

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS, LLC,  
Petitioner,

v.

VL COLLECTIVE IP LLC,  
Patent Owner.

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IPR2022-01086  
Patent 8,605,794 B2

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Record of Oral Hearing  
Held: September 19, 2023

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Before KARL D. EASTHOM, JEFFREY S. SMITH, and  
PATRICK M. BOUCHER, *Administrative Patent Judges*.

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The above-entitled matter came on for hearing Tuesday, September 19, 2023, commencing at 1:00 p.m. EDT, via Video-conference.

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

1:00 p.m.

JUDGE BOUCHER: Good afternoon. This is a hearing for IPR 2022-01086, which concerns US Patent No. 8,605,794. Unified Patents is the Petitioner and the Patent Owner is VL Collective IP. I am Patrick Boucher, and also joining us by video are Judges Easthom and Smith. At this time, we'd like Counsel to introduce yourselves, as well as anyone else you may have with you. Who is appearing for the Petitioner, please?

MR. BOWSER: For the Petitioner is Lead Counsel, Raghav Bajaj, and myself, Jonathan Bowser.

JUDGE BOUCHER: And will you be presenting, Mr. Bowser?

MR. BOWSER: Yes, I will.

JUDGE BOUCHER: Thank you. And Counsel for Patent Owner, could you please introduce yourself and let us know who is with you?

MR. CARDENAS-NAVIA: Yes, good afternoon. With me is Christine Lehman, who is Lead Counsel, and I am Jaime Cardenas-Navia. We're both of Reichman Jorgensen Lehman & Feldberg on behalf of the Patent Owner, and I will be presenting.

JUDGE BOUCHER: Thank you, Mr. Cardenas-Navia. As you are aware, this is an entirely video hearing, so we ask generally that people keep themselves on mute unless speaking to minimize disruptions. Sometimes if people fail to do that, there can be some feedback that's a little bit distracting. Also, to help the court reporter, we ask that you try to remember to identify yourself before speaking. A full transcript of the hearing will become part of the record of the proceeding in due course. I do want to

1 notify the parties that the hearing is open to the public, so the public is able  
2 to listen in on the proceedings.

3 I'm not aware of any reason to think that we'll be discussing  
4 confidential information, but if that proves to be incorrect for any reason,  
5 we're going to rely on the parties to let us know. We received demonstrative  
6 exhibits filed by both parties, and every member of the panel has a copy of  
7 those. In addition to copies of the demonstratives, each member of the panel  
8 has access to the entire record in case you choose to refer to something that's  
9 in the record, but not on one of your slides.

10 Finally, when conducting your presentation, please take care to refer  
11 to the slide number, exhibit or page number that you're discussing for the  
12 record. That will make it easier for us to follow your presentation, and it will  
13 also help with clarity in the transcript. As you know from our trial order,  
14 each party has a total of 60 minutes to present its argument. Because  
15 Petitioner has the burden to show unpatentability of the claims, Petitioner  
16 will proceed, followed by Patent Owner. Both parties may reserve rebuttal  
17 time.

18 Are there any questions from either party at this time? Mr. Bowser?

19 MR. BOWSER: Yes, Judge Boucher. I was wondering if I could share  
20 my demonstratives on the screen?

21 JUDGE BOUCHER: Yes, that's fine. You can go ahead with that.  
22 Any other questions before we start?

23 MR. CARDENAS-NAVIA: None from Patent Owner.

24 JUDGE BOUCHER: In that case, Mr. Bowser, when you're ready  
25 you can begin. How much time would you like to reserve for your rebuttal?

26 MR. BOWSER: I would like to reserve 15 minutes, Your Honor.

1 JUDGE BOUCHER: So I will put 45 minutes on my timer. If you can  
2 keep track of the time on your own, as well, I will try and let you know  
3 when we're kind of at the end of that 45 minutes and you can decide whether  
4 to proceed into your rebuttal time or reserve it. Whenever you're ready,  
5 please go ahead.

6 MR. BOWSER: Thank you, Your Honors. Again, my name is  
7 Jonathan Bowser. May it please the Board, I am representing Petitioner,  
8 Unified Patents, in IPR 2022-01086. I want to start off with the background  
9 of the 794 patent, and I'm on Slide 2. If we can see on the right-hand side is  
10 Figure 1. This is the device of the 794 patent. On the left-hand side of Figure  
11 1 at the top, you can see video data segments. Then on the right-hand side  
12 you can see audio data segments. In the claims, the first data segments  
13 correspond to the video data segments, and the second data segments  
14 correspond to the audio data segments.

15 What I want to focus on is we can see at the top of Figure 1, in each  
16 case when there is a video file, D1, and on the right-hand side where there is  
17 an audio file, D2, in each case, a fragmentation description file specifies how  
18 the segments are to be obtained in the order of the segments according to a  
19 chronological sequence, R1 for the video segments, and R2 for the audio  
20 segments. That fragmentation description file, as we can see on the left-hand  
21 side, it's an important part of how the device operates because it defines the  
22 order of the segments and how the segments are to be obtained by the  
23 fragmentation modules, MF, in red and blue. What's important to keep in  
24 mind, however, is that the fragmentation description files are not recited in  
25 the claims at all.

1           We move to Slide 3, and we can see the next step in the process is the  
2           synchronization process. So on the right-hand side, again with Figure 1, we  
3           can see the video data segments, S1, and on the right-hand side we can see  
4           the audio data segments. Then there's a synchronization module, and it  
5           synchronizes the video and audio data segments together. It does so based on  
6           an assignment rule. We can see in Figure 1 one of the examples of the  
7           assignment rule that's disclosed in the 794 patent is a simple numbering  
8           scheme.

9           What we have is for every second video segment, there's a  
10          synchronization of one audio segment. That's how the 794 describes the  
11          synchronization process. I want to move to Slide 4 next. We can just see  
12          Claim 1, and today I'm going to focus primarily on Claim 1. The parties  
13          have both argued Claims 1 and 9 the same. Claim 1 is a method claim, and  
14          Claim 9 is a system claim. What the parties dispute are Limitations 1.0 and  
15          1.2. We can see on Slide 5 are the grounds. There's two *Abbott* grounds, an  
16          anticipation ground and an obviousness ground, and there's two grounds for  
17          *Sonohara*, anticipation and obviousness.

18          I'm going to focus on *Sonohara* first, because that was the  
19          ground that the Board instituted review on. Before I do that, however, I want  
20          to focus on claim construction. That's important because for the *Sonohara*  
21          ground, Patent Owner, as we see on Slide 7, they've construed three terms.  
22          That's important because every single argument that Patent Owner presents  
23          with respect to the *Sonohara* ground is based entirely on their constructions.  
24          Patent Owner does not and cannot challenge *Sonohara* on the basis of a  
25          plain and ordinary meaning.

1           Throughout this proceeding, as we can see on Slide 7, Petitioner has  
2 indicated that all claim terms should be construed according to their plain  
3 and ordinary meaning. I'm going to focus first on Patent Owner's  
4 constructions and why each one of them is incorrect. We can see there are  
5 three terms, content-related data segments, assignment rule, and then the  
6 preambles, whether or not they are limiting. Moving to Slide 9, here we see  
7 Patent Owner's proposed construction of content-related data segments. The  
8 phrase content-related data segments, that's all that's ever recited in the  
9 claims, but we have this whole mouthful on the right-hand side about what  
10 Patent-Owner's proposed construction is, what they want to raise.

11           What is interesting, too, is that Patent Owner has shifted focus a little  
12 bit here, because this is a screenshot from the Patent Owner Response, the  
13 Patent Owner's proposed construction. What Patent Owner did then in their  
14 surreply is they split it up. They split it up according to the definitional  
15 construction and then what they now call their preferred construction. This is  
16 their preferred construction, and I'm going to explain why their preferred  
17 construction is just simply wrong. There's a couple reasons why and I'm  
18 going to walk through them.

19           We can see on Slide 10, Your Honors, this on the left-hand side is  
20 Claim 1. We've highlighted every instance of the words content-related data  
21 segments. There's either the first data segments or the second data segments.  
22 At no point are those data segments ever defined or described in any detail  
23 other than just the terms themselves. On the right-hand side we can see again  
24 this mouthful that we have, data segments ordered in a file such that they  
25 will present the file's contents in their intended presentation order when  
26 rendered sequentially.

1           You'll notice, importantly, that none of those features are in the claim  
2 themselves. It's well settled that it's improper to read limitations into the  
3 claims. I want to move to Slide 11. On the right-hand side, we can see this is  
4 a screenshot from the Patent Owner response. This is where Patent Owner  
5 gets their incorrect construction from. They rely on the fragmentation  
6 description file. Right there we can see it in the green highlighting. But the  
7 fragmentation description file, as I indicated earlier, it's just not recited in  
8 the claims.

9           Also, the other thing that Patent Owner has argued, and Dr. Goodrich,  
10 their expert has pointed out, was that well, if you look at the example to  
11 plurality of succeeding second data segments and how they represent the  
12 speech of the signal, that's an example. Everything that Patent Owner has  
13 relied on for this construction is just incorrect. I want to turn to Slide 12  
14 next, Your Honors. I want to point out this is the construction from the  
15 District Court in the Starz litigation. What the District Court did there is they  
16 construed the term content-related as it's defined in the specification. We  
17 can see at the top of this right here, in Column 4, Lines 14 and 19, this is  
18 how the term content-related is described in the specification.

19           All throughout this proceeding, Petitioner has pointed out how the  
20 term content-related data segments should be construed according to their  
21 plain and ordinary meaning. However, we indicated that if the Board finds it  
22 necessary to construe this term, it should just simply adopt the definitional  
23 construction in the specification, just like the District Court did in the Starz  
24 litigation. I want to move to Slide 13. This is another reason why Patent  
25 Owner's construction is wrong, because it, by itself, also renders other  
26 portions of Claim 1 superfluous.



1           On the left-hand side of Slide 13, we see essentially the operative  
2 points here. We see sequentially outputting and the segments, and that's  
3 done on the basis of an assignment rule. If you adopt Patent Owner's  
4 construction here, what it does is it effectively renders the entire assignment  
5 rule superfluous because the assignment rule governs how the segments are  
6 supposed to be output. But what Patent Owner is proposing in their  
7 construction is the segments themselves dictate how they will be ordered. If  
8 you adopt Patent Owner's construction here, what it does is it effectively  
9 reads out of the assignment rule entirely.

10           I want to move to the next term that Patent Owner has construed—  
11           JUDGE BOUCHER: Actually, Mr. Bowser, before you do that, this is  
12 Patrick Boucher. I'm just curious, if we were to adopt the definition in the  
13 specification as you sort of alternatively propose, what does it mean for the  
14 first and second data segments to have a syntactical meaning?

15           MR. BOWSER: So that, I will point you to, Your Honors, I'm trying  
16 to get the cite here, Paragraphs 31 to 33 of Dr. Freedman's Supplemental  
17 Declaration. He goes through and he explains it. In short, what this means is  
18 identification information. You're having information that identifies the  
19 specific segments. Let me go back, Your Honors, to Slide 2. The reason I'm  
20 going to point to this is we see in the 794 patent, it refers to—and this is  
21 Reference #1, it refers to the Panis document. The Panis document is  
22 Reference #1 at the end of the specification, and it refers to that document to  
23 provide insight into what exactly is done to provide information about the  
24 syntax.

25           It's the same thing that's being done here, which is the fragmentation  
26 description file. It provides an identifier of the data, and that's exactly, as Dr.

1 Freedman has explained, is the syntax information is identifying the  
2 segments so that they can be ordered and appropriately addressed. That, if  
3 you wanted to look, Your Honors, at Paragraphs 31 to 33 of Dr. Freedman's  
4 Supplemental Declaration where he goes into detail explaining exactly what  
5 syntax means.

6 JUDGE BOUCHER: Okay. The way you described it—I have to look  
7 back and think about it more closely—but the way you described it sounds  
8 sort of close to what the Patent Owner is proposing, doesn't it? That the  
9 syntactical meaning gives you information on how the segments are ordered.

10 MR. BOWSER: Well, so it's not—let me go back to their  
11 construction. It's just providing information as to identifying the particular  
12 files. That information is used to then synchronize the data, but the syntax is  
13 just identifying the individual segments. It doesn't actually say how they  
14 will be synchronized. Another component, and in this case the  
15 synchronization module—I'm going back to Slide 2, sorry, Slide 3—the  
16 synchronization module takes the segments, the information, based on how  
17 they're identified, and then synchronizes them based on their identifiers.

18 Really the syntax information is simply just identification information  
19 which is used to find out what the order of the files is. But the identification  
20 information does not by itself indicate the order. It's just an identifier.

21 JUDGE BOUCHER: So to be clear, your position is that the  
22 syntactical meaning and the definition does not include any ordering  
23 information with respect to the data segments.

