Claim 7 depends on Claim 1, if Claim 1 is rendered obvious, then you only need the disclosure of Farber to get to Claim 7. And -

JUDGE MURPHY: But that's not in the petition.

MR. JUGLE: -- so I won't disagree with you on that. I think the petition may have been inartfully drafted with respect to that. But nonetheless, I think you get there, because I don't think you need anything from Vermeulen on Claim 7, and the petition doesn't say you do.

JUDGE MURPHY: Well -

MR. JUGLE: So if you get -

JUDGE MURPHY: -- we need -- you need your inherency argument, right? That's why I'm focused on the inherency and the technical legal standard. And I just want to make sure I understand the position, that's all. Because I'm looking at your petition, and you've said what you've just recapped for me -

MR. JUGLE: Yeah. So -

JUDGE MURPHY: -- inherency --

MR. JUGLE: -- look, our position is that it's inherent. Our position that is Claim 1 is disclosed on Ground 2 with Vermeulen. If you don't believe it's inherent, we think because Vermeulen -- the combination of Vermeulen and Harp -- and Farber renders obvious Claim 1, you get there with just Farber on Claim 7.

But I will freely admit that, given the drafting of the petition, that was probably an oversight that Claim 7 should have been included in Ground 2. But no additional information from Vermeulen is needed for Claim 7.

JUDGE MURPHY: Thank you.

PARTICIPANT: Please stand by. We've lost Judge McMillin.

JUDGE MURPHY: Yeah. We lost the connection to Judge McMillin.

PARTICIPANT: Judge McMillin, can you hear me?

JUDGE MCMILLIN: I can. Thank you.

PARTICIPANT: Okay. And you should be on screen now. Thank you.

JUDGE MCMILLIN: All right. Thank you. Sorry.

MR. JUGLE: Is everyone ready?

JUDGE MURPHY: Yeah. Go ahead.

MR. JUGLE: All right. I'm going to move on to -

JUDGE MCMILLIN: I'm ready.

MR. JUGLE: -- Slide 60 for Element 1C, which is generating a channel identifier for the multimedia asset. Farber discloses that there's a

numerical channel identifier associated with music genre. For example, Farber gives an example of Channel 1 for a channel associated with soft rock. This is similar to what the '441 Patent says. It discloses using numerical channel identifiers associated with music genre. Next to Element 1D is Slide 62. Element 1D requires, "Retrieving from a cloud service of plurality of media files to be included in the multimedia asset, including a media identifier for each one of the media files."

So each of Farber's music channels can include a plurality of songs, that's at Farber column 4, 33 through 36. And for each song, Farber retrieves audio content as well as the associated album art. So we think no matter how you slice this, there's a plurality of media files for each multimedia asset, because there's multiple songs. And for each song, there's at least audio content and associated album art in Farber. Farber discloses that this includes a media identifier, and that a media identifier can be numbers or simple streams.

For example, for a song, it has a song title, an artist, record label, all this stored, and then there's a unique value stored for each media item. Moving on to Slide 65, likewise, for -- the '441 Patent discloses using simple streams for media identifiers. So it provides a very similar example with an artist, a duration, a title, and then a music ID, which is just a number. So moving on to Slide 66, the data sources that Farber obtains its media items from can be accessed remotely.

As Farber says they can -- they don't need to be located in a single location and may or may not be co-located. It also refers to them having

connections to servers. So we think that meets the retrieving from a cloud service portion of this element.

JUDGE MURPHY: Well, does it disclose that anywhere expressly in Farber? I mean, one of Patent Owners arguments is that, you know, this notion of the data carousel subsystem isn't suggested necessarily in Farber. What's your response to that?

MR. JUGLE: So our response to that is, one, it says it can be remote or it can be a server, and there's nothing specifically limiting about what form that cloud service needs to take. And we think a person of ordinary skill would read this claim and interpret cloud services essentially anything remote, and Farber discloses that. And there's nothing more specific required about the claim.

JUDGE MURPHY: And tell me again, I'm sorry, because I was looking at the slides. Where does Farber disclose the connection to a remote source for the files?

MR. JUGLE: So it says that the data sources may or may not be located in a single location so they don't need to be onsite or local. They can be remote.

JUDGE MURPHY: Where are you referring to?

MR. JUGLE: So that's Farber column 5 at lines 35 -- 36 through 38.

JUDGE MURPHY: 36 through 30 -

MR. JUGLE: 38.

JUDGE MURPHY: -- 8.

MR. JUGLE: And then at column 5, lines 26 through 32, Farber discloses that the data source may also be associated or connected to a server or other computer managing the database or facilitating communications with the data carousel subsystem 46. So we think Farber discloses remotely located data sources and use of servers.

JUDGE MURPHY: All right. And just so I'm clear, Farber doesn't use the word remotely located?

MR. JUGLE: Well, it says not located in a single location. It does not use the word remotely located. It doesn't use the word cloud explicitly.

JUDGE MURPHY: But what else could it be?

MR. JUGLE: Right.

JUDGE MURPHY: Okay.

MR. JUGLE: So moving on to Slide 67, Element 1E. For each of the media files Farber require -- or the Claim 1 requires creating a custom Hypertext Transfer Markup Language user interface that includes video. So Farber discloses that for each song, it creates a custom HTML interface, or a custom HTML template. So it has a screen with embedded assets, for example, it's shown in Farber Figure 1. And Farber discloses that it can create those templates which may be coded utilizing HTML.

And these are user interfaces, because they can include buttons and other assets that a user can interface with. For example, a download button, an add song button, a personalized channel choice button. Those are things that allow the user to interface with the screen and with the system. Farber's templates can also include video. The assets referred to with respect to the

templates specifically says can include motion picture video, and then it gives the example of a promotion and advertising panels that may contain motion picture video content.

Moving on to Slide 70, Element 1F. "Encoding each of the media files and encapsulating them together using an MPEG transport stream format." So Farber encodes and encapsulates its media files using an MPEG transport stream format. It has an MPEG encoder 47 that creates an MPEG transport stream for all the channels. Then it multiplexes that with the audio stream to output the video broadcast. Or Claim 1 -- I'm at Slide 71 now, Element 1G requires storing each one of the multimedia assets at a caching unit.

So Farber discloses storing the assets at the storage playout device 150 for later playback. Finally, Slide 72, with respect to Elements 1H and 1I. "Require receiving a request at the caching unit for one of the multimedia assets from the broadcasting unit." Farber discloses receiving a request from a broadcasting unit, so it says, "in applications where playout is desired at a later time," so it's receiving some indication that play out is desired at a later time. Also, as I referenced earlier, Farber discloses that its user interface panels can have buttons like request song or personalized channel buttons that a user can use to pass requests to Farber.

So Farber receives the request to generate its multimedia assets. To the extent we don't -- the board doesn't agree that Farber explicitly discloses receiving requests, we think this is also obvious in light of Vermeulen, which describes a web services interface configured to receive

client requests for access to data objects. So this providing something -- providing data in response to a client request was well known in the art and Vermeulen discloses that.

JUDGE MURPHY: What's your response to Patent Owner's argument that that's not a request from a content provider?

MR. JUGLE: So Farber, at a high level, describes what it is broadcast being played out over a broadcast media system like a cable television provider. So again, this goes back to the does it have to initiate with the content provider? We don't think it does. It's not required by the --

JUDGE MURPHY: And just for Farber, just walk me through quick to refresh me. How does the Farber system -- as opposed to Avellan, how does the request work its way through the content provider?

MR. JUGLE: So Farber doesn't explicitly disclose the content provider providing that request to the -- its broadcast system. We know that it's outputting music broadcast into a broadcast, and it says that it can do things in response to those. And we know that the users are retrieve -- are receiving Farber's output by a content provider.

So when they provide anything back through those user interfaces, those are also provided through the content provider. There isn't a figure with an explicit line saying this is the path from the content provider to the system of Farber.

JUDGE MURPHY: Okay. Thank you.

MR. JUGLE: But we think that is obvious in light of Vermeulen. Finally, the caching unit provides a multimedia asset in MPEG transport

stream format. Farber discloses this. It discloses that the output of its MPEG encoder is in the MPEG transport stream format. And then, that's multiplexed with an audio file and sent out for broadcast, either from the storage play out unit or in one embodiment, that that doesn't exist straight to broadcast.

With respect to the dependent claims of the '441 Patent Claims 2 through 9, much like what I discussed with respect to Avellan, the -- these add well known and common features. The use of the REST API, the use of JavaScript or WebKit browser or engine. Encoding at a specific bit rate, the use of common standards such as H.264, inclusion of video. As with the Avellan dependent claims, these are well known and common features. Patent Owner doesn't contend that they invented any of these features, and they're either directly disclosed in Farber or plainly disclosed in the cited secondary references.

And that was at Slide 76. Moving on to Slide 77, I will briefly address a few of the arguments from the Patent Owner response, attempting to distinguish Farber. So first, Patent Owner response that Farber's embodiments are limited to a CD player or CDROM. At Slide 79, that's not true. Farber discloses using any re-writable storage medium, not just a CDROM. Patent Owner's Response argued that Farber does not use the media identifier to retrieve media files.

But the claims don't -- at Slide 81, if we review the claim language, it just requires that the media identifier is included for each one of the media files, and that the media files are retrieved. It doesn't require that the media

identifiers are used for retrieval. It's not in the claim.

JUDGE REPKO: So the media identifier, that's also related to the cloud service of 1D -

MR. JUGLE: Yes.

JUDGE REPKO: -- in the claim? And then in Farber, it's -- you're just basically relying on the fact that the data sources are not co-located, that term co-located that you were talking about earlier. So how does the media identifier relate to these other data sources, 42 and 44 in Farber?

MR. JUGLE: Well, so it's -- so what we said is it's included in the media files that are retrieved. So you have an identifier for the media when you retrieve it from the data sources, and that's to provide information to the user.

JUDGE REPKO: So it's not used by the cloud service or something?

MR. JUGLE: I'm not saying it's not used by the cloud service. What I'm saying the claims don't require it to be used. It just requires it to be included when you retrieve the plurality of media files, included in the media asset.

JUDGE REPKO: So what exactly is the identifier in Farber and how is that identified in the media? It's just, like, a song title?

MR. JUGLE: A song title, there's a unique -

JUDGE REPKO: Something like that?

MR. JUGLE: -- ID that Farber discloses. So if Farber at Figure 6, for each song, it discloses a unique ID, so a number. In Farber it's like -

JUDGE REPKO: A tracking number.

MR. JUGLE: -- 3,000,000 something, like, a track number. And the -

JUDGE REPKO: It's more than just the title though, right? It's not just -

MR. JUGLE: Well, we think the title would be enough.

JUDGE REPKO: -- a catalog.

MR. JUGLE: But Farber discloses that it's a unique ID. The '441 Patent describes the media identifiers including a unique ID. So we think Farber gets us there, even under a narrow read of the term.

JUDGE REPKO: You don't think it requires, like, to get a database index or anything like that?

MR. JUGLE: That's not in the claim.

JUDGE REPKO: Just some piece of information. Thank you.

MR. JUGLE: And I don't think Farber precludes using that information as a database index or something like that, but it's not required by the claim. It doesn't need to be explicitly disclosed in Farber.

JUDGE REPKO: Thank you.

JUDGE MURPHY: So when you capture that file, you need to capture the identification as well?

MR. JUGLE: Correct.

JUDGE MURPHY: What you do with it after that in the system is -

MR. JUGLE: It's not in the claim.

JUDGE MURPHY: -- not a limit of the claim?

MR. JUGLE: Right. Okay. In the interest of time, because I think I only have about 13 minutes left, I'm going to move to Slide 92 and discuss Wannamaker with reference to the '002 Patent at Claim 7. So at Slide 93, limitation first element, "A multicast server configured to generate parameters relating to at least one of video content, image content, and audio content, and configured to output the parameters via MPEG outputs."

So Wannamaker discloses a system that delivers web content to cable television subscribers. Moving to Slide 94, it has an -- Wannamaker discloses an Application Server 94 that has a multimedia streamer for multicasting content. So we know it's the server of Wannamaker is doing multicasting. Slide 95, the server has a -- the application server has a cache manager that generates parameters relating to the requested content.

Some of those parameters include parameters to resolve the URL request and obtain that content. Additionally, at Slide 96, those parameters can include the content’s modification date. And at Slide 97 can include parameters relating to the content's layout size. And Slide 98 also talks about layout size.

JUDGE REPKO: So layout size itself is a parameter. And where is that stored in these files that Wannamaker uses?

MR. JUGLE: So it's stored in -- number one, the claims don't require that the parameters be stored in a particular location, so.

JUDGE REPKO: You're relying upon that to be part of the image files, right, the FMBs?

