

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

SLING TV L.L.C., SLING MEDIA, L.L.C.,  
DISH NETWORK L.L.C., DISH TECHNOLOGIES L.L.C.  
Petitioners

v.

REALTIME ADAPTIVE STREAMING LLC,  
Patent Owner.

---

Case IPR2018-01342  
Patent 8,934,535 B2

---

**PATENT OWNER'S SUR-REPLY**

**TABLE OF CONTENTS**

I. Claim Construction..... 2

    A. “Access Profile” ..... 2

        1. Realtime’s proposal comes directly from the ’535 patent and is consistent with the claims and specification. .... 2

        2. Sling’s proposal is inconsistent with the specification. .... 3

    B. “Asymmetric Compressors” / “Asymmetric Data Compression” ..... 5

II. New Arguments Not Permitted in Reply..... 5

III. Ground 1: Dvir Does Not Anticipate Claims 1, 2, 9, 10, and 14 ..... 7

    A. The Petition fails to make a *prima facie* showing of anticipation. .... 7

    B. Sling fails to show that Dvir’s “sample” is a “data block.” ..... 9

    C. Sling fails to show that Dvir discloses “determining a parameter or attribute of at least a Portion of a data block” ..... 12

    D. Sling fails to show that Dvir discloses an “access profile” under either Realtime’s proposed construction or the Board’s construction in IPR2018-01169. .... 14

    E. Sling has waived any argument that Dvir discloses “asymmetric” compression under the correct construction. .... 15

IV. Ground 2: Dvir Does Not Render Obvious Claims 1, 2, 9, 10, 14..... 17

    A. Sling adds a plethora of new obviousness theories found nowhere in the Petition that must be disregarded. .... 17

    B. Sling’s also waived any argument that “asymmetric” compression would be obvious under the correct construction. .... 19

V. Ground 3: Dvir and Ishii Do Not Render Obvious Claims 3–6, 8, 11, 12. .... 20

VI. The Petition Is Time-Barred Under § 315(b). .... 20

VII. Conclusion..... 21

### PATENT OWNER'S EXHIBIT LIST

<b>Exhibit No.<sup>1</sup></b>	<b>Description</b>
<b>2001</b>	Amended Complaint of June 6, 2017, in E.D. Tex. Case No. 17-cv-84
<b>2002</b>	Stipulated Motion in D. Colorado Case No. 17-cv-2097
<b>2003</b>	Proof of Service of Amended Complaint re: DISH Network LLC
<b>2004</b>	Proof of Service of Amended Complaint re: Sling TV LLC
<b>2005</b>	Proof of Service of Amended Complaint re: EchoStar Technologies LLC
<b>2006</b>	Proof of Service of Amended Complaint re: Sling Media LLC
<b>2007</b>	Defendants' Supplemental Rule 7.1 Disclosure Statement
<b>2008</b>	Defendants' Unopposed Application for Extension of Time to Answer Complaint
<b>2009</b>	Defendants' Invalidity Contentions
<b>2010</b>	Expert Declaration of Kenneth A. Zeger
<b>2011</b>	Transcript of Deposition of Scott Acton on May 10, 2019
<b>2012</b>	<i>Realtime Adaptive Streaming v. Sling, et al.</i> , Civil Action No. 1:17-CV-02097-RBJ, Dkt. 135-1 (D. Colo. Nov. 7, 2018), Expert Declaration of Alan Bovik
<b>2013</b>	<i>Realtime Adaptive Streaming v. Sling, et al.</i> , Civil Action No. 1:17-CV-02097-RBJ, Dkt. 151 (D. Colo. Jan. 11, 2019), Markman Order
<b>2014</b>	U.S. Patent App. Pub. US 2002/0144271 A1 for Appl. No. 09/197,441 ("Behagen")
<b>2015</b>	Transcript of Deposition of Scott Acton on May 10, 2019 in IPR2018-01331 on U.S. Patent No. 8,867,610.
<b>2016</b>	RFC 2435, RTP Payload Format for JPEG-compressed Video, October 1998

<sup>1</sup> Exhibits 2001–2009 were submitted with Patent Owner's Preliminary Response. Exhibits 2010–2016 are submitted with Patent Owner's Response.

The Petition fails to make a *prima facie* case of unpatentability. After seeing the Patent Owner Response, Petitioner Sling shifts gears and offers entirely new theories and arguments that are found nowhere in the Petition. Sling also offers a new, 61-page and 108-paragraph supplemental declaration from Dr. Acton as alleged support for its new positions. Both the declaration and Sling's new theories and arguments should be disregarded.

For example, the POR shows that Dvir does not teach or suggest the limitations "access profile" and "asymmetric" compression. Now, in reply, Sling offers new theories for how those limitations are satisfied under various constructions it could have but did not propose. Also, there no reason those theories could not have been included, at least in the alternative, in the Petition.

Likewise, the POR shows that Dvir does not disclose various limitations, such as "data block," "determining a parameter or attribute," and "access profile." Now, Sling does a wholesale rewrite of its anticipation theory. In reply for the first time, it argues in the alternative that each of these limitations is "obvious." But none of these obviousness theories in the Petition. Thus, Sling essentially gives a new obviousness ground missing from the Petition

Because the Petition does not present a *prima facie* case of obviousness, because new theories in reply are improper, and because all of Sling's arguments fail regardless, the Board should confirm the patentability of the challenged claims.

## I. Claim Construction

### A. "Access Profile"

#### 1. Realtime's proposal comes directly from the '535 patent and is consistent with the claims and specification.

Realtime's proposed construction "information that enables the controller to select a suitable compression algorithm that provides a desired balance between execution speed (rate of compression) and efficiency (compression ratio)" is correct. Realtime's proposal comes verbatim from the '535 patent, is consistent with the specification, and is supported by the claims. *See* POR at 13–16.

Sling's criticisms lack merit. First, Realtime's proposal is not "aspirational" (Reply at 1)—it is simply the patents' *description* what access profiles are. Even if the construction had a minimal degree of subjectivity (according to Sling), that does not mean it is indefinite or incorrect. *See Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014) ("some modicum of uncertainty" in claims ensures "the appropriate incentives for innovation"). Sling's assertion that Realtime's proposal "is not informative as to what an 'access profile is'" (Reply at 1) is question-begging. Both sides agree that "access profile" does not have a plain and ordinary meaning. Thus, it is appropriate to look to the intrinsic evidence to inform that meaning.

Second, there is no inconsistency between Realtime's construction and the claims or specification—and Sling identifies none. *See* Reply at 1–2. Sling appears

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.