

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GENIUS SPORTS LTD.,  
Petitioner,

v.

SPORTSCASTR INC.  
(d/b/a PANDA Interactive),  
Patent Owner.

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IPR2024-01310  
U.S. Patent No. 11,039,218

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**PATENT OWNER PRELIMINARY SUR-REPLY**

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Alexandria, VA 22313-1450

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## EXHIBIT LIST

| Exhibit | Description                                                                                                                                                                                                              |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| EX-2001 | Declaration of Aviel Rubin, Ph.D.                                                                                                                                                                                        |
| EX-2002 | <i>Curriculum vitae</i> of Aviel Rubin, Ph.D.                                                                                                                                                                            |
| EX-2003 | Joint Claim Construction Statement, Dkt. 69                                                                                                                                                                              |
| EX-2004 | Declaration of Dr. Stephen Wicker, September 13, 2024                                                                                                                                                                    |
| EX-2005 | Yahoo Finance Tanner Simkins, April 20, 2017                                                                                                                                                                             |
| EX-2006 | NBA.com, Steve Ashburner April 27, 2017 Article                                                                                                                                                                          |
| EX-2007 | Sportstechie, Robert Roble, April 22, 2017                                                                                                                                                                               |
| EX-2008 | Sports Tech Tokyo Award; 2019 Yahoo! Sports Tech Awards; Sports Business Awards                                                                                                                                          |
| EX-2009 | Various Media Reports on the Patented Invention                                                                                                                                                                          |
| EX-2010 | CNBC, December 20, 2018                                                                                                                                                                                                  |
| EX-2011 | <a href="https://sportscastr.com/about">https://sportscastr.com/about</a>                                                                                                                                                |
| EX-2012 | <a href="https://pandainteractive.com/patents">https://pandainteractive.com/patents</a>                                                                                                                                  |
| EX-2013 | <a href="https://sportscastr.com">https://sportscastr.com</a>                                                                                                                                                            |
| EX-2014 | <a href="https://studiopanda.live/">https://studiopanda.live/</a>                                                                                                                                                        |
| EX-2015 | Genius Sports 2-24-18 Email                                                                                                                                                                                              |
| EX-2016 | Genius Sports 5-7-18 Email                                                                                                                                                                                               |
| EX-2017 | '218 Patent Genius Sports Infringement Claim Chart                                                                                                                                                                       |
| EX-2018 | <a href="https://www.opensourceforu.com/2015/03/a-guide-to-using-raw-sockets">https://www.opensourceforu.com/2015/03/a-guide-to-using-raw-sockets</a>                                                                    |
| EX-2019 | <a href="https://learn.microsoft.com/en-us/windows/win32/winsock/tcp-ip-raw-sockets-2">https://learn.microsoft.com/en-us/windows/win32/winsock/tcp-ip-raw-sockets-2</a>                                                  |
| EX-2020 | Oracle documentation in 2011: Anatomy of the Client/Server Model.<br><a href="https://docs.oracle.com/cd/E13203_01/tuxedo/tux80/atmi/intbas3.htm">https://docs.oracle.com/cd/E13203_01/tuxedo/tux80/atmi/intbas3.htm</a> |
| EX-2021 | Peng, Gang. "CDN: Content distribution network." arXiv preprint cs/0411069 (2004) <a href="https://arxiv.org/pdf/cs/0411069">https://arxiv.org/pdf/cs/0411069</a>                                                        |
| EX-2022 | The History of Streaming Media.<br><a href="https://boyetblog.s3.amazonaws.com/PCPlus/324.Streaming.pdf">https://boyetblog.s3.amazonaws.com/PCPlus/324.Streaming.pdf</a>                                                 |
| EX-2023 | RFC 2326: Real Time Streaming Protocol (RTSP)<br><a href="https://www.ietf.org/rfc/rfc2326.txt">https://www.ietf.org/rfc/rfc2326.txt</a>                                                                                 |
| EX-2024 | Adobe's Real Time Messaging Protocol<br><a href="https://rtmp.veriskope.com/pdf/rtmp_specification_1.0.pdf">https://rtmp.veriskope.com/pdf/rtmp_specification_1.0.pdf</a>                                                |
| EX-2025 | WebRTC 1.0: Real time Communication Between Browsers<br><a href="https://www.w3.org/TR/2011/WD-webrtc-2011027/">https://www.w3.org/TR/2011/WD-webrtc-2011027/</a>                                                        |