24 MR. BOWSER: That's correct, Your Honor

25 JUDGE BOUCHER: Thank you.

26 MR. BOWSER: Sure. So I'm going to turn next to—

1 JUDGE SMITH: Actually, let me—I have a question real quick. This  
2 is Jeffrey Smith. You mentioned that if we wanted to construe content-  
3 related data segments, you'd be fine with us construing it from the definition  
4 given in the specification. Is there any reason why we shouldn't construe this  
5 term or why we should just rely on the plain and ordinary meaning for this  
6 term?

7 MR. BOWSER: So Your Honor, the reason why you don't need to  
8 construe it is because no construction is necessary to resolve the dispute with  
9 respect to the prior art. The reason why is that *Sonohara* used identification  
10 numbers for the image and the audio data segments, and it uses that  
11 information, those identification numbers, for synchronization. The short  
12 answer to your question is that if you were to construe the term, you could  
13 do so with respect to the definition, but it's unnecessary to do so because the  
14 prior art teaches it. We don't need to construe this particular term to resolve  
15 the controversy here as to whether or not the prior art actually discloses the  
16 content-related data segments.

17 JUDGE SMITH: Thank you.

18 MR. BOWSER: Sure. Turning—

19 JUDGE EASTHOM: So just to be clear, in other words, it doesn't  
20 matter if we use Patent Owner's construction? It's still met by *Sonohara*?

21 MR. BOWSER: Yes, Your Honor. Well, to be clear here, this is the  
22 interesting aspect here because in the Surreply, Patent Owner seems to have  
23 sort of shifted focus a little bit. They call it their preferred construction, but  
24 then they also call this the definitional construction. They're actually arguing  
25 for their preferred construction, not necessarily the definitional construction.  
26 The reason being is because they want to further define what's actually

1 defined in the specification. If you look in the Patent Owner response with  
2 respect to their explanation, they've argued that their proposed construction,  
3 their, again, "preferred construction" really captures the essence and reflects  
4 the construction.

5 As far as I understand their arguments, they don't want the  
6 definitional construction because they cannot overcome *Sonohara* just based  
7 on the definition. So moving to the assignment rule limitation—I'm on Slide  
8 15 next—and here we can see that this is the assignment rule in Patent  
9 Owner's proposed construction. This is a screenshot of their construction.  
10 We've outlined here on Slide 15 the reasons why this is improper. I'm going  
11 to go to Slide 16, and we can just see the construction. On the left-hand side  
12 of Slide 16 is the actual language of the claim in Claim 1 on the basis of an  
13 assignment rule for assigning.

14 On the right-hand side, this is Patent Owner's proposed construction.  
15 So they have the actual claim language and then they go ahead and Part 2 is  
16 they add an entirely new negative limitation, wherein the assignment is not  
17 performed by using exact timing information for the content-related data  
18 segments. This negative limitation, which they need in order to overcome  
19 *Sonohara*, is improper and I'm going to explain why. Let me start off with  
20 Slide 19. This is just one of the reasons why. We can see on Slide 19 where  
21 Patent Owner at the top, they've equated exact timing information with  
22 timestamps, effectively saying that they're the same thing.

23 Using exact timing information such as timestamps, this is a direct  
24 quote from the Patent Owner response. Then on the bottom of Slide 19, we  
25 can see dependent claims. Dependent claims 20 and 21 have a negative  
26 limitation wherein the assignment rule is not based on a timestamp. If

1 dependent claims 20 and 21 are to have any meaning whatsoever, that means  
2 that Claims 1 and 9 could be based on a timestamp. Yet, we can see on the  
3 top of Slide 19, that's what Patent Owner's doing is they're equating exact  
4 timing information with timestamps.

5 I would also point out that this concept of using exact timing  
6 information, if you were to even search in the 794 patent, that phrase using  
7 exact timing information, it's found nowhere in the specification. To further  
8 compound the—

9 JUDGE SMITH: Let me just, before you move on to further  
10 compound things, this is Judge Smith, let me ask you—from what I  
11 understand, and I don't remember where Patent Owner said this, but I think  
12 Patent Owner said somewhere that exact timing information and timestamps  
13 are not the same thing. Timestamps are just one example of timing  
14 information so that these dependent claims are actually narrower than what  
15 Patent Owner is asserting as timing information. Can you speak to that? Is  
16 there any difference between timing information and timestamps so that  
17 these dependent claims would be narrower than the independent claim which  
18 would be for timing information?

19 MR. BOWSER: Yes, Your Honor, I have a slide directly on this point.  
20 You indicated earlier that it was Patent Owner's argument that dependent  
21 claims 20 and 21 are narrower. In fact, Patent Owner has argued the  
22 opposite. Patent Owner has argued that the negative limitation—and we can  
23 see on Slide 20 in the bottom highlighted portion of the Patent Owner's  
24 response, and I'm going to just read it—the negative limitation in claims 20  
25 and 21 is broader.

1 I don't understand how you can have a dependent claim, a negative  
2 limitation that is actually broader than what they're trying to claim, in the  
3 independent claims. They've even admitted that it's not coextensive. Their  
4 proposed construction of assignment rule is not coextensive with the  
5 negative limitation. It's very difficult to understand this logic that they're  
6 trying to use. It's like saying that they have a negative limitation that they're  
7 proposing to add in the independent claims that is somehow narrower than  
8 what's in the broader dependent claims.

9 I just don't understand. That's Patent Law 101, how you cannot have  
10 that. Let me go to, if I can, Slide 17.

11 JUDGE BOUCHER: That seems like a semantics sort of quibble,  
12 though, doesn't it, in that quote you just showed us they also said it's more  
13 limiting. Maybe the use of the word broader isn't entirely clear to me, but  
14 wouldn't you concede that they're actually saying that those claims are more  
15 limiting?

16 MR. BOWSER: I don't, Your Honor. So the fact is that claims 20 and  
17 21 are not based on a timestamp. What's difficult to understand exactly what  
18 they mean by using exact timing information is that concept is never  
19 described in the specification. If you go into the Patent Owner response in  
20 terms of how they propose this, they've said well, all of the examples don't  
21 use exact timing information. But that phrase, using exact timing  
22 information, is not discussed. I don't think it is, in fact, more limiting  
23 because we don't know how a timestamp differs from using exact timing  
24 information. A timestamp is exact timing information. That's exactly what it  
25 means. When something happens, it is a timestamp and you have a record of  
26 it. That is exact timing information.

1 I apologize, but I don't agree with that characterization that it is, in  
2 fact, more limiting, because a timestamp is using exact timing information. I  
3 want to go to Slide 17, and this is an example. This is the negative limitation  
4 in Patent Owner's assignment rule. They've argued that well, every one of  
5 our embodiments is not based on assignment rule, but they're confusing  
6 things here because what's happening is you have examples in the  
7 specification, and we talked about it earlier, where it's just a number  
8 scheme. On the left-hand side of Slide 17, we have the example we talked  
9 about earlier.

10 Each audio data segment is output with every second video data  
11 segment. Of course that doesn't have anything to do with time, but there's  
12 also no negative—there's no discussion of the limitation with respect to  
13 excluding time. It's just a simple number assignment. They also have  
14 examples—in Column 2, Lines 55 to 59 is another example where it's just  
15 talking about a chronological sequence. Again, they're trying to cherry-pick  
16 different portions and say well, because nothing has exact timing  
17 information, therefore we should be able to read this negative limitation in.

18 It's kind of like, if I don't have a helicopter in my garage, can I say  
19 that I don't have a helicopter in my house? Let me also point out Slide 18.  
20 The District Court considered the very same construction and the District  
21 Court rejected it. They just said plain and ordinary meaning, the terms are  
22 clear on its face. I want to go—

23 JUDGE SMITH: Let me ask you—this is Judge Smith—about they're  
24 just numbering them sequentially, that there's no timing information. I'm a  
25 little bit unclear on this. If each one of these segments is a certain length of  
26 time, I guess it's two video segments for each one sound segment or

1 something like that. If the two video segments and the one sound segment  
2 have the same length of time, wouldn't assigning them number just be kind  
3 of a shorthand way of identifying the timing information? I don't see how  
4 the sequential numbers are not correlated to the timing information if these  
5 segments have the same length of time.

6 MR. BOWSER: We don't know that—actually, in this example the  
7 segments don't have the same amount of time, so actually we don't know  
8 that in this specific example.

9 JUDGE SMITH: Okay.

10 MR. BOWSER: What we know is there's one instance in the  
11 specification and you can go to—and Patent Owner is going to harp on  
12 this—it's a single sentence in the specification where they actually try to  
13 somehow discourage the use of time. This is in Column 2, Lines 42 to 43. It  
14 says this is an advantage since the assignment is carried out without the use  
15 of timestamps. Well, guess what? That's in claims 20 and 21. That's the  
16 only instance that we have in the specification which tries to distinguish the  
17 assignment rule from anything having to do with time. My point earlier,  
18 Your Honor, was about the fact that when they talk about an assignment  
19 rule, they don't do so with respect to time or try to distinguish time except  
20 for this very one example that I just pointed out, Column 2, Lines 42 to 43.

21 There are other examples in the specification that have nothing to do  
22 with trying to distinguish time. Here we just have a numbering system or  
23 numbering scheme. If I go to the next term—sorry, my clock stopped. I'm  
24 going to go to Slide 23, and this is with respect to the preamble. This is the  
25 third term that Patent Owner has tried to construe.

26 JUDGE BOUCHER: Actually, before you do that



1 JUDGE EASTHOM: Can I—go ahead—

2 JUDGE BOUCHER: —oh sorry, go ahead, Judge Easthom. I was  
3 going to let you know, I heard you say something about your clock having  
4 stopped. I have you with about 20 minutes left in your principal time. But go  
5 ahead and ask your question, please, Judge Easthom.

6 JUDGE EASTHOM: Thank you, Judge Boucher. Mr. Bowser, your  
7 friends are arguing also prosecution history narrows this claim, they  
8 disclaimed it. Is it your contention that it's this broadening of the dependent  
9 claims and also the fact that it's a negative limitation that overcomes  
10 anything otherwise that they disclaim in the prosecution history? Or are you  
11 contending the prosecution history isn't clear and it isn't a clear disavowal  
12 or doesn't give us any, shed any light on the meaning of the claim? Or both?  
13 What's your take on the prosecution history, I guess?

14 MR. BOWSER: Yes, so the—I apologize.

15 JUDGE EASTHOM: I'm sorry, yeah, I meant to stop, sorry, thanks.

16 MR. BOWSER: So we don't—we've argued that there actually isn't  
17 prosecution disclaimer, so I don't have any slides specifically on their  
18 arguments. But I do, I think if you wanted to—let me get their slides—sorry,  
19 I have too many papers here—starting at Slide 37 and 41, they made certain  
20 arguments about how, with respect to the *Shin* and the *Rosenau* references.  
21 But as we pointed out in the reply, and our argument is on Pages 9-10, those  
22 arguments themselves do not constitute a clear and unambiguous disavowal.

23 Just with respect to the timing aspect with respect to the *Shin*  
24 reference, they talk about how there's a difference here because they're  
25 using metadata and then determining a specific point in time, how that  
26 metadata is supposed to be identified and synchronized. They argue that

1 that's different than the assignment rule. Now the examiner didn't provide  
2 any commentary. They're making arguments as to specific distinctions that  
3 they've characterized, but at no point during the prosecution history was  
4 there a clear and unambiguous disavowal. The standard is quite high for  
5 prosecution disclaimer. We don't have that here.

6 Patent Owner's only argument effectively here is that hey, we argued  
7 that there was a distinction. But let me point out, too, in the *Rosenau*  
8 reference, what was different—and this is on Slide 41 of their slides and on  
9 Slide 42 where you have the examiner's statements—they made this  
10 comment, well *Rosenau* uses a system time clock counter. And then the  
11 examiner noted the fact that well, okay, you don't use a system time clock  
12 counter. But they're not talking about limiting it to specific time segments,  
13 or sorry, that the segments are limited to a specific time.

14 Our position all throughout here, Your Honors, and as we've indicated  
15 on Pages 9 to 10 is there's just no clear and unambiguous disavowal. It  
16 doesn't rise to the level of prosecution disclaimer.

17 JUDGE EASTHOM: So you're saying it has a plain and ordinary  
18 meaning and the assignment rule just has a plain and ordinary meaning.  
19 What is that ordinary meaning that you give it?

20 MR. BOWSER: The ordinary meaning that we give it is the words  
21 themselves so that you are just assigning the first data segments—I'm sorry,  
22 you are assigning each one of the second data segments to one of the first  
23 data segments. What we've shown—

24 JUDGE EASTHOM: Based on any rule then, there's no restriction on  
25 the rule, in other words. Is that fair?

26 MR. BOWSER: Yes.

1 JUDGE EASTHOM: Okay.

2 MR. BOWSER: Yes, that's correct, Your Honor.

3 JUDGE EASTHOM: In their Slide 38, they do say segments of one  
4 type of data are not assigned to segments of the other type. Rather a  
5 synchronization time is calculated. Then they say further there is no  
6 assigning of each second data segment to a first data disclosed—so for at  
7 least these reasons, *Shin* does not blah-blah-blah and then they quote the  
8 rule. You're just saying that this thing where they say a synchronization time  
9 is calculated in *Shin*, you're saying that's not enough to be a clear disavowal.