MR. JUGLE: So they are stored in -- either in the image files or in conjunction with the image files. But we think that with respect to this element of configured to output the parameters via MPEG outputs, Patent Owner seems to be reading this very broadly. That as long as the content being output is defined by a set of parameters, that's an inclusion of the parameters.

So even to the extent that Wannamaker doesn't disclose explicitly storing those parameters somewhere, using the parameters to generate the content meets that limitation.

JUDGE REPKO: But then they have to also be MPEG output as well, parameters themselves, right?

MR. JUGLE: There has to be an MPEG output, but -- and the parameters that define that MPEG output are included in there.

JUDGE REPKO: Okay. So the layout size?

JUDGE MURPHY: Well, but the claim says, output the parameters -

MR. JUGLE: So -

JUDGE MURPHY: -- via MPEG output.

MR. JUGLE: -- I'm going to -- let me just bring up -- give me one second. This particular piece of claim language, you know, it's a little knotty, right? So what we've done, if you look at Exhibit 1012 to the 350 IPR, which is -- let me get to this and go to page 1859. So this is Plaintiff's Second Amended Complaint, which included claim charts.

JUDGE MURPHY: One second. You said which page again?

MR. JUGLE: 1859.

JUDGE MURPHY: That's the individual page number of that document?

MR. JUGLE: So that's the individual page number of that PDF document. It might have been filed in four sections and I -- forgive me, I'm not sure which.

JUDGE MURPHY: It doesn't matter. Okay. Go ahead. Sorry.

MR. JUGLE: Okay. So Plaintiff's infringement read basically says, this limitation is met by having audio and video content that's output as MPEG outputs. No identification of parameters. If the parameters are used to define the MPEG output, that meets the limitation.

JUDGE MURPHY: Well, but that's your district court complaint, right? I mean, the burden here is on you. We take the claim as they wrote it, and if you want us to construe that claim or understand how it's being applied here, that's fine.

MR. JUGLE: So again, we think that those parameters are included in the MPEG output. Screen size is one of them. When you output the MPEG frame, it's going to have the screen size in it because the receiver needs to know what the size is, so.

JUDGE REPKO: Does Wannamaker say that?

MR. JUGLE: So -

JUDGE REPKO: Do you rely on the part of Wannamaker to say that FMB file has that? I just want to -

MR. JUGLE: So the FMB file is then -- later on in this

presentation, or I can skip ahead to it, is those images -- those FMB image files are converted into an MPEG transport stream.

JUDGE REPKO: Okay. You said MPEG has -- did Wannamaker actually say that though anywhere? Looking at your Slide 98, you've pointed us to the layout size. That's what you mean by parameters here, right?

MR. JUGLE: Right.

JUDGE REPKO: That's, like, you're trying to tell me that. 264 tells me that you have the MPEG syntax. So I assume you mean the parameters are in that MPEG, because it says via MPEG output. And then -

MR. JUGLE: Right.

JUDGE REPKO: -- you've also two -- you've also excerpted another part that says, height is guaranteed to be the height of the screen. So I mean, how does that second quote relate to the first quote, just in terms of the height being this guarantee have anything to do with the MPEG?

MR. JUGLE: Well, so the MPEG is -- the MPEG contains the FMB files, right? So the output of the MPEG also has a height and a width, and that guarantee is included in that MPEG output.

JUDGE REPKO: So it's inherency -- inherent. And then, the MPEG file format has -- is that your -

MR. JUGLE: Look, I don't think it's inherent because I think Wannamaker discloses that you have this layout and it says that the FMBs are compressed into an MPEG syntax. And that's included in the FMB, so it gets included into the MPEG syntax.

JUDGE REPKO: Where does it say it's going to be included in the FMB? And what if the FMB just has -- just an image, right? It just has so many pixels and that's it, has a resolution.

MR. JUGLE: And a resolution is one of those parameters. There's parameters –

(Simultaneous speaking.)

JUDGE REPKO: -- parameters in the FMB file?

MR. JUGLE: Correct.

JUDGE REPKO: Does it say that anywhere?

MR. JUGLE: Do you mind if I answer this on rebuttal? I'll take a look at this.

JUDGE REPKO: Sure.

MR. JUGLE: All right. So the application server outputs the parameters via MPEG outputs by delivering an MPEG stream to its downstream users. Moving on to Slide 100, let me just take a quick look at Slide 97. Yeah, I don't think that answers your question. So moving on to Slide 100, Element -

JUDGE REPKO: Are there any other -- I just -- going back to that. Are there any other parameters other than size you think are in -- would meet that limitation segment?

MR. JUGLE: Well, again, so, yeah, because we think there's numerous parameters that are generated at the application server that are passed to retrieve the content. So the parameters for resolving the URL, the modification dates of the files that it fetches. And then, at least given the

broad interpretation that Patent Owner seems to have given to this claim, that generating an MPEG output defined by those parameters and it includes that, those parameters in the MPEG.

JUDGE REPKO: Is that your interpretation? Is that how we should interpret -- is that the correct interpretation of the claim?

MR. JUGLE: We think so, yes.

JUDGE REPKO: Okay. So you agree with Patent Owner's district court construction? And so, the URL parameters, you're saying because they define the file in some way, they're also via MPEG output?

MR. JUGLE: That's correct.

JUDGE REPKO: Okay. Thank you. I have no further questions on that.

MR. JUGLE: All right. So moving on to Slide 100, Elements 7B and 7C require a caching server communicatively coupled to the multicasting server and configured to receive and store the parameters. So Wannamaker discloses a Content Processor 23 that's coupled to Application Server 24. This content processor produces and caches content requested by the application server, so it is the portion that receives and stores those parameters. And in doing so, uses them to retrieve the content.

At Slide 101, the content processor produces and caches content requested by the application server. It checks local rendered cache that the content notifies the application that the content is present. So the content processor is storing and retrieving the content. All right. At 102, Claim Element 7d, create a temporal sequence of screen captures similar to Claim 1

of the '074 Patent. I think this claim -- this element is notable because it has a slight difference from the one we talked about before, which is it doesn't require you to capture all of the content of a rendered webpage.

It just says the screen capture defines content of a rendered webpage at a given time. So unlike Claim 1 where you had to get all of the content, here you have to get some of the content. Content processors Renderer 36 produces rendered web content. So content processor produces rendered web content from the standard, from the web. And it does that by parsing and rendering HTML to produce output image files, which Wannamaker refers to as FMB. So at Slide 103, the rendered web content includes animated images and gives an example of animated GIFs or JIFs.

I don't really have a dog in that fight. And to do so, to render these animations, it describes, "Render them as separate frames and then saving each frame in a format, an image format with a timestamp and a sequence number." So that tells us to render the animation. It is taking a temporal sequence of screen captures that illustrate dynamic change because your sequence that it says you're saving is going to illustrate the dynamic change in that animation.

Moving to Slide 106, Element 7E requires assembling the temporal sequence of screen captures. So Wannamaker discloses that the renderer assembles the sequence of screen captures into MPEG frames. Next, Element 7F, requires providing at least one of the video content, image content, audio content to the multicast server for generating a multicast stream. So those MPEG frames are then provided to the application server,

which generates MPEG streams for multicasting.

Again, the multimedia streamer consists of an audio-video terminal server, which is part of Application Server 24, and that's responsible for delivering MPEG video or and Dolby Audio streams to a set-top box. Finally, there's a requirement of, at Slide 109, Element 7G, a monitoring system that's configured to maintain video generation -- or generation of video and audio files even in failure cases. Wannamaker discloses a monitoring system that provides for fault tolerance. It has a system that's capable of detecting fatal faults and restarting itself without human intervention.

It also describes various levels of fault tolerance, including subsystem redundancy. And that if a server fails, and this is at Wannamaker paragraph 101, "The transactions are routed to another server in the server group." So if one fails, it goes over, keeps going.

JUDGE REPKO: Thank you. Rebuttal time?

MR. JUGLE: I'm just -- let me use, like, 30 more seconds and then I'll sit down. So finally, all the dependent claims of Claim 7, as with Avellan and Farber, well-known common features, multiple servers, multicast, MPEG encoding, addition of metadata. We think these are well known and common, and they're either directly disclosed in Wannamaker or the cited secondary references. With that, I'll wrap up and save my remaining time for rebuttal.

JUDGE REPKO: Thank you.

Let me know when you're ready, I'll start the clock. Now, we need

to know how much time you wish to reserve for it.

MR. DROLET: Yeah. Give me a second to set up this -

JUDGE REPKO: Of course.

MR. DROLET: I'll be doing 65 minutes and then 25 for a rebuttal.

JUDGE REPKO: Thank you.

MR. DROLET: Just give me a second while I set up, please. Can you all see my screen okay?

JUDGE REPKO: That looks good. Thank you.

MR. DROLET: I'm ready, Your Honor.

JUDGE REPKO: You may begin.

MR. DROLET: Good afternoon, Your Honors, and may it please the Board. I'm Rob Drolet, appearing on behalf of Patent Owner Edwin Hernandez-Mondragon in all three proceedings, IPR2025-349, 350, and 351, covering Patents 10,123,074, 10,524,002, 11,140,441. Present with me today is the inventor and owner of the patents, Dr. Edwin Hernandez-Mondragon. I understand I have 90 minutes. I intend to organize my time as follows, 15 minutes for threshold questions that apply to all three patent -- all three proceedings and majority of the independent claims.

I'll then spend about 50 minutes of the patent specific arguments for each of these three patents. I ask to reserve 25 minutes for rebuttal time. Before we begin, I acknowledge there's a lot of material and ground to cover. However, our entire focus fundamentally across all matters is that proper claim construction was not followed, not in accordance with Phillips. It wasn't attempted at all by Petitioners.

Further, upon a review of all evidence developed during the inter partes review proceeding and upon application of Phillips and construing all key claim elements of the challenged patent claims, all 60 have challenged claims or patent claims. From the submission of Petitioner's petition to institute these inter parties review proceedings through today, Petitioners have ignored the challenged patent specification. Petitioners have ignored the express language in the patent specification.

Petitioners have failed to construe claims in accordance with Phillips. Petitioners have failed to adhere to what a person ordinarily skilled in the art is required to do in construing patent claims. Slide 3, let me begin with three arguments in Slide 3. Each of these operates independently, meaning any single one standalone sufficient to defeat the grounds in each case. Together they are in Patent Owner's view insurmountable.

First, the evidentiary foundation for all three petitions is tainted. Petitioner's expert received a draft of the petition before writing his declaration. Adopted Petitioner's attorney framing wholesale, and then materially altered sworn testimony after confirming with Counsel overnight. Under Broadcom v. Invensas -

JUDGE MURPHY: Counsel, let me stop you there for a minute. I saw that in your pages. Can you tell me what happened at the deposition in your view?

MR. DROLET: Certainly. Would you like me to actually give specifics out of the -- out of the deposition or generally?

JUDGE MURPHY: No. Just -- I mean, you've cited the pages and

-

MR. DROLET: Certainly. I can have more in detail, Your Honor, but -

JUDGE MURPHY: Just tell me your -

MR. DROLET: -- upon confronting the deponent, the expert, with reviewing the actual specification for areas of where it described key terms, he admitted he did not do that. Matter of fact, he wasn't instructed, nor was his scope of work to construct any claim whatsoever, any patent term.

He acknowledged he was directed to go ahead and perform analysis on one sub-element and the remaining elements -- sub-elements of all the claims he depended upon what was provided by Counsel.

JUDGE MURPHY: And which sub-element was it that he was -

MR. DROLET: 1D. Let me refer to my notes. Element 1 Delta, that he was actually instructed to provide input on. The remaining elements of the first independent claim, he relied solely on what was provided. And again, I have specifics concerning that. Is that sufficient on the other?

JUDGE MURPHY: No, no. I mean which patent claim?

MR. DROLET: This is the first one, '074. The first claim -

JUDGE MURPHY: That's fine. That's fine.

MR. DROLET: -- the entire first claim of the first independent claim he went ahead and admitted he was not directed to go ahead and do any analysis whatsoever. Is that sufficient, Your Honor?

JUDGE MURPHY: Yes.

MR. DROLET: Okay. So the evidentiary foundation for all three

petitions is tainted. Petitioner's expert received a draft of the petition before writing his declaration, adopted Petitioner's attorney's framing wholesale, and then materially altered sworn testimony after confirming with Counsel overnight. That declaration is entitled to zero or minimal weight. Without it, Petitioner is left with naked attorney argument that cannot satisfy the preponderance standard under 35 U.S.C. Section 316.

Second, the term "content provider," as used in all independent claims across all three patents, means a cable television or satellite television operator, not a transmission gateway, or internet intermediary. Three independent lines of intrinsic evidence compel by construction. No cited reference discloses a cable or satellite operator requesting, receiving, and broadcasting a media stream. That simple construction eliminates independent claim grounds in all three proceedings.