| Exhibit | Description                                                                                                                                                                                                                                                                                                        |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| EX-2026 | HTTP Live Streaming: draft-pantos-http-live-streaming-01<br><a href="https://datatracker.ietf.org/doc/html/draft-pantos-http-live-streaming-01">https://datatracker.ietf.org/doc/html/draft-pantos-http-live-streaming-01</a>                                                                                      |
| EX-2027 | Microsoft To Add Smooth Streaming in IIS7<br><a href="https://virtualizationreview.com/articles/2008/11/04/microsoft-to-add-smooth-streaming-in-iis7.aspx">https://virtualizationreview.com/articles/2008/11/04/microsoft-to-add-smooth-streaming-in-iis7.aspx</a>                                                 |
| EX-2028 | HTTP Dynamic Streaming. (Archived May 14, 2010)<br><a href="https://web.archive.org/web/20100514170442/http://www.adobe.com/products/httpdynamicstreaming/">https://web.archive.org/web/20100514170442/http://www.adobe.com/products/httpdynamicstreaming/</a>                                                     |
| EX-2029 | MPEG ratifies its draft standard for DASH. (Archived December 14, 2011)<br><a href="https://web.archive.org/web/20111214104626/http://mpeg.chiariglione.org/meetings/geneva11-1/geneva_press.htm">https://web.archive.org/web/20111214104626/http://mpeg.chiariglione.org/meetings/geneva11-1/geneva_press.htm</a> |
| EX-2030 | Mogulus Rebrands With A Killer Domain: Livestream.com<br><a href="https://techcrunch.com/2009/05/18/mogulus-gets-a-killer-domain-for-rebranding-livestreamcom/">https://techcrunch.com/2009/05/18/mogulus-gets-a-killer-domain-for-rebranding-livestreamcom/</a>                                                   |
| EX-2031 | How to watch Obama's inauguration (and the parties) online<br><a href="https://www.cnet.com/tech/tech-industry/how-to-watch-obamas-inauguration-and-the-parties-online/">https://www.cnet.com/tech/tech-industry/how-to-watch-obamas-inauguration-and-the-parties-online/</a>                                      |
| EX-2032 | Twitch is 4 <sup>th</sup> in Peak US Internet Traffic<br><a href="https://blog.twitch.tv/en/2014/02/05/twitch-is-4th-in-peak-us-internet-traffic-90b1295af358/">https://blog.twitch.tv/en/2014/02/05/twitch-is-4th-in-peak-us-internet-traffic-90b1295af358/</a>                                                   |
| EX-2033 | Twitch Engineering: An Introduction and Overview<br><a href="https://blog.twitch.tv/en/2015/12/18/twitch-engineering-an-introduction-and-overview-a23917b71a25/">https://blog.twitch.tv/en/2015/12/18/twitch-engineering-an-introduction-and-overview-a23917b71a25/</a>                                            |
| EX-2034 | <i>Proceedings of the 25th ACM workshop on network and operating systems support for digital audio and video</i> , pp. 55-60, 2015 <a href="https://arxiv.org/pdf/1502.04666">https://arxiv.org/pdf/1502.04666</a>                                                                                                 |
| EX-2035 | U.S. Patent 11,039,218 Certified File History                                                                                                                                                                                                                                                                      |
| EX-2036 | Ellis <i>et al.</i> U.S. App. No. 2008/0062318                                                                                                                                                                                                                                                                     |
| EX-2037 | Shoff <i>et al.</i> US 2001/0001160                                                                                                                                                                                                                                                                                |
| EX-2038 | DeWeese <i>et al.</i> US 2001/00392.09                                                                                                                                                                                                                                                                             |
| EX-2039 | Bocharov <i>et al.</i> US 2011/0083144                                                                                                                                                                                                                                                                             |

The Board should deny institution of this petition seeking IPR of U.S. Patent No. 11,039,218 (“the ’218 patent”) because “the same or substantively the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d).

