

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TIKTOK INC.,
Petitioner,

v.

NTECH PROPERTIES, INC.,
Patent Owner.

Case IPR2024-01338

U.S. Patent No. 8,875,185

PATENT OWNER'S PRELIMINARY RESPONSE

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PATENT OWNER'S EXHIBIT LIST

Exhibit	Description
2001	U.S. Patent Application Publication No. 2004/0025180 A1
2002	Business Wire, “stimTV Network Wins Emmy Award from the National Television Academy; Technology & Engineering Emmy Award for Best Use of ‘On Demand’ Technology” (Jan. 10, 2007)
2003	National Television Academy, “National Television Academy Announces Emmy Winning Achievements: Honors Bestowed at 58th Annual Technology & Engineering Emmy Awards” (Jan. 8, 2007)
2004	Claim Chart Comparison of Independent Claim 1 of the ‘185 Patent with the then-pending claims of the ‘374 and ‘873 Patent Applications

I. INTRODUCTION

The Board should deny the Petition¹ under 35 U.S.C. § 325(d) because the Office already determined that Marcus156 does not disclose defining second video programming based on the user's selection of a frame associated with the first video programming and a template, Petitioner's secondary references (Grounds 2-7) do not (and are not alleged to) cure this noted deficiency in the prior art, and Ferman (Grounds 8-9) is cumulative to another reference considered during prosecution of the '185 Patent, Begeja (Ex. 2001). Petitioner neither acknowledges the Office's consideration of Marcus156 with respect to this limitation nor identifies any error in the Examiner's analysis. The Petition, therefore, should be rejected because it rehashes meritless art and arguments already considered and rejected by the Office without addressing the conclusions reached by the Examiner.

With respect to Marcus156, the Examiner was persuaded by the Applicant's argument that "[t]he invention, unlike [Marcus156], provides customized first video programming as a basis from which to select a wide range of additional second video programming that is also customized, and which adheres to template rules" Ex.

¹ The Petition relies on primary references Marcus156 (Ex. 1009) and Ferman (Ex. 1012) to challenge Claims 1-20 (the "Challenged Claims") of U.S. Patent No. 8,875,185 (Ex. 1001, the "'185 Patent").

1005 at 240-41; *id.* at 258-59 (Notice of Allowance finding that the prior art of record alone or in combination (including Marcus156) does not teach this feature of the claimed invention). Instead of defining second customized video programming based on the selection of a frame associated with first video programming, Marcus156 “provides a method and system for creating seamless temporally ordered video programming from clips that are not required to be part of the same original programming.” *Id.* at 240. User interactions with Marcus156’s video programming can add new clips to existing programming, but Marcus156 does not contemplate, teach, or suggest defining second programming.

Denial of the Petition under § 325(d) or the merits is also appropriate because Ferman is cumulative to the Begeja reference, which the Applicant overcame in the same Office Action Response. Ex. 1005 at 241. Like Begeja, Ferman’s system presents a system to generate highlight reels from a full version of a video, only allowing a viewer to select more or less of that same program. Petitioner’s arguments regarding Ferman are also insufficient to raise a reasonable likelihood that any claim of the ’185 Patent is unpatentable because Ferman does not disclose searching a database for video clips, concurrently presenting first video programming along with frames of clips of the first video programming, there is no concurrent frame display from which a user selects a frame of the first program and

which is used as a basis to select additional, different programming in accordance with template rules, as required by the Challenged Claims.

II. THE '185 PATENT

A. NTECH

Marcus founded NTECH Properties, Inc., (“NTECH”) in 2001 with the goal of fundamentally changing how media is created and presented to users. For this and other related work, Marcus has won a multitude of film, music, and advertising awards, including awards from the Cannes Film Festival, the American Advertising Awards, the Clio Awards, the New York Film and Television Festival, and the Madrid International Film Festival.

Of particular relevance to this case, Marcus developed stimTV, which broke ground as the first platform to offer videos personalized to the user. Ex. 2002 at 1-2. Launched in 2005, stimTV provided the world's first truly interactive and personally tailored media presentation network, where multiple personalized video streams could be concatenated and presented to the user without requiring the user to manually select individual media assets. *Id.* This work was widely recognized in the industry, and in 2007, stimTV was awarded a Technology and Engineering Emmy Award for “Outstanding Innovation and Achievement in Advanced Media Technology for the Best Use of ‘On Demand’ Technology Over the Public (open)

Internet,” beating out large conglomerates like ABC.com, AOL Music, and Turner Broadcasting for this honor. Ex. 2002 at 1; Ex. 2003 at 3.

B. Overview of the '185 Patent

The '185 Patent claims priority to U.S. Provisional Application No. 60/482,597, filed June 24, 2003, and claims an improvement over then-conventional systems, including live television and video-on-demand (“VOD”) systems. '185 Patent at Cover Page (60), 1:28-2:2. Before the '185 Patent, information delivery systems gave viewers “very little control over what information is presented,” and the interfaces for requesting information were non-entertaining. *Id.* at 1:47-48; *see also id.* at 1:40-2:2. Accordingly, whereas conventional media platforms let users manually choose from available media assets (*e.g.*, by tuning to a particular live television channel or selecting a particular stored media asset from a list of available media assets), the '185 Patent describes and claims an entirely different paradigm for the delivery of content that builds upon the inventor's earlier work, described and claimed in Marcus¹⁵⁶. Rather than forcing a user to manually choose particular media assets, Marcus¹⁵⁶ pioneered the concept of preparing and presenting video programming in the form of a concatenated stream of video clips based on user-centric variables stored in a “template.” *Id.* at 3:9-19, 3:34-38.

The invention described and claimed in the '185 Patent improved on this model by generating and displaying *different* video programming (*i.e.* a second

concatenated stream of video clips) based on the first video programming while also ensuring that the second video programming was generated according to the template. *Id.* at 2:6-38, 3:16-19 (“In one embodiment, selections made by the user are monitored and used in association with templates to determine which clips will be selected and how they will be presented to the user in the stream of information in the future.”); *see also* Ex. 1005 at 240-41 (the claimed invention “provides customized first video programming as a basis from which to select a wide range of additional second video programming” which is “different video programming . . . that is also customized, and which adheres to template rules”). In order to ensure that the second video programming is customized to the user, the second set of video clips must also satisfy the template, which specifies certain user information, viewing scenarios, and style requirements. *See* ’185 Patent at Claim 1.

Accordingly, Independent Claim 1 recites, *inter alia*, “presenting said first video programming in a first area of display” and “concurrently with said presenting said first video programming, presenting one or more frames from one or more displayed first video clips from the first video programming in a second area of said display.” ’185 Patent at Claim 1. When the user selects one of these frames, the system selects clips and transitions and generates the second video programming, which includes a plurality of selected second video clips that also adhere to the template.

