

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NEC CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 22-987-CJB
	)	
PELOTON INTERACTIVE, INC.,	)	
	)	
Defendant.	)	

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MEMORANDUM OPINION

July 15, 2026
Wilmington, Delaware

In this patent infringement action filed by Plaintiff NEC Corporation (“Plaintiff” or “NEC”), NEC asserted that Defendant Peloton Interactive, Inc.’s (“Defendant” or “Peloton”) content streaming services (the “accused products”) infringe United States Patent Nos. 8,909,809 (the “’809 patent”) and 8,752,101 (the “’101 patent” and together with the ’809 patent, the “asserted patents”).¹ (D.I. 372, ex. J at ¶¶ 5-6, 29; *see also* D.I. 382 at 1; D.I. 387 at 4-5)² Presently pending before the Court is Peloton’s motion for summary judgment that Peloton does not infringe, literally or under the doctrine of equivalents, claims 1, 2, 4, 5, 11, 12, 14-16, 21-23, 25 and 26 (the “asserted claims”) of the ’101 patent (the “Motion”). (D.I. 383) NEC opposes the Motion. For the reasons set forth below, the Motion is DENIED.³

1. Peloton argues that summary judgment of no infringement of the asserted claims of the ’101 patent should be granted for three reasons that the Court will address in turn below. (D.I. 387 at 6-8)⁴

¹ The asserted patents relate to implementing adaptive bit rate (“ABR”) streaming of multimedia content over computer networks. (D.I. 372, ex. J at ¶¶ 6, 80, 85; *see also* D.I. 382 at 2; D.I. 387 at 4-5) The patents, parties and experts use “bit rate” and “code rate” synonymously. (*See, e.g.*, D.I. 382 at 2)

² The Court incorporates by reference the Background section of its June 17, 2026 Memorandum Order resolving Peloton’s *Daubert* motion to exclude the testimony of NEC’s damages expert, Dr. Christopher A. Vellturo, regarding reasonable royalty damages. (D.I. 551 at 1-3)

³ The parties have jointly consented to the Court’s jurisdiction to conduct all proceedings in this case, including trial, the entry of final judgment and all post-trial proceedings. (D.I. 25)

⁴ In its reply brief, Peloton appears to raise a new, fourth argument as to why the accused products do not infringe the ’101 patent—i.e. that NEC does not “demonstrate that Peloton’s Products determine a code rate based on a remaining time before a ‘set’ reproduction start time.” (D.I. 498 at 5-6; *see also* NEC’s Hearing Presentation Summary Judgment and *Daubert* Motions Slides at Slides 71-72) The Court will not entertain this argument, as parties

2. As relevant to this Motion, the accused products currently use one of the following third party media players: ExoPlayer and Media3 (collectively, “ExoPlayer”) provided by Google; JWPlayer provided by JWPlayer; and AVPlayer provided by Apple. (D.I. 394 at ¶ 2; D.I. 442 at ¶ 2) Previously, certain accused products used the VisualOn Player provided by VisualOn, but Peloton discontinued use of that player in 2018. (D.I. 394 at ¶ 3; D.I. 442 at ¶ 3; D.I. 391, ex. L at ¶ 64) In the summer of 2024, the accused products briefly used a modified version of the ExoPlayer (the “modified ExoPlayer”). (D.I. 394 at ¶ 3; D.I. 442 at ¶ 3; D.I. 391, ex. L at ¶ 64; D.I. 387 at 6) The Court will refer collectively to these third party media players below as the “third party players.”

3. The Court has previously set out the relevant legal standards for review of a summary judgment motion brought on non-infringement grounds in *Baxter Healthcare Corp. v. Nevakar Injectables, Inc.*, Civil Action No. 21-1184-CJB, Civil Action No. 21-1186-CJB, 2025 WL 823224, at *2-3 (D. Del. Mar. 14, 2025). The Court hereby incorporates its discussion of these legal standards in *Baxter Healthcare Corp.* and will follow those standards herein.