Slide 4, Avellan only transmits static webpage screenshots. It is not a multimedia streaming system. It does not receive requests from content providers. It does not assemble media streams. It does not provide streams for broadcast on broadcast media channels and does not deliver live-streaming content. Petitioners claim that Avellan discloses live stream -- live-streaming televisions feeds is a complete misreading.

Column 8, lines 18 through 21 of Avellan merely lists CNN, BBC, and ESPN, live-streaming television feeds as websites whose pages Avellan can screenshot. Those four foundational gaps doom every Avellan-based ground in all three cases. I'll address each one of these in order before turning to patent-specific matters. Slide 5, expert testimony does not

disclose the underlying facts or data on which the opinion is based, is entitled to little or no weight. That standard comes directly from Federal Rules of Evidence 702(b), and is not in dispute. Both parties cited it.

The burden in a final written decision is preponderance of the evidence under 35 U.S.C. Section 316(e). That burden never shifts to Patent Owner and cannot -- cannot be carried by attorney argument alone. Deposition testimony with Petitioner's expert, Mr. Lipoff, confirmed three independent defects in his declaration. First, Petitioner provided Mr. Lipoff with the draft of the petition before he prepared his declaration. He was given Petitioner's legal theory, Petitioner's attorney's training, and his declaration reflects it. This is not how independent expert testimony works.

Second, Mr. Lipoff selectively adopted Petitioner's positions on multiple claims and elements without conducting full independent analysis of the references. He was tasked only with addressing certain sub-evidence, and he said so under oath. His declaration incorporated Petitioner's pre-packaged analysis without disclosing that reliance. Third, after conferring with Counsel between the first and second day of testimony and disposition, Mr. Lipoff materially altered the prior sworn testimony. The board should weigh that alteration against him.

JUDGE MURPHY: Well, what are you alleging he altered overnight exactly?

MR. DROLET: The next day he offered up to clarify several comments he made the day before. One of them was concerning his tasking in assessing his declarations that there was anticipation and obviousness. So

without being prompted, he went ahead and came back with that, as well as several other points, which prompted me to ask him that he talked to Counsel the night before, which he -- said he did.

JUDGE MURPHY: Okay.

MR. DROLET: Slide 6, Slide 6 shows why this matters across all three cases and all grounds. The entire evidentiary backbone of these three petitions is a single comprised expert declaration. Every ground claim, mapping of prior art claim elements relies in this declaration. The Petitioner has no independent expert support, who remains after the declaration is discounted in attorney argument, which cannot carry the preponderance standard as a matter of law. Patent Owner stands ready to provide explicit statements made by Petitioner's expert, Mr. Lipoff, that undeniably disqualified Mr. Lipoff's testimony.

However, Patent Owner submits overwhelming evidence on the merits alone that all claims in the '074, '002, and '441 Patent claims, survive Petitioner's challenges. Patent Owner only asks the board to recognize that this defect pervades every ground. And wherever the board has a close call in their prior art analysis, the quality of the expert report should weigh heavily in that assessment. It is notable that Petitioner never responded to this argument in its reply.

It was fully and specifically developed in the Patent Owner response across all three proceedings. At pages 10 through 11 in IPR349, pages 12 to 13 in IPR331, and 7 through 8 in IPR350, Petitioner's silence is notable. The argument stands unrebutted. Slide 7. Slide 7, Patent Owner's

construction of content provider is a third party such as a cable television or satellite television operator.

JUDGE MCMILLIN: Excuse me. This is Judge McMillin. With regard to claim construction, I'm looking at your petition in IPR2025-00349. And the claim construction section is very short and doesn't offer a claim construction of anything. It appears to -

JUDGE MURPHY: Oh, we just lost Judge McMillin's audio. Pause this until we can get him back up.

JUDGE REPKO: He froze.

JUDGE MURPHY: Yes. Judge McMillin, can you hear us?

JUDGE MCMILLIN: I can hear you now.

JUDGE REPKO: Could you please repeat your question? I'm going to start the time again.

JUDGE MCMILLIN: Okay. I'm sorry.

My question was that I've looked back at the petition -- can you hear me?

MR. DROLET: Yes, Your Honor.

JUDGE MCMILLIN: I've looked back at the petition in the 349 case, and the claim construction section does not seem to offer any constructions. Specifically with regard to this argument, it does not offer a construction for "content provider."

MR. DROLET: With respect to petition, you're correct. They did not offer any. In fact, I think the Petitioner stated that their claim to survive any claim construction. We -- and then -

JUDGE MCMILLIN: I -

MR. DROLET: Yes, Your Honor?

JUDGE MCMILLIN: -- I misspoke. I'm sorry. I was referring to the Patent Owner's Response that the claim construction section is very short. It's at page 23 of the Patent Owner's Response in the 349 case. And there is no claim construction offered of any term, including content provider.

MR. DROLET: Your Honor, I have to refer that during the rebuttal as far as the specific section. But in the Patent Owner Response, we call out that certain keywords, certain terms of art that are used specifically in the actual patent terms themselves are not disclosed and are not suggested or taught by the Petitioner in all their -- in all the different references. So it's specifically -

JUDGE MCMILLIN: It appears to me that you did make an argument on content provider. It begins at page 49 of your Response. It does not appear to be framed as a claim construction argument as you're doing now, but as an argument to distinguish the prior art.

MR. DROLET: I would disagree with that assessment, Your Honor. I'll have to look at exactly how it's written up in the different sections. But the intent of the Patent Owner's Response, as well as the Sur-reply is consistent with respect to certain key terms of art that are in the actual patent claims that are not disclosed. And that we're asked -- and we asked for proper construction that looks to the specification to construe those terms.

So with respect to the actual location specifically in our Response and Sur-reply, I'll address that specifically during rebuttal. But I have -- strongly insist that we across all of our documents, go ahead and push back and say specifically that those key terms are not properly construed in accordance with Phillips.

JUDGE MCMILLIN: Well, I would ask again that you look at page 23 of the Patent Owner's Response. There's a section entitled "claim construction," but there's no constructions offered. And there is a discussion of content provider, but that begins at page 49 of your response and it's not clearly, at least in my mind, framed as a construction argument.

MR. DROLET: I'll have to go ahead and revisit exactly how it's phrased, but I'll go ahead and again, insist that it isn't -- it's consistent throughout all of our documentation with respect to pushback, is that these key terms have not properly been construed in accordance with Phillips. Thank you.

JUDGE MCMILLIN: And thank you. Please.

MR. DROLET: So Patent Owner's construction of content provider is a third party such as a cable television, or satellite television operator, or any other multimedia outlet that requests and receives multimedia content for playback on a broadcast media channel. Three independent lines of intrinsic evidence support that construction. You'll need one to decide the issue in Patent Owner's favor, but all three point in the same direction. Three -- first, the specification expressly states it.

Column 2, lines 57 reads, "An example, computer implemented

method can receive from a content provider, such as a cable or satellite operator, a request for at least one media stream for playback on a broadcast media channel." That is not an embodiment. That is the inventor describing his invention using the exact words of the claim. Column 1, line 16 through 23 adds, "The present disclosure provides a mechanism for delivering multimedia content from a cloud-based system to cable with satellite content providers."

Column 8, lines 15 to 22 closes the loop, "The media stream can be provided to the content provider for broadcast on the broadcast media channel." Those three passages in the same specification used identically in all three challenged patents, the content provider requests, the content provider receives, the content provider broadcasts. There is nothing ambiguous about that. Second, Dependent Claim 9, in all three patents, expressly limits the independent claims content provider to -

JUDGE MURPHY: Well, Counsel, let me stop you there. Which -- what's your response to Counsel for Petitioner's answer to that, which is that the claim doesn't say the request has to be initiated or originated by the content provider?

MR. DROLET: I believe in reading the claim terms in light of the specification, it's clear that the content provider is actually requesting, making that request. If you're asking can it have been from an initial source before the content provider and then the content provider making a request, that's analogous to a doctor making a request for something going through a pharmacist, for instance.

Who's actually making the request? It's clear here in the specification that the content provider is making that request. That answer your question, Your Honor?

JUDGE MURPHY: Yeah, thank you.

JUDGE REPKO: I have a question, Mr. Drolet. Do you believe these passages here that you reproduced on Slide 7 are definitional? Are we talking about lexicography when you defined content provider to be this specific?

MR. DROLET: Our understanding is that when you look at the specification itself, you're looking at everything. What specific definitions are given? What functionality is disclosed? What's the relationship? All these things are in context with each other, so it needs to be looked at the entirety of the actual specification, including how it's used in dependent claims and independent claims to understand how the actual inventor -- and that's the whole crux of this.

Trying to understand what the inventor meant in his writings, in his words, in the actual patent itself. So definitional, not like saying that, you know, this is that. No, but it informs that decision. It informs someone reading the specification when looking at the claims, what those claim terms mean.

JUDGE MURPHY: Well, two -- one question and one comment, right? To Judge McMillin's point, what you just described is traditionally set forth in a claim construction argument, which is not in any of your briefs.

MR. DROLET: I'll have to pull up exactly the terminology and the

arguments presented in the Reply and Surreply. But it was definitely Patent Owner's intent to put on the record that the construction of the actual claim elements and what they meant was to look at the specification in accordance with Phillips, determine what these key terms are. Whether it was definitionally defined in a section of either of our reports or replies in a certain section, you know, it's mislabeled.

I can't answer that until I look at that specifically. And I think clearly the substance of our communication across the board through surreply indicates that our intent of looking at specification, that -- those steps was missed. The Petitioner offers nothing of that.

JUDGE MURPHY: All right. Let me ask you a question about Avellan, the Avellan reference -

MR. DROLET: Yes, Your Honor.

JUDGE MURPHY: -- with regard to this limitation of a request being made from a content provider. Your response that this is in the IPR351 petition, but it's a common response across provisions. You say that Avellan's gateway platform does not originate the content, but acts as a distribution intermediary. Receiving, processing, and delivering the webpage images to end users and you say this is not a request from a content provider?

MR. DROLET: That's correct.

JUDGE MURPHY: Where does it say in the claim that the request has to originate and cannot be a distribution intermediary -- through a distribution intermediary?

MR. DROLET: So reading the claim and receiving a request from a content provider means receiving a request from a content provider. If the request is from an upstream entity, and it's a pass-through content provider, it's not a request from the content provider. It's a transmission of a request. Reading the claim, it's a -- from the content provider. That's our interpretation.

JUDGE MURPHY: Okay. Thank you.

MR. DROLET: Let me finish off with the Claim 9. So Dependent Claim 9 and all three patents expressly limits the independent claims content provider to a cable television operator or satellite television operator. Under the doctrine of claim differentiation, the independent claim must already carry a meaning that encompasses cable and satellite operators as representative samples. Otherwise, Claim 9 has no narrowing effect. Claim 9 makes no sense unless the independent claim already contemplates cable and satellite operators as the paradigm case.

Slide 8, internal logic requires it. The claim requires the content provider to perform three functions: request a media stream, receive the assembled media stream, and then broadcast it on a broadcast media channel. It would be logically nonsensical for the content provider to request and receive something it itself creates. Petitioner's ordinary meaning construction collapses these roles into one entity. That same entity requesting what it already made, that cannot be right, and not what the specification teaches.

I'll note additionally, Petitioner waived any competing

construction. No petition across these three cases have advanced or proposed construction. Petitioner now cannot in oral argument offer construction that's never briefed. Slide 9. Let me go to Slide 22. Apologize.

JUDGE MCMILLIN: This is Judge McMillin.

MR. DROLET: Yes.

JUDGE MCMILLIN: I have a question about your Claim 9 claim differentiation argument. If a plain and ordinary meaning in the context of this patent for Content Provider is a cable television operator or a satellite television operator, why would it be necessary to define it as such in Claim 9? If that's already in Claim 1, then Claim 9 serves no purpose.

MR. DROLET: So Claim 9 specifically states TV -- cable television operator or satellite television operator. The construction is a third party, such as, and it goes on to be broader: any other entity performing that commercial function.

JUDGE MCMILLIN: Yes, I understand that because Content Provider is said to be a cable television operator or a satellite television operator in Claim 9, that means that Content Provider in Claim 1 must be broader than that. But if your argument is that in Claim 1 and all the other claims, Content Provider means those two things, then Claim 9 serves no useful purpose.

MR. DROLET: Your Honor, I agree that Claim 9 further limits -- has a limitation with respect to being a TV satellite operator or TV cable operator. The actual claim construction we propose is a third-party

commercial entity carrying out functions such as. So I think it's broader in our specification and broader in construction. I think Claim 9 further limits and differentiates it even further.

JUDGE MCMILLIN: Let's look at the specification of the '074 Patent. The specification says, column 3, line 43 to 44, "The intention is not to limit the present technology that the particular embodiments describe." The specification says, at column 14, line 31, 32, and 33 and 34, "No limitation of the claims should be implied based on particular features or arrangements in such examples as one of ordinary skill would be able to use these examples to derive a wide variety of implementations."