C. The Relevant Prosecution History

During prosecution of the application that issued as the '185 Patent, the Examiner issued a rejection based on Marcus156. *See* Ex. 1005 at 219 (relying on Marcus156 for its disclosure of a “template compris[ing] a plurality of variables corresponding to potential viewing scenarios”); *see also id.* at 217-26, 240-41. Although the Examiner cited Marcus156 for its temporal ordering, the Applicant identified several patentable distinctions between the claimed invention and Marcus156 pertaining to the *second video programming* claim features. *Id.*

For example, the Applicant argued that the claimed invention enables “a user to search and browse videos in a customized manner, make a selection from the customized presentation, and receive further customized video programming.” *Id.* at 237. Although Marcus156 provides for the creation of “seamless temporally ordered video programming from clips,” it does not disclose generating the “multiplicity of branched and inter-related programming” like the '185 Patent. *Id.* at 240.

The Applicant also distinguished Marcus156 on the basis that it does not provide customized second video programming based on interactions with customized first video programming:

The invention, unlike Marcus, provides ***customized first video programming as a basis from which to select a wide range of additional second video programming that is also customized,***

and which adheres to template rules by which this different video programming is related or consistent, and also in each case is presented in an appropriate temporal order and in a consistent style, and according to user information. The present invention improves upon Marcus in a material and non obvious way.

Id. at 240-41 (emphasis added). That is, Marcus156 does not disclose the claim features of “defin[ing] [a] second video programming,” different from the first video programming that forms the basis for selecting the second video programming, and which selection adheres with “first or second templates” comprising user information, viewing scenarios, and style requirements. ’185 Patent at Claim 1.

Instead, Marcus156’s interactive system only presents a customized first video programming in which additional video clips are incorporated into that same programming upon viewer selection. See Marcus156 at 14:35-52. On this point, Marcus156 is similar to Begeja, which “displays thumbnails (Fig. 5) so that clips within a topic can be selected for viewing.” Ex. 1005 at 241. Accordingly, “although Begeja allows a user to select more of an entire video program based on a segment[,] it does not provide for a plurality of video clips or additional programming to be selected based on a segment, and does not select, determine a temporal order, and concatenate clips into second video programming as claimed.” *Id.* Like Marcus156, therefore, Begeja does not disclose the customization of additional, different video programming, with the first video programming

providing the basis for the selection and which is in accordance with template rules.
Id.

The Examiner found these arguments persuasive and mailed a Notice of Allowance confirming that the claims were allowable over “the prior art of record. Ex. 1005 at 253-61. Moreover, when allowing the ’185 Patent’s child, U.S. Application No. 14/494,110, the Examiner determined that while Marcus156 is “pertinent to applicant’s disclosure,” it does not disclose “searching” for and “defining second video programming” according to “templates.” Ex. 1006 at 99-102.

III. THE BOARD SHOULD EXERCISE ITS DISCRETION PURSUANT TO § 325(d) TO DENY INSTITUTION

The Board should deny this Petition because the Office already determined that Marcus156 and Begeja do not disclose the *second video programming* limitations of the ’185 Patent, Ferman is cumulative to and substantially similar to Begeja, and Petitioner has not demonstrated any error in the Examiner’s express findings on this issue. This is the sort of wasteful “do-over” that the *Advanced Bionics* framework is intended to prevent. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, No. IPR2019-01469, Paper 6 at 8-9 (P.T.A.B. Feb. 13, 2020) (precedential) (“*Advanced Bionics*”).

A. Grounds 1-7: The Office Already Determined That Marcus156 Does Not Disclose the *Second Video Programming*

Marcus156 was the subject of extensive consideration during prosecution of the '185 Patent and several of its family members. That consideration included arguments from the Applicant, and determinations on the record, that Marcus156 does not disclose generating *second video programming*. Petitioner overlooked this aspect of the prosecution history entirely and did not establish any material error in the Examiner's analysis.

1. *Advanced Bionics* Prong 1 is Satisfied Because the Office Already Considered the Same Art and Argument

Advanced Bionics prong one is satisfied because the Office already considered the same prior art (Marcus156) and arguments (whether Marcus156 discloses the *second video programming* limitations of the '185 Patent). *Advanced Bionics* at 8 (*Advanced Bionics* part one considers whether “the same or substantially the same” art or arguments “were previously presented to the Office.”). Because Marcus156 was already considered by the Office, *Advanced Bionics* prong one is satisfied with respect to Grounds 1-7 without reference to *Becton, Dickinson* factors (a), (b), and (d). *Id.* at 9-10 (identifying factors for determining whether “substantially the same prior art or arguments” were previously presented to the Office).

Becton, Dickinson factors (a), (b), and (d)² nevertheless demonstrate that the same or substantially the same *arguments* were previously presented to the Office with respect to Marcus156. *Id.* at 20 (if the same prior art was previously presented, the Board need not determine whether the same arguments were previously presented).

a) *Becton, Dickinson* Factors (a) and (b)

The Office already considered Marcus156 for the same argument Petitioner presses in the Petition:

Marcus provides a method and system for creating seamless temporally ordered video programming from clips that are not required to be part of the same original programming nor have a preexisting temporal order with respect to each other. Marcus does not go further, and provide a method and system of the invention, and its multiplicity of branched and inter-related programming. The invention, unlike Marcus, provides

² The *Becton, Dickinson* factors relevant to the part one inquiry include: “(a) the similarities and material differences between the asserted art and the prior art involved during examination; (b) the cumulative nature of the asserted art and the prior art evaluated during examination;” and “(d) the extent of the overlap between the arguments made during examination and the manner in which petitioner relies on the prior art.” *Id.* at 9 n.10.

customized first video programming as a basis from which to select a wide range of additional second video programming that is also customized, and which adheres to template rules by which this different video programming is related or consistent, and also in each case is presented in an appropriate temporal order and in a consistent style, and according to user information. The present invention improves upon Marcus in a material and non obvious way.

Ex. 1005 at 240-41 (emphasis added). The Examiner agreed, twice. *Id.* at 258-59; *see also* Ex. 1006 at 99-102. Although Petitioner argues that “grounds 1-7 combine Marcus156 with additional references not considered by the examiner” (Pet. at 72), those references do not (and are not alleged to) teach these *second video programming* limitations.

Factors (a) and (b) show that the Examiner already considered the same prior art and the same or substantially the same argument that Petitioner rehashes in the Petition.

b) *Becton, Dickinson Factor (d)*

Factor (d) likewise demonstrates that the Board already considered and rejected substantially the same argument Petitioner makes here. *Cf.* Pet. at 72-73.

Although Petitioner notes that the Examiner did not cite Marcus156 for the *second video programming* limitations (*id.*) it overlooks the fact that Applicant expressly distinguished Marcus156 on this basis and that the Examiner found that

argument persuasive. See Ex. 1005 at 240 (remarking that “Marcus[156] furthermore does not provide the currently claimed combination of steps nor make them obvious”), 294-303 (issuing a notice of allowance because “the prior art of record” fails to teach this and other features of the claims).