10 MR. BOWSER: Yes. Your Honor, that's correct, and we can see on  
11 Slide 39, we don't know what was persuasive. On Slide 38, they've made a  
12 number of arguments. We don't know which one the examiner was  
13 persuaded by. Was it the fact that there's no assigning of each second data  
14 segment to a first data segment? That's it. Were they persuaded by that? I'm  
15 sorry, was the examiner persuaded? We just don't know. To rise to the level  
16 of prosecution disclaimer, one of which is you can amend the claims to  
17 specifically exclude something or you could have a statement in the  
18 prosecution history where it doesn't include a particular feature.

19 That's just not what we have. The applicant made a couple of  
20 arguments, and it doesn't rise to the level of prosecution disclaimer. What  
21 the case law requires is a clear and unambiguous disavowal of claim scope.  
22 We don't have that.

23 JUDGE EASTHOM: There was a recent case—it wasn't too recent,  
24 but I think it was *PMC v. Apple*. Let me see if I can find the cite. The court  
25 sort of—it's *Personal Media Communication, LLC v. Apple*, and it's 952  
26 F.3d 1136, Fed. Circ. 2020. It criticized the Board. It said according the

1 Board, PMC's arguments to the examiner's thinking the distinguishing  
2 consideration should not "clearly disavow mixed analog and digital  
3 information transmissions," and then it goes on. It says—then the Board  
4 reasoned that because the prosecution history presents a murky picture as  
5 opposed to a clear waiver, the Board reasoned that it should be discounted  
6 for the purposes of claim construction.

7 Then the court says "we disagree with the Board's legal analysis and  
8 conclusion." Then it says even where "prosecution history statements do not  
9 rise to the level of unmistakable disavowal, they do inform claim  
10 construction." Then they cite another case there. I won't bore you with the  
11 details, but then they say—but then it says "an applicant's repeated and  
12 consistent remarks during prosecution can define a claim term." Then it says  
13 "especially whereas here, , there is no plain or ordinary meaning to the claim  
14 term and the specification provides no clear interpretation."

15 Then it says similarly, "an applicant's amendment accompanied by  
16 explanatory remarks can define a claim term whereas here, the claim  
17 language and specification fail to provide meaningful guidance." That being  
18 said, this case was cited a couple other times since then. I'm not real sure if  
19 the holding is limited to when there's no clear and ordinary meaning, but it  
20 did say especially then so it seems like it applies in other situations, too. I  
21 don't know if they watered down the requirement. I just wondered if you  
22 had any take on that or had considered that.

23 MR. BOWSER: Well, Your Honor, we haven't addressed that  
24 particular case and those specific facts. It sounds like it was very fact-  
25 specific based on the arguments that were made in the prosecution history.  
26 The point, I'm going back to Slide 19, is just simple here, is that while there

1 were some statements trying to distinguish the assignment rule based on  
2 time, the fact remains, Your Honors, that we have in claims 20 and 21 the  
3 requirement that the assignment rule cannot be based on a timestamp. That  
4 necessarily means that in claims 1 and 9, it can be based on a timestamp.

5 When we have Patent Owner equating exact timing information,  
6 whatever phrase they came up with to throw into their claims, they're  
7 equating that with timestamps. So they can't have their cake and eat it, too.  
8 The other point is—maybe a distinguishing consideration, Your Honor,  
9 about the case that you mentioned is that we do have a plain and ordinary  
10 meaning and we do have guidance from the specification where the  
11 assignment rule—and I'm back on Slide 17—we have the example where  
12 it's just a numbering scheme. That's it. There's an example.

13 We talked about that earlier with respect to Figure 1, where it's every  
14 second video segment gets an audio segment. We have a plain and ordinary  
15 meaning from the context of the specification. This, to me, Your Honor,  
16 does not rise to the level of just disregarding the fact that there are negative  
17 limitations in claims 20 and 21 that specifically conflict with Patent Owner's  
18 proposed construction. We also have guidance from the specification  
19 explaining how what the plain and ordinary meaning of an assignment rule  
20 is.

21 JUDGE EASTHOM: I'm sorry, I didn't understand, Mr. Bowser. So  
22 the numbering scheme that you're saying here that you're relying on, you're  
23 saying that that is just like, as Judge Smith posed the question, in other  
24 words it does include, it could include timing. Is that what your point is?

1 MR. BOWSER: Well, the point is, I raise this again, Your Honor, if I  
2 remember correctly, you, when you read out the portions of that case, I think  
3 I heard that there was something about—

4 JUDGE EASTHOM: That there was a clear—this is a clear thing that  
5 shows that it's not necessarily related to timing, so that doesn't cut in your  
6 favor. That's why I didn't understand your argument.

7 MR. BOWSER: The reason I pointed this out is because we have  
8 guidance from the specification how the assignment is—the rule is supposed  
9 to be carried out simply based on a numbering scheme.

10 JUDGE EASTHOM: But that precludes time. That doesn't include  
11 time, or am I missing something? If that doesn't include time, then that  
12 supports Patent Owner's position, not yours. If you're saying this is a clear  
13 thing that something doesn't support timing information.

14 MR. BOWSER: Your Honor, we only go to the prosecution history  
15 when there isn't a clear meaning. My point about—and the reason I'm  
16 relying on this numbering scheme is they said well, it doesn't have time. It  
17 doesn't have anything having to do, I don't know, with the color yellow or  
18 the color blue. Should we read that into the claim? This is the point here in  
19 the sense that we have guidance from the specification that the assignment  
20 rule can be based simply on a numbering scheme.

21 There was no discussion of excluding timing information from that. In  
22 fact, I keep coming back to this. This is why this is fundamental, in my  
23 opinion, why—I'm on Slide 19 again—how can you have a dependent claim  
24 that excludes a timestamp and then the independent claim is, if properly  
25 construed, can include the timestamp, but then you say well, no, we can't

1 use exact timing information? There's just very problematic inconsistencies  
2 here. That's why their construction just doesn't work.

3 JUDGE EASTHOM: Thank you, I understand. I understand your  
4 argument now.

5 MR. BOWSER: So I'm going to move to Slide 23 where we talk  
6 about the preamble. So this is--

7 JUDGE BOUCHER: Actually, before you do that I just want to  
8 confirm something, which is I thought I heard you agree in your discussion  
9 with Judge Easthom and I just want to confirm that during prosecution the  
10 applicant did argue a distinction between timing information and use of an  
11 assignment rule for both the *Shin* and *Rosenau* references. Do you agree  
12 with that?

13 MR. BOWSER: There was—yes, they discussed timing, but we  
14 don't—let me go to Slide 21. It doesn't rise to the level of clear and  
15 unambiguous disavowal. If you look at their slides, for example, what led  
16 to—

17 JUDGE BOUCHER: I don't want to take too much of your time here,  
18 and I understand that your argument is that the statements perhaps were not  
19 clear enough. I understand you have other arguments with respect to the  
20 specification, negative limitation and those things. But with respect to what  
21 actually happened during prosecution, it sounded to me like you just agreed  
22 again that the applicant did, in fact, distinguish the prior art before the  
23 examiner by drawing a distinction between the use of timing information  
24 and the use of an assignment rule. Is that right?

25 MR. BOWSER: They made those arguments, yes, Your Honor, but  
26 again, it doesn't rise to the level of clear or unmistakable disavowal. Let me

1 move to Slide 23, the last term here, what they've tried to construe as the  
2 preamble. Now Patent Owner may argue here in the instance that in the  
3 District Court they adopted this specific construction. I just want to make  
4 clear that the District Court adopted the construction that Patent Owner and  
5 the plaintiff, the declaratory judgment plaintiff, agreed upon. There was no  
6 briefing whatsoever.

7 We don't have any guidance in the District Court as to why the  
8 District Court adopted it. It was just simply adopted because the parties  
9 agreed to it. So I don't think the District Court adopting it necessarily has the  
10 same persuasive authority here. Moving to Slide 24—sorry, let me go to  
11 Slide 23. The reasons why—go back to Slide 23—the reasons why Patent  
12 Owner's construction is wrong as to the preamble is—there's a couple  
13 reasons. Number one is that the preambles don't recite any essential  
14 structure to carry out the bodies of claims 1 and 9.

15 Claims 1 and 9 require synchronization of the first and second data  
16 segments. They don't require synchronization of the first and second files.  
17 We can see on Slide 24 on the right-hand side, so this is a reproduction of  
18 claim 1. At the top, this is the preamble. A method for synchronizing  
19 content-related first data segments of a first data file and content-related  
20 second data segments on a second data file. But look at the body of the  
21 claim. At no point is the first data file or the second data file ever recited.  
22 There is a structurally complete concept in the body of the claim which is  
23 synchronizing the segments.

24 At no point is there any discussion of the first data file and the second  
25 data file. What Patent Owner, the only thing that they've been able to rely on



1 is the fact that there's antecedent basis with respect to certain dependent  
2 claims, 5, 13, 18 and—

3 JUDGE SMITH: But that's not—this is Judge Smith. That's not the  
4 only thing that Patent Owner relies on. There's also—Patent Owner says,  
5 and this is in the Patent Owner response around the bottom of Page 23, 24.  
6 They're saying if we do construe this context-related data segments, if we  
7 construe it based on the definition in the spec to mean data segments that  
8 have a syntactical meaning with the respective data file, then that brings the  
9 first and second data file from the preamble into the body of the claim by the  
10 virtue of the fact that we're construing content-related data segments to have  
11 meaning within the respective data file. Can you speak to that?

12 MR. BOWSER: The fact that you're getting syntactical meaning does  
13 not require the actual data file. All we need for syntactical meaning is just  
14 identification information. You don't need that from the data files. Just to  
15 address this issue is their construction of the preamble relies on their  
16 incorrect construction of content-related data segments. But again, the  
17 context—

18 JUDGE SMITH: But—

19 MR. BOWSER: --of getting the syntax—I'm sorry, do you have a  
20 question?

21 JUDGE SMITH: Yeah, if we rely on the definition from the spec for  
22 the construction of these data segments like you said we could do even  
23 during your presentation and also in your briefing, you said if we need to  
24 construe it to resolve a dispute we can rely on the definition in the spec. If  
25 we do rely on that definition in the spec, that definition in the spec does  
26 include the respective data files. Am I wrong?

1 MR. BOWSER: Well, it includes syntactical information from the  
2 data files. It doesn't require the data files. So let me actually—I'm going to  
3 jump to, if I can, Slide 31, 32. So this is where we get the syntactical  
4 information. *Sonohara* expressly teaches this concept. We have—and I'm  
5 sorry for jumping ahead, but what we—this is also, let me just say because  
6 someone in the art teaches it, it's another reason why you don't have to even  
7 construe it. What we have is we have syntactical information from the data  
8 file.

9 On the right-hand side we have Figure 4. We have what's important is  
10 that there is information syntax from the image file and syntax from the  
11 sound file. That information is then added to the header, so we have  
12 identification information. The syntax is the header and the track identifiers.  
13 That's what we have. Whether you construe the preambles as according to  
14 the definition, again that doesn't require the preamble to actually require—it  
15 doesn't require the, sorry. The construction does not require the first and  
16 second data files.

17 It just means, and looking at the definition it says that it's syntactical  
18 meaning within the file. So what we need is the syntax. We don't need the  
19 first and second data files. So Patent Owner's argument that you necessarily  
20 require the first and second data files if you construe it according to the  
21 definition, that's just simply wrong. I want to turn back to Slide 26. This is  
22 another reason why their construction is wrong is because the claims don't  
23 require synchronizing the first and second data files. It requires  
24 synchronizing the segments.

25 We can see that this is Dr. Freedman saying that the segment's origin  
26 from data files D1 does not change the operation of the synchronization

1 module. In the bodies of claims 1 and 9, it is talking about synchronizing  
2 data segments. The data files are completely irrelevant to what happens in  
3 the bodies of the claims. I want to turn to the *Sonohara* ground, and this is  
4 important because this relates somewhat to their construction. I know I'm  
5 getting into my time a little bit here.

6 This is Patent Owner's argument with respect to *Sonohara*, and I want  
7 to just reiterate, too, that Patent Owner's arguments against *Sonohara* are  
8 entirely dependent on their incorrect claim constructions. What Patent  
9 Owner has done with respect to *Sonohara* is they've focused on Figure 1 in  
10 isolation, effectively, in saying well, look, that's only one file. We have two  
11 files. But what they've done is effectively read out the rest of *Sonohara* and  
12 looking at Figure 1 in isolation. I'm going to show you why this is wrong.

13 We have the Image File #1. We have to keep the numbers straight  
14 here and I've tried to make this clear by using color coding. We have the  
15 Image File #1, and in that image file—I'm sorry, we have File #1. In that  
16 File #1, we have image data segments and we have sound data segments.  
17 Those are what's synchronized by the data synchronization means, #4.  
18 Going to Slide 29, we can see where does the file come from? This right  
19 here is the file production processing device on the right-hand side of Figure  
20 4. That's the motion picture file that's produced.