4. Peloton’s first non-infringement argument is that “[p]roperly construed, the ‘101 [p]atent is directed to determining the code rate of content data *before* the content starts to play because the claims are limited to *one* reproduction start time” and the accused products “do not infringe the asserted claims of the ‘101 patent because they do not [determine] the code rate for content data before the reproduction start time.” (D.I. 387 at 6-7, 8-11; *see also* D.I. 498 at 2 & n.3)

are “not permitted to save for their reply brief arguments that they should have [] clearly made in their opening brief.” *In re Horsehead Holding Corp. Sec. Litig.*, Civil Action No. 16-292-LPS-CJB, 2018 WL 4838234, at *17 (D. Del. Oct. 4, 2018) (citing cases), *report and recommendation adopted*, 2019 WL 1409454 (D. Del. Mar. 28, 2019).

5. Peloton's first argument is not a winning one, as the Court has not construed any claim term in line with Peloton's interpretation here. (D.I. 434 at 2) During the claim construction process, while NEC argued that the relevant claim term ("reproduction start time") should be construed according to its plain and ordinary meaning, Peloton proposed that it be construed to require a determination of code rate *only* for a *single first* reproduction start time before content playback begins. (See, e.g., D.I. 137 at 2, 4, 11) Before the Court construed the disputed term, however, Peloton ultimately *agreed* that "reproduction start time" should be ascribed its plain and ordinary meaning. (D.I. 236 at 1 & n.1) Meanwhile, Peloton proposed an alternate construction for another disputed term, "content," that it explained would resolve the "collateral dispute between the parties" relating to "reproduction start time." (*Id.*; D.I. 234 at 14 n.10) In addressing the parties' dispute regarding "content," the Court found that: (a) in ultimately agreeing with NEC that "reproduction start time" should be given its plain and ordinary meaning, Defendant gave up its position that the term be construed to require a determination of code rate only for a single first reproduction start time before content playback begins; and (b) on the merits, the intrinsic record did not support Peloton's proposed construction for "content" (which, again, Peloton viewed as reflecting the same dispute between the parties). (D.I. 463; see also NEC's Hearing Presentation Summary Judgment and *Daubert* Motions Slides at 37-42) In light of all this, the Court has not construed the asserted claims to require that the code rate of content data be determined only for a single first reproduction start time. (See D.I. 587) Therefore, Peloton's first non-infringement argument cannot prevail.

6. With its second non-infringement argument, Peloton asserts that summary judgment of non-infringement is warranted because: (a) the asserted claims of the '101 patent require that the code rate be determined "based on" a "remaining time" and an "available

reproduction time[;]” (b) “remaining time” and “available reproduction time” are two distinct claim terms that must be satisfied by two distinct values; but (c) NEC points to the same value (i.e., that which measures the duration of the buffer in the terminal device—or, the “buffer duration”) for all of the third party players as corresponding to both the “remaining time” and “available reproduction time.” (D.I. 387 at 15-20)

7. Peloton’s briefing was not helpful to the Court with respect to this second issue. Peloton’s view here is that NEC’s expert, Dr. Aviel D. Rubin, points to buffer duration as corresponding to both the “remaining time” and “available reproduction time” for the accused third party players. But Peloton relegates all of its support for that position to a single, brief footnote, which was frustrating. (*Id.* at 18 n.11) And in this footnote, Peloton provides citations to dense reports with no highlighting in them that might have helped guide the Court to the relevant material. Indeed, in two instances, Peloton cites to 10 and 11 paragraphs, collectively, with no further indication of where the Court should look in these paragraphs. (*Id.*) For its part, NEC does not dispute Peloton’s position that it would be wrong for it, as part of its infringement reads, to be pointing to the same value as satisfying both the “remaining time” and “available reproduction time” limitations. (*See* D.I. 498 at 4) Instead, NEC responds by saying that Dr. Rubin “does not allege” that one singular value corresponds to both the “remaining time” and “available reproduction time” for each of the third party players. (D.I. 434 at 7-8)⁵ As best as the Court can tell (since NEC similarly and unhelpfully cited to many paragraphs of dense expert reports with no highlighting) NEC is correct that, at least in certain circumstances for each

⁵ Thus, the Court assumes that to the extent that Dr. Rubin ever *did* seem to take such a position in the alternative in his expert reports as to certain of the third party players, *see, e.g., infra* n.7, NEC has now withdrawn such positions in the case.