Petitioner also suggests that the Examiner erred in allowing the '185 Patent—allegedly because the “applicant was further forced to add additional, substantive limitations not found in the '185 patent claims.” Pet. at 6; *see also id.* at 73. The record does not support this claim. Indeed, when allowing the '185 Patent's child, U.S. Application No. 14/494,110, the Examiner determined that while Marcus156 is “pertinent to applicant's disclosure,” it does not disclose “searching” for and “defining second video programming” according to “templates.” Ex. 1006 at 99-102. Petitioner ignores this finding, which is inconsistent with its suggestion that the Examiner determined that Marcus156 discloses this limitation with respect to “later family members.” See Pet. at 5-6, 72-73.

Indeed, the *second video programming* limitations were not present in the “later family members” that Petitioner cites in support of its argument. *Id.* at 73 (citing Ex. 1007 at 309; Ex. 1008 at 78-81); *see also id.* at 6. Accordingly, it is immaterial whether the Applicant “had to further amend the pending claims with limitations not found in the '185 patent,” because those applications did not include the *second video programming* limitations that the Examiner twice found to

distinguish Marcus156. *Id.* at 73; *see also* Ex. 2004 (a table contrasting the '185 Patent's independent claim with the claims of the other applications).

In view of the foregoing, NTECH respectfully submits that the same prior art and arguments were previously presented to the Office.

2. *Advanced Bionics* Prong 2 Favors Denial As Petitioner Fails to Demonstrate Material Error by the Office

Advanced Bionics prong two is satisfied because Petitioner overlooks and alleges no error in the Office's prior consideration of Marcus156 with respect to the *second video programming* limitations. *See Advanced Bionics* at 8-9 (under *Advanced Bionics*, "[i]f a condition in the first part of the framework is satisfied and the petitioner fails to make a showing of material error, the Director generally will exercise discretion not to institute *inter partes* review."). Indeed, Petitioner only alleges "error" with respect to a single dependent claim, which is immaterial to the patentability of the independent claim and its dependents. Pet. at 72-73.

As established above, the Applicant distinguished the claimed invention over Marcus156 based upon the *second video programming* claim features. *See, e.g.,* § II.C, *supra*. Petitioner ignores this aspect of the record and identifies no error in the Examiner's consideration of Marcus156 or the Applicant's arguments distinguishing that reference.

Instead, Petitioner simply asserts that Marcus156 "was only used as a secondary reference for some specific claim limitations." Pet. at 72-73. However,

the characterization of a reference as “primary” or “secondary” has no effect on the Office’s obviousness analysis, and indeed the Examiner examined Marcus156 at great length. *See* Ex. 1005 at 217-26; *Schwendimann v. Neenah, Inc.*, 82 F.4th 1371, 1384 (Fed. Cir. 2023) (“[C]haracterizing references as primary and secondary is merely a matter of presentation with no legal significance.”) (internal quotation marks omitted).

In the Office Action Response directly preceding the Notice of Allowance, the Applicant traversed Marcus156 as if it were asserted as a single reference obviousness rejection. Ex. 1005 at 240 (“Marcus[156] furthermore does not provide the currently claimed combination of steps nor make them obvious.”). The Applicant proceeded to explain how “[t]he present invention improves upon Marcus[156] in a material and non obvious way,” because, unlike Marcus156, the claimed invention “provides customized first video programming as a basis from which to select a wide range of additional second video programming that is also customized” Ex. 1005 at 240-41, 253-61.³

³ During prosecution of the child patent, the same Examiner relied on substantially similar claim features as those here for finding the claims allowable over Marcus156. *See* Ex. 1006 at 99-102 (identifying Marcus156 as “pertinent to applicant’s

The Examiner's correct conclusion is confirmed by Petitioner's failure here to demonstrate that Marcus156 teaches the distinguishing claim features, as detailed below. *See, e.g., § VI.A, infra.* Thus, Petitioner cannot show that the Examiner erred in a material way. In fact, the only alleged "error" Petitioner sets forth concerns dependent claim 13 and how the Examiner purportedly overlooked Marcus156's disclosure of video streaming. *See Pet. at 73-74.* But that alleged error is unrelated to the independent claim and the distinguishing claim features, and thus immaterial to the patentability of the Challenged Claims.

Additionally, Petitioner's assertion concerning the prosecution of other family members is groundless. *Id.* at 73 (citing the '873 prosecution history (Ex. 1007) and the '374 prosecution history (Ex. 1008)). While Marcus156 was used in obviousness rejections during the prosecution of other patent applications in the same family, the pending claims did not include *second video programming* features of the '185 Patent. Ex. 2004 (comparing Independent Claim 1 of the '185 Patent with the then-pending claims of the '873 and '374 applications cited in the Petition).

disclosure," but expressing that no prior art of record suggests the claim limitations regarding the second video programming, including "searching" for and "defining second video programming," and wherein the "searching" or "defining" is performed according to templates).

In view of the foregoing, *Becton, Dickinson* factors (c), (e), and (f) weigh heavily in favor of discretionary denial. Thus, both parts of *Advanced Bionics* confirm that the Board should exercise its discretion under § 325(d) to deny institution.

B. Grounds 8 and 9: Ferman is Cumulative to Begeja

The Board should reject the Petition under § 325(d) because the Office already considered substantially the same prior art and arguments as those raised in Grounds 8 and 9, which rely on Ferman as the primary reference. However, Ferman is substantially the same as, and cumulative to, the Begeja reference that the Applicant distinguished during prosecution of the '185 Patent.

1. *Advanced Bionics* Prong 1 is Satisfied Because Ferman is Cumulative to Begeja Concerning *Second Video Programming*

In addition to pointing out that Marcus156 does not disclose the *second video programming* limitations of the '185 Patent, the Applicant also distinguished Begeja. And despite Petitioner's bald assertion that Ferman is "new, non-cumulative" art not previously before the Office, Petitioner did not mention Begeja or seek to establish that Ferman is non-cumulative to that reference (or any other art of record). Pet. at 72; *see also id.* at 3-4.

Petitioner's failure to identify any alleged differences between Ferman and the art previously before the Office is, by itself, fatal under *Advanced Bionics*. *Parse*

Biosciences, Inc. v. 10X Genomics, Inc., No. IPR2023-01033, Paper 8 at 14, 21 (P.T.A.B. Dec. 19, 2023) (denying institution under § 325(d) because petitioner's "failure to conduct *any* analysis of whether its art was cumulative is, by itself, fatal under AB part one."); *see also Autel Intelligent Tech. Corp. v. Orange Elec. Co.*, No. IPR2021-01545, Paper 8 at 17, 20-23, 27 (P.T.A.B. Apr. 8, 2022) (denying institution under § 325(d) where Petitioner failed to "persuasively identify any specific, substantial difference between [petitioner's reference] and the Third Reexamination's prior art"); *Alarm.com, Inc. v. Vivint, Inc.*, No. IPR2022-00728, Paper 6 at 20-22 (P.T.A.B. Nov. 1, 2022) (concluding that the art was cumulative, noting the "[p]etitioner does not address the similarities between [references] applied during prosecution . . . , and [the reference] relied upon in each of the asserted grounds").