**I. The Same Or Substantially The Same Prior Art And Arguments Were Previously Presented To The Office**

**A. Ellis Is Substantively The Same As & Cumulative Of Previously Considered Prior Art**

The face of the ’218 patent cites both: (i) Ellis-318, a patent publication having an identical technical specification and drawings as Petitioner’s Ellis; and (ii) International Search Report and Written Opinion (the “PCT WO”), in which the International Searching Authority found Ellis-318 to be “not considered...of particular relevance.” (EX-2035, 207.) Petitioner does not dispute these facts. Nor does Petitioner dispute that *two* examiners considered Ellis-318 and the extent of its relevance to Patent Owner’s one-to-many socket architecture, which may be paired with a digital content stream. Instead, Petitioner argues that Ellis was not substantively considered because (1) the Examiner did not cite Ellis-318 in a rejection, and (2) the claims subject to the PCT WO differ from those before the PTO Examiner. Neither argument passes muster.

**First**, whether the Examiner cited Ellis-318 in a rejection is not dispositive. The Board has rejected the same argument: “Petitioner...seems to limit this factor to references that are expressly included in a rejection by the examiner. This factor

is not so limited.” *Medtronic Corevalve LLC v. Speyside Medical, LLC*, IPR2021-00310, Paper 9 at 26 (PTAB July 23, 2021) (citing *Advanced Bionics LLC v. MED-EL Elektromedizinische Gerate GmbH*, IPR2019-01469, Paper 6 at 7-8 (PTAB Feb. 13, 2020)).

Petitioner’s attempt to dismiss Ellis-318 for its “mere inclusion in an IDS” overlooks the depth of analysis found in the ’218 patent’s file history. Unlike *Fasteners for Retail v. RTC Indus.*, which included “over 1,000 prior art documents,” Ellis-218 is one of only 44 prior art documents listed on the applicant’s 2/23/21 IDS. (EX-2035, 356-361.) The Board was “skeptical that the examiner was able to devote sufficient time to evaluate all of the asserted art in detail during prosecution” in *Fasteners for Retail* (IPR2019-00994, Paper 9 at 10 (PTAB Nov. 5, 2019) (emphasis in original)). The same skepticism is unwarranted here, where Examiner Chen explicitly stated that she considered “ALL REFERENCES” in the IDS listing Ellis-318 “EXCEPT WHERE LINED THROUGH.” (EX-2035, 360.) Examiner Chen did not “line through” Ellis-318, and there is no evidence to suggest that she did not, in fact, consider Ellis-318.

Petitioner’s reliance on *Whitewater West Indus. v. American Wave Machines*, in which the prior art “was [not] applied and discussed during prosecution” (*Whitewater West Indus. v. American Wave Machines*, IPR2022-01033, Paper 8 at 16 (PTAB Nov. 22, 2022) (emphasis added)), is misplaced. Unlike in that case, here

the PCT Examiner specifically searched for, considered, analyzed, and made a determination as to the relevance of Ellis-318, and Examiner Chen considered this analysis. (EX-2035, 356-360.)

**Second**, Petitioner’s argument regarding the claims subject to the PCT WO disregards Petitioner’s rationale for using Ellis to challenge the ’218 patent—“Ellis’s *two-part* delivery method/system.” (Petition, 19.) Each claim set includes recitations directed to Patent Owner’s one-to-many socket architecture/paired digital content. Examiner Chen would likely have understood the PCT Examiner’s finding of Ellis-318 as an A-category document applicable to the ’218 patent claims. Just as the two-track architecture of Ellis-318 was not of particular relevance to the architecture of the PCT application, so, too, would the generic two-track architecture of Ellis-318 not have been relevant to the claims of the ’218 patent. And Petitioner can point to no authority stating that identical overlap in claims must exist.

**B. Ellis, Herzog, and Spivey Are Substantively the Same as Shoff, DeWeese, and Bocharov**

In arguing that Shoff, DeWeese, and Bocharov are not substantively the same as Ellis, Herzog, and Spivey, Petitioner ignores the Examiner’s analysis of Shoff, DeWeese, and Bocharov.