player, Dr. Rubin is identifying two *different* values as representing “remaining time” and “available reproduction time[.]”⁶

- **ExoPlayer:** While Peloton alleges that Dr. Rubin points to “[REDACTED]” as corresponding to both values, (D.I. 387 at 18 n.11 (citing D.I. 389, ex. D at ¶ 68 (“paragraph 68”); D.I. 391, ex. M at ¶ 73)), NEC retorts that Dr. Rubin explains that “remaining time” is represented by the equation [REDACTED] minus the [REDACTED] and “available reproduction time” is represented by “[REDACTED][.]” (D.I. 434 at 7 (citing D.I. 447, ex. 3 at ex. 1 at ¶¶ 65-66, 70-73, 75-76); *see also* NEC’s Hearing Presentation Summary Judgment and *Daubert* Motions Slides at Slide 49; Tr. at 127-33).⁷
- **Modified ExoPlayer:** While Peloton alleges that Dr. Rubin points to “[REDACTED]” as corresponding to both values (citing paragraph 68 here too), (D.I. 387 at 18 n.11 (citing D.I. 389, ex. D at ¶ 68; D.I. 391, ex. M at ¶ 73)), NEC retorts that Dr. Rubin explains that “[REDACTED]” constitutes “available reproduction time” while “[REDACTED]” or “[REDACTED]” constitutes “remaining time[.]” (D.I. 434 at 8 (citing D.I. 447, ex. 3 at ex. 1 at ¶¶ 80-81); Tr. at 135-40; *see also* NEC’s Hearing Presentation Summary Judgment and *Daubert* Motions Slides at Slides 55-56).
- **JWPlayer:** While Peloton alleges that Dr. Rubin points to [REDACTED] as corresponding to both values, (D.I. 387 at 18

⁶ Peloton also briefly argues in its opening brief that to the extent that NEC points to *other* variables beyond buffer duration in the third party players, NEC fails to show that these values are *actually used* to determine a code rate. (D.I. 387 at 19) In support, Peloton again cites to a brief footnote that only addresses three of the third party players—ExoPlayer, JWPlayer and VisualOn. (*Id.* at 19 n.12) With respect to ExoPlayer, NEC is not pointing to the values that Peloton calls out as constituting the “remaining time” or “available reproduction time” (i.e., [REDACTED], [REDACTED] or [REDACTED]). (*Id.*; *see* D.I. 434 at 7) The Court will address Peloton’s assertion here with respect to JWPlayer and VisualOn below when it speaks to those specific players.

⁷ It is true that in paragraph 68, Dr. Rubin opines that [REDACTED] constitutes “an available reproduction time” and can also “correspond[] to the remaining time under various circumstances[.]” (D.I. 389, ex. D at ¶ 68) But it is also true that in other paragraphs, Dr. Rubin identifies a different value than [REDACTED] as corresponding to “remaining time.” (*See, e.g., id.* at ¶ 65 (explaining that the code uses the start time of the chunks “to calculate a duration value . . . by the equation [REDACTED] minus the [REDACTED]” and that “in such circumstances, it is my opinion that the duration is the ‘remaining time’”); *see also id.* at ¶ 76)

n.11 (citing D.I. 389, ex. E at ¶¶ 65-76)), NEC retorts that Dr. Rubin explains that “remaining time” is represented by the value [REDACTED] and “available reproduction time” is represented by [REDACTED] (D.I. 434 at 8 (citing D.I. 447, ex. 3 at ex. 2 at ¶¶ 73-75; D.I. 446, ex. 2 at ¶ 79); *see also* NEC’s Hearing Presentation Summary Judgment and *Daubert* Motions Slides at Slides 50-51; Tr. at 151-54).⁸ With respect to Peloton’s assertion that Dr. Rubin does not explain how [REDACTED] are used to calculate the code rate, (D.I. 387 at 19 & n.12), the Court is not persuaded that the record on that issue is so bare that summary judgment of non-infringement is warranted, (*see, e.g.*, D.I. 389, ex. E at ¶ 73 (explaining that an emergency switch (to a different code rate) is performed by comparing the value of [REDACTED] with the value of [REDACTED]); *see also* Tr. at 153-54)).