Nevertheless, *Becton, Dickinson* factors (a), (b), and (d) establish that Ferman (and Petitioner's arguments based on Ferman) are substantially similar to Begeja (and the arguments the Examiner considered concerning Begeja).

a) *Becton, Dickinson* Factors (a) and (b)

Had Petitioner provided this mandatory analysis, it would have confirmed that Ferman is cumulative to Begeja and suffers from the same deficiencies—namely, the absence of a concurrent frame display as a basis to define different, second video

programming (as in Elements 1[g]-1[j]).⁴ The following table illustrates the similarities between Ferman and Begeja:

Ferman	Begeja
In addition, the system description scheme and program description scheme provide information regarding the content of the available information that may selectively be obtained and recorded. The system, in an autonomous manner, periodically obtains and records the audiovisual information that may be of interest to the user during the past week based on the three description schemes. Ferman at ¶ [0107].	In one embodiment of the invention, the service works by recording all of the video streams of appropriate source and interest to a target audience. For example, the service may record content from a collection of (or a particular one of) sports or news channels on television. Ex. 2001, ¶ 27.
An audiovisual program analysis module 42 performs an analysis of the received programs 38 to extract and provide program related information (descriptors) to the description scheme (DS) generation module 44. Ferman at ¶ [0102].	Once the content is captured and recorded, it can be segmented, analyzed and/or classified, and thereafter stored on a platform. Ex. 2001, ¶ 28.
A search, filtering, and browsing (SFB) module 52 implements the description scheme technique by parsing and extracting information contained within the description scheme. The SFB module 52 may perform filtering, searching, and browsing of the programs 38, on the basis of the information contained in the description schemes. Ferman at ¶ [0105].	Having obtained or generated the text, it can then be used as a basis for searching the multimedia content. Ex. 2001, ¶ 29.

⁴ NTECH uses the claim element naming convention as set forth in the Petition.

Ferman	Begeja
The user selects the Chicago Bulls game and indicates a desire to view a 5 minute highlight of the game. The system automatically generates highlights. The highlights may be generated by audio or video analysis, or the program description scheme includes data indicating the frames that are presented for a 5 minute highlight. Ferman at ¶ [0107].	Once the pertinent segments of the broadcast have been appropriately extracted, for a given user, they can be stitched together for continuous delivery to that user. Ex. 2001, ¶ 30.
On the display, the user is presented with a list of recorded sporting events including Basketball and Soccer The user is interested in basketball games and indicates a desire to view games. A set of title frames is presented on the display that captures an important moment of each game. Ferman at ¶ [0107].	In section 505, still frames of the beginning of each clip (i.e., thumbnails) within a topic can be viewed by the user. Section 505 can be controlled by section 515, which allows the user to select a topic of clips to be shown, as well as section 520, which allows a user to select a portion of the clips from that topic that will be played. Ex. 2001, ¶ 68.
The user selects the Chicago Bulls game and indicates a desire to view a 5 minute highlight of the game. The system automatically generates highlights. Ferman at ¶ [0107].	When one or more of these clips is chosen for viewing by the user, that clip is shown in section 510. Ex. 2001, ¶ 69.

Two key conclusions may be drawn from this table: (1) Ferman is less relevant to the Challenged Claims than Begeja was because Ferman's selection is through a "Length" window and therefore does not disclose "concurrently . . . presenting frames from one or more displayed first video clips from the first video

programming displaying frames;”⁵ and (2) neither Ferman nor Begeja discloses defining second video programming based on the user’s interaction with such a frame.

b) *Becton, Dickinson* Factor (d): the extent of the overlap between the arguments made during examination and the manner in which petitioner relies on the prior art

There is a near-perfect overlap between the arguments made about Begeja during prosecution and the way Petitioner relies on Ferman in this matter.

The Examiner cited Begeja for its disclosure of presenting one or more frames of recently displayed video clips and receiving a selection of the frame from a user. Ex. 1005 at 220. Petitioner similarly argues, “it would have been obvious to implement the UI shown in Ferman’s Fig. 10 to concurrently play the selected highlight video in the main UI element and display frames from the highlight videos to allow the user to play other versions of that highlight video.” Pet. at 58-59. However, as the Applicant persuasively argued during prosecution of the ’185

⁵ While Petitioner annotates Ferman’s “Highlight View” of Figure 10 to show initial highlights of a program displayed next to the frames of the program in the left hand column, this column actually displays titles of *different programs*. See § VI.F.1, *infra*; Ferman at Fig. 10, ¶ [0124].

Patent, the user's selection of such a frame in Begeja does not result in defining second video programming:

Thus, although Begeja allows a user to select more of an entire video program based on a segment (§ [0030]), it does not provide for a plurality of video clips or additional programming to be selected based on a segment, and does not select, determine a temporal order, and concatenate clips into second video programming as claimed. Begeja displays thumbnails (Fig. 5) so that clips within a topic can be selected for viewing (§§ [0068-0069]).

Ex. 1005 at 241 (citing Begeja). That is, when a user clicks on a segment in Begeja, it just plays more of the video programming without selecting a second plurality of video clips or defining second video programming.

Likewise (granting Petitioner's argument that it would be obvious to modify Ferman's "Highlight View" interface to concurrently display frames from the first video programming), the modified Ferman falls short of the claimed invention because clicking on any one of those frames would just show more or less of the same program. In particular, and for the sake of Petitioner's argument, if a user were to select one of these "frames," the system would merely present a longer or shorter highlight of the same program. Pet. at 59 (asserting that Ferman teaches the selection and playing of "other highlight videos of the same program."). Thus, Ferman, like Begeja, fails to disclose the customization of additional, different programming

based on the selection of frames of a first video programming and in accordance with the templates as claimed.

Because Ferman is cumulative to and applied in the same way to the Challenged Claims a Begeja, NTECH respectfully requests that the Board determine that Petitioner presents substantially the same prior art or arguments regarding Ferman that the Office already rejected when considering Begeja.

2. Advanced Bionics Prong 2: Petitioner Does Not Identify Material Error in the Examiner's Analysis of Begeja

Advanced Bionics prong two is satisfied because Petitioner overlooks and alleges no error in the Office's prior consideration of substantially the same prior art and arguments. *See Advanced Bionics* at 8-9 (under *Advanced Bionics*, "[i]f a condition in the first part of the framework is satisfied and the petitioner fails to make a showing of material error, the Director generally will exercise discretion not to institute *inter partes* review.").

C. The Additional References Are Immaterial Because They Are Not Asserted Against the Claim Features Forming the Basis For Allowance

The additional references asserted in Grounds 2-7 and 9 are irrelevant to the § 325(d) analysis because Petitioner does not rely on those references to satisfy the *second video programming* claim features. *See* Pet. at 22-27, 57-62 (relying on Marcus156 or Ferman for the *second video programming* claim features), 33-34, 38-40 (relying on ***Rosen or Sull*** only for concurrent frame display (Grounds 2-7)), 42-

43, 45 (relying only on **Hosken** only for progressive video clip searching (Grounds 4-7), 45, 47, 69 (relying only on **Byers** for dependent claims (Grounds 6, 7, and 9)). Therefore, these additional references are immaterial to patentability as the claims would have issued whether or not these references were before the Office.