**First**, Petitioner fails to address the substantial technical overlap between Ellis and both Shoff and DeWeese, which Patent Owner highlighted in its POPR at 26-30. For example, Ellis’s generic, high-level discussion of a *two-part* delivery

method/system is found in at least Shoff FIG. 4. (*Compare*, Petition, 19 with POPR, 27-28; *see also*, EX-2037, FIG. 4.)

**Second**, Petitioner argues that there were no “specific teachings that would support a finding that the Examiner had substantially the same teaching before her.” (Reply, 4.) For example, Petitioner asserts that none of the references analyzed in the prosecution history taught the recited “control server” (Reply, 3-4), when in fact, the prosecution history includes a detailed analysis, considered by Examiner Chen (EX-2035, 356-360), of the control server. (“***Bocharov discloses... a control server to periodically retrieve, from an event information provider*** [mapping to Bocharov], ***first event information germane to a first live sporting event*** [mapping to Bocharov], ***wherein the first event information includes first score information for the first live sporting event*** [mapping to Bocharov]” (EX-2035, 212, 214 (emphasis added).)

And rather than “fabricate a combination” as alleged by Petitioner, Patent Owner presents the very references that were apparently analyzed together by the Examiner during prosecution of the ’218 patent. For example, the ’218 patent’s prosecution history demonstrates that the Examiner considered at least the two-track architecture of Shoff and DeWeese and Petitioner’s interpretation of “webserver,” “control server,” and “socket server” limitations in Bocharov in a single correspondence—the Non-final Office action mailed April 21, 2021. (EX-2035,

337-349.) Petitioner's suggestion that Examiner Chen did not consider the interoperation of the references enumerated in the Office Action is baseless.

In sum, Petitioner merely uses cumulative prior art and repurposes prior art analysis that has already been considered during prosecution.

## **II. The Examiner Did Not Err During Prosecution**

As discussed above, the Examiner had the benefit of and expressly reviewed the PCT WO analyzing the “integrat[ion] [of] known, generic components, as taught by Spivey (the control server and socket server) and Herzog (the webserver).” (Reply, 5.) Specifically, the Examiner already considered the disclosure of these alleged “generic components” in Shoff, DeWeese, and Bocharov in allowing the '218 patent. (POPR, 30-33.) And the Examiner expressly analyzed Shoff, DeWeese, and Bocharov in an Office Action, and specifically commented on the allowability of the independent claims over these references. The only logical conclusion is that Examiner Chen was familiar with the content of the prior art.

The Examiner correctly recognized that the '218 patent claims are allowable over the prior art disclosures and the combination of a two-track architecture with generic servers. (EX-2035, 210-229, 337-349.) Accordingly, discretionary denial under Section 325(d) is appropriate.

Dated: February 24, 2025

/Brian Eutermoser/

Brian Eutermoser

Reg. No. 64,058

KING & SPALDING LLP

1401 Lawrence Street, Suite 1900

Denver, CO 80206

Telephone: (720) 535-2312

*Counsel for Patent Owner  
SportsCastr Inc. (d/b/a PANDA  
Interactive)*

**CERTIFICATE OF SERVICE**

I certify that I caused to be served a true and correct copy of the foregoing:  
**PATENT OWNER PRELIMINARY SUR-REPLY** were served by filing this  
document through the Patent Trial and Appeal Case Tracking System (P-TACTS)  
on February 24, 2025, in its entirety on the following:

W. Todd Baker (Reg. No. 45,265)  
todd.baker@kirkland.com  
KIRKLAND & ELLIS LLP  
1301 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

Jeanne M. Heffernan  
jheffernan@kirkland.com  
Michael T. Dinnella (Reg. No. 82,580)  
michael.dinnella@kirkland.com  
KIRKLAND & ELLIS LLP  
401 Congress Avenue  
Austin, TX 78701

/Brian Eutermoser/  
Brian Eutermoser  
Reg. No. 64,058  
KING & SPALDING LLP

*Attorney for Patent Owner*  
*SportsCastr Inc. (d/b/a PANDA*  
*Interactive)*

Date: February 24, 2025  
1401 Lawrence Street, Suite 1900  
Denver, CO 80202  
Telephone: (720) 535-2312