- **VisualOn:** While Peloton alleges that Dr. Rubin points to the variable [REDACTED] corresponding to both values, (D.I. 387 at 18 n.11 (citing D.I. 389, ex. F at ¶¶ 58-68)), NEC retorts that Dr. Rubin explains that “remaining time” is represented by [REDACTED]⁹ and

⁸ Peloton is correct that in at least one place in his report, Dr. Rubin explains that [REDACTED] corresponds to both values. (D.I. 389, ex. E at ¶ 75) However, even there, as NEC notes, Dr. Rubin explains that these variables with the same name [REDACTED] can correspond to both values “*at different points in the code*”—which seems to be a different thing than pointing to one value at one place in the code that can satisfy both “remaining time” and “available reproduction time” at any given time. (D.I. 434 at 9 (citing D.I. 389, ex. E at ¶ 75 (“For example, [REDACTED] as used in [REDACTED] corresponds to the remaining time . . . Moreover, the [REDACTED] as used in *find best level* corresponds to the available reproduction time[.]”) (emphasis added))) NEC notes that this is an “alternative infringement theory” to Dr. Rubin’s opinion elsewhere in his reports that, in certain scenarios, [REDACTED] does not correspond to the “remaining time” and instead [REDACTED] is the remaining time. (D.I. 434 at 8-9; D.I. 446, ex. 2 at ¶ 79; NEC’s Hearing Presentation Summary Judgment and *Daubert* Motions Slides at Slide 57)

⁹ In its opening brief, Peloton acknowledged that Dr. Rubin pointed to a value that Peloton referred to as [REDACTED] with respect to VisualOn. (D.I. 387 at 19 n.12) And so in its answering brief, NEC referred to that same value—[REDACTED]—as the other value aside from buffer duration that Dr. Rubin identified as being used by VisualOn to determine code rate. (D.I. 434 at 8; Tr. at 142 (NEC’s counsel explaining that [REDACTED] was “Peloton’s nomenclature [in footnote 12 of its opening] brief which we just adopted for purposes of the briefing to try to talk about the same concept”); *see also* Tr. at 145) NEC’s counsel explained that [REDACTED] is shorthand for “download time.” (Tr. at 143) Peloton then argued in its reply brief that NEC’s argument here fails because the value [REDACTED] doesn’t even appear in Dr. Rubin’s report—

“available reproduction time” is represented by [REDACTED], (D.I. 434 at 8 (citing D.I. 447, ex. 3 at ex. 3 at ¶¶ 61-62, 66-68); *see also* NEC’s Hearing Presentation Summary Judgment and *Daubert* Motions Slides at Slide 52; Tr. at 140-45).¹⁰ With respect to Peloton’s assertion that Dr. Rubin does not explain how download time is used to calculate the code rate, (D.I. 387 at 19 & n.12), here again, the Court is not persuaded that the record on that point warrants summary judgment of non-infringement, (*see, e.g.*, D.I. 389, ex. F at ¶ 65 [REDACTED]; *id.* at ¶¶ 66, 68 [REDACTED] *see also* Tr. at 144).

- **AVPlayer:** While Peloton alleges that Dr. Rubin points to “a number of buffer values” including [REDACTED] and [REDACTED] as constituting both remaining time and available reproduction time, (D.I. 387 at 18 n.11 (citing D.I. 391, ex. G at ¶ 68 (“ex. G, paragraph 68”))), NEC retorts that Dr. Rubin explains that “remaining time” is represented by either [REDACTED] or [REDACTED] and “available reproduction time” is represented by [REDACTED], (D.I. 434 at 8 (citing D.I. 447, ex. 3 at ex. 4 at ¶¶ 101-06); *see also* NEC’s Hearing Presentation Summary Judgment and *Daubert* Motions Slides at Slides 53-54; Tr. at 145-50).¹¹

8. In its reply brief, Peloton argues that the additional variables that NEC

notwithstanding the fact that *Peloton itself* had referred to this very same value with respect to VisualOn in its opening brief. (D.I. 498 at 4)

¹⁰ Peloton is correct that in at least one place in his report, Dr. Rubin states that [REDACTED] may correspond to the “available reproduction time” and “may also correspond to the remaining time” in certain circumstances. (*See, e.g.*, D.I. 389, ex. F at ¶ 60) However, he also seems to explain that two different variables ([REDACTED]) are also used, at least in certain circumstances [REDACTED] (*Id.* at ¶¶ 66, 68)