It appears to me that, in the specification, Applicant said that the specification should not be used to limit the claims.

MR. DROLET: That section that you went ahead and read, recited, allows a person ordinarily skilled in the art to read the specification in its entirety and to go ahead and construe things that are commensurate with the entire specification. It's not limit them or limit the interpretation to be specific examples that's stated in this -- in the -- in the actual specification. But it still has to be congruent. It still has to be applicable. It has to be coherent with what the specification says.

So I agree that language gives some latitude, interpretation of what other embodiments can come from this, the specification as applied to the claim language, but does not give free license to go ahead and expand to something that is nonsensical. Did I answer your question, Your Honor?

JUDGE MCMILLIN: Yes.

MR. DROLET: Thank you.

JUDGE MCMILLIN: Thank you.

JUDGE REPKO: If you don't mind, I want to make sure we get to an issue that's important to me. Do you mind skipping ahead to Slide 10?

MR. DROLET: Okay, Your Honor.

JUDGE REPKO: I'd like you to talk a little bit about the live streaming of Avellan -

MR. DROLET: Yes, Your Honor.

JUDGE REPKO: -- a little bit, and what is actually capturing? Can you go ahead and present that?

MR. DROLET: Sure. Out of context here, but in general, what Avellan is, is a screenshot mechanism. Specifically, if you read the actual background and the actual summary of this invention in the time it was made, Avellan is trying to go ahead and work around the bandwidth issue at the time of being able to go ahead and do live web interactions because of the transmission rate capacity of the satellites. It was too -- it's like dial-up, you couldn't do it.

Avellan was a workaround to use heavy servers at some sort of gigabyte megafarm to go ahead and interact with the web pages themselves, make those screenshots, and then use those screenshots and transmit those images to someone like an end-user to be able to go ahead and at least see the images. That's what Avellan's doing.

So right here, what Avellan's talking about, and I can go through the actual specification, but that's what it is. Avellan, in fact, teaches away

from our -- from our claim. Avellan teaches, because of the restrictions with the satellite and bandwidth capacity, it can't at the time. Remember this is back what, 20 -- or early 2000s. It couldn't go ahead and interact with -- no, I'm sorry, 2011. It couldn't interact through the satellite systems with live web pages. It was too slow. So this is a workaround. So Avellan is purely a screenshot system. That's all it does.

JUDGE REPKO: And I want to talk about column 8. You cited column 8 here, and it -- lines 14 through 30 of column 8 talk about a broadcast mode. And this is what Petitioner was telling me earlier, and they said that, you know, there's music downloads, there's ESPN. And then on line -- looking at line 27 of column 8, it says, "The user can then tune the browser to one of the broadcast channels to receive that content." That's what Avellan says, that content, referring back to ESPN.

So how do they view ESPN or these live television feeds if it's not being captured somewhere?

MR. DROLET: The television feeds, whatever is being represented on a web page, whether it be live television feed or CNN or web page, are these mega -- you know, fast server farms, they're capturing these web -- these images. Those images then sent -- get sent out. In broadcast mode, they're doing it proactively. They're taking already CNN, ESPN, a hockey game, a soccer game, and already broadcasting those out or at least sending out those series of images from that website. That's what it's talking about. That's what it's sending out.

JUDGE REPKO: It's sending out the video captures?

MR. DROLET: Sending out images of whatever's being represented on the -- on that website or the live streaming feed. The live streaming feed itself is being shown somewhere. It's being rendered, and those images from that feed is what's being sent. There is no -- and again, Avellan doesn't -- it can't do that. It doesn't have the bandwidth. It's only sending, actually, screenshots of those things in repetitive fashion. So -

JUDGE REPKO: But how can the user tune the browser to receive that content, to receive the live hockey game -

MR. DROLET: Because -

JUDGE REPKO: -- if it's not screenshotting the hockey game?

MR. DROLET: Because in broadcast mode, they proactively go ahead and say, okay, we'll take CNN, for instance, and we'll take ABC, Fox 3, and go ahead and initiate transmission of screenshots on specific channels. And the end users themselves, again, on these terminals, can choose which stream they want to get to, right? That's what the broadcast channel is about. That's what Avellan teaches.

JUDGE REPKO: It says on lines 43 and 44, it captures that data, including audio to a video frame format.

MR. DROLET: So the tag files are what accompanies the actual images themselves. They get tagged. They get brought along with the actual screenshots, and they get broadcast to the actual end users. That's what they're receiving.

JUDGE REPKO: They're receiving that video -

MR. DROLET: They're -

JUDGE REPKO: -- the original hockey game video plus the images of the capture.

MR. DROLET: They're receiving some sort of tag file that -- and again, Avellan doesn't talk a whole lot about it, but some sort of tag file that associates either some sort of information that's being displayed along with that website feed to the end-user.

JUDGE REPKO: Thank you.

MR. DROLET: Yes. Again, because of reading the abstract -- reading the background, reading some of this invention, Avellan can't do the -- can't do what we do because they don't have the bandwidth on the actual satellite. This is a workaround. Okay. So -

JUDGE MURPHY: Well, if we were to read this as Petitioner would have us read it, I mean, Avellan also discloses compressing the image or video frame. Why wouldn't that help, if you will, with the limited bandwidth issue?

MR. DROLET: I'm not sure I understand the -

JUDGE MURPHY: They're compressing the frames to send it out via the browser.

MR. DROLET: Well, they're compressing the actual image of whatever it is to be sent out. That's what they're overcoming the transmission restrictions on the satellite.

JUDGE MURPHY: And why would that prohibit doing the same thing for a live video feed?

MR. DROLET: Well, live video feed, just like interaction with a

website, requires a whole bunch of handoffs back and forth with respect to all the different items on the actual feed or on a website. That's the type of interaction that the satellite system, at that time, couldn't handle. It couldn't handle that traffic. So that's their workaround, that's Avellan's workaround, that's the solution to the technology at this time to -- in order to get at least some sort of emulation. And again, Avellan talks about this. It's an emulated screenshot. It's an emulated feed of what's actually occurring. Does that answer your question, Your Honor?

JUDGE MURPHY: Yes. Thank you.

MR. DROLET: Let me go back to 22 if I could. Let me address the board's claim construction, institution's decisions. The direction was explicit. The board stated that a trial could produce additional evidence that may support information in the final written decision that unpatentability has not been proven. Everything that's in this decision should be read in that context and should not be understood to be a final decision.

Determination: The board is deciding on an incomplete record without full briefing, without depositions, they want the complete specification analysis the Patent Owner has now provided. Trials produced the evidence that was a complete institution. The specification passages are now before the board, fully briefed, and with our expert support. Dependent Claim 9 was not analyzed through a claim differentiation lens at the institution. The complete claim logic analysis was not before the board. This is precisely the posture the board anticipated when it said its findings were preliminary.

Slide 23. If the board's institutional construction of Content Provider as a broad term encompassing a transmission gateway were correct, Claim 9 would have no narrowing of a function at all. It would be superfluous. Superfluous claim language is impermissible under several things such as doctrine. The board cannot adopt a construction that makes an express dependent limitation meaningless.

I'll go to Slide 11. I think it's continuing your last question concerning Avellan. So here we capture the critical distinction of capturing an image of a CNN web page is categorically different from transmitting a live CNN video stream. A static web page screenshot is not a media stream. This is not a close technical question. It's a categorically distinction -- categorical distinction between two entire types of systems.

Petitioner argues that Avellan in columns 8, lines 8 -- 18 to 21 discloses live-streaming television feeds by listing CNN, BBC, and ESPN. This arguably is textually incorrect. Those lines of Avellan list the broadcasters as suitable sites, meaning websites that Avellan's rate can -- gateway can screenshot. Avellan captures images from those websites. It does not stream live television. It transmits static images of web pages that happen to belong to television broadcasters.

Petitioner's expert conflated a website owned by CNN with a live CNN broadcast stream. Those are different things. A person ordinarily skilled in the art would understand immediately that screenshotting cnn.com is nothing like receiving a live broadcast feed from CNN for cable distribution.

JUDGE REPKO: But in broadcasting that, they are pointing to the data that comes from the video, right? I mean, there are -- there's live streaming feeds that the user can tune into. I think that's what their position is. If they're going to see the user -- an end-user's actually going to be able to view the hockey game. They're not focused on the static.

MR. DROLET: They're -- the end-user's seeing screenshots, repetitive screenshots of the live hockey game. They're not receiving live transmission feed. That's the difference. That's a difference between a remote desktop and any of us do a remote desktop to somewhere else. Same thing. We're not engaging directly with that website. We're receiving a -- an emulation of what that website is. It's a static image. We as humans can see so many frames per second. That's what the emulation is. That's what it's doing. It's a workaround against a live feed. Live feed can't be handled by the infrastructure of a satellite.

JUDGE MURPHY: But why would Avellan -- I think Judge Repko's point is why would it characterize streaming a live television feed as broadcast mode if it were doing what you say it's doing?

MR. DROLET: So stand by the interpretation that Avellan cannot go ahead and transmit that. Not capable because of the satellite. And what it's actually stating that says is taking static images of the -- of that live feeds, those websites, and translating to those series of those screenshots.

JUDGE REPKO: So going back, the claim notation we're talking about is Claim Notation Element 1D: "Generating a temporal sequence of screen captures." Does Avellan teach that? You just said like it -- it's static.

Is that what you're saying? It's not temporal? I guess I just want to make sure I -- tied to -- your argument to the claim language. That's what you're talking about?

MR. DROLET: Right. Your Honor, I'll -- I couldn't get that rebuttal, so I have the -- specifically the terminology that I have written, so I don't misconstrue what we said in our reply. Our contention is still that there are two different things. So if you're asking -

JUDGE REPKO: What's two different things?

MR. DROLET: -- if you're asking -- if you're asking does Avellan teach Sub-element 1D -

JUDGE REPKO: Yes.

MR. DROLET: -- because it's temporal, I'll take -- let me answer that in rebuttal once I look at our response, please.

JUDGE REPKO: Okay. So what are you actually saying in this -- on this slide, Avellan's actually missing? What claim element?

MR. DROLET: So this right here, it's the fact that it's -- when they say that they're actually capturing a live stream, it's not a live stream. They're capturing static images from a live stream. Two different things. It's not a media stream. A media stream consists of a packetized information. It's temporal. It's actually coded. It actually has some sort of ability to go ahead and meet the code on the other end. It's not a media stream. This is just successive transmissions of static images, two distinct things. It's not a -

JUDGE REPKO: It says it's capturing the video frame format,

though. In column 8 of Avellan, line 44, it says, "In broadcast mode, this server captures video frame format." That's not static.

MR. DROLET: No, but it's a compressed file that's being sent. It's not a live stream. It's not a media stream. That's my distinction here.

JUDGE REPKO: You're saying we should read media stream to exclude compressed files.

MR. DROLET: Yes. The media stream itself, by its nature, has a temporal relationship to each different piece of information. It's all time-related and it's actually coded and it has packetized information. It's sent with the ability to be sent, coded, and to be decoded on the other side.

JUDGE REPKO: And it's not compressed. That was my question.

MR. DROLET: If you're asking specifics about whether or not a media stream itself has any sort of compression, I can't comment on that right now. What I'm stating is that a media stream is different than sending successive files of compressed, or succession -- a succession of compressed files, whether it be video compressed files or static files. A video file is just that. It's a compressed video file and it's sent. It's not an actual media stream. I guess that's my distinction.

JUDGE REPKO: Okay. Well, 1D says generating the screen captures, and then 1E requires assembling the media stream using those stream captures.

MR. DROLET: Correct.

JUDGE REPKO: Right? And their position is that Avellan creates the screen captures of the streaming feed -- of video and then

assembles a new stream from those screen captures of the streaming video on the screen.

MR. DROLET: Well, that's an incorrect reading because a media stream, by its actual definition, again, one -- another term that we talk about in our surreply -- in our reply, a media stream reading national specification means specific thing, which is not disclosed by Avellan.

JUDGE REPKO: It says the word streaming video feeds. In other words, the words that Avellan uses is streaming television feeds.

MR. DROLET: So -

JUDGE REPKO: Line 20, for example, of Avellan column 8.

MR. DROLET: So I'm not sure I answer -- I understand your question, Your Honor.

JUDGE REPKO: How can that not be a media stream? It says streaming television feeds.

MR. DROLET: It's not sending streaming television feeds. It's sending files, compressed files, capturing images of -- or video compressed files from that feed. It's not the same thing.

JUDGE REPKO: Okay. Thank you.

MR. DROLET: So Petitioner's demonstrative cite Avellan states that, "The broadcast channel can be configured to receive live content." The Board should note that this -- what this passage actually says. It says the channel can be configured to receive live content. Not that the channel transmits the live media stream to a cable operator. Configuring Avellan's broadcast channel to pull from a live streaming website still results in

Avellan's gateway screenshot, whatever the browser renders from that URL at a given moment. There's a screenshot of video player's web page, not a live media stream assembled for cable broadcast. Column 8, lines 27-31, changes nothing about Avellan's fundamental screenshot delivery architecture.

