

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TIKTOK INC.
Petitioner,

v.

NTECH PROPERTIES, INC.
Patent Owner.

Case No. IPR2024-01340
U.S. Patent No. 8,145,704

PETITIONER'S MOTION TO STRIKE

TABLE OF CONTENTS

	<u>Page</u>
I. Legal Standard.....	1
II. PO’s New Argument That Whitehead’s “Content Sources” Are Not “Media Streams” Should Be Struck	1
III. PO’s Argument That Petitioner Waived Certain Theories Is New, Incorrect, And Should Be Struck.....	2
IV. Petitioner’s New Argument That A “Media Stream” Must Contain Multiple Elements Should Be Struck	4

Pursuant to the Board's email of November 24, 2025, Petitioner respectfully requests that the below arguments be stricken from PO's sur-reply.

I. LEGAL STANDARD

PO's sur-reply "may only respond to arguments raised in the preceding brief. ... 'Respond' ... does not mean proceed in a new direction with a new approach as compared to the positions taken in a prior filing. ... [A] sur-reply that raises a new issue or belatedly presents evidence may not be considered." Consolidated Trial Practice Guide at 73 (Nov. 2019).

II. PO'S NEW ARGUMENT THAT WHITEHEAD'S "CONTENT SOURCES" ARE NOT "MEDIA STREAMS" SHOULD BE STRUCK

In its POR, PO did not contest that Whitehead's "content sources 135" are "media streams," as claimed. Instead, PO waited until its sur-reply to argue for the first time that Whitehead's "content sources 135" do not meet the "media streams" limitation. Sur-Reply at 10-11. This is an improper new argument.

By way of background, the '704 patent claims 19 and 24 require "presenting a plurality of media streams to a user" and "receiving ... a selection of one of the media streams." Petitioner mapped these limitations to Whitehead's menu of "custom media channels 170" (Pet. at 11, 15) under two theories: (1) "Media Stream Mapping 1": each "custom media channel 170" is a "media stream" (Pet. at 12); and (2) "Media Stream Mapping 2": each custom media channel corresponds to a specific "content source 135," and the corresponding "content source 135" is the

“media stream” (Pet. at 13-14). *See also* Reply at 7-8.

For Media Stream Mapping 2, PO did not dispute that Whitehead’s “content sources 135” are “media streams” until its sur-reply. Rather, in its POR, PO argued that “*even if content sources 135 provide ‘media streams,’* there is no sense in which the user’s selection of a custom media channel selects a Content Source’s ‘media stream.’” POR at 19-20. Thus, in the POR, PO disputed whether selecting a “custom media channel” is the same as selecting a “content source 135” corresponding to that “custom media channel.” In its sur-reply, however, PO argued for the first time that “Petitioner has not established that a ‘content source’ is a ‘media stream’” and that Petitioner “conflates content sources with the streams they provide.” Sur-Reply at 11. These are improper new arguments that should be struck.

PO’s introduction of a new argument is prejudicial to Petitioner. Petitioner did not have an opportunity in its reply to address the distinctions PO is now trying to make or explain how PO’s new arguments fail to rebut Petitioner’s obviousness theories. Pet. at 14-15, 54. PO’s new argument that Whitehead’s “content sources 135” are not the claimed “media streams” should thus be struck.

III. PO’S ARGUMENT THAT PETITIONER WAIVED CERTAIN THEORIES IS NEW, INCORRECT, AND SHOULD BE STRUCK

PO’s sur-reply argues that “Petitioner confined its theory to Whitehead’s pre-generated embodiment.” Sur-Reply at 12. This is incorrect, Petitioner has always maintained that *both* Whitehead’s “pre-generated embodiment” (as coined by PO,

where Whitehead's "mixing server" selects media elements to include in a "custom media channel" before a user selects that channel from a menu and then modifies the content of the custom media channel in response to user's selection) **and** its "real-time embodiment" (as coined by PO, where Whitehead's "mixing server" selects media elements to include in a "custom media channel" in response to a user selecting that channel) meet all claim limitations. *See, e.g.*, Reply at 1-5, 6-7 (arguing invalidity under "real-time embodiment"). PO's arguments, raised for the first time in its sur-reply, are thus both wrong and untimely, and should be struck.