21 Where does it come from? It comes from an image file and it comes  
22 from a sound file. Those segments, the image segments come from the  
23 image file and the sound file comes from the sound file. This is exactly  
24 what's recited in the claims. Even if you interpret claim 1, the preamble, as  
25 requiring the image file and the sound file, *Sonohara* clearly teaches that. I  
26 want to also point out here—

1 JUDGE SMITH: Let me just make sure I—can we go back to the  
2 previous slide, please?

3 MR. BOWSER: Slide 29?

4 JUDGE SMITH: Yeah, this is Judge Smith. So just to be clear, those  
5 files in Image File 11 and Sound File 12, those files are already segmented  
6 the way they are in Figure 1? Is that correct?

7 MR. BOWSER: I'm sorry, are you comparing *Sonohara*'s Figure 4 to  
8 the 794 patent's Figure 1?

9 JUDGE SMITH: No, to the—I'm comparing it to, I think it's  
10 *Sonohara* Figure 1, with the—no, no, *Sonohara* Figure 4 with *Sonohara*  
11 Figure 1.

12 MR. BOWSER: Yes, so let me walk through this here. Let me go to  
13 Slide 30 real quick, and this explains it. File production processing device in  
14 green in 7, that's on the right-hand side, it produces the file. The file that we  
15 see in Slide 31, that's the file that we're talking about. What the file  
16 production processing device 7 does is it takes the segments from the image  
17 file and it takes—sorry, it takes the image segments from the image file and  
18 it takes the sound segments from the sound file, and it incorporates them into  
19 this single file. We can see that in Slide 30 on the right-hand side.

20 Just to reiterate, on Slide 29, we see this. The file production  
21 processing device, that's exactly what it does. It takes it from two different  
22 files and it creates the File #1. I don't know if you can see my mouse, but in  
23 the lower right-hand corner, that is the file right there. That's what's created  
24 and that's what contains the segments that are then synchronized, as we can  
25 see in Slide 31. I want to point out, too, just one last point here with respect

1 to *Sonohara* again. *Sonohara* teaches the syntax information because the  
2 Syntax information is the header and the track identification numbers.

3 It's very clear. What happens in the file production processing device  
4 is it takes the image file and the sound file, it reads it, it analyzes it, and then  
5 it adds the syntax, the information that came from the image file and the  
6 information that came from the sound file. It takes that syntax and then it  
7 adds it into the header. So we have the header and the track information on  
8 the bottom left-hand corner. We can see that that is the syntax information  
9 that discloses exactly what is addressed in the 794 patent.

10 I want to briefly touch on the—

11 JUDGE BOUCHER: But isn't the—when you began your discussion  
12 you were talking about the fragmentation modules in the 794 patent, which I  
13 understood to be to define the segmentation of the audio and video files that  
14 they initially existed, which is kind of the point that Judge Smith was  
15 raising. Isn't the same thing true in *Sonohara*, that image file and sound file  
16 11 and 12 are not yet segmented? That only happens once it gets down to  
17 probably box 13, where it defines the segmentation of the files.

18 MR. BOWSER: Let me go back to Slide 2 where we can see this is  
19 done. It's the same thing. So what we have in *Sonohara* is this is basically  
20 the image file and then D2 is the sound file. We start with that and we  
21 segment. Going back to—sorry, on the right-hand side you have the  
22 fragmentation modules, so they are taking out the segments. Let me go to  
23 Slide 29, and this is exactly the same. What you do is you take the segments  
24 out. How do we know that? Because you look at Slide 31.

1           There the segments, right there, in red and blue, those are the image  
2           data segments and the sound data segments. Those come from the files. It's  
3           exactly what the 794 patent is doing.

4           JUDGE BOUCHER: By the time you have defined segments, you no  
5           longer have two files.

6           MR. BOWSER: That is true, but the claim doesn't require when you  
7           have two segments to have two different files. All the claim requires is that  
8           the segments come—it doesn't even require it, but the preamble says that the  
9           segments—what does it say here in my claim? That segments of a first data  
10          file and segments of a second data file, that's it. That's all that's required by  
11          claim 1. It doesn't—you don't have to keep the files all throughout the  
12          process, because if you look at the body of claim 1, limitations 1.1 and 1.2,  
13          it's synchronizing the segments. No mention whatsoever of any of the first  
14          and second data files.

15          I want to turn to, in the interests of time here because I know I'm  
16          eating into my rebuttal, I want to show here on Slide 38, I'm turning to the  
17          *Abbott* reference. This is important to keep in mind. The Board preliminarily  
18          agreed with Patent Owner's mischaracterization of the *Abbott* reference. I  
19          say mischaracterization because I'm going to tell you exactly why the way  
20          that they characterized it was just incorrect. All throughout this process,  
21          there has been no expert testimony from Patent Owner on *Abbott*. The only  
22          expert testimony that we have in this proceeding explaining how a POSITA  
23          would understand *Abbott* is Dr. Freedman.

24          That's important because all we have, Patent Owner has only offered  
25          as the attorney argument. Turning to Slide 39, we can see this is an example.  
26          GOP1, so *Abbott* brings things into GOP—video segments into GOP1,

1 groups of pictures, then the audio segments are different. What Patent  
2 Owner argued, again, only attorney argument, is that segments A1 through  
3 A5 are all assigned to the beginning of GOP1. But that's not what's shown  
4 in Figure 9. We have Dr. Freedman explaining in detail why that's wrong.

5 It's very clear, as we can see on the left-hand side that A1, of course,  
6 is associated with the beginning of GOP1. But then you look at time T2,  
7 then you have audio segments A2 and A3. At time T3, you have A4. Again,  
8 all the claim requires is assigning each one of the second data segments, and  
9 in this example it's the audio segments, to one of the first data segments.  
10 Here that's exactly what's disclosed in *Abbott*. We have A1 through A5.  
11 Each one of those second data segments is assigned to one video segment.  
12 We've been clear all throughout the proceeding that the GOP corresponds to  
13 the first data segment.

14 What Patent Owner has done all throughout this proceeding is they  
15 just keep arguing this point. Well, A1 through A5 are all assigned to the  
16 beginning of GOP1. That makes no sense. The reason for it is because if you  
17 did that, you would have a bunch of audio, A1 through A5, just all on top of  
18 each other, and it would make no sense. The whole point, as we see in  
19 Figure 9, and as Dr. Freedman explained, is to have a synchronization of the  
20 audio with the video. With that, I will reserve my remaining time. It looks  
21 like I did 53 minutes. Can I reserve the remaining time for rebuttal, please?

22 JUDGE BOUCHER: Yes, I think that's right. I did just want to clarify  
23 this point though, because I don't really understand the Patent Owner's  
24 argument the same way you do with respect to *Abbott*. It seems to me that  
25 A4 is played because it follows A3, not because it has been assigned to F4,  
26 for example. Am I wrong about that? The way I understand *Abbott* is that the

1 assignment happens with the first video segment of the GOP and the  
2 corresponding audio segment, and then they just play out, but there's no  
3 subsequent assignment of video segments with any of the audio segments.

4 MR. BOWSER: Well, Your Honor, each one of those audio segments  
5 are assigned to the GOP1. That's all that the claim requires. Let's look at  
6 limitation 1.2, and it says for assigning each one of the content-related data  
7 segments to one of the content-related first data segments. That's exactly  
8 what's disclosed in Figure 9 of *Abbott*. We have audio segments A1 through  
9 A5, and yes, they are played out, but they are still assigned to GOP1. GOP1  
10 corresponds to the first data segment. Dr. Freedman again, this is the only  
11 expert testimony in the record, for *Abbott* has explained how A1 through A5  
12 are assigned to GOP1, as is clearly shown in Figure 9.

13 The fact that A2 through A5 might play later doesn't change the fact  
14 that they are assigned to GOP1. We can look, A6 through A9, those are  
15 assigned to GOP2. That's another instance of a first data segment. What  
16 Patent Owner's trying to do is read more into the claims than what's  
17 required. All that's required is assigning each one of the second data  
18 segments to one of the first data segments, and *Abbott* teaches that. With  
19 that, I will-

20 JUDGE BOUCHER: Thank you. We'll give you the full seven  
21 minutes for your rebuttal.

22 MR. BOWSER: Okay. I'm going to stop sharing.

23 JUDGE BOUCHER: Patent Owner, when you're ready, we can  
24 proceed with your presentation, please. How much time would you like to  
25 reserve for rebuttal?

26 MR. CARDENAS-NAVIA: I'd like to reserve 15 minutes.



1 JUDGE BOUCHER: So I will put 45 minutes on my timer. Similarly  
2 as with the Petitioner, if you can sort of keep track of your own time and I  
3 will try to let you know when we're at the end of your principal time there.

4 MR. CARDENAS-NAVIA: Will do. I want to make sure I get to all  
5 the claim constructions and spend plenty of time on *Sonohara*, but if it's  
6 okay I'll just pick up where we ended and briefly address *Abbott*. I agree  
7 with Your Honor's description of *Abbott*, and I'll point out that in the  
8 petition, all that Petitioner relied on for the assignment rule, and I'll refer  
9 you to Slide 6 of Patent Owner's Demonstratives, which shows Figure 9 of  
10 *Abbott*, and again, Figure 9 of *Abbott* is describing the indexes of *Abbott*. It's  
11 these indexes that Petitioner relied on as the alleged assignment rule.

12 What the indexes do is exactly what Your Honor was describing, is  
13 they say the indexes are only for when you're jumping or skipping in  
14 content. What they do is for the video frames, all the video frames are  
15 essentially associated with the start of the GOP that they correspond to.  
16 Similarly for the audio frames, all the audio frames, for example, that fall  
17 within a GOP, for example A1 through A5, they all get associated with the  
18 start of the first audio frame, A1. That's associated with the start of the first  
19 video frame, F1.

20 So what you're doing is these indexes, they do assign all the audio  
21 frames to the start of a single GOP, and they're only used once, not for each  
22 of the data segments as the claims require. That was Petitioner's theory in  
23 their petition. In their reply, they did change theories and we believe it's an  
24 improper new theory, but they appear to be now saying that well, if you look  
25 at Figure 9, A1, the different audio frames sort of match up with different  
26 video frames or at least the entirety of GOP1.

1           That's a new theory, but it also doesn't work out because I agree with  
2   Your Honor's understanding of *Abbott* that all the audio frames are played  
3   sequentially during normal playback. They're not based on any—they're not  
4   played out based on any correlation with the video GOPs or video frames.  
5   That's very clear from the portions of *Abbott* that both Petitioner and Patent  
6   Owner cite to. The other aspect is that the claims require more than just  
7   using an assignment rule to assign data segments, first data segments with  
8   second data segments.

9           They require outputting the first and second data segments based on  
10   that assignment. Again, *Abbott* does not do that. The indexes are only used  
11   once. It's not that each of the audio frames and video GOPs are assigned  
12   based on the indexes. Unless anyone has a question about *Abbott*, I'll now  
13   pivot over to the claim construction arguments.

14          JUDGE EASTHOM: I have a question. I don't understand why it  
15   doesn't meet the claim, even if some of them A2, A3, A4 are sequential, as  
16   long as they're all assigned according to the claim. Then with your  
17   observation about the output, doesn't the video and audio get outputted?  
18   Isn't that the whole purpose of *Abbott*?

19          MR. CARDENAS-NAVIA: They would get output sequentially, but  
20   that outputting would not be based on the alleged assignment rule, which are  
21   these indices. The assignment would just be based on purse ordering of the  
22   audio frames, irrespective of the video frames or GOPs, and the same would  
23   be true for the video frames and video GOPs.

24          JUDGE EASTHOM: But you don't dispute that A1 through A5 are  
25   assigned to GOP1, right?

1 MR. CARDENAS-NAVIA: Within the context of indices, yes, they  
2 have a certain assignment. In the context of normal playback, which again,  
3 now seems to be the new theory that Petitioner has relied on, I don't believe  
4 there is any kind of assignment disclosed in *Abbott* of that. What is  
5 happening is just standard playback which is just you've got your audio  
6 frames playing one after the other, and then you've got your video frames  
7 and just play them one after the other.

8 That's different than what the 794 patent is about, which is about  
9 making sure you're synchronizing the audio and video by having an  
10 assignment rule that creates relationships between them. The only thing in  
11 *Abbott* that gets at all close to that is the indices, but again, they fall short  
12 because they're only used and they have a many to one relationship that  
13 doesn't meet the claim limitations.

14 JUDGE EASTHOM: Thank you.

15 MR. CARDENAS-NAVIA: With that, I'll now refer to Slide 15 of the  
16 demonstratives, Exhibit 2015. I'm sorry, Slide 16, and I'll start with the  
17 construction for the term content-related data segments. This is an  
18 interesting one because the parties and their experts both agree on the  
19 definitional construction, and I just want to be clear that there wasn't a  
20 changing of position between Patent Owner's response and Patent Owner's  
21 surreply. In both papers we address both of these constructions.