IV. LEVEL OF ORDINARY SKILL IN THE ART

For the purpose of this preliminary proceeding only, NTECH applies Petitioner's proposed definition of a person of ordinary skill in the art ("POSITA"), as one having "at least a Bachelor of Science in electrical engineering, computer engineering, or similar fields and at least two years of practical experience in the field of media processing and/or transmission. More education can supplement for less practical experience, and vice versa." Pet. at 5.

NTECH reserves the right to propose its own definition of a POSITA if the Board institutes review.

V. CLAIM CONSTRUCTION

At this juncture, no express construction is necessary for the Board to resolve the instant dispute and affirm patentability. Should the Board institute trial, NTECH reserves the right to advocate for the construction of any claim term in its Patent Owner Response.

VI. PETITIONER HAS NOT ESTABLISHED A REASONABLE LIKELIHOOD THAT ANY CLAIM IS UNPATENTABLE

The Petition advances a total of nine grounds, of which six challenge the sole independent claim (Claim 1). *See* Pet. at 3-4. For the reasons as follows, Petitioner fails to demonstrate a reasonable likelihood that any claim of the '185 Patent is obvious.

A. Grounds 1-7: Marcus156 Does Not Disclose *Second Video Programming* (Claims 1-20)

Grounds 1-7 rely solely on Marcus156 with respect to the *second video programming* limitations, but as determined during prosecution of the '185 Patent (*see* §§ II.C, III.A, *supra*), Marcus156 does not disclose “defining a second video programming” based on a first video programming and which selection adheres to template rules (Elements 1[j]-1[k]).

1. Overview of Marcus156

Marcus156 is directed to automating the editing process in the creation of a single video program. *See* Marcus156 at Title (“System For Automated Generation of Media”), 1:16-49 (describing “provid[ing] instructional videotapes to patients with information regarding managing of various diseases and conditions” based on an automated editing process). For example, Marcus156 discloses generating a customized, instructional video program on a requested topic, “such as a condition which the patient has been diagnosed with.” *Id.* at 1:16-49, 6:49-7:2, 8:1-43.

To create this customized video program, Marcus156 discloses an Editor Program that receives an indication of the requested topic (e.g., heart disease) and the user's demographic information and, in turn, produces a preliminary recommended decision list (EDL), e.g., a sample order of clips. *Id.* at 6:65-7:5. For instance, in response to a patient request on heart disease conditions, the Editor Program assembles a heart disease program based on clips from a database and apply applicable transitions between the clips. *See, e.g., id.* at 8:7-13 (“For example, in the assembly of programs for education of patients about health issues, the user may define only the demographic characteristics of the intended recipient of the program and the information to be conveyed, e.g., management of a particular condition. In one embodiment, the system may simply select appropriate clips from the database and apply suitable transitions.”); *see also id.* at 8:2-43. A List Editor/Previewer receives the EDL and provides a production editor with the ability to edit the EDL before the final video program is sent to a user. *Id.* at 7:3-15.

The user then watches the video program via Marcus156's “interactive system.” *Id.* at 14:35-67. The interactive system allows the user to interact with the displayed video programming and incorporates more information into the program based on the user's interaction. For instance, “[w]hen the user moves a pointer or mouse to a particular portion of the screen, and clicks on the screen, the system may select, for example, assets incorporating more detailed information on certain

portions of the heart corresponding to material on the portion of the screen where the mouse was located when clicked.” *See id.* at 14:35-58. However, rather than generating second video programming based on this interaction, Marcus156 discloses adding new clips to the same video programming:

At this point, the system may select assets that are appropriate to the particular information that the viewer appears to be seeking based on the information on the screen at the time. The system will then generate suitable transitions and add those assets to the programming.

Id. at 14:40-45.

Accordingly, the “invention, unlike Marcus, provides customized first video programming as a basis from which to select a wide range of additional second video programming that is also customized.” Ex. 1005 at 240. Indeed, as the Applicant successfully argued during prosecution: “Marcus[156] does not go further, and provide a method and system of the invention, and its multiplicity of branched and inter-related programming,” *i.e.* two different but associated video programs. *Id.* (the claimed invention provides for a “first video programming” as a basis for selecting a second “***different video programming***” and “***which adheres to template rules***”) (emphasis added).

2. Marcus156 Does Not Disclose “Defin[ing] a Second Video Programming” Adhering to “First or Second Templates” (Elements 1[j]-1[k])

Marcus156 does not disclose defining a second video programming, in which the selection of video clips is based on the first video programming and adheres to template rules, as required by the Challenged Clams. See '185 Patent at Claim 1 (Elements 1[j]-1[k]). Petitioner essentially ignores the “define a second video programming” language in its analysis of this limitation, which is sufficient for the Board to find Grounds 1-7 meritless. 37 C.F.R. § 42.104(b)(4) (“The petition must specify where each element of the claim is found in the prior art patents or printed publications relied upon.”).

The closest Petitioner comes to addressing this limitation is its unexplained claim that Marcus156 discloses “the generation of a new stream of video programming.” Pet. at 25 (citing Marcus156 at 14:40-45, 14:46-55, 7:11-15). However, the first two (unexplained) citations confirm that if and when Marcus156's interactive system performs “additional interactive searches” (in Petitioner's parlance) no “new stream of video programming” is generated. *Id.* (citing Marcus156 at 14:40-55). Instead, when appropriate assets are identified, they are added to the existing video programming:

At this point, the system may select assets that are appropriate to the particular information that the viewer appears to be seeking based on the information on the screen at the time. The system

will then generate suitable transitions and **add those assets to the programming**. For example, the program may be a tour of a three-dimensional model of the heart. When the user moves a pointer or mouse to a particular portion of the screen, and clicks on the screen, the system may select, for example, assets incorporating more detailed information on certain portions of the heart corresponding to material on the portion of the screen where the mouse was located when clicked. The system applies suitable transitions to the assets and **incorporates these assets into the programming interactively** in response to mouse clicks or other suitable input from the viewer.

Marcus156 at 14:40-55 (emphasis added). This passage explicitly contradicts Petitioner's claim that Marcus156 discloses generating a "new stream of video programming" based on interactive searches and video selections. Pet. at 25.

The final unexplained citation concerns an entirely different embodiment of Marcus156: the List Editor/Previewer. *Id.* (mixing-and-matching the List Editor/Previewer's and interactive system's distinct and separate functionalities). The List Editor/Previewer and the interactive system are separate and distinct features: one is utilized by the editor of a video program and the other by the user. *Compare* Marcus156 at 7:11-15 ("The List Editor/Previewer 430 is the GUI designed to provide the production editor with the ability to change, add to and preview the EDL that has been produced by the editor program 425 in response to information entered

in the Patient Profile Entry Interface 415.”) *with id.* at 14:8-67 (creating and displaying video programming for a user).