Slide 12. Avellan fails on four independent claim elements, any which -- any one of which is sufficient. First, no request from Content Provider. Every request in Avellan originates from user computers 104. Individual end users: the direction of information flows reversed from the claims. In the patents, the cloud system receives requests from operators. In Avellan, end-users request content from a gateway server. There is no cable or satellite operator anywhere in the Avellan system. Second, no playback of a media stream. The word playback does not appear in Avellan's specification. Avellan transmits a sequence of static web page images, not a temporally continuous media stream. Discrete images are not a media stream. Playback requires temporal continuity, synchronization into coding. Avellan -

JUDGE REPKO: No, there's playback. I just want to interrupt you. It says, "The user can view the streaming broadcast." How is that possible if there's no temporal continuity? It's a hockey game.

MR. DROLET: So the end-user can see succession of static images being sent. It emulates the live streaming feed. It is not by the actual nature of Avellan existing in the content -- context of what it represents, it cannot do that.

JUDGE REPKO: Temporal continuity is there, though. Even if they're static images -

MR. DROLET: If -

JUDGE REPKO: -- they may be temporally continuous?

MR. DROLET: So if you're asking, is there a temporal continuity with static images? Yes, but there's no -- there is no correction mechanism. There's no correction mechanism, whether there's five frames missing, two frames missing, ten seconds go by. The fact that you have a succession of different screenshots is temporal in that sense, but I'm making the point that it's not temporal with respect to a media stream.

JUDGE REPKO: So you think that the user is watching a hockey game, they're seeing, like, a part of the hockey game, and then it stops for a few frames, and then they see another part, and it's, like, all discontinuous?

MR. DROLET: Well, that'd be a difference. That's a difference in media stream and actual what Avellan teaches. Avellan teachings, whatever -- whatever's being sent. Whatever some -- whether someone sees a ten-second lapse between frames, one-second lapse between frames, the end-user doesn't know. It's just receiving whatever compressed images are coming through in this data transmission.

JUDGE REPKO: Getting these compressed images and so they're not -- they can't even watch the hockey game because it's all disjointed.

MR. DROLET: Well, whether the refresh rate's one second, five seconds, I don't know. All I'm saying is that Avellan, in its teaching, doesn't comply with anything just with what I've just said. It's taking the

screenshots, sending them off through the end-user, the end-user sees them, it emulates seeing the thing in live.

JUDGE REPKO: Yeah. So I mean, line 66, column 8 of Avellan, they say, "Continuously captures the broadcast data at the networks." So you think that means it's just, it's discontinuous in a way that the user might see, like, parts of the action of the hockey game, but won't see -- they'll be missing a couple seconds because of lag and stuff.

MR. DROLET: It's asking me to guess. I can't opinion on -- I can't provide an opinion on that, Your Honor.

JUDGE REPKO: Okay.

MR. DROLET: All I'm saying is I'm contrasting what Avellan teaches to what our claim language is.

JUDGE REPKO: So you think that's what Avellan teaches, though, it's discontinuous playback?

MR. DROLET: You don't know. It's sending screenshots of a different website within its own capacity.

JUDGE REPKO: Okay. So it says, "broadcast data." So you think that's just sending -- I just want to make sure I understand what you're arguing and what you're -- what you believe the word media conveys versus what Avellan's actually teaching. So the hockey game, again, the users choose a certain hockey game, that page of the website can be sent in broadcast mode. This is what Avellan's teaching. Stored at the storage device, and then the gateway server retrieves video frame format. So that video frame format is not temporally continuous? It's disjointed, it's not

media stream?

MR. DROLET: It's not a media stream.

JUDGE REPKO: Okay.

MR. DROLET: That's for sure. And that's our point of contention. It's not a media stream, and that's one of the areas that it fails our patent.

JUDGE REPKO: Thank you.

MR. DROLET: Slide 13. There's no assembling the media stream. Avellan compresses a single web page image at a time. Compression of a single image is not assembling the media stream. The claim invention requires assembling a plurality of multimedia items of different types, audio, video, metadata, into a stream for cable or satellite broadcast. Avellan has no assembly step.

Fourth, no broadcast in a broadcast media channel. Avellan operates in unicast mode, one user one image, or broadcast mode, the same cached web page image pushed to multiple desktop computers. Neither mode is a broadcast media channel in the cable or satellite sense. Neither delivers a multimedia stream to cable headend for distribution on a cable or satellite channel. These are architecturally unrelated systems.

JUDGE REPKO: You've made that point. I just want to emphasize that you have about 16 minutes left, so you may want to adjust how you're -

MR. DROLET: Yes, Your Honor.

JUDGE MURPHY: Yeah, let me direct you to the Farber reference, please. If you have Farber at column 5. We were having this

discussion earlier with Petitioner's Counsel, so I wanted to get your response to what Counsel said.

MR. DROLET: So let me get to Farber.

JUDGE REPKO: And I also want to remind you, I'd like to leave time to also talk about the parameters in the other 350 case.

JUDGE MURPHY: So we're in Farber at column 5, lines 33 through 38. Are you with me, Counsel?

MR. DROLET: Yes, Your Honor. I'm sorry. I'm trying to get to my -- yes, Your Honor.

JUDGE MURPHY: You have your screen up? Okay. Or the -

MR. DROLET: Now in Slide 17, as we're going to talk -- I'm sorry.

JUDGE MURPHY: So in Farber, we had the discussion with Counsel about a remote source being a cloud service source. And Counsel's argument, as I understand it, is that Farber says the data sources may or may not be located in a single location, may or may not be co-located with the data carousel subsystem. And so in Farber's system, that means if it's not located in the single location, it's a cloud service. What's your response to that?

MR. DROLET: No, Your Honor. There's no enablement of a cloud service or cloud retrieval device. Again, Farber is purely a solution to prevent screen burnout on a -- on a display. Its intention there to go ahead and get data to go ahead, and act upon is in a -- in discrete locations. It's just, Farber's mentioned it can be local, remote, but it's still a discrete

location stored somewhere. There's no enablement of -- or even mention of any sort of cloud engagement to go ahead and get data for Farber.

JUDGE MURPHY: So you're saying it can be a remote location but not -

MR. DROLET: It can be a remote stored location.

JUDGE MURPHY: -- but not necessarily a remote cloud service.

MR. DROLET: It's definitely not remote cloud service, and they even mentioned not even enabled.

JUDGE REPKO: How -- can you explain what the -- what cloud service means to you? How is that not something that's co-located?

MR. DROLET: So cloud service means something that you're engaging either with a web page or some sort of HTML component and allowing to go in and interact with multimedia items, of course, of some sort to extract data. Farber does none of that. Farber is a triggered state system. It actually follows the path. I'm going to go get this, put it here, store it, play it a different time. That's it. There's nothing in -- enabling in Farber even discloses. Yeah, the word says, oh, remote or other -- remote, but it's still a fixed location.

JUDGE REPKO: Well, I don't want to get into what Farber says. I'm just -- I'm curious again about the claim construction. If you're thinking about cloud service, you want us to interpret this a certain way. I heard you said a web page, requires a web page?

MR. DROLET: No. I said that cloud service means that you'd be engaging with something other than a physical hard location. You'd be

actually engaging the web, engaging the website, some sort of online content provider of sorts to go ahead and get that data. And Farber doesn't teach that whatsoever.

JUDGE REPKO: So if it says, "not co-located," how is it not engaging with the website or something like that? I don't see how -- can you make that -

MR. DROLET: All Farber disclose -- infers taking a stored location. Again, reading the actual specification itself, and what Farber teaches is actually taking physical stored data and pulling that stored data from somewhere, some sort of stored medium. It's not talking about engaging with a real time website or content provider to extract data. It has none of that.

JUDGE REPKO: So you think it has to do the content provider as well? You need that as part of the process?

MR. DROLET: So I mentioned content provider only as a -- as an example of cloud-based service, which Farber does not teach. So anything, a website, some sort of entity that could provide that data is not taught at all or even inferred.

JUDGE REPKO: So if you have some data that's not co-located, how else can you get it other than --

(Simultaneous speaking.)

MR. DROLET: If it is not located -- stored in location A on a CD disk bank, it's located in location B in another CD bank, or it is located on CD hard drive on this.

JUDGE REPKO: I see.

MR. DROLET: It's not located on the cloud. It is actually physical location. Again, the technology reading this patent, that's what it is about.

JUDGE REPKO: I see. So you're saying like the data in Farber, the non-co-located data, could be sitting on a static media somewhere in -

MR. DROLET: Correct.

JUDGE REPKO: -- somebody's house, for example.

MR. DROLET: Correct.

JUDGE REPKO: Okay. I see. Thank you for clarifying that.

MR. DROLET: I apologize. You wanted me to go to Farber, and I'm jumping around, Your Honor.

JUDGE MURPHY: No. We were following up on exactly what we wanted to follow up on.

MR. DROLET: Well, 11 minutes left. Let's go to -

JUDGE REPKO: And if you have time to talk about the Wannamaker reference and the parameters in particular -

MR. DROLET: Okay, let's -

JUDGE REPKO: -- that would be -

MR. DROLET: -- jump Wannamaker.

JUDGE REPKO: And in particular, it'd be helpful if you could clarify whether the claim construction that Petitioner pointed us to from the District Court claim construction, do you agree with their characterization? Do you agree that we should adopt that construction here in this proceeding?

MR. DROLET: I can't comment on that until I look at specifically what the construction entails. I'm not sure. Is there a specific question about that construction you're asking about?

JUDGE REPKO: Well, I mean, just as a general matter they said that, you know, parameters via MPEG outputs. How should we construe that here in this proceeding?

MR. DROLET: So with Wannamaker, we have to understand what a Wannamaker is. Wannamaker itself was a short-lived solution when a transmission from coax and RF set-top boxes for homes and the emergence of the web. What Wannamaker did is provide a short-term solution that really provided a historical short -- had a short life cycle. It actually went and provided hardware. They had an operator's location to go ahead and try to commercialize website components and such so that traditional, limited set-top boxes, commercial set-top boxes, which were -- didn't have much capacity for computation to do much more, could be -- could -- they could take -- commercialize those assets.

So what Wannamaker does, in detail, in this specific thing for the Motorola, is establish hardware, and to head into operator station to go in and emulate some of these webs -- web -- web-based features that they can be commercialized using the existing commercial set-top box. So the entire infrastructure, the reason it is so detailed is because they have so many different things that are trying to emulate a live feed, which can't be done through the traditional set-top boxes. Wannamaker provides a -- at least a short-term solution for the commercial entities to try to commercialize some

of these internet things.

They could be movies. They could be websites, but the infrastructure at the time, with the existing set-top boxes and the RF cable, the coax, couldn't handle it. Couldn't do it, specifically because how it was set up. So what they do, they set up these different components that went ahead. And the different components are called different things that are similar to our patent plans, but it's not multicasting. It's not doing what our patent does. It goes ahead, and is images and it takes screenshots.

It takes different types of information existing on available website resources, and then goes in and offers them up through the -- as you mentioned earlier, like with the framing, the layouts, so that the end user could receive, if they choose to, something that looked like a movie. In fact, they would receive something that looked like the movie, but it wasn't the actual true live feed from the -- from the website. So Wannamaker provides that infrastructure.

JUDGE REPKO: All right. So focus on the claim language here. Limitation 7A says, you know, "The multicast server is configured to output the parameters via the MPEG outputs." Do you believe that it -- Wannamaker teaches that?

MR. DROLET: No, there's no multicast server in Wannamaker. The term multicast refers to go ahead and send out information that replicates the P&I frames of the different video so that the -- at least the limitations on the set-top boxes could receive something and have something emulates the video on the end-user side. So the multicast feature is taking

those videos, and you covered it earlier with the different features that it has.

I mean, let me -- I think this one's better here. There we go. I'm now looking at Slide 117. 117, okay? It talks about the different components that's actually Wannamaker is using, okay? And I think that helps answer the question. Utilizing the set-top boxes, the actual -- the TV navigator, and actually going ahead and sending the information to the end user.

JUDGE REPKO: Okay. So on page 43 of your Patent Owner response, you're talking about the encoding and it lacks the parameters. Can you kind of discuss that argument?

MR. DROLET: So the parameters that Wannamaker discusses is modifying that information that exists from the internet, from the websites, into a format that can be utilized by the restraints on the actual set-top boxes themselves. The actual exercise that Wannamaker does is deliver that images, the sound, to the actual end user. And the reason it's complicated is because it has to go in and could be -- it is constrained by the set-top box restrictions so that's what Wannamaker does.