¹¹ Here again, if one were looking at ex. G, paragraph 68 in a vacuum, Dr. Rubin does state that [REDACTED] is an “example of available reproduction time and remaining time in some circumstances[.]” (D.I. 391, ex. G at ¶ 68) But continuing on in Dr. Rubin’s report, as NEC points out, he further explains that [REDACTED] are also examples of the remaining time in certain circumstances. (*See, e.g., id.* at ¶ 106)

and Dr. Rubin identified (beyond buffer duration) as being used to determine the code rate fail for various reasons:

- **ExoPlayer:** Dr. Rubin does not explain how a code rate is determined based on the equation [REDACTED] minus the playbackPositionUs. (D.I. 498 at 4)
- **Modified ExoPlayer:** NEC ignores Dr. Almeroth's unrebutted testimony that "[REDACTED]" is never actually used. (*Id.* (citing D.I. 391, ex. M at ¶ 91))
- **JWPlayer:** Dr. Rubin's identification of [REDACTED] as a variable that can constitute the "remaining time" is a speculative theoretical edge case scenario. (*Id.* at 5)
- **VisualOn:** NEC's identification of [REDACTED] doesn't appear in Dr. Rubin's report. (*Id.* at 4; *see also supra* n.9)
- **AVPlayer:** While NEC points to two variables that may be the "remaining time" in specific circumstances, Peloton's expert explained that [REDACTED] it is therefore not relevant to this issue. (D.I. 498 at 4)

But these arguments come too late. Peloton could have and should have made these arguments in its opening brief. (Tr. at 125, 164-65) By saving them for its reply brief, Peloton prevented NEC from having the ability to fairly respond to these arguments (and prevented the Court from getting a strong back-and-forth argument from the parties on those issues, prior to or during the hearing on this Motion). Therefore, the Court will not consider these arguments here. (*See supra* n.4; Tr. at 115-16, 123-24)

9. The Court finally turns to Peloton's third non-infringement argument. Peloton contends that: (a) it is undisputed that certain accused products (i.e., its video-on-demand workout classes) have used variable bit rate ("VBR") since 2021 to encode content data for its workout classes; and (b) the asserted claims of the '101 patent (which require content data that is

“one content coded with any *one code rate* of a plurality of code rates different from each other”—i.e., the “one code rate limitation”)¹² cannot be infringed as to these products, because their use of VBR results in content with a *plurality* of code rates instead of “*one code rate*” as required by the asserted claims.¹³ (D.I. 387 at 8, 20-22 (emphasis added); D.I. 498 at 6-8; Tr. at 103-04, 107 (Peloton’s counsel asserting that “something that is encoded with [VBR] is not one code rate, it’s many different code rates”))¹⁴

10. But in the Court’s view, the record nevertheless demonstrates a dispute of material fact as to whether Peloton’s video-on-demand workout classes’ use of VBR infringes the one code rate limitation. As just previewed, Peloton’s expert, Dr. Kevin Almeroth, opines that such use does not infringe because in using VBR, an encoder assigns a higher bit rate to segments of content that have a higher level of complexity than others, and therefore for any given piece of content broken up into segments, the piece of content will not amount to “one content coded with any *one code rate* of a plurality of code rates different from each other” (because the segments will all have different code rates). (D.I. 446, ex. 1, appendix I at ¶ 41 (emphasis added)) However, NEC’s expert, Dr. Rubin, opines that even with VBR, the accused

¹² Peloton views the one code rate limitation to require that the content data for each quality version of the content must maintain *the same code rate* throughout the content. (D.I. 387 at 20)

¹³ VBR entails varying the code rate across individual segments of content belonging to the same quality level. (D.I. 446, ex. 1, appendix I at ¶ 41; *see also* D.I. 394 at ¶ 28; Tr. at 103) In contrast, constant bit rate encoding (“CBR”) entails keeping a constant code rate for a given quality level of content. (D.I. 446, ex. 1, appendix I at ¶ 41; *see also* D.I. 394 at ¶ 29; D.I. 442 at ¶ 29) Peloton’s live workout videos use CBR, and all of Peloton’s videos before September 2021 used CBR; the videos using CBR are not at issue in this portion of the Motion. (See D.I. 434 at 10 n.10)