22 We do believe that if Patent Owner is to prevail under either of these,  
23 we again do have the preferred construction that elaborates on what  
24 syntactical meaning is, both because that's a term that's given a specific  
25 meaning within the context of the 794 patent and because it leads to  
26 additional distinctions between *Sonohara* and the claims of the 794 patent.

1 For the preferred construction, what it makes clear is that the data segments  
2 have a specific order. That specific order, it comes from how the content was  
3 ordered in the data file.

4 Within the data file—let's say it's the audio of a movie—it has a  
5 specific ordering, and just because you segment the data doesn't mean you  
6 forego that ordering. You need to retain that ordering, and that's what the  
7 term content-related is intended to capture, that you retain that ordering of  
8 the content even though you now have data segments instead of a whole data  
9 file. There's a number of explanations of that in the specification.

10 If you look at Slide 20, directly following the definitional language for  
11 content-related it gives examples of a plurality of succeeding second data  
12 segments represent the speech signal of a specific speaker within a dialogue  
13 sequence. Here we're talking about again order, succeeding data segments,  
14 and we're also talking chronological order because we're talking about  
15 speech signals. The following example is very similar. Now it's talking  
16 about video, but it's talking about individual images of a video sequence.

17 Again, there's a strong emphasis on order and there being an intended  
18 chronology. If you turn to Slide 21, this again has more examples and it has  
19 by far the clearest example, which it talks about having a data segment with  
20 the audio word good and then the next data segment having the audio for the  
21 word morning. It explains that, of course, the data segment with the word  
22 good is output first and then you output the data segment with the word  
23 morning.

24 Again, it's invoking these—the two common threads through all these  
25 examples, you're talking about the order of data segments and the order is a  
26 chronological order. Again, it's the order you had for the content in the

1 original data file that's still preserved, and that's what makes these data  
2 segments content-related data segments as opposed to just any old data  
3 segments in any old order.

4 JUDGE SMITH: Let me just ask you real quick—this is Judge Smith.  
5 Is it fair to say that if we reject the preferred meaning and go with either the  
6 definitional meaning or plain meaning, is it fair to say that in that case the  
7 Petitioner would win?

8 MR. CARDENAS-NAVIA: No, not at all. We have arguments—

9 JUDGE SMITH: Is this something—do we need to reach this far to  
10 resolve the dispute, or would it be enough to stop at either the definitional or  
11 just not construe it?

12 MR. CARDENAS-NAVIA: So we believe we have multiple avenues  
13 to distinguish *Sonohara*. This is one of them. The existence of multiple data  
14 files that have syntactical meaning is another, and of course, the assignment  
15 rule and lack of use of exact timing information is another. We do believe  
16 they're all important. This one is a bit of a threshold one. It's used  
17 throughout the claims. I certainly do think that at least the definitional  
18 construction should be adopted, both because it's definitional—there's zero  
19 dispute about that—and also because it does vitally, it recites the limitation  
20 that the data segments are always defined within the context of the data file.

21 That's relevant to a number of the other claim constructions and also  
22 to some of the distinctions with *Sonohara*. At a minimum, I do believe that  
23 construing it with a definitional construction would be quite helpful. Just one  
24 thing I want to point out for this construction and I'll direct everyone to  
25 Slide 22—although I do apologize, Slide 22 has a typo in it. The language  
26 highlighted in yellow that says the content-related first data segments

1 according to their chronological sequence, it should say the content-related  
2 first data segments and the content-related second data segments according  
3 to their chronological sequence. It was inadvertently omitted.

4 But what I want to point to this slide for is the relationship between  
5 the content-related data segments and the requirement in claim 1 that the  
6 data segments be sequentially output according to their chronological  
7 sequence. Again, this shows the centrality of the order and the syntactical  
8 meaning of the data segments. Because if you're sequentially outputting a  
9 series of data segments, it's far from guaranteed that the data segments will  
10 also be output chronologically.

11 You can think of a simple example where you've got three data  
12 segments, a beginning data segment, a middle data segment, and an end data  
13 segment. If they're ordered middle, beginning, end and you output them  
14 sequentially, then you're not going to output the content chronologically. It's  
15 only if the segments are already ordered chronologically beginning, middle,  
16 end that when you output them sequentially, they will also output  
17 chronologically, which is what the claims require.

18 You sequentially output all the data segments and that results in them  
19 being output according to their chronological sequence. Again, that fits in  
20 perfectly hand in glove with Patent Owner's preferred construction for  
21 content-related data segments.

22 JUDGE BOUCHER: Right, so what is your construction actually  
23 adding that isn't already recited in the claim with the language according to  
24 their chronological sequence?

25 MR. CARDENAS-NAVIA: So the way I view it is the construction is  
26 a precondition for the data segments to be output properly, because again, if

1       you don't have that as a precondition, they won't necessarily output in the  
2       proper order. Then also again, it establishes that relationship between the  
3       data segments and the order in the original data file.

4               JUDGE BOUCHER: I just don't see where the combination of the  
5       definitional construction with the language you highlight in yellow doesn't  
6       already capture everything that you want with your preferred construction.

7               MR. CARDENAS-NAVIA: I believe the preferred construction  
8       does—oh, I see what you're saying. I guess I view it as otherwise the claims  
9       could be awkward in a way. You could have data segments, and if there's no  
10      clarification of what syntactical meaning, you could potentially have a  
11      scenario where they're ordered middle, beginning, end and then you output  
12      them sequentially and it doesn't end up output chronologically, so the  
13      construction would avoid that type of scenario.

14              JUDGE BOUCHER: Okay, thanks.

15              MR. CARDENAS-NAVIA: Another thing I'll point out is Petitioner  
16      made the argument that our preferred construction, which again talks about  
17      the order of the data segments within a data file, would render the  
18      assignment rule superfluous. That's not correct. If you look at this claim  
19      closely, you see that there's a clear division between the order in which the  
20      data segments are output and between the alignment of data segments from  
21      the first data file and the second data file. So the order of the data segments  
22      within each data file is just—the order in which they're output is just  
23      sequential and chronological.

24              That's clear from the language of the claim. That's unrelated to the  
25      assignment. What the assignment rule governs is the timing of the outputting  
26      of that order for the data segments within each of the two data files. If you

1 look at Figure 1 of the 794 patent, which is also up on Slide 22, you see  
2 those at play. So you start off with your two data files, D1 and D2, they get  
3 fragmented into data segments 0 – 9 for the audio and 0 – 4 for the video,  
4 and you already see those arrows R1 and R2, which indicate chronological  
5 order.

6 So that chronological order exists as soon as the data segments are  
7 fragmented. It also exists apart from the assignment rule, which is indicated  
8 in Figure 1 by the capital Z in that circle there. The assignment rule is not  
9 applied until you get to that synchronization module. Then you look at the  
10 output of that module, and what you have is, again you've got the data  
11 segments for the audio and for the video and you again have the arrows R1  
12 and R2 because they're both output sequentially and chronologically.

13 But now in addition, you've got the interrelation between the audio  
14 data segments and the video data segments. So audio segment 0 is output  
15 with video segment 0, and then the audio segment 1 is output, and then the  
16 audio segment 2 is output with video segment 1 and so on.

17 JUDGE BOUCHER: So if we talk about this drawing just for a  
18 moment, those segments on the left and on the right, where are those? Are  
19 those in—we start with D1 and D2, which are clearly separate files, and then  
20 the fragmentation module chops them up into these segments. Where are the  
21 segments?

22 MR. CARDENAS-NAVIA: They can be segments, they can be part  
23 of distinct files, as well.

24 JUDGE BOUCHER: Because your argument with respect to  
25 *Sonohara* seems to rely fairly critically on these segments being in distinct  
26 files. It's not clear to me from your patent where those segments are,



1 whether they're in distinct files at this point or not. The data certainly  
2 originates from distinct files just like it does in *Sonohara* and they get  
3 fragmented just like in *Sonohara*. So where is the distinction you're actually  
4 making and where's the support for that distinction?

5 MR. CARDENAS-NAVIA: Sure. So the distinction, it again comes  
6 from this term content-related data segments, because there's content-related  
7 first data segments, content-related second data segments, and for them to be  
8 content-related, they have to have a syntactical meaning within a data file.  
9 Looking at this figure—

10 JUDGE BOUCHER: That's not the distinction I was after. It's your  
11 other argument with respect to the first and second data files being different.  
12 Why isn't the Petitioner correct that in *Sonohara* the first and second data  
13 segments are of a first and second data file like here?

14 MR. CARDENAS-NAVIA: I am trying to answer your question. It  
15 just has maybe a bit of a longer windup than you might have expected. So  
16 the reason I was starting with content-related data segments is because what  
17 the claim expressly requires is that again, you've got the first set of data  
18 segments, and there is a syntax for those segments within a first data file.  
19 Then you've got a second set of data segments that have a different syntax  
20 within that different second data file. That's the clearest breaking point with  
21 *Sonohara*, is if you look at what Petitioner maps to in *Sonohara*, all  
22 Petitioner ever points to is a single syntax within a single data file.

23 Where rubber meets the road on two data files versus a single data file  
24 is that if you have two data files, you have two syntaxes. Again, the syntax  
25 matters because that gives you your chronological order. That's what allows  
26 the contents to be played correctly. *Sonohara* does not have that. As you

1 correctly point out, you start with two data files. There's no data segments.  
2 There's no syntax in either of those data files. You then create a single data  
3 file and now you've got different sets of units times audio data and image  
4 data within that single data file, but at best you've got a single syntax within  
5 a single data file.

6 The syntax within that single data file would also be very different  
7 than, for example, the syntax in Figure 1 here of the 794 patent, where  
8 you've got a chronology just with respect to the audio data and you've got a  
9 chronology and a relationship just with respect to the video data. There's a  
10 lot of reasons why that matters. The 794 patent in the background talks  
11 about being in the context of adaptive bit-rate streaming where you would  
12 actually swap out the video or the audio midstream, and how this technology  
13 enables that by always keeping the audio separate from the video and having  
14 two streams that are synchronized at a precise point in time, not already  
15 synchronized and you're just playing it out.

16 JUDGE SMITH: This is Judge Smith. A lot of what you just said isn't  
17 in the claim, even if we give you the definitional meaning of what's in the  
18 spec about content-related is understood to mean they have syntactical  
19 meaning. The whole thing that you said about different syntaxes, none of  
20 that is in the claim or at least in the definitional support in the spec. It seems  
21 like based on what you said, we'd be reading a lot of things that are not in  
22 the claim into the claim without really any basis for reading them into the  
23 claim.

24 MR. CARDENAS-NAVIA: May I address that?

25 JUDGE SMITH: Yes.

1 MR. CARDENAS-NAVIA: So I'll direct you to Slides 15-16, and I'll  
2 start on Slide 16. I'll go with the definitional construction, which is data  
3 segments that have a syntactical meaning within the respective data file.  
4 We're talking about, let's say, content-related first data segments, so for  
5 those data segments, they must have a syntactical meaning within those  
6 segments' respective data file. If you're talking about audio data segments,  
7 you have to have syntactical meaning within the audio file. The same would  
8 be true for the second content-related data segments. They have to have a  
9 syntactical meaning within their respective data file, which is the video data  
10 file.

11 Again, if you look at Slide 15, we see that where the preamble recites  
12 content-related first data segments of a first data file. Then when you get to  
13 the body of the claim and you've got content-related first data segments, and  
14 then through the definitional construction you're referring to the respective  
15 data file of those first data segments, that is the first data file in the  
16 preamble. The syntax is specific to first content-related data segments of a  
17 first data file and second content-related data segments of a second data file.

18 JUDGE SMITH: The syntactical meaning would be related. Is there a  
19 difference between syntax and syntactical meaning?

20 MR. CARDENAS-NAVIA: Ah yes, not particularly. I'm using one as  
21 shorthand for the other, saying the meaning of syntactical meaning gets  
22 confusing very quickly, so sometimes I just refer to it as syntax for  
23 shorthand.

24 JUDGE SMITH: Okay, thank you.

25 JUDGE EASTHOM: Mr. Cardenas-Navia, I just had a quick question,  
26 if you could go back to Slide 22, please.

1 MR. CARDENAS-NAVIA: Slide 22, yes.

2 JUDGE EASTHOM: Just to be clear, so in D1 they're not segmented  
3 yet. It's just that you can define the segments with this program language or  
4 whatever this is, this command BSD. This is some other data structure that  
5 helps you define the segments in D1, but there's nothing segmented in D1 in  
6 that, right? Is that right?

7 MR. CARDENAS-NAVIA: I agree with that, and that's why in terms  
8 of distinguishing *Sonohara*, it's not that the data segments once they've been  
9 segmented are necessarily in a distinct data file or not. It's again, it's what is  
10 your syntax within that data file. Because of the point in time, because there  
11 is no syntax at all in *Sonohara* until you get to the single data file—

12 JUDGE EASTHOM: So wait, can I interrupt you just to—so what  
13 you're saying is the claim requires that when you have this D1, I'm not  
14 reading it, but in *Sonohara* you have to have, somewhere in *Sonohara* where  
15 you have a similar D1, a file where you start out and you know that they're  
16 segmented. But even though they're not segmented, but you could segment  
17 them if you wanted to, and segment them in a chronological order. Is that  
18 what your argument is?