Petitioner fails to explain the relevance of this citation, including whether it intended to argue that it would be obvious to combine some aspects of the List Editor/Previewer embodiment with some aspects of the interactive system embodiment. Pet. at 25. Nevertheless, it is clear that the List Editor/Previewer embodiment does not disclose **either** (1) generating a “new stream of video programming” based on interactive searches and video selections or (2) that “List Editor/Previewer 430 can change video programming in response to user interaction.” *Id.* (citing Marcus156 at 7:11-15). Rather, the List Editor/Previewer may be used to modify a “preliminary edit decision list (EDL)” based on user information stored in a “Patient Profile Entry Interface.” Marcus156 at 6:65-7:15.

Aside from the fact that Marcus156 discloses incorporating new assets into the same program rather than defining a second video programming, the new clips are selected in accordance with the information on the screen, **not template rules**. Tellingly, where Petitioner mentions templates, it provides only conclusory statements that the same actions performed on the “initial search” are also performed on “follow-up searches,” *i.e.* a viewer’s interactive searches. Pet. at 27 (“templates used in follow-up searches in Marcus156’s system can be the same as or different from the initial search”). No disclosure in Marcus156 substantiates this claim, and

Petitioner cannot satisfy its burden of proving obviousness by employing “mere conclusory statements.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016).

In any event, Marcus156 contradicts Petitioner’s conclusory statements. Rather than “selecting, determining, and concatenating” the plurality of second video clips in accordance with one or more templates, Marcus156 “select[s] assets that are appropriate to the particular information that the viewer appears to be seeking based on the information on the screen at the time.” See Marcus156 at 14:40-43. Accordingly, Marcus156 does not disclose selecting “a plurality of video clips including the second video clip” in accordance with template rules. ’185 Patent at Claim 1. This makes sense because if the user seeks out “more detailed information” about material on a certain part of the screen, Marcus156 will add the requested information regardless of the template rules used to select, determine, and concatenate the clips chosen for the original video programming. Marcus156 at 14:46-52.

For at least the foregoing reasons, Petitioner fails to establish that Marcus156 discloses “defin[ing] a second video programming,” which is selected based on a customized first video programming and formed in accordance to template rules, as set forth in claim elements 1[j]-1[k].

3. Petitioner Fails to Demonstrate that Marcus156 Discloses Presenting the *Second Video Programming* (Element 1[l])

For the reasons discussed above, Petitioner also fails to demonstrate that Marcus156 provides for the presentation of a second video programming following the “follow-up search.” Again, this search simply results in the presentation of the that same video program, just with additional clips incorporated therein.

B. Grounds 8 and 9: Ferman Does Not Disclose *Second Video Programming* (Claims 1-7, 9-15, 17-20)

Grounds 8 and 9 rely solely on Ferman for the *second video programming* limitations. Like Marcus156 and Begeja, Ferman does not provide customized second video programming that adheres to template rules and is based on the user's selection of a frame representing a clip of the first video programming (Elements 1[f]-1[j]).

Petitioner also fails to demonstrate that Ferman discloses several other limitations, including, *inter alia*, “searching” databases for video clips and “selecting” a plurality of video clips (Elements 1[a], 1[b]), and “selecting” a plurality of transitional clips (Element 1[c]),

1. Overview of Ferman

Ferman discloses an audiovisual system that receives several audiovisual programs from a source, such as broadcast television. Ferman at ¶ [0119] (“In particular, the description scheme will enable audiovisual browsing and searching of programs and enable filtering within a particular program by supporting

multiple program views such as the highlight view.”) (emphasis added). The system analyzes the programs and presents the viewer with several viewing options. *Id.* at ¶¶ [0092], [0102], [0105]-[0107], [0114]. For example, the system can receive several previously-recorded programs (e.g., basketball games) and present “title frames . . . that capture[] an important moment of each game.” *Id.* at ¶ [0107].

Accordingly, Ferman’s “Highlight View” interface⁶ displays a set of different programs to a user and enables the user to select and watch highlight/summary videos of each program within the set. *Id.* at ¶ [0114] (disclosing that the viewer is able to select the highlight view/summary).

⁶ Petitioner cites aspects of Ferman’s “Highlight View” (Fig. 10) and “Event View” (Fig. 11) interfaces. *See* Pet. at 57-58 (“The event view has similar functionality.”). NTECH’s analysis on the “Highlight View” herein applies equally to the “Event View” interface.

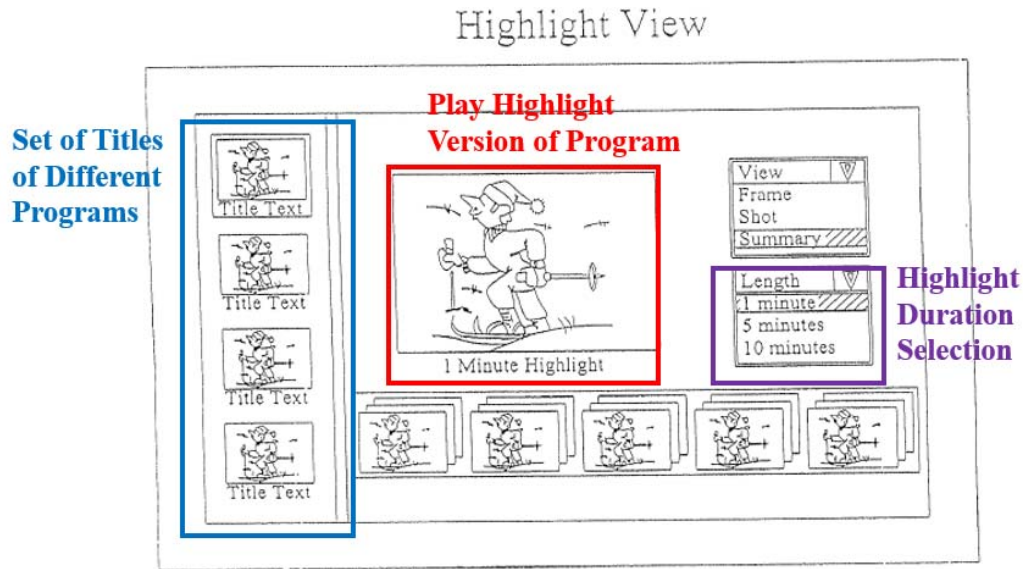


FIG. 10

Id. at Fig. 10 (annotated). As Petitioner appears to recognize,⁷ these title frames are not “frames from one or more displayed first video clips from the first video programming,” they depict “an important moment of each game,” and each game is a *different* video program. *Id.* at ¶ [0107]; ’185 Patent at Claim 1 (Element 1[g]).

⁷ Pet. at 59 (contending that a POSITA would be motivated to *modify* Ferman to “play the selected highlight video in the main UI element and display frames from the highlight videos to allow the user to play other versions of that highlight video”) (emphasis omitted).