As discussed above, Whitehead discloses a selectable menu of "custom media channels 170." Pet. at 11. A fundamental dispute between the parties is whether a "custom media channel" is a "media stream" before Whitehead's "mixing server" selects media elements to include in that "custom media channel." POR at 4-8, 15-19; Reply at 1-4, 6-7; Sur-Reply at 2-6, 8-10. Petitioner expects that this dispute will warrant significant discussion at oral arguments.

PO's sur-reply for the first time and incorrectly contends that "Petitioner confined its theory to Whitehead's pre-generated embodiment." Sur-Reply at 12. PO's argument rests on an incomplete and misleading reading of Petitioner's Reply. There, Petitioner stated that "Petitioner never mapped *creating profile 160* and corresponding custom media channel in the first instance to the claimed '*user data*.'" Reply at 9 (emphasis added). Consistent with this statement, Petitioner has

consistently argued that Whitehead's custom media channels exist / are created when the user first creates corresponding profile 160, even if Whitehead's "mixing server" only selects media elements for the "custom media channel" at a later time (what PO calls the "real-time embodiment"). *See, e.g.*, Reply at 6 (quoting EX2014, ¶87 for PO's expert admission that the "custom media channel must exist prior to the content information device 110 receiving the menu"). Petitioner never abandoned that theory.

PO's argument to the contrary is based on selectively quoting from the reply; most significantly, omitting the discussion of "creating profile 160" when quoting Petitioner's reply. Sur-Reply at 12 (selectively quoting Reply at 9). Read in full, Petitioner's reply is clear that its discussion of a "previously-created custom media channel" refers to the user previously "creating profile 160" for a custom media channel, even if that profile 160 is used to select media elements only after the menu selection. Reply at 1-5, 6-7 (arguing invalidity under "real-time embodiment").

PO's attempt to "confine[] [Petitioner's] theory to Whitehead's pre-generated embodiment" is thus a new argument raised for the first time in the sur-reply and in any event does not accurately reflect Petitioner's positions. It should be struck.

IV. PETITIONER'S NEW ARGUMENT THAT A "MEDIA STREAM" MUST CONTAIN MULTIPLE ELEMENTS SHOULD BE STRUCK

Before its sur-reply, PO did not argue that a "media stream" must contain multiple media elements in a defined order. Indeed, its expert admitted that just "one" clip can be a media stream. In its sur-reply, however, PO advances a new

construction of “media stream” that requires multiple media elements in a defined order and presents new validity arguments based thereon. Sur-Reply at 16-18. PO's new arguments should be struck.

In its POR, Petitioner sought to construe “media stream” as “a continuous sequence of media data.” POR at 3-8. In deposition, PO's expert testified that “one” clip can be a “media stream” as long as its “data” is “sent as a continuous sequence”:

Q. Under your construction of “media stream,” can a single clip constitute a media stream?

A. If it's in a stream, that is, that it's being sent as a continuous sequence of data, then, yes, one can. But zero cannot.

Ex. 1028 at 42:7-11. PO now tries to backtrack on this admission by arguing, for the first time, that its “continuous sequence of media data” construction requires “an order” of multiple elements. Sur-Reply at 16-17 (citing Ex. 1028 at 29:22-30:7). But the expert testimony cited by PO for this proposition only addresses what is required where a “media stream” consists of multiple elements, not whether multiple elements are required in the first instance, which the expert testified is not required. Ex. 1028 at 29:22-30:7, 42:7-11. Until the sur-reply, PO and its expert did not contend that a “media stream” must comprise multiple media elements.

PO's change in claim construction position for “media streams” is especially prejudicial because Petitioner's expert addressed in his second deposition invalidity of dependent claim 13 even under PO's new construction (Ex. 2032 at 74:13-75:18) but Petitioner was not afforded an opportunity to address this testimony in its reply.

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CERTIFICATE OF SERVICE (37 C.F.R. §§ 42.6(E), 42.105(A))

The undersigned hereby certifies that the foregoing document was served in its entirety on December 2, 2025 upon the following parties via Electronic Mail:

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