19 MR. CARDENAS-NAVIA: I apologize. I'm not sure I quite followed  
20 that. I think what the primary distinction for *Sonohara*, again, is the  
21 requirement I was just referring to on Slides 15 and 16, which is because of  
22 the construction of content related data segments and because, as I'll get to,  
23 the preamble is limiting and requires a first data file and a second data file,  
24 the results of the combination of both of those two is that you have to have  
25 first data segments that have a syntactical meaning within a first data file and

1 second data segments that have a syntactical meaning with respect to a  
2 second data file.

3 JUDGE EASTHOM: But you don't have data segments in the data  
4 file D1 and D2 in your spec, right? You're not relying on that for support on  
5 what you just told me.

6 MR. CARDENAS-NAVIA: That's correct. What I'm relying on  
7 would be kind of bracketed with S1 and S2, the segments as they exist with  
8 that R1 arrow next to them, because that order and that chronology is the  
9 syntactical meaning, is the syntax, and it exists for those data segments with  
10 respect to the data file D1.

11 JUDGE EASTHOM: Okay, and then if we don't agree with your  
12 reading of the preamble, that argument is not going to be a winner. Is that  
13 true? You need both of those?

14 MR. CARDENAS-NAVIA: If what you don't agree with is just the  
15 preamble, I still think this argument is viable.

16 JUDGE EASTHOM: I mean if we disagree that the preamble—if we  
17 construe the preamble and we say we don't think it's limiting with respect to  
18 the first data file because there's no reference back to the first data file in the  
19 body of the claims, say we think that, then do you lose with respect to  
20 *Sonohara*?

21 MR. CARDENAS-NAVIA: No, because as long as you agree with,  
22 well, you can agree with me on the assignment rule limitation and we prevail  
23 for that reason. But even sticking more to this, if you agree with me on the  
24 construction of content-related data segments, the definitional construction,  
25 whichever one agrees with, that construction imports the limitation of

1 syntactical meaning within a data file, with one data file for the first set of  
2 data segments and with another date file for the second set of data segments.

3 JUDGE EASTHOM: Okay, I need to understand—

4 MR. CARDENAS-NAVIA: Yeah.

5 JUDGE EASTHOM: Okay. Setting aside the assignment rule, most of  
6 this boils down to whether you have syntactical segmentation in a data file,  
7 not necessarily segments, correct? That's okay, don't answer that. I don't  
8 think I'm being very clear, I'm sorry. Go ahead.

9 JUDGE SMITH: Yeah, just to be clear, though, this drawing does not  
10 show a first data file having content-related first data segments, right? D1  
11 isn't at—the specification of the patent doesn't describe what that stuff is by  
12 S1, where that is. There's no specific disclosure that that is a file with  
13 segments, right? This seems like the patent was contemplating that the audio  
14 and video data originated from separate files just like in *Sonohara*. Then  
15 they were segmented and then they were synchronized with an assignment  
16 rule. But the distinction you're drawing, it's hard for me to see where that  
17 was actually contemplated in the specification here.

18 MR. CARDENAS-NAVIA: Well, again, I think it all has to do with—  
19 the patent talks about the context and adaptive bit rate streaming, and there's  
20 an important need to have the audio separate from the video, for example,  
21 because you might want to swap one or the other out as the quality of your  
22 internet connection changes. Additionally, it's partly for that reason, but the  
23 patent is pretty clear that you have a syntactical meaning within a data file  
24 that is respect to one set of content-related data segments.

25 Yes, I do not dispute that there are separate data files, but again, when  
26 you get to the segmentation point and when you get to the syntactical

1 meaning and the syntax of those data segments, they're in the context of two  
2 distinct data files. The claim was very express about that. That is through the  
3 preamble, which we certainly believe is limiting, the claim sets that out as a  
4 clear requirement. In addition to the preamble setting that out, let me jump  
5 now to Slide 28. On Slide 28, we've got two dependent claims from the 794  
6 patent.

7 Both of them refer to the first data file and the second data file, so  
8 again, there's more antecedent basis and more structure from that preamble  
9 that is being relied on in these dependent claims. Again, that suggests  
10 they're limiting and the inventors viewed two distinct data files as an  
11 important distinction for this patent, an important requirement of it. I believe  
12 it's undisputed that every single embodiment in the patent involves two data  
13 files and having content-related data segments that have a syntax within a  
14 distinct data file.

15 JUDGE SMITH: Let me ask you about Petitioner's construction of the  
16 preamble. To Petitioner's point, Petitioner is saying if we look at the  
17 preamble—just look at the claim, we start under Phillips we construe the  
18 claim. The first thing we look at are the words of the claims themselves.  
19 Looking at the words of the claims, content-related first data segments of a  
20 first data file, content-related data segments of a second data file, so the  
21 disputed terms are the first data file and the second data file.

22 If we just remove the disputed terms, there are a couple of cases—I  
23 think you cited them in your briefing. The first case was the *Bio-Rad* case on  
24 Page 1371. In that case, the Federal Circuit said we don't need to construe  
25 the entire preamble, we can construe a portion of the preamble. So the  
26 portion here would be the disputed terms. The second case that you cited

1 was the Catalina case, and on Page 810 of Catalina, the Federal Circuit said  
2 if we delete the disputed phrase—if deleting the disputed phrase doesn't  
3 affect the structural definition or the operation of the body of the claim, that  
4 is the body of the claim defines a structurally complete invention, the  
5 preamble wouldn't be given patentable weight.

6 To Petitioner's point, it seems like that's the case here. Looking at the  
7 claim language itself, deleting first data file, second data file, the body of the  
8 claim is structurally complete. There are no functions or structure that are  
9 affected by deleting these disputed terms. What's your response to—in that  
10 case, we wouldn't even need to go to the definitional construction for  
11 content-related in the spec because there would be no dispute to resolve.  
12 What are your thoughts on that?

13 MR. CARDENAS-NAVIA: Three things come to mind. One, I keep  
14 saying this, but the content-related data segments term includes a reference  
15 to the respective data file. If you take the first data file and the second data  
16 file out of the preamble, you suddenly have a term that's definitional that has  
17 no antecedent basis. The antecedent basis for that construction, which is in  
18 the body of the claim, only comes from the preamble. The second thing I'd  
19 say is I'll have to find the case name maybe before my rebuttal, but there is  
20 Federal Circuit case law warning against splitting up a preamble and saying  
21 this part's limiting, but that part's not limiting.

22 There has to be a really good reason to do that. Otherwise, that's  
23 certainly a disfavored way to conduct claim construction. I believe it's cited  
24 in our papers. I'll do my best to find that case name before my rebuttal. I'm  
25 now forgetting the third thing I was going to say. But the third thing I'll  
26 point out, referring back again to Slide 28, is for example, claim 18,



1 dependent claim 18, where again, it's just reinforcing how the inventors  
2 viewed the significance of having two distinct data files.

3 Claim 18 says where an assignment rule is maintained in a file  
4 separate from the first data file and the second data file. Here again, when  
5 inventor wants to find a new data file, it uses the word a file and defines it a  
6 new file. But when it wants to refer to preexisting data files, it uses the word  
7 the. This is just more and more evidence that the inventors absolutely  
8 considered first data file and second data file to be limitations to provide  
9 structure in claim 1, that in my view through the definitional construction  
10 content-related is referred to in the body of claim 1, but is certainly referred  
11 to in claim 18. There's no reason to—that's again, just further evidence that  
12 it's limiting in all the independent claims.

13 JUDGE EASTHOM: But how—claim 5 seems to make it so that the  
14 media data can be represented in both of those files, and so I don't  
15 understand how that helps you. It looks like it's saying that there's no—first  
16 of all, it's a dependent claim, so it's the first time that you see the first data  
17 file and the second data file in the body of a claim. I think your point in your  
18 briefing was that media data is different than the broader limitation in the  
19 claim that doesn't specify the type of data. But this also broadens claim 1 in  
20 that it allows some type of data to be in either one of those files, both types  
21 of data to be in both of those files.

22 MR. CARDENAS-NAVIA: The way I understand dependent claim 5  
23 is that claim 1 doesn't specify the type of data other than its content-related  
24 data. If you look at the specification, there's a clear disclosure of what type  
25 of content data there could be. One category is media data, which is  
26 referenced in claim 5. The other category is metadata, which I think is

1 referenced in claim 13 or something like that. Claim 5, the way it's further  
2 narrowing claim 1—

3 JUDGE EASTHOM: I understand that argument, but I guess I was  
4 trying to get you to answer media data has audio and video data, right? Is  
5 that right?

6 MR. CARDENAS-NAVIA: It could be audio data or video data.

7 JUDGE EASTHOM: Or both, right?

8 MR. CARDENAS-NAVIA: I would want to think about that a little  
9 more. Possibly.

10 JUDGE EASTHOM: Don't think about it too much. Let's just assume  
11 for the sake of my question maybe, and then you don't have to agree. What  
12 you're saying is that, if my premise is right, then you have two types of data  
13 and they could be both of them, without any distinction could be spread  
14 across the two files. That broadens up the meaning of how you're storing. It  
15 contradicts what you're saying claim 1 is limited to. You're saying oh, for  
16 general data, they have to be in one file or the other, but for the specific data  
17 they could be in both data files.

18 MR. CARDENAS-NAVIA: I believe I'm not quite following your  
19 example in why media data would somehow be broader. It's a more specific  
20 type of data.

21 JUDGE EASTHOM: No, no, I'm not saying media data is broader.  
22 I'm saying the fact that you can put media data in two different files—you  
23 could put audio and video data in one file and you could put audio and video  
24 data in another file, so you could mix the two up. Whereas in claim 1 you  
25 seem to be saying well, if I have one type of data it's got to be in the first  
26 data file and another type of data has to be in the second data file.

1           Then you come along in claim 5 and you blur the distinction and you  
2 say hey, if I have the specific type of data which has two different types of  
3 data in itself we can spread those across—I don't know. Maybe it's not very  
4 clear how I'm asking you, but it seems like you're using the data files as  
5 kind of broader. I guess that's my question.

6           MR. CARDENAS-NAVIA: I believe I understand what you're saying  
7 now. Thank you for that additional explanation. I did not mean to suggest  
8 that claim 1, the first data file is somehow limited to just audio or just video  
9 or the same for the second data file. I think in claim 1, the first data file, it  
10 could be some type of media data, certainly audio data or video data or  
11 metadata. I would like to think about it more if I can. It could possibly be  
12 some combination of audio and video data. I haven't ruled that out yet. I'm  
13 not sure if that would interfere with how the assignment rule—it might not.

14           Maybe you could have a situation where you have multiple audio and  
15 video or have combined audio and video that you synchronize with subtitles.  
16 Maybe that's a possibility. But I do see the data files in claim 1 as broader  
17 and the media data in claim 5 as narrowing the scope of what kind of data  
18 can be in one of the two data files.

19           JUDGE EASTHOM: I appreciate that. Okay, thank you.

20           MR. CARDENAS-NAVIA: Absolutely. I think given that, and given  
21 where we are with the time, I'll probably turn to the assignment rule claim  
22 construction. Here, at a very high level, here's how I view this dispute. If  
23 you just look at—and I'm on Slide 35—if you just look at the assignment  
24 rule limitation in the context of claim 1, I don't read claim 1 this way in the  
25 context of all the intrinsic evidence. But just in a vacuum you could look at  
26 it and say well, what if you have an assignment rule and your assignment

1 rule is well, take all the time stamp information from each of the audio data  
2 segments and take all the time stamp information from all the video data  
3 segments and line the two up just by playing the audio and video according  
4 to their time stamp information that aligns.

5 Again, I think the POSA reading the 794 patent would not interpret  
6 assignment rule that way, but in a vacuum that could be the case. I think it's  
7 very clear that the assignment rule should not capture that type of  
8 embodiment or you're just blatantly relying on time stamps. Using time  
9 stamps is addressed in the patent, it's mentioned. It's disparaged as  
10 something not to do because it has downsides. The two references that were  
11 overcome during prosecution, and I'll go through them in just a second in  
12 more detail, *Shin* and *Rosenau*, the backdrop to both of them is using time  
13 stamp information in data segments to align audio and video.

14 There's just no way the 794 patent would have been allowed if  
15 assignment rules were so broad as to encompass just an assignment rule that  
16 was just based—just used timing information. I do want to clarify something  
17 about exact timing information, which is what's in our construction, and  
18 time stamps. Exact timing information is intended to encompass time  
19 stamps. It is also intended to encompass additional uses of exact timing  
20 information as we see with *Shin* and *Rosenau* where, for example, you have  
21 time stamps and then maybe you're doing some adjustments to those exact  
22 time stamps, again based on other types of exact timing information. So I  
23 just—

24 JUDGE EASTHOM: Just to clarify, were your friends correct in  
25 characterizing—was that a mistake? You seem to be saying claim 5 is

1 broader than claim 1, the time stamp claim. I'm sorry, I don't know if I have  
2 the right one, but.