A viewer who is interested in watching basketball games is provided with a “set of title frames [of different games] . . . on the display” and can “select[] the Chicago Bulls game and indicate[] a desire to view a 5 minute highlight of the game.” Ferman at ¶ [107]. At this point, the viewer is presented with the five-minute highlight video:

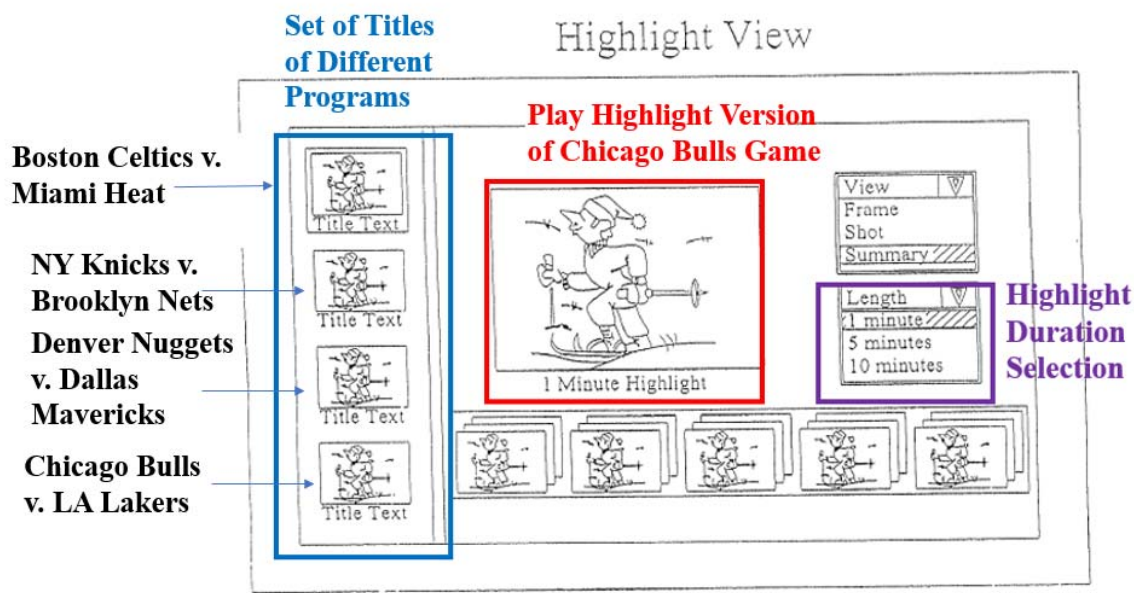


FIG. 10

Id. at Fig. 10 (annotated); see also *id.* at ¶ [0107]. More or less of the same game (e.g., one-minute and 10-minute highlights) may be played by selecting the appropriate “Length,” not from a viewer selecting frames displayed concurrently with the playing the initial highlights of a program.

2. Ferman Does Not Disclose Searching a Database of Video Clips or Selecting a Plurality of Video Clips (Elements 1[a] and 1[b])

Ferman is fundamentally different from the '185 Patent because Ferman does not disclose “searching, by one or more computing devices, one or more databases of video clips in response to a user request wherein each video clip comprises a plurality of frames.” '185 Patent at Claim 1.

Ferman discloses a “search engine [that] uses the information contained in the program description scheme to retrieve programs on the basis of their content.” Pet. at 48 (quoting Ferman at ¶ [0117] (emphasis added)); *see also* Ferman at ¶¶ [0094], [0114], [0264]. These “programs,” however, are not the “video clips” that Petitioner asserts are “selected.” *Compare* Pet. at 50 (“Ferman’s system [] selects an initial set of video clips (‘preferred programs’) that fulfill the user request.”) *with id.* (“From this initial set, based on the user preferences, Ferman’s system will select a subset of video clips corresponding to specific events or highlights.”). It is these “video clips corresponding to specific events or highlights” that Petitioner contends make up the “first video programming.”

Critically, however, there is no database of such “video clips” in Ferman’s system. Instead, as Petitioner recognizes, the search engine permits a user to search for and retrieve **programs**. *Id.* at 48-50. Rather than these “video clips” being searchable and selectable (as claimed), Petitioner admits that Ferman’s system

discloses “breaking down a long-form program into subsequences,” in a process it calls “filtering.” *Id.* at 51 (citing Ferman at ¶ [0119]). Accordingly, rather than (1) search “one or more databases of video clips in response to a user request” and (2) select “a plurality of first video clips responsive to the user request,” (’185 Patent at Claim 1), Ferman discloses searching for **programs** and then breaking those programs down into segments. Ferman at ¶ [0119].

Moreover, the claims require that “searching” for video clips and “selecting” video clips are both performed responsive to the same user request. ’185 Patent at Claim 1 (reciting “searching . . . video clips in response to a user request” and “selecting . . . a plurality of first video clips responsive to the user request”) (emphasis added). On the other hand, Ferman’s “search engine” and “filtering” functionalities are admittedly responsive to different user actions. Ferman at ¶ [0117] (disclosing a program search engine that presents results according to a “user query”); *id.* at ¶ [0119] (disclosing “filtering within a particular program by supporting multiple program views such as the highlight view”). Filtering via the highlight view is responsive to a user choosing a particular highlight length, not the user request that initiated the search.

For at least the foregoing reasons, the Challenged Claims are patentable over Ferman.

3. Ferman Does Not Disclose or Suggest Presenting First Video Programming With Concurrent Frame Display (Elements 1[f]-1[g])

Ferman's system does not present a first video programming concurrently with corresponding frame(s) (which forms the basis for the selection of second video clips that define a second video programming). See '185 Patent at Claim 1. Petitioner's argument to the contrary does not find support in Ferman. See Pet. at 57-60.

Petitioner contends that the "playing video" in the Highlight view is presented next to "frames from that video" in the left-hand column to "allow the user to play other versions of that highlight video." *Id.* at 58-59; *see also id.* at 59 ("[A] user would be able to watch an initial version of the highlight video and then select frames to play other highlight videos of the same program."); *id.* at 9, 58 (annotating Fig. 10 to depict an initial highlight video presented in the center of the display while frames from the highlight video are presented in the left-hand column).

Petitioner does not accurately describe this aspect of Ferman, which discloses presenting a set of "title frames" that represent different programs than the one that is concurrently playing. Ferman at ¶ [0107] ("The user is interested in basketball games and indicates a desire to view games. ***A set of title frames is presented on the display*** that captures an important moment ***of each game***. The user selects the Chicago Bulls game and indicates a desire to view a 5 minute highlight of the game.")

(emphasis added)); § VI.B.1, *supra* (depicting Ferman's highlight view interface of figure 10).

When a viewer wishes to play more or less of the same program, the viewer selects a length option from the "Length" menu. See Ferman at Fig. 10 (depicting a "Length" menu listing other highlight durations), ¶¶ [0107], [0204] ("The descriptor <HighlightLength> specifies which version of the highlight should be shown . . ."). There is, therefore, no concurrent display of the initial "playing video" and "frames from that video" in a different area to thereby "allow the user to play other versions of that highlight video," as Petitioner suggests. Pet. at 58-59. Recognizing this deficiency, Petitioner argues that it would have been obvious to modify Ferman's Highlight interface to arrive at the claimed invention. *Id.* at 58-60.