The parameters that it talks about is how to do that, how to actually do that, because the existing infrastructure in commercial set-top boxes and residential houses at the time could not handle the actual webs -- web information itself straight. Mainly because it wasn't set to do that, and because with coax and RF capability of the commercial residences.

JUDGE REPKO: Okay. Thank you. About five minutes left.

MR. DROLET: Okay. So I've been jumping around. We've

talked Avellan, Wannamaker briefly. We can go to Farber. Oh, we'll go to Slide 28. Try to hit the high points here, we got left. So Slide 28 talks about the question the board asks specifically about whether maintaining generation in failure cases requires continuous generation or encompasses some sort of lag or pause. We believe in Slide 30 specifically answers that question. We cite four critical passes -- passages.

The monit block ensures the process running Media Parallel encoder, or plug, keeps running at all times, and it does not stop at the failure. Second, the multicast -- multiblocks contain a recording function for stream-level redundancy, recording for use in case of failure. Third, the fault-tolerant mode provides immediate prerecorded audio playback upon failure detection. Fourth, ping monitoring timeout immediately triggers pre-recorded content with no gap, no lag, no human intervention. Keeping running at all times, do not stop upon failure is not the language of occasional interruption. It's language of continuous uninterrupted operation.

The specification answers the board's questions -- question. Maintain generation means uninterrupted generation, not a system tolerating some lag or pause. Slide 31. "Even if the Board adopts a more permissive reading, even if the Board declines to require strict continuity. Wannamaker still" phase – "fails it. Wannamaker's own disclosure admits its failure response terminates generation." Wannamaker paragraph 320. "The operator can telnet into the system and fix the problem or restart the system. Failure response is restarting the failed component or restarting the entire system as necessary."

"Generation that stops and starts is not generation that is maintained under any reading of the term." Slide 43. I want to address the Board's finding concerning the caching unit. The Board institution stated claim one does not limit caching unit in any way. The statement is not a claim construction under Phillips. Under Phillips, the terms are given that ordinary and customary meaning is a certified preferred -- person of ordinary skill in the art, in view of the specification of the entire claim. Limitation is not interpretation as commensurate with the specification.

Slide 45. "The '441 specification describes the caching unit across multiple sections with specificity." Column 5, line 6 through 16, "The caching unit encodes and transcodes of multimedia files downloaded from the cloud. Keeps updated admitted metadata, and creates customizable screens for the cable operator." Column 6, lines 33 through 38. "The caching unit is the component that encodes audio and video. Can use the disc space in the media plug." And then Figure 7 shows the caching unit's architecture, which includes HTPTV and RTSP operating system services.

Slide 47. "Independent Claim 25 of the '441 Patent expressly defines what a caching unit does. By listing six operational functions, it must perform. Receiving a request from a content provider, obtaining content from external sources, rendering a webpage by a browser, generating temporal screen captures, assembling a media stream, and providing the stream at a multicast unit." Is authoritative evidence that from within the same patent of a -- what a person of ordinary skill in the art would consider a caching unit.

Slide 15. "Farber is absolutely silent on the term caching unit. The word does not appear in Farber's disclosure. Anticipation cannot be based on silence. Equating a passive storage device with a computing-intensive cache unit of '441 Patent improperly broadens the claim scope."

And I'll reserve the rest of the time for rebuttal, Your Honors.

JUDGE REPKO: Thank you.

Petitioner, almost 30 minutes for rebuttal. A little shy, 30 minutes. Go ahead and let me know when you're set up and ready to go.

MR. JUGLE: Rob, this is mine up here.

MR. DROLET: I'm sorry?

MR. JUGLE: This was mine not yours, right?

MR. DROLET: Not mine. Thanks for asking.

MR. JUGLE: All right. I'm ready. So to begin, during my opening presentation the board asked if there was any additional support in Avellan we had around 1D. I want to point to a few other parts of Avellan that I think give the column 5 reference I primarily discussed just a little more context. You already referenced them in Patent Owner's response, but I'll just reiterate them.

So first, the abstract describes that in broadcast mode, “A gateway server periodically or continuously images broadcast data, e.g., popular websites, compresses the website images, and stores the compressed website images at the gateway cache.” So as an abstract of the entire disclosure Avellan is saying, I'm continuously taking images of what it describes as broadcast data, and it gives an example of popular websites.

JUDGE REPKO: Does it say -

MR. JUGLE: That --

JUDGE REPKO: -- it compresses it to video -- or to images, and then uses the images to create video of the broadcast data in the abstract? That's the thing, it kind of leaves that open.

MR. JUGLE: In the abstract -- right. So the abstract just says, I'm going to broadcast all the compressed broadcast data to all of the millions of computer subscribers over a broadcast device. So if we go to column 2, lines 27 through 34, it says, "In a broadcast mode, gateway service periodically or continuously images broadcast data."

So the same thing as the abstract, essentially. It says, "The website images", so it is talking about capturing plural images, capture the graphical features at -- and that's at column 2, lines 59 through -- or 58 through 59. Going to column 8 at -

JUDGE REPKO: So we know column 2, you said, it compresses images in the cache. So we still just have images at this -

MR. JUGLE: Right.

JUDGE REPKO: -- point, right, of some broadcast data?

MR. JUGLE: Right.

JUDGE REPKO: So where do we go from those images and kind of connect it up to the video files?

MR. JUGLE: So -- okay. So column 6, lines 50 through -- 52 through 54 describe an embodiment in which a webpage responds to this image compressed or turned to the browser using a differential burst video

transmission. So there's embodiments where Avellan talks about sending video.

JUDGE REPKO: That's what I'm wondering -

MR. JUGLE: And that's -

JUDGE REPKO: -- about the connection between, like, there are some modes that will download the video, correct? I mean, are we talking about two different things? And you're going to give me some more stuff here, I'm sure. But -- like, what I'm wondering is, are they downloading the streaming videos separate from creating snapshots of the video on the screen?

MR. JUGLE: So I think Avellan discloses a unicast mode and a broadcast mode, and mostly we talk about the broadcast mode. Because the unicast mode seems to be directed to, like, projecting images of a fully interactive webpage to a particular user -

JUDGE MURPHY: Counsel --

MR. JUGLE: -- so that they can click on -

JUDGE MURPHY: Can you pull that -

MR. JUGLE: I'm sorry, my -- got to push it a little.

JUDGE MURPHY: Yeah.

MR. JUGLE: Okay.

JUDGE MURPHY: Is that -- let me just our -- ask our techs. Can you speak into the podium mic?

MR. JUGLE: Yes. Can you hear me?

JUDGE MURPHY: Are we good, Greg? Oh, I just got a message.

Anyway, just -

MR. JUGLE: Okay.

JUDGE MURPHY: -- go ahead.

MR. JUGLE: So that unicast mode seems to be envisioned as providing a website that a user can interact through. So it's imaging these websites, producing a streaming file that -- of those websites, and it is including these tag files that the users can interact through. I don't think that works if it just sends a package of download, because then there's no interactivity back and forth. But that all aside, we mostly in the petition rely on the broadcast embodiment. And -- so, the broadcast embodiment, for example, at column 8, lines 42 through 46, talks about, "Gateway server retrieves the desired data from Networks 152 -- 150 or 152, capturing that data, including audio to a video or image frame format, compressing that video data, and stores the compressed video data in the gateway of the cache. The cache acts then to send that to the users."

I don't think there's anything in Avellan that says, I'm just sending a file, because it is -- it talks repeatedly about providing live-streaming. And I'll also note that there was no claim construction put forth for media stream in Patent Owner's briefing, in Patent Owner's response. And what I heard up here was that this media stream requires a lot of specific requirements, and that wasn't argued. And I don't think there's anything in the claim or Patent Owner's patent specification that supports that narrow of a reading of media stream. So I think Avellan discloses the -- you know, the plain and ordinary interpretation of what a media stream is.

Because it describes that -- what the user would receive, and what the user would want to receive, and what its purpose is is to provide this live-streaming broadcast. And the claims don't require much more than that. They don't require that it be a live-streaming video and a media stream or anything like that. What it required was that you render webpages and you take a temporal sequence of screen captures, which it sounded like Mr. Drolet said Avellan does. It sounded like he said you send a continuous set of screen captures that get updated.

And the -- or the claims don't require that that's five frames per second or 30 frames per second or enough to be full motion video or enough to give a chunky representation of what's going on. That's not in the claim. It just requires that you have a temporal sequence of screen captures that are continuously captured -

JUDGE MURPHY: Well, let me -

MR. JUGLE: -- and illustrated dynamic change.

JUDGE MURPHY: Yeah. In Limitation 10F in the '441 Patent, for example, it's -- it -- the limitation says assembling the at least one media stream using the temporal sequence of screen captures. Would that include something other than a live stream?

MR. JUGLE: I don't think so.

JUDGE MURPHY: Like a temporal sequence of static images, for example.

MR. JUGLE: Right. So if it's assemble, I think all assembly means is you're putting it into a format to an extent which Avellan says,

because it says you can put these into a video frame format. And -

JUDGE REPKO: So what if it is like a newspaper, a static image of a newspaper scrolling through, is that -- would that meet the claim?

MR. JUGLE: If you're scrolling through it over time, I think so.

JUDGE MURPHY: And what about the -

MR. JUGLE: As long as that scrolling illustrates some dynamic change, because that's what the claim requires.

JUDGE REPKO: The content does have to correspond to the plurality of multimedia items. So it has to be some interactively -- how we view multimedia. It can't be more than text.

MR. JUGLE: So it says it is a plurality, so let me make sure I am on the limitation you're talking about.

JUDGE REPKO: Well, I guess looking at 1B from the 3 -

MR. JUGLE: Yeah, I just want to make sure I have the -

JUDGE REPKO: -- 49 case. So that -- it does define media stream, I guess, in 1A, right? The one -- media stream includes a plurality -

MR. JUGLE: Oh, do you have -

JUDGE REPKO: -- of multimedia items of different types.

MR. JUGLE: Right.

JUDGE REPKO: So just text seems like the plain language of the claim would exclude that.

MR. JUGLE: So I think if you only had just an image of -- well, it's a capability too, right? Or this is a method -- this is a method claim. So yeah, if you just -- if the only disclosure was taking one page of a newspaper

and sending that -- an image of that, you probably don't get there with an Avellan.

But Avellan discloses a lot more than that. It discloses, as I said at Claim 8, that you're capturing these -- you're capturing video and audio, and audio has to continue over time. You can't have audio that you captured that isn't over time. If you hear an instantaneous sound, it doesn't sound like anything.

JUDGE MURPHY: And what's your response to Counsel's argument that Avellan was not technically capable of broadcasting?

MR. JUGLE: I don't think there's any support for that in Petitioner's.

JUDGE MURPHY: Do you recall if that was argued in the Response or Sur-reply?

MR. JUGLE: I mean, I think, as I recall, the Patent Owner made some broad arguments that none of the references are enabled. I don't think they were fully explained. I don't think they were explained with independent analysis. I don't think they were explained with supporting references. So I -- at an extremely high level, maybe that was raised, but I don't think it was raised in full or with evidence.

JUDGE MURPHY: Thank you.

MR. JUGLE: All right. Next, I'm going to briefly talk about claim construction because there's a lot of claim constructions the Patent Owner is putting forward, and they are -- well, one, never explicitly argued in any of the Patent Owner Responses. And two, I don't think they're really reading

Phillips correctly. Phillips is very clear that you're not supposed to read specific embodiment of the inventions into the claim language. And Phillips said, we've warned repeatedly against confining claims to the embodiments.

And Patent Owners can say, well, this is an embodiment but it says it is an example. That's pretty much the language of an embodiment. So it strikes us that, A, they're trying to read embodiments into the claim language. And B, most of the arguments they're making are not -- weren't fully raised in the Patent Owner Response, and they waited until the Sur-reply to bring claim constructions, which isn't proper. There were new arguments, new evidence in favor of their claim instructions that could have been brought, given that they knew the Board's position in the institution decisions, and the Patent Owner Response and work.

Also, Mr. Lipoff, I will address that here. So Mr. Drolet is correct. We didn't really respond to that in the Reply. They cite one portion of Mr. Lipoff's testimony in all of the Patent Owner Responses, which is to an exhibit that doesn't even exist. But I think from context, it has to be the first day of Mr. Lipoff's testimony, which I think was Exhibit 2053 to the '074 Patent. Because that's the only day that had enough pages to include these citations. And what these citations actually say, the first one they reference in their Patent Owner Response, which is column 116, line 23 through 117, 18, is literally just Mr. Drolet reading from the specification verbatim.

It doesn't tell us anything about Mr. Lipoff's testimony. And then, the second portion in the Patent Owner Response is column 120, line 16 through 121, line 11, which I have up here on the screen. Which basically

they ask Mr. Lipoff what figures he's relying upon. And he says, I don't recall making any reference to Figure 2. I don't think that supports their argument, and there wasn't really anything to say in response because the argument is just empty.