3 MR. CARDENAS-NAVIA: No, and let me—I understand what  
4 you're asking.

5 JUDGE EASTHOM: Thanks.

6 MR. CARDENAS-NAVIA: It's on Slide 56 of the demonstratives,  
7 and actually I'll direct you to Slide 57. It puts a side-by-side between our  
8 construction for assignment rule and the limitation in claims 20 and 21. It is  
9 kind of nuanced, but there are clear distinctions. Exact timing information is  
10 broader than time stamps, but the words I'm using to draw a distinction  
11 between the construction and so then the independent claims and the  
12 dependent claims is the difference between using exact timing information  
13 and being based on a time stamp. The analogy would be like it's the  
14 difference between making a movie that uses historical footage and events  
15 versus making a movie that is based on historical footage and events. The  
16 first one is a documentary. The second one is a Hollywood movie.

17 JUDGE EASTHOM: But notwithstanding that distinction that you're  
18 making about those two words based on and using—it would otherwise be  
19 broader, right? Claim 20 and 21 would otherwise be broader because it's a  
20 negative limitation?

21 MR. CARDENAS-NAVIA: So the way I use it, because of the based  
22 on language, the negative limitation of claim 20 and 21 is broader.

23 JUDGE EASTHOM: Oh no, I—oh, the negative limitation in 20 and  
24 21 is broader, you're saying?

25 MR. CARDENAS-NAVIA: That's how I view it. If you think of  
26 claim 1, let's say, and there's no negative limitation, so you've got a circle, a

1 pie, of the scope of the claim. Then if you apply our construction and you're  
2 removing assignment rules that use exact timing information, then you're  
3 taking out, let's say, a quarter of the pie. Now if you say the assignment rule  
4 is also not going to be based on a time stamp, you're taking out an additional  
5 chunk of the scope of the claim because being based on something is broader  
6 than just using something.

7 So in our review, as you go from the independent claim to the  
8 dependent claim, this is why it's a little confusing, because the negative  
9 limitation gets larger, essentially what you're taking out of the pie gets  
10 larger. But the result is that the scope of the claim is more narrow, so there is  
11 nothing improper. There is no potential for a doctrine of claim  
12 differentiation-type scenario that is created by Patent Owner's construction.  
13 Just the other thing I'll note is that even if there were, which again there  
14 isn't, but that would be a proper basis to undo disclaimer.

15 JUDGE SMITH: Before you get to disclaimer, let me just be real  
16 quick, I heard you say that there's a difference between timing information  
17 and time stamps, but I'm not really clear on what that difference is other  
18 than the words timing information are different than the words time stamps.  
19 But other than that, what's the difference as a practical matter?

20 MR. CARDENAS-NAVIA: It actually is helpful to use a *Shin* or a  
21 *Rosenau* to explain it, but essentially there's—it didn't want to be too  
22 limited to just using time stamps. The POSA, if all the construction said was  
23 it's not by using time stamps, that might be interpreted as data segments  
24 historically have time stamps in them. So all you're excluding is explicitly  
25 taking those time stamps out of the data segments and aligning the data  
26 segments based on those time stamps. That's why we did not just say

1 excluding based on using time stamps, because if you look at the file  
2 history—

3 JUDGE SMITH: What I'm asking you is what is timing information  
4 that is not a time stamp? Do you understand what I'm asking you?

5 MR. CARDENAS-NAVIA: I do. I'm trying to explain it. If it's okay,  
6 I think it actually would be helpful if I used *Shin* or *Rosenau*. It's a clear  
7 example of what I mean that's encompassed and might help more broadly  
8 inform what—

9 JUDGE SMITH: Okay.

10 MR. CARDENAS-NAVIA: --we're trying to capture here.

11 JUDGE SMITH: So what does *Shin* say is timing information that's  
12 not a time stamp?

13 MR. CARDENAS-NAVIA: Let me get to the slide.

14 JUDGE BOUCHER: You are, by the way, about a minute into your  
15 rebuttal time so far.

16 MR. CARDENAS-NAVIA: Thank you. I'll direct you to Slide 36,  
17 and so this is Figure 6B from *Shin*, which is a reference that was overcome  
18 during prosecution. What *Shin* has is, it's got your content that's represented  
19 by the lower line, and the content has time stamps as part of it. It's  
20 segmented and the segments have time stamps. The problem confronted with  
21 *Shin* is that you want to align that content with segment metadata. So you've  
22 got some kind of overlay of metadata you want to play in synchrony with the  
23 content.

24 But the problem is the metadata for various reasons might arrive  
25 earlier or later to whoever is viewing the content, so you need some way to  
26 resynchronize the content and the metadata when it arrives. What you do is,

1 again, both the metadata and the content, they already have time stamps, but  
2 what you're calculating is that delta T you see on the left there, which is  
3 basically how out of sync are the content and the metadata. Normally you  
4 would just match T sub A, which is the time stamp for the segment metadata  
5 with the T sub A for the content and just play based on that.

6 But because they're out of sync, what you do is you take that time  
7 stamp for the content and you add that delta T to it. You do that for all the  
8 time stamps for each of the segments within the content to then restore  
9 synchronization between the content and the metadata. What you're doing  
10 here, this is the type of thing we're trying to capture with excluding exact  
11 timing information. You're not just using time stamps. You're using time  
12 stamps plus this delta T, which is another exact time delta, which is another  
13 form of time stamp. Based on that, that's how you're doing the  
14 synchronization.

15 This reference was expressly distinguished by the Patentee, if you  
16 look at Slide 37, it says, it's highlighted the content data and metadata each  
17 include time information for synchronization. Then it goes on to say the  
18 synchronizer then determines a relative time point and synchronizes the  
19 content data and metadata based on the determined time point. That's the T  
20 sub A plus delta T. It's got a twist, but you're essentially using time stamps  
21 plus this delta time stamp to synchronize the content and the segments  
22 within *Shin*.

23 Now if you look at Slide 38, this was expressly distinguished by the  
24 Patentee on that basis. It says on the contrary, *Shin* at best determines a point  
25 in time in content and metadata so that they are synchronized. Segments of  
26 one type of data are not assigned to segments of the other type, which is



1 what the assignment rule is about. That's more the numbering schemes or  
2 outline every third video segment with every audio segment. That's more  
3 what an assignment rule is. It's not supposed to be about all these doing  
4 things with time stamps.

5 That was the expressed basis for distinguishing *Shin*. If you look at  
6 Slide 39, the examiner accepted those arguments. I know I'm short on time,  
7 so I'll very quickly touch *Rosenau*, which is shown on Slide 40. Again, you  
8 see on Slide 40, you've got audio data segments, you've got video data  
9 segments. They all have time stamps, *Rosenau* is very clear about that. What  
10 you're doing is you're just keeping track of have the data segments fallen  
11 out of sync with one another? You measure that as a precise time. If they do,  
12 you take a corrective action to get them back in sync based on that precise  
13 time.

14 Again, it's all about exact timing information, really time stamps, but  
15 if you say just time stamps, maybe that's construed as more limiting. Again,  
16 if you look at Slide 41 and 42, sorry, 41, the Patentee was expressed about  
17 distinguishing them based on timing information parsed from a data stream  
18 and then the system clock counter, which tracks how out of sync they are.  
19 That was the basis. Then on Slide 42, this is what the patent office said, and  
20 they agree, using very similar language saying we agree.

21 It's about frame synchronization based on timing information from a  
22 data stream. That is not what the claim requires, which is the assignment  
23 rule. I believe this was clear disclaimer of certain type of timing information  
24 that could, in a vacuum, be viewed as within the scope of assignment rule, so  
25 a construction is needed to make clear that no, it's not within the scope. As

1 I'll hopefully get to, maybe spend one minute on, distinguishes *Sonohara*.

2 Now let me—

3 JUDGE EASTHOM: Do you agree that assignment rule has a plain  
4 and ordinary meaning, or do you think it has a different meaning? Is there a  
5 plain and ordinary meaning for it?

6 MR. CARDENAS-NAVIA: I think it has the plain and ordinary  
7 meaning in light of all the intrinsic evidence in the file history, so not  
8 particularly. I think especially to capture this file history, you need the  
9 construction. The intrinsic evidence does disparage time stamps and says not  
10 to use them, but that again leaves some ambiguity about exactly then what is  
11 the scope. So I do believe a construction would be very helpful to clear that  
12 up.

13 JUDGE EASTHOM: Right, but normally when we use prosecution  
14 history, a lot of times the black letter law, as well, it has a plain and ordinary  
15 meaning and if you want to change that, if you want to narrow that, you have  
16 to have a clear disavowal. That's why I'm asking you if you think it's  
17 something that you need a clear disavowal for or do you think it's  
18 ambiguous and you don't need such a clear disavowal?

19 MR. CARDENAS-NAVIA: I believe under either standard it's met. I  
20 do think given the disparagement in the spec and the file history, that does  
21 create a little more ambiguity than usual about what the term means. That is  
22 a term that only exists in the context of the 794 patent. If you say assignment  
23 rule, it doesn't have a general meaning in the art. It is only described in the  
24 context of the 794 patent with a specific meaning. But even if the standard  
25 were to be a clear and unmistakable disclaimer, again, two references, very

1 similar, all about the timing information. The examiner agreed that was the  
2 basis on which the references were overcome.

3 Now for one minute let me direct you to Slide 54. For *Sonohara*, we  
4 see we've got some sound data segments. We've got some image data  
5 segments, but when we get to the description of how they're actually output,  
6 it's only described with reference to these specific times, t1, t2, t3. It doesn't  
7 say just output sound data 1 with image data 1. It says, as we see here on  
8 Slide 55, at the time t1, then you output sound data #2-01 with image data  
9 #1-01. Then at time t2, output the next set of segments. Then at time t3,  
10 output the next set of segments.

11 They're all, again, in every embodiment in *Sonohara*, they're all  
12 exactly one second. All of this is done in the context of the segments have  
13 this duration, output them at this time, and that's how you get there. See  
14 *Sonohara* is using exact timing information very clearly. Petitioner doesn't  
15 really explain how this wouldn't be exact timing information. Petitioner sort  
16 of seems to just ignore this description of the time and the exact durations.  
17 With that, I'll go ahead and save the rest of my time for rebuttal.

18 JUDGE BOUCHER: According to my timer you've got about five  
19 minutes left for rebuttal. I do just want to ask, though, if you could answer  
20 briefly, the District Court disagreed with grafting on this negative limitation.  
21 What would be the basis for us to come to a different conclusion? Would it  
22 be just that we disagree with the District Court? I thought perhaps you were  
23 going to say that the Personalized Media case that Judge Easthom had  
24 spoken about with the Petitioner might provide a basis for doing that, but  
25 then you seemed to say that prosecution history supported either standard.  
26 What would be the basis for disagreement with the District Court?

1 MR. CARDENAS-NAVIA: I do believe that Personalized Media case  
2 provides support, but I also believe it meets it under either basis. I guess I'll  
3 say two things about the claim construction. The District Court is, of course,  
4 not limiting on this panel. Two things: One is, as the judge actually made  
5 clear if you look at the transcript hearing, her preference, as is some judges'  
6 preference, is to resolve claim construction disputes with knowledge of the  
7 impact that it will have on the case.

8 She wanted to know, what invalidity or infringement dispute am I  
9 resolving when I make this claim construction determination? That was not  
10 presented to her at the claim construction hearing. She noted that, and for  
11 one other term, the content-related data segments and what is syntactical  
12 meaning, there she was expressing look, I'm docking this construction for  
13 now. Parties can raise it at summary judgment and give me the context of  
14 what is going to be the impact of my construction.

15 I think a bit of that was going on here, where the judge wanted more  
16 context on what the impact of her decision would be. The other thing I  
17 would say is that the judge, at that time especially, had a much more limited  
18 record before her than the Board does. It's District Court litigation. I believe  
19 there were four patents in the suit at that time. We had, maybe it was three—  
20 there was at least 10 claims being construed. We had a couple of pages and  
21 some briefs to address it, whereas here there have been much fulsome  
22 briefing, a more complete record along with oral argument. That would be  
23 an additional basis of this panel just has additional information that was not  
24 available to the District Court.

1 JUDGE BOUCHER: Thank you. Mr. Bowser, when you're ready, I  
2 have seven minutes on my timer for your rebuttal. It looks like you're  
3 speaking, but I don't hear you.

4 MR. BOWSER: Sorry, you'd think I'd get the hang of this after this  
5 many years. Let's see. I'm going to share my screen again here. What I want  
6 to focus on first is the chronology aspect. What I have on the screen right  
7 now, Your Honors, is the petition. On pages 42-44, this is where we address  
8 the specific feature. What I want to point out is the Patent Owner's counsel  
9 during his argument, he mentioned that there is no chronology from the data  
10 segments. That's just simply not the case because what *Sonohara* very  
11 clearly teaches is that the data identifying section, it gives data identifying  
12 numbers.