¹⁴ Peloton makes this argument with respect to both literal infringement and infringement under the doctrine of equivalents. (D.I. 387 at 20-22)

products at issue will still have a “[REDACTED]” that specifies multiple playlists that have different bit rates, and each playlist will contain “media segments of a specific, predetermined average bitrate”—i.e., content data which is “one content coded with *any one code rate* of a plurality of code rates different from each other.” (D.I. 391, ex. J at ¶ 67 (emphasis added) & n.7; NEC’s Hearing Presentation Summary Judgment and *Daubert* Motions Slides at Slide 66)¹⁵ On that score, Dr. Rubin opines that when the content is transmitted, while the code rate of each segment will vary, “the overall average bitrate of the segments belong to the same playlist aligns with the “[REDACTED]” value of the playlist”—and so all segments in a playlist will have a specific, predetermined average bitrate (i.e., *any one code rate*) that is different from the average bit rate of the other playlists. (D.I. 391, ex. J at ¶ 71; *see also id.* at ¶ 69; D.I. 434 at 10-11) And it is not immediately clear to the Court that Dr. Rubin’s infringement theory could not satisfy the one code rate limitation—i.e., it seems possible that the “one code rate” portion of the claim limitation can be met by reference to the one, average bit rate discussed above. On this record, then, the experts’ dispute about whether or not the on-demand classes’ use of VBR satisfies the one code rate limitation amounts to a genuine dispute of material fact that precludes summary judgment of non-infringement.¹⁶

¹⁵ NEC also argues in a footnote that Peloton’s contention that it has used VBR with respect to video-on-demand classes since September 2021 is a contested fact that relies solely on the hearsay of a Peloton employee. (D.I. 434 at 10 n.1) But that does not seem to be correct, as Dr. Almeroth further explains that he independently confirmed Peloton’s use of VBR by observing a video-on-demand workout class. (D.I. 446, ex. 1, appendix I at ¶¶ 43-44)

¹⁶ It is also possible that the parties could be having a *claim construction* dispute relating to the meaning of “one code rate” in the one code rate limitation. (*See* Tr. at 157 (Plaintiff’s counsel indicating that the parties may be having a claim construction dispute)) As noted above, Peloton views the term “one content coded with any one code rate of a plurality of code rates” to require that the content data for each segment belonging to the same quality level of the content must maintain the same code rate throughout the content. (D.I. 387 at 20, 22) But NEC asserts that the claims do not require that all content segments must have one “fixed code

11. An appropriate Order will issue.

12. Because this Memorandum Opinion may contain confidential information, it has been released under seal, pending review by the parties to allow them to submit a single, jointly proposed, redacted version (if necessary) of the Memorandum Opinion. Any such redacted version shall be submitted no later than **July 20, 2026** for review by the Court. It should be accompanied by a motion for redaction that shows that the presumption of public access to judicial records has been rebutted with respect to the proposed redacted material, by including a factually-detailed explanation as to how that material is the “kind of information that courts will protect and that disclosure will work a clearly defined and serious injury to the party seeking closure.” *In re Avandia Mktg., Sales Pracs. & Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019) (internal quotation marks and citation omitted). The Court will subsequently issue a publicly-available version of its Memorandum Opinion.

rate[] that perpetuates throughout all media segments” for a given quality level of content. (D.I. 391, ex. J at ¶ 72; Tr. at 158, 160) Instead, as just discussed, NEC’s position is that if there are segments of content that are coded with one average code rate, and if that one average code rate is different from the average code rate of segments of content at another quality level, that satisfies the one code rate limitation. (D.I. 391, ex. J at ¶¶ 71-72; D.I. 434 at 10 (“VBR . . . includes one code rate for the quality level, which is represented as the average bit rate”)) The Court is not certain at this point as to whether this is in fact a claim construction dispute or an infringement dispute. But even if it is a claim construction dispute, the parties have not sufficiently teed up the question to allow the Court to render a definitive decision on the claim construction issue at this time.