So that's all I have now. Today, Mr. Drolet, excuse me, referenced some statements that Mr. Lipoff made in his second day of deposition that wasn't in the Patent Owner Response, so we couldn't have responded to it. We don't think it should be credited now, but at a high level, all Mr. Lipoff said was, I gave an independent opinion. I looked at the draft of the petition. There were certain things that were said that I didn't think I needed to supplement, and other things that I provided my opinion on.

We don't think there's anything improper about that. There isn't any cases they've cited that says an expert's supposed to prepare their declaration in isolation or anything like that. We think it's fairly routine that experts work with Counsel to prepare both the declaration and the petitions. All right. So -

JUDGE REPKO: I would like to ask you about Farber.

MR. JUGLE: Sure.

JUDGE REPKO: The issue of cloud service and a remote location in the cloud service. My understanding from Counsel for Patent Owner is that it -- something that's not co-located or located in a single location could be a separate physical location rather than something cloud-based.

MR. JUGLE: Well, I think everything in the cloud is eventually located somewhere physical, so I don't think that argument is particularly

availing because -

JUDGE REPKO: I mean, is it simply a connection through any network through another source?

MR. JUGLE: To the cloud?

JUDGE REPKO: Yeah.

MR. JUGLE: Cloud wasn't argued for construction, and I think a reasonable interpretation means if you're going out to some other source, yeah, that's retrieving it from the cloud. And a person of skill in the art would recognize that if you can retrieve something remotely, you can also retrieve it from a cloud system.

So that remote system, it could be somebody's server at their next-door neighbor that they dial up into, like it's 1994, or it could be a cloud server because it just says it's remote. And a person of ordinary skill in the art would understand how to access a remote system in the form of a cloud server. Even at the time of these patents, which was in the early 2010s, the cloud was a thing at that point.

JUDGE MURPHY: So he pointed us to the possibility that it was stored on disc, a CD, and you can do it yourself.

MR. JUGLE: I don't think Farber says that. I guess that's a possibility. But I also don't think there's any limitation in the definition of cloud that prevents a cloud remote service from spinning up a tape, or a CD, or other long-term storage to access that information if it needs to.

So Farber doesn't limit the remote system to a CD player. It doesn't say that anywhere. But even if a cloud server is going to retrieve that

information from a CD, I think that can be the limitation.

JUDGE REPKO: But if it is not co-located, it could be your neighbors walking that CD over to your house. Is that fair being a cloud service?

MR. JUGLE: No. I don't think so. I -- or is that -- I don't think that's a fair reading of what Farber is doing either. In the context of Farber it's saying, I'm going to retrieve these things. It's not talking about sending a mail-in request or something like that, so.

JUDGE REPKO: So your issue is really with how we read Farber. You're saying it's inherent, essentially. If it's not co-located, it's inherently in a cloud -

MR. JUGLE: No.

JUDGE REPKO: -- on a -- in a cloud service. And that's what the claim says, right? Cloud service.

MR. JUGLE: Yeah. I -- what I'm saying is that a person of ordinary skill in the art would read Farber and say, if I'm going out to the cloud, or if I'm going to a remote server, I'm going out to -- I can go out to the cloud to get that.

JUDGE REPKO: It doesn't say from a server, it says not co-located.

MR. JUGLE: It -- well, Farber has a separate place where it describes the data sources connecting to a server.

JUDGE REPKO: So you -

MR. JUGLE: So -

JUDGE REPKO: -- your argument is you think there's something -

MR. JUGLE: So I think when you read that altogether, it would provide a person of ordinary skill in the art with an understanding that this could be a -- this could -- is a cloud system.

JUDGE REPKO: I just want to make sure I get your argument clear.

MR. JUGLE: Yes.

JUDGE REPKO: So you're -- it's two things. One, it's not co-located. And two, there's a server there and that's what leads us to believe that there is a cloud service, essentially. It -- Farber, given there's a server, that precludes their interpretation that there's a neighbor with a CD -

MR. JUGLE: Right.

JUDGE REPKO: -- that he's going to walk over to your house?

MR. JUGLE: Correct.

JUDGE REPKO: Is that correct?

MR. JUGLE: Yeah.

JUDGE REPKO: Okay.

JUDGE MURPHY: Yeah. And my only question there is, your ground one in IPR351 for the '441 Patent is anticipation. And so, for that limitation, are you -- I'm trying to check the petition. You're relying on inherency for that?

MR. JUGLE: So we're -- I -

JUDGE MURPHY: No, we talked about inherency in terms of

determining the storage.

MR. JUGLE: Yeah, right and -- but inherency requires a necessary -

JUDGE MURPHY: It does.

MR. JUGLE: -- right? So I -- we didn't make an inherency argument. What we said is that this -- it's disclosed because it's remote, and that's enough. You can understand that remote server to be a cloud server.

JUDGE MURPHY: Okay.

MR. JUGLE: It's -- and -

JUDGE MURPHY: I mean the -

MR. JUGLE: -- we didn't construe what cloud means, so this -- saying a remote server is or isn't inherently a cloud server, it's just an argument we didn't make because cloud was interpreted broadly, right? It -- and in other words, cloud can encompass a remote server. That's the construction argument.

Is that a person of ordinary skill in the art would look at the cloud and say, this can include a remote server. We didn't -- Patent Owner didn't raise a countervailing construction or have any justification for this narrow reading that they're putting on it now. So -

JUDGE REPKO: In claim terms, cloud -- oh, excuse me.

MR. JUGLE: I'm sorry. I -

JUDGE MURPHY: Yeah, let me just so I'm clear. So the fact that it's remote and it's a remote server connected to the data carousel subsystem is sufficient, in your view, for anticipation?

MR. JUGLE: Yes.

JUDGE REPKO: I just want to clarify, it's cloud service.

MR. JUGLE: Yes.

JUDGE REPKO: Not cloud server. So the service, can you explain how that's inherent in Farber?

MR. JUGLE: Well, again, we haven't said it's inherent.

JUDGE REPKO: Or how -

MR. JUGLE: And so -

JUDGE REPKO: -- how is --

(Simultaneous speaking.)

JUDGE REPKO: -- by Farber?

MR. JUGLE: So any of the things I just said where I said server, I think if you substitute the word service, my argument holds. I don't think there's any particular construction that's placed on service that requires any more explanation from Farber. When it's broad, when Farber discloses a remote look -- retrieving the data from something that isn't co-located, or in other words is remote, that could include a server, that's enough to satisfy a cloud service.

JUDGE REPKO: Cloud service, not co-located and in communication with a -- another server?

MR. JUGLE: Correct.

JUDGE REPKO: Okay. Thank you. I have no further questions on that.

MR. JUGLE: So briefly here, Patent Owner said Wannamaker

doesn't have a multicast server. We went through a slide. Wannamaker discloses a multicast server, so I don't feel the need to rebut that.

Caching unit of Farber, I think their argument about the requirements of a caching unit only helps them if we were making the argument that everything happens at the storage unit of Farber. And as I said, we're not. So I don't think -- I think that's just two ships passing in the night here.

So I think the last thing I have to say on rebuttal is I'm going to briefly address arguments that were made in Petitioner's slides that he didn't quite get to, and also in their Patent Owner response regarding our obviousness combinations. And that is just to note that KSR is pretty clear about when it is appropriate to do an obviousness combination. And we don't think that reading a KSR that's presented in the Patent Owner response or the slides is really fair. KSR is pretty clear that when you have known techniques, it's simple for an -- a person of ordinary skill in the art to improve similar devices the same way, and that when you do have that, using the technique is obvious.

KSR also specifically notes that you do not need precise teachings directed to a specific subject matter of the challenge claim. You can take into account inferences and creating steps of a person of ordinary skill in the art. So KSR is not as narrow as Patent Owners make it out to be. There's a whole litany in case law around it. We think our petition and expert declaration provide ample reasons to combine the primary and secondary references. And with that, unless there's any other questions, I am happy to

sit down and -

JUDGE MURPHY: None from me.

JUDGE REPKO: I have no further questions. Thank you.

MR. JUGLE: Thank you.

JUDGE REPKO: Judge McMillin? Any further questions?

JUDGE MCMILLIN: No, thank you.

JUDGE REPKO: Patent Owner, you have 25 minutes for your rebuttal. Just let me know and I'll start the clock.

MR. DROLET: When Your Honors are ready.

JUDGE REPKO: You can proceed right now.

MR. DROLET: Thank you. So in brief, I did review our Patent Owner Response, and across 349, 350, 351, we're explicit in calling out that all these different terms, content provider, media stream, playback, assembling, those are not taught. And we specifically reference looking, at the -- at the specification, that an -- a person of ordinary skill in the art would not understand that to be what Petitioner says.

So in respect to what he just showed with the KSR, we disagree. Phillips, in all the different cases that I put on the Sur-reply with respect to the Board's decisions over the last two years, with respect to any sort of interpretation of claim terms, that they have to have some sort of connection with the specification. It can't be done just by ordinarily assuming and being divorced. So our whole contention has been from our Patent Owner Response to our Sur-reply, what does the specification teach us? That has not been done at all. So we disagree with Petitioner. We've stated so in our

Responses and our Sur-reply. So let me continue with a few things here.

JUDGE MCMILLIN: Mr. Drolet, this is Judge McMillin. I also took the opportunity to go back and look at your Responses, and the claim construction sections in each of the responses appear to be the same or at least very, very similar, and I could not find Patent Owner urging or arguing claim construction in any of your Responses. There are arguments relating to those claim terms, but they do not appear to be claim construction arguments, at least not in your Response.

MR. DROLET: So -

JUDGE MCMILLIN: Can you point me to anything in any Response that says something to the effect of, this claim term should be construed as?

MR. DROLET: Page 49 of -- and I know you can't see my screen from where you're at, Judge, I pulled up IPR, my own response -

JUDGE MURPHY: Pardon me, Counsel, can you pull that microphone closer to you, please? Thanks.

MR. DROLET: Certainly. I pulled up my screen here.

JUDGE MCMILLIN: I am looking at page 49 of your -- if you're referring to page 49 of the Response in the 349 case, I'm looking at it. Can we go to claim -- go to page 23 first?

MR. DROLET: Yes, I'm there.

JUDGE MCMILLIN: Your entire claim construction presentation is on page 23. And again, I don't see any urging of any claim construction. There is simply criticism of what Petitioner did, and you specifically

criticize Petitioner for not specifying what constitutes the plain and ordinary meaning of any term.

MR. DROLET: Your Honor -

JUDGE MCMILLIN: There is no claim construction argument in that Response.

MR. DROLET: So I'm looking at page 24, and we state that Phillips should be followed, and it should be read, including the entire specification and prosecution history. We state that. Further, on page 40 -- 49, should I say, we begin specifically talking about how those term interpretations are different than what Petitioner has. And I'm showing here on my screen, sorry for the delay. So on page 49, "The intrinsic record confirms that content provider refers to entities such as cable or satellite operators. The specification expressly states an example computer-implemented method can receive from a content provider, such as a cable or satellite operator, a request for at least one media stream for a playback on a broadcast channel." Further, dependent Claim 9 limits Claim 1 to cases where the content provider is a cable television operator or satellite television operator. Under the doctrine of claim differentiation, dependent Claim 9 confirms that content provider in independent Claim 1 must already carry the ordinary meaning of a source entity responsible for supplying content, consistent with industry usage.

Petitioner's attempt to relabel a gateway platform as a content provider is inconsistent with intrinsic evidence. A gateway is merely a transmission intermediary, not a content source. A gateway platform, as

cited by Avellan, is "an intermediary system that facilitates communication between user computers utilizing information copied from websites." The Avellan gateway platform does not originate content, but acts as a distribution intermediary, receiving, processing, and enabling delivery to the computer end users, images, and webpages. Avellan fails to teach, suggest or disclose receiving from a content provider a request for at least one media stream for playback, as we've cited in Independent Claim 1, 12, and 17.

A premise that a request comes from a passive intermediary communication pass-through communication infrastructure, such as a broadcast device, is erroneous. A broadcast device cannot perform any request capability. The broadcast device described in Avellan is merely a passive intermediate communication path. It does not in itself request a media stream, but only transmits computer user-generated requests. As such, it cannot satisfy the active method set of receiving from a content provider a request for at least one media stream, required by the challenge claims. I go on to describe the actually physical -- you know, in actual descriptions and actual specification of Avellan, how that's different.

We go on to even talk about, on page 53, a request, a request refers to an active, intentional action taken by a user or a client device to obtain data, services, or content. Further, a request is explicitly initiated by users such as by clicking the play button. Additionally, a request is directed to a remote entity and requires some degree of volition or specific invocation. In Avellan, the only request comes from the user computers, not from a content provider. I go on, on page 54, "A media stream is a continuous, temporally

ordered flow of multimedia data transmitted for playback rather than a static file transfer." Further, "Playback is the process of outputting stored or streamed multimedia content for user consumption, including retrieving, decoding, and rendering steps."