13 Those data identifying numbers identify and represent the order of the  
14 data. I'm just showing you here Page 43. We can see this from the text itself  
15 from *Sonohara*. These are all quotes and we've emphasized this. *Sonohara*  
16 uses the data identifying numbers. The reason I'm putting up the petition is  
17 because we don't have a slide that uses Figure 7, but here this is just an  
18 example. We can see that when the image and the sound data are assembled  
19 together in the file, they have the syntax information from the track  
20 information. They also have the data identifying numbers.

21 Just to be clear, the track identifiers are the ones on the left-hand side,  
22 the ones with the number sign, and the data identifying numbers are the ones  
23 on the right. *Sonohara* is very clear that that is for identifying the order.  
24 Patent Owner's argument that somehow *Sonohara* does not disclose the  
25 order is just incorrect. I want to move to—sorry, let me go to Slide 34 of  
26 Patent Owner's slides here. This is a different topic, but I want to show you

1 a somewhat slightly different topic. It's about the assignment rule, but I want  
2 to show you in the bottom left-hand corner, and this is clearly we can see  
3 how these are lined up.

4 There is a chronology to the data segments. Sound data, for example,  
5 in blue. We see #2, that's the track identifier. All the sound has track  
6 identifier #2 and all the image has track identifier #1, but the data identifiers  
7 are linked up together, 01 is linked up with the #2-01. We can see on the  
8 right-hand side. Also, as we can see on this slide, as well, Slide 34, that  
9 *Sonohara* clearly teaches the assignment rule because there is the control  
10 information in the header. The header defines a relationship between the  
11 image data and the sound data, and that's so the image data and the sound  
12 data is output together and synchronized as its intended to.

13 The last point I want to raise is something that Patent Owner has  
14 brought up. I'm going to just put up Patent Owner's Slides 8 and 9. This is  
15 its concept about how somehow *Abbott* only uses the indexes when jumping  
16 and only once. I would implore you to look at the actual text that Patent  
17 Owner cites. They cannot cite to anything that actually says there's a limit  
18 on when these indexes are used. Yes, the concept of the indexes are used  
19 when there's jumping or skipping. I'm going to look at Slide 9, same thing.  
20 Just the highlighted text, there's no limitation in *Abbott* that says that these  
21 index files are only used when there's a jump or a skip.

22 I want to point out, too, just the last thing here. Let's look at the claim  
23 language itself. This is another indication of how Patent Owner is trying to  
24 read in things that are just not there in order to distinguish the claims. This is  
25 claim 1. There is no time limitation as to when this synchronization occurs.  
26 It doesn't occur—I wrote down here what Patent Owner's counsel used, and

1 I'm quoting, "normal playback." You'll see that claim 1 is certainly not  
2 limited to normal playback. It also doesn't exclude jumping or doesn't  
3 exclude skipping. It just talks about synchronizing segments and that's it.

4 Patent Owner's argument that *Abbott* is somehow, you can only look  
5 at the indexed files only during jumping and only during skipping. You  
6 should reject those arguments because they're just incorrect. With that, I will  
7 answer any other questions that you may have.

8 JUDGE SMITH: I have a question. Just real quickly, if you could,  
9 Patent Owner made the point, to your point about the preamble of the claim  
10 just says data segments of a data file, it doesn't say anything beyond that,  
11 Patent Owner brought up the point if we construe the context-related by its  
12 definition in the spec, the definition in the spec actually says the data  
13 segment having a syntactical meaning within the respective data file. We  
14 can't just read the words of the preamble by themselves and say of a data file  
15 and that's it. We have to include the definition from the spec, having a  
16 syntactical meaning within the respective data file. Can you respond to that?

17 MR. BOWSER: Sure, yeah. So what that means, Your Honor, is the  
18 fact that there is some identification information within the file. So let's  
19 look, and this is the same point I just talked about as with respect to  
20 *Sonohara*. Let me go to Slide 34 again. We have syntax within the file, so  
21 these data identifying numbers, they come from the original image file and  
22 the original data. These don't just appear out of nowhere. This is not some  
23 magical assignment. These are segments that are pulled from the image file,  
24 so they are syntax within the original file.

25 We can see the step here on Slide 29. Again, we talked earlier about  
26 how that comes from the image file. Then you have that syntax within that

1 file. If you were to somehow interpret *Sonohara*--and again, I'm on Slide  
2 34—as not having that syntax, where do these numbers come from? What do  
3 they mean? Do they just come from out of the blue? The whole point is that  
4 you have the syntax, the syntactical information, within the file that they  
5 came from.

6 So what we're trying to do is we are trying to synchronize the image  
7 and the sound together. You do that because you use the track identifiers and  
8 the data identifiers. That's exactly what's disclosed in *Sonohara*. To answer  
9 your question—and by the way, sorry, I want to just say you don't need to  
10 actually bring in the first data file and second data file even if you use the  
11 definition, because all that's required—sorry, I need to get the slide here that  
12 has—this is Slide 12. This is the text. It's understood to mean that the first  
13 and second data files have a syntactical meaning within the respective data  
14 files.

15 You don't need the actual first and second data files in order to define  
16 the claim term that way. It just means that the segments have a syntactical  
17 meaning within that file. That's exactly what *Sonohara* discloses, as I just  
18 showed you with Slide 34. With that, are there any other further questions?

19 JUDGE BOUCHER: It does not appear so, so thank you, Mr. Bowser.

20 MR. BOWSER: Thank you.

21 JUDGE BOUCHER: Mr. Cardenas-Navia, I have five minutes on my  
22 timer whenever you're ready for your surrebuttal, please go ahead.

23 MR. CARDENAS-NAVIA: Sure thing. I'll just make one point for  
24 *Abbott*. Petitioner was saying that we haven't shown that *Abbott* cannot be  
25 used, the indexes in *Abbott* cannot be used other than when jumping and  
26 skipping. That's a flipping of the burden, particularly in the context of



1 anticipation where really it's Petitioner who would need to show that  
2 indexes are used other than when jumping or skipping, which they have not  
3 shown. In fact, in their petition they essentially conceded that it's only used  
4 when jumping or skipping.

5 Two, to get to this citation to a case that talks about for preambles, the  
6 Federal Circuit, I believe it overturned the District Court that it found that  
7 only certain limitations within the preamble were limiting because only  
8 those certain claim terms provided antecedent basis for the body of the  
9 claims. That case was *Bio-Rad Labs v. 10x Genomics*, 967 F.3d 1353, and  
10 the pin site, I believe, is 1370-71. Another point I'll make is that because  
11 Petitioner in their petition proposed that no term should be construed,  
12 Petitioner never analyzed any construction for the term content-related data  
13 segments. So the petition has no analysis whatsoever of any kind of  
14 syntactical meaning within any kind of data file.

15 The only time that any type of analysis for that limitation appeared  
16 was in Petitioner's reply. Given that, again, everyone agrees that this was an  
17 express definition, I don't believe that Petitioner should be allowed to  
18 address that for the first time in a reply. I guess now let me ask if there are  
19 any further questions.

20 JUDGE EASTHOM: I have a question. Can we go to Slide 38,  
21 please? The negative limitation you propose says we won't exclude any  
22 exact timing limitation, and then you pointed out that that means a  
23 synchronization time plus a time stamp with respect to *Shin* and maybe the  
24 other references. Did I get that right?

25 MR. CARDENAS-NAVIA: That's correct. What *Shin*—

1 JUDGE EASTHOM: So my question is why can't you use the time  
2 stamp, because that's not exact. That's part of the time information. You  
3 said there would be some delay, right? So you had to do both of those things  
4 to exclude exact information.

5 MR. CARDENAS-NAVIA: Time stamps were known, so *Shin* and  
6 *Rosenau* in addition to using, for example, in *Shin*, time stamps plus this  
7 delta T time, the default in *Shin* is just having time stamps in the audio and  
8 video data segments. The specific rejection in the examiner was on this  
9 additional aspect of *Shin*, but *Shin* was overcome. The disclaimer should  
10 exclude the use of time stamps as part of assignment rule in addition to  
11 broader uses of exact timing information, like time stamps plus the  
12 synchronization time.

13 JUDGE EASTHOM: But I don't think time stamps give you exact  
14 timing information, right? According to your explanation?

15 MR. CARDENAS-NAVIA: I think I see what you're saying. You're  
16 saying that because it becomes out of sync, the time stamps are no longer  
17 exact timing information?

18 JUDGE EASTHOM: Right, right.

19 MR. CARDENAS-NAVIA: I see. So the intent is to view, although in  
20 practice time stamps in certain scenarios in *Shin* would not provide perfect  
21 synchronicity, time stamps still are types of exact timing information  
22 because what they represent is a specific point in time at which that piece of  
23 the content should be played. The fact that they might get out of sync or  
24 there may be some asynchronicity doesn't change the underlying nature of  
25 the time stamps. They still are a type of exact timing information.

1 JUDGE EASTHOM: Could you just flip to Slide 38 real fast? Just a  
2 quick question—

3 MR. CARDENAS-NAVIA: Yes.

4 JUDGE EASTHOM: You have two arguments there against the  
5 reference. I'm looking at the second sentence. "Further there is no assigning  
6 of each second data segment to a first data segment." That was a separate  
7 argument, right? That's another reason to distinguish *Shin* apart from the  
8 synchronization time business, correct? I don't know what that—it's  
9 Petitioner because I think the fact that you made the argument, I think some  
10 cases say it's still disclaimer, even though you made two separate ones. I just  
11 want to see if you agree that those are two separate arguments.

12 MR. CARDENAS-NAVIA: That's correct, they are. I think they are  
13 similar flavors, but there are multiple distinctions. I agree with you that in  
14 this instance—there are exceptions—but in this instance the examiner  
15 accepted those arguments. The art was overcome, so you don't as the  
16 Patentee then get to pick and choose and say this is the disclaimer, this is not  
17 the disclaimer. It would apply to the statements that were made to overcome  
18 the prior art.

19 JUDGE EASTHOM: I don't have anything. Appreciate that.

20 JUDGE SMITH: I have a question.

21 JUDGE EASTHOM: Just a housekeeping, could you please file the  
22 Exhibit 1002 again with the numbering? There's no numbering on the  
23 bottom of the pages and it makes it hard to dig into this cite. We don't have  
24 any pin cites for this exhibit. That's the prosecution history Exhibit 1002.  
25 You can just file that as a substitute exhibit, please.

26 MR. CARDENAS-NAVIA: Okay.

1 JUDGE EASTHOM: Patent Owner, I don't know if you have any  
2 objection, is that okay? I mean Petitioner? Oh, I'm sorry. Petitioner needs to  
3 file it. Petitioner, can you file that, please?

4 MR. BOWSER: Okay.

5 MR. CARDENAS-NAVIA: And no objection from the Patent Owner.

6 JUDGE EASTHOM: Okay, thank you.

7 MR. BOWSER: Yes, we will do that.

8 JUDGE SMITH: Let me just real quickly follow up on *Bio-Rad*. That  
9 was actually the case that I cited that said we could split the preambles into  
10 disputed portions and undisputed portions. It's true in *Bio-Rad*, the preamble  
11 in that case, the court declined to split it up into two portions, but it seems  
12 like in that case the court was saying that the preamble limitation that the  
13 District Court wanted to exclude was intertwined with the rest of the  
14 preamble. It did more than recite an intended use.

15 It seems like there were facts, but then at the same time it didn't  
16 overrule its previous precedent that held that—I'm reading it on Page 1371.  
17 The Federal Circuit said in citing to a case called *Tomtom*, "we held that the  
18 District Court erred in determining that it had to construe the entire preamble  
19 if it construed a portion of it." I appreciate your citing to this case. I guess  
20 what I was getting at is given this case that says we can either divide the  
21 preamble into parts that we construe and parts we don't construe or we  
22 won't, applying the holdings from this case, why would we not divide the  
23 preamble?

24 MR. CARDENAS-NAVIA: I believe our situation is more similar to  
25 facts in *Bio-Rad* as compared with the earlier, I believe it was Federal  
26 Circuit precedent where there was some splitting that was permitted, because

1 as in *Bio-Rad*, first data file isn't in some distinct separate part of the  
2 preamble that maybe it makes sense to not have it limiting. It's directly  
3 stated in relation to the first content-related data segments and the second  
4 content-related data segments.

5 Again, we also have the definition of content-related data segments in  
6 the spec, and that further ties the two together. So here, if you find content-  
7 related data segments limiting, but not the first and second data file, you're  
8 actually splitting a relationship that's in the preamble and in the definition of  
9 the specification. So that makes our facts more similar to *Bio-Rad*.

10 JUDGE SMITH: Okay, thank you.

11 JUDGE BOUCHER: It appears that there are no more questions. We  
12 want to thank both parties for your presentations. I know we had quite a  
13 number of questions, but the information was helpful in allowing us to  
14 understand the parties' positions with respect to the various issues. The case  
15 is submitted and we are off the record.

16 (Whereupon, the above-entitled matter went off the record at 3:15  
17 p.m.)

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