Petitioner's proposed modification misuses common sense to supply a missing limitation. In *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355 (Fed. Cir. 2016), the Federal Circuit considered whether and under what circumstances common sense (as opposed to record evidence and motivation to combine) could be used to supply a missing claim limitation. 832 F.3d at 1361-62. The court explained that invoking common sense to supply a missing limitation may be proper when "the limitation in question [is] unusually simple and the technology particularly straightforward." *Id.* at 1362. Petitioner has not attempted to make that showing.

Instead, Petitioner presents a *post-hoc* rationalization for its proposed modification, arguing that Ferman, as modified, would provide efficient browsing. Pet. at 59. After-the-fact identification of the benefits flowing from a particular invention does not prove that it would have been obvious to make the modification at the time of the invention. *Otsuka Pharm. Co. v. Sandoz, Inc.*, 678 F.3d 1280, 1296 (Fed. Cir. 2012) (“The inventor’s own path itself never leads to a conclusion of obviousness; that is hindsight. What matters is the path that the person of ordinary skill in the art would have followed, as evidenced by the pertinent prior art.”). Indeed, Ferman’s existing highlight view interface already allows for efficient browsing between different highlight versions. Ferman at ¶¶ [0151], [0152], [0204]. This functionality allows the viewer to efficiently browse and watch initial highlights of a program as well as other highlights of the program by selecting a duration in the “Length” window, e.g., the 10-minute highlights of the program.

In fact, Petitioner’s modification would cause Ferman to lose the ability for the user to efficiently choose a new program. *In re Cyclobenzaprine Hydrochloride Extended-Release Capsule Pat. Litig.*, 676 F.3d 1063, 1075 (Fed. Cir. 2012) (precedent requires “that a fact finder consider all evidence relating to obviousness before finding a patent invalid on those grounds”). By replacing the set title frames of different programs with frames from a concurrently playing program, a viewer could not browse and select other programs to watch. See Ferman at ¶ [0107]

(viewers are presented with titles of different programs from which they can select from and watch an initial program), Fig. 10.

For at least the foregoing reasons, Petitioner has not established that Ferman discloses or renders obvious presenting first video programming concurrently with frames of clips of the first video programming.

4. Ferman Does Not Disclose or Suggest Receiving User Frame Selections to Define a *Second Video Programming* (Elements 1[h]-1[j])

Ferman's Highlight view does not present frames of clips from a first video programming in its Highlight interface, it presents a set of title frames, each of which is associated with a different program. § VI.B.2, *supra*. Because it would not have been obvious to modify Ferman to present first video programming concurrently with frames from clips of the first video programming, it follows that Ferman cannot disclose a user selecting such a frame as the basis for selecting a plurality of second video clips to define a second video programming. See '185 Patent at Claim 1. Indeed, Petitioner acknowledges that its argument for these limitations depend on its argument that it would be obvious to modify Ferman to reach the concurrent presentation limitations regarding element 1[f].

In any event, Petitioner's proposed modification of Ferman would not result in the selection of a second plurality of video clips or the definition of second video programming. *Cf.* Pet. at 61 (claiming that "user selections are used to populate the

user description scheme and therefore to search for and select additional video clips"); *see also id.* at 60 ("a user can click on a frame to make a selection"). As established above, there is no database searchable or selectable "video clips" in Ferman's system. *See* §VI.B.2, *supra*. Instead, Ferman discloses the ability to merely present more or less of an entire program (e.g., 10, 5, or 1 minute highlights) using its "filtering" technique. Ferman at ¶¶ [0107], [0119], Fig. 10.

Accordingly, like Begeja, Ferman "allows a user to select **more of an entire video program** based on a segment" (Ex. 1005 at 241), "it does not provide for a plurality of video clips or additional programming to be selected based on a segment, and does not select, determine a temporal order, and concatenate clips into second video programming as claimed." *Id.* (emphasis added); *id.* at 299-300; § III.B., *supra*. Just like Begeja, Ferman's selection via the "Length" window provides only for more or less of the same program, not additional, different programming. *See* §VI.B.1 *supra*. For instance, Ferman teaches that a user watching a one-minute highlight of a program can watch more of that same program by selecting via the "Length" window the five-minute duration. *See id.*

5. Petitioner Fails to Demonstrate That Ferman Discloses Selecting a Plurality of Transitional Clips (Element 1[c])

Petitioner fails to demonstrate that Ferman discloses "selecting . . . a plurality of first transitional clips." '185 Patent at Claim 1. Petitioner considers video segments, *i.e.* major events in a video clip, the same as the claimed transitional clips.

See Pet. at 52 (“The set of segments includes ***multiple major events in the video clip***”) (emphasis added). They are not the same.

The claimed selected transitional clips are “concatenate[ed]” with the claimed selected video clips, such as linking together advertisements with a basketball game. There is no concatenating of Ferman’s video segments because they are part of the video clip itself (e.g., the basketball game) and are used for filtering the video clip (for example, searching for dunk events in the basketball game). See Ferman at ¶ [0094] (disclosing that the identification of highlights and events can be filtered and searched for), ¶ [0255] (disclosing that the program contains video segments (clips) segmented into events such as dunks), ¶ [0252] (segmenting the video program into “story units, scenes, and shots”).

Recognizing this deficiency, Petitioner also advances an obviousness argument, but it provides no concrete reasoning or evidence for the argument. See Pet. at 52 (alleging that “it would have been obvious for a POSITA to modify Ferman’s system to more explicitly select clips for inclusion in the final video programming based on their ability to transition between other events”). Other than stating that the system will “select clips for inclusion,” Petitioner does not identify what transitional clips are selected, how they would be selected, where they would be selected from, or why they would be included with video clips (the highlights of a program). *Id.*; see also *id.* at 57-60 (Petitioner relying on Ferman’s highlights of a

program). Indeed, given that the highlights are already designated in length (*i.e.* 1 minute, 5 minutes, and 10 minutes), a POSITA would not have added additional clips to the highlights as this would exceed the designated lengths. See Ferman at Fig. 10 (depicting the length durations for highlights).

VII. CONCLUSION

For at least the foregoing reasons, the Board should deny institution.

Respectfully submitted,

Dated: December 11, 2024

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the portions of the foregoing PATENT OWNER'S PRELIMINARY RESPONSE specified in 37 C.F.R. § 42.24 has 9,300 words in compliance with the 14,000 word limit set forth in 37 C.F.R. § 42.24(b)(1). This word count was prepared using the Microsoft Word word-processing system used to prepare this paper.

Respectfully submitted,

Dated: December 11, 2024

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CERTIFICATE OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. § 42.6(e), and pursuant to agreement by the parties that filing with the Board through the Patent Trial and Appeal Case Tracking System (P-TACTS) and e-mailing an electronic copy to counsel of record for Petitioner constitutes electronic service, service was made on Petitioner as detailed below.

<i>Date of service</i>	December 11, 2024
<i>Manner of service</i>	Electronic Filing and Electronic Mail (jimglass@quinnemanuel.com; ogizivojnovic@quinnemanuel.com; qe-bytedance-ntech-iprs@quinnemanuel.com)
<i>Documents served</i>	PATENT OWNER'S PRELIMINARY RESPONSE
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