Avellan does not teach, suggest, or disclose at least receiving from content provider, a request for at least one media stream for playback, because Avellan solely teaches imaging in a webpage, and then transmitting that image to user computers in either unicast or broadcast mode. Some other cases using a compressed file -- video file or compressed video format that is first stored at the gateway's cache as it was a file. There's no playback whatsoever because there is no media stream. So we continue going to different terms, but we've addressed what Petitioner claims meets the -- our claim language, and we're invoking the process that Phillips talks about, and this Board has talked about, as far as looking at the specification about what the claim itself means.

So we've articulated the best we can, at least in the Patent Owner's Response, and then in the Sur-reply across the board in all three proceedings, we specifically call out sections of specification. Petitioner has failed, has ignored all specification. This Board, in previous decisions concerning the IPRs, and also for other appeal boards, specifically talk about looking at specification, and having in context of what the inventor has written in the specification. So that's what we're trying to convey here, not only in our Patent Owner Response, what I'm showing right now, but our Sur-reply.

JUDGE REPKO: So I realize that's what you're trying to convey, but going back to Judge McMillin's point, on page 7 of your slides, you've given us this construction and you've kind of quoted it from somewhere. So what -- did you quote that from the Patent Owner Response?

MR. DROLET: I -

JUDGE REPKO: "A third party such as a cable or television" which page of the Patent Owner Response did you quote that from?

MR. DROLET: You're talking about my presentation earlier?

JUDGE REPKO: Yes. On Slide 7, you say, "Patent Owner's construction of content provider is a third party, such as" -- did you quote that from the Patent Owner's Response?

MR. DROLET: Well, I'm looking at Patent Owner's response, then -- as it's written on page 49.

JUDGE REPKO: That's what you're citing, page 49. So is that appears on page 49. Page 30 -

MR. DROLET: Page 49 for the Patent Owner Response: "The intrinsic record confirms that content provider refers to entities such as cable or satellite operators."

JUDGE REPKO: But that sentence -

MR. DROLET: Then go on to explain that.

JUDGE REPKO: -- that sentence that you have in your slide doesn't appear verbatim on this -- but it -- you're saying it's captured by this somehow? Is that what you're saying? Because I just want to make sure the construction that you're proposing on Slide 7 that you've quoted isn't

necessarily a quote from page 49, correct?

MR. DROLET: I -- let me look at what was -- what's on the slide, Your Honor, please.

JUDGE REPKO: I just want to make sure. I guess my question is, like, where does that quote come from?

MR. DROLET: Slide -

JUDGE REPKO: 7. At the top, your "construction", in quotes.

MR. DROLET: Okay. That comes from the Patent Owner's expert declaration, 2006.

JUDGE REPKO: But that doesn't come from the Patent Owner's Response?

MR. DROLET: No. I read specifically what was written in Patent Owner's Response right now.

JUDGE REPKO: Because you put the construction in the expert declaration.

MR. DROLET: In this demonstrative, this was included -- the intent was, is that a content provider is not an intermediary. It is some sort of third party entity. And I'll go back and I'll rely on what was written in our Patent Owner Response, as well as our Sur-reply.

JUDGE REPKO: So you're wanting us to adopt this construction from Patent Owner's expert declaration?

MR. DROLET: I'm asking to adopt the construction that -- or the definition that we gave in the Patent Owner Response.

JUDGE REPKO: But you're -

JUDGE MURPHY: But it's not in your Patent Owner Response. That's what we're trying to say.

MR. DROLET: Well, no. I'm looking at Patent Owner's Response, page 49, "The intrinsic record" firms – "refers to entities such as cable or satellite operators." That is what we state in page 49.

JUDGE MURPHY: Yes, understood. Judge Repko was saying -- was trying to understand where this quote on the slide came from.

MR. DROLET: The quote appears to come from the expert declaration.

JUDGE MURPHY: Right.

MR. DROLET: So -

JUDGE MURPHY: But there's no paragraph cited, so it's somewhere in that declaration?

MR. DROLET: Yes. Yes, sir.

JUDGE MURPHY: That declaration, Exhibit Number 2006, is not cited on page 49 or the subsequent pages discussing the content provider. That's our point. It has to be in the brief somewhere, because we don't know what you're talking about.

MR. DROLET: Understood. I apologize for any sort of confusion with respect to mismatch. My point being is that we -- our position has been, from the Patent Owner Response to the Surreply, to call out all these key terms of art that we believe are instructed or informed by the specification, something Petitioners have not done from day one. So our position has always been that. The intrinsic record shows us what those

terms should be.

JUDGE REPKO: Would it be fair to adopt this construction if it's in the dec only and not in your Response, just in some paragraph that you didn't even cite in the slide?

MR. DROLET: I'm not sure I understood.

JUDGE REPKO: Well -

MR. DROLET: Say that again.

JUDGE REPKO: -- Petitioner has to reply, and they are supposed to respond to your arguments in the Patent Owner Response, right? We've given you so many pages of the Patent Owner Response to make your argument. You proposed the claim construction. That claim construction is in the expert declaration, not in your Patent Owner Response, what you're quoting, right? On page 7 of your slide.

MR. DROLET: Of the slide.

JUDGE REPKO: Right. So if we were to adopt that, would that be fair to Petitioner when they didn't have the opportunity to respond to it because it wasn't in your Patent Owner Response?

MR. DROLET: So what would be fair is that Petitioner did not respond to any of our characterizations or what we proposed for these key terms are in our Patent Owner Response. They were silent with respect to our characterization. So if you're asking me -

JUDGE REPKO: That wasn't my question. I guess my question specifically was what's on Slide 7 here, and if that's the construction that we're going to adopt, the Petitioner didn't have an opportunity to see it

because it was in the expert dec, it wasn't actually in a Patent Owner Response, does that raise some fairness concerns?

MR. DROLET: So the fairness concerns, if you read through all the -- these are demonstratives, but the intent was, is that a content provider, as the claim -- as the challenge claims say it out to be in the actual specification, is not a satellite or intermediary passenger device. It's an actual entity such as a cable or satellite operator, as stated in the content provider. So that's fair. They have -- they had advanced notice of that reply, but also in our Sur-reply as well. So as far as notice goes, as far as argument goes, we stand by what's in our Patent Owner Response and Sur-reply as far as characterization.

As far as the mismatch between the expert-specific quote that's in the demonstrative, I only say that there was no intent of misdirection or mischaracterization. It was trying to intend to be in fidelity what was written in the declaration and to relate that to what we've been responding to. We stand by what's in the -- in the Response and we stand by the Sur-reply.

JUDGE REPKO: Okay. Thank you.

MR. DROLET: If that answers your question.

JUDGE REPKO: I have no further questions on that. Thank you.

MR. DROLET: Okay. So again, claim construction is an option. All the board (INDISCERNIBLE) have said that. With respect to -- Farber, getting back to the caching unit, based on the actual construction and actually specification, the caching unit is not taught by Petitioner. The claim construction itself, the language in the actual specification leads us to a

different conclusion that a mere storage unit is not taught -- is not an actual caching unit.

With respect to Petitioner's comments concerning their lack of response for their expert, I object to any sort of weight the Board will give that, because they chose not to respond. The Board earlier declined to ask for specific instances in which those exchanges were made, and at this point during oral argument I suggest that we not -- that that not -- that be fully discounted. If the Board feels those issues are important, I'm happy to read specifically how it's explicitly -- disqualifies its comments, but I had the feeling that that was not important and we're arguing the merits of the case. So that's what I believe about the -- about disqualification.

So I mentioned earlier that media stream is not taught, suggested, or disclosed by any of the references. Media stream, as I described earlier, is a separate claim element of the actual claim itself. So we're talking about its correspondence to other functionalities. I want to make sure it's clear, and we argued with it. Specifically that in our reply, when we talk about media stream, it's an actual specific separate thing. Media stream is a continuous, temporally ordered flow of multimedia data, transmitted for playback, rather than the static file transfer. Further, playback is the process of outputting stored or streamed multimedia content for user consumption, including retrieving, decoding, and rendering steps. Avellan does not teach, suggest, or disclose at least receiving from a content provider a request for at least one media stream for playback.

Assembling the at least one media stream requires more than

transmitting or displaying individual media items. A person of ordinary skill in the art would understand assembling the -- organizing, and synchronizing, and packetizing media content into a continuous stream suitable for playback. By contrast, Avellan merely discloses transmitting a series of separate image files, in some other cases, compressed video files, without any disclosure of assembling those items into a coherent media stream with temporal continuity or synchronization. Assembling is simply applied in hindsight to the HD protocol.

Avellan does not disclose providing at least one media stream, because it merely stores and identifies images, files, without delivering or making available a continuous media stream for playback. A person of ordinary skill in the art would understand that providing requires a stream to be furnished in a form suitable for playback, such as through transmission over a network or supplying to a client. Transmitting static images or a series of image files alone falls short of this requirement.

In Patent Owner's Sur-reply, we established that the Farber is a finite state machine. Audio triggers MPEG coder, MPEG coder triggers, processing the three-minute song requires system to complete one trigger sequence before the next. The elements require a caching unit actually receiving an external request, then responsively providing that asset. In Farber, when a broadcast unit sends a request in process, the process is disrupted. The MPEG multiplexer works only on MPEG transport streams already in process.

Getting back to Wannamaker, with respect to the actual

communication that Wannamaker is making in the actual disclosure, it's HTML, to MML or CPML. That actual control language for that set top control box, there's no conversion of actual data for the actual end user. This is purely instructional information, based on the HTML to construction language for that set top box. So when we talk about MPEG outputs, it refers to encoding and decoding, which Wannamaker does not do. It takes those inputs, makes it a PRI frame, sends -- transmits those, and sends instructions to the set top box. It does not do any sort of MPEG encoding.

JUDGE REPKO: I guess what Petitioner was saying in the district court claim construction, the MPEG -- it doesn't have to be MPEG parameters. As long as there's some encoding somewhere in the chain of causation, I guess, it reads on the claim. How do you respond to that, under the district court construction that -- or I guess it's not district -- it's a position that's being taken in district court that Petitioner wants us to adopt for this proceeding?

MR. DROLET: With respect to the actual encoding of the -- what that means? Is -- I'm trying to understand the question, Your Honor.

JUDGE REPKO: Yeah, so they pointed us to a specific exhibit, and I don't want to -- you only have about three minutes, so I don't want to go too far down the rabbit hole, but I guess they're saying that, you know, there is MPEG compression, but the claim doesn't require that there be MPEG parameters specifically, or compression parameters specifically, Claim 7.

MR. DROLET: Right. And I say that's inherent in actual -- the

actual claim language itself, that it's inherent. It requires it.

JUDGE REPKO: Requires some sort of MPEG parameters?

MR. DROLET: Yes.

JUDGE REPKO: Thank you.

MR. DROLET: So in summation, we still stand by the fact that Petitioner did no proper claim construction. Key terms, media stream, caching unit, they're not disclosed. Content provider, not disclosed. Media stream, not disclosed. Playback cannot occur by Avellan. Farber does not teach a caching unit. Farber does not do a determining step. It's not inherent, it's an actual specific step in the actual claim itself. You can't just go ahead and modify, or interpretation to go ahead and make a claim superfluous. So for Farber, you can't take those out. The inherency for the actual determining step, as shown before, can't be done. It's not applicable. It's not inevitable. The inherency would require inevitability, and it's not the case.

So with the combination of all the different sources, because they're different architectures, Wannamaker, we spoke before, it's an actual workaround. It's a middleware for antiquated transmission of actual web services, to try to go ahead and get them in set top boxes. That's a different type of infrastructure than Farber or Avellan. Totally different. A person of ordinary skill in the art with software, as asked earlier, how would that make a difference? If a person of ordinary skill in the art had that experience based on software, would understand the difference between these different references. There is no motivation to combine. There's no analogous way

of even putting them together. There's no modicum of success, no expectation of success. But a person of ordinary skill in the art with software, which is -- this patent is about, it's pure software, is not properly addressed in someone who doesn't have that background. And I believe that's what's happened across the board with a lot of Petitioner's arguments, is that because they're not compatible references, they're different infrastructures, they are not congruent. It would not be -- they would not be analogous art and it would not be functional.

So with that, any other questions from the board? I'll reserve my time.

JUDGE REPKO: Judge McMillin, do you have anything further?

JUDGE MCMILLIN: No, thank you.

MR. DROLET: Thank you.

JUDGE REPKO: Thank you. So thank you for appearing today and answering our questions. The oral hearing is concluded, but please stay and answer any questions that our court reporter has.

THE REPORTER: Thank you.

(Whereupon, the above-entitled matter went off the record at 4:01 p.m.)

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