



HERBERT SMITH
FREEHILLS
KRAMER

PTAB Oral Argument

TikTok Inc.

V.

NTECH Properties, Inc.

December 18, 2025

Case No.: IPR2024-01340

Patent No.: 8,145,704

Kramer Levin is now HSF Kramer

IPR2024-01340 ('704 Patent) – Grounds

Ground	Challenged Claims	35 U.S.C. §	References
I	1-24	103	Whitehead
2	1-24	103	Whitehead and Marcus '904
3	1-24	103	Cristofalo and Marcus '904

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Summary of the Arguments

- The '704 Patent's Challenged Claims are patentable because:
 - **GROUND 1 and 2 (Whitehead):**
 - Whitehead does not disclose a publisher that receives the media stream selection and assembles the selected media stream with other media elements (Independent Claims 19 and 23);
 - Whitehead does not disclose providing from the aggregator to the publisher an “output signal including data indicative of the selection and of user data” (Independent Claim 19); and
 - Whitehead does not disclose accessing a plurality of media streams (Independent Claim 1).
 - **GROUND 3 (Cristofalo):**
 - Cristofalo in view of Marcus '904 does not disclose a publisher that assembles the selected media stream with other media elements (Independent Claims 19 and 23); and
 - Cristofalo in view of Marcus '904 does not disclose providing from the aggregator to the publisher an “output signal including data indicative of the selection and of user data” (Independent Claim 19); and
 - Cristofalo in view of Marcus '904 does not reach Independent Claim 1's limitations.

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Overview of the '704 Patent

SUMMARY OF THE INVENTION

30

In an embodiment, a method of generating media programming is provided. A client receives from an aggregator a menu of selectable feeds. A selection of one of the selectable feeds is received at the aggregator. In response to the selection, a client is provided with media programming generated by a publisher. Information relating to the client, which may include, by way of example, user selections or user information, is furnished to the publisher. In response to receiving the user selections or user information, the publisher provides media programming, dependent at least in part on the received user selection or user information. 35 40

The '704 Patent describes and claims generating individual customized media programming by acquiring a selected media stream and assembling the selected media stream with additional media elements selected based on user information.

'704 Patent at 1:30-42; Claims 19 and 23

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Overview of the '704 Patent

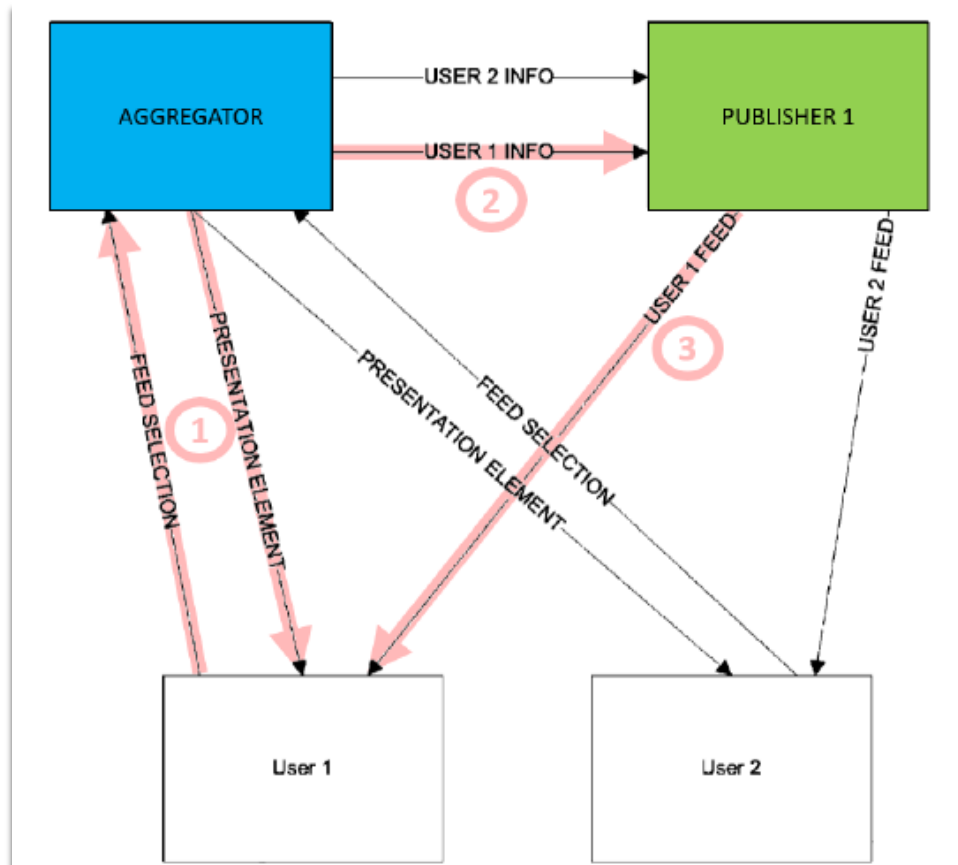
19. A system for providing media programming, comprising:

- an aggregator having a memory and a processor, the processor adapted for presenting a plurality of media streams to a user, receiving a signal having data indicative of a selection of one of the media streams, and providing an output signal including data indicative of the selection and of user data; and
- a publisher having a memory and a processor, the publisher processor adapted to receive the output signal from the aggregator, and, responsive to the data indicative of the selection and of user data, access from the memory at least one algorithm for selection and sequencing of media elements, select a temporal sequence of media programming comprising the selected media stream and other media elements based on an output of the algorithm using the selection and the user data, assemble the selected media stream and the other media elements in the temporal sequence, and provide media programming to the user including the assembled media stream and other media elements in the temporal sequence.

'704 Patent at Claim 19

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Overview of the '704 Patent



Pet. at 7

Claim 19 Recites:

- (1) An aggregator presenting selectable media streams to a user.
- (2) The aggregator providing to the publisher an output signal including data indicative of the media stream selection and user information to a publisher.
- (3) The publisher generating individual customized media programming, comprising the selected media stream and other media elements. Pet. at 6-7.

Pet. at 7; '704 Patent at Fig. 1; see also '704 Patent Fig. 5, 11:20-12:18

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE



Claim Construction

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE



Claim Construction: “Media Stream”

Term	NTECH’s Construction	Petitioner’s Construction
“Media Stream”	A media stream is “a continuous sequence of media data.” POR at 4.	A media stream is a “container[] for media” that does “not necessarily include media at all times.” Reply at 2-3.

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

HSFKRAMER.COM

// 8

Claim Construction: “Media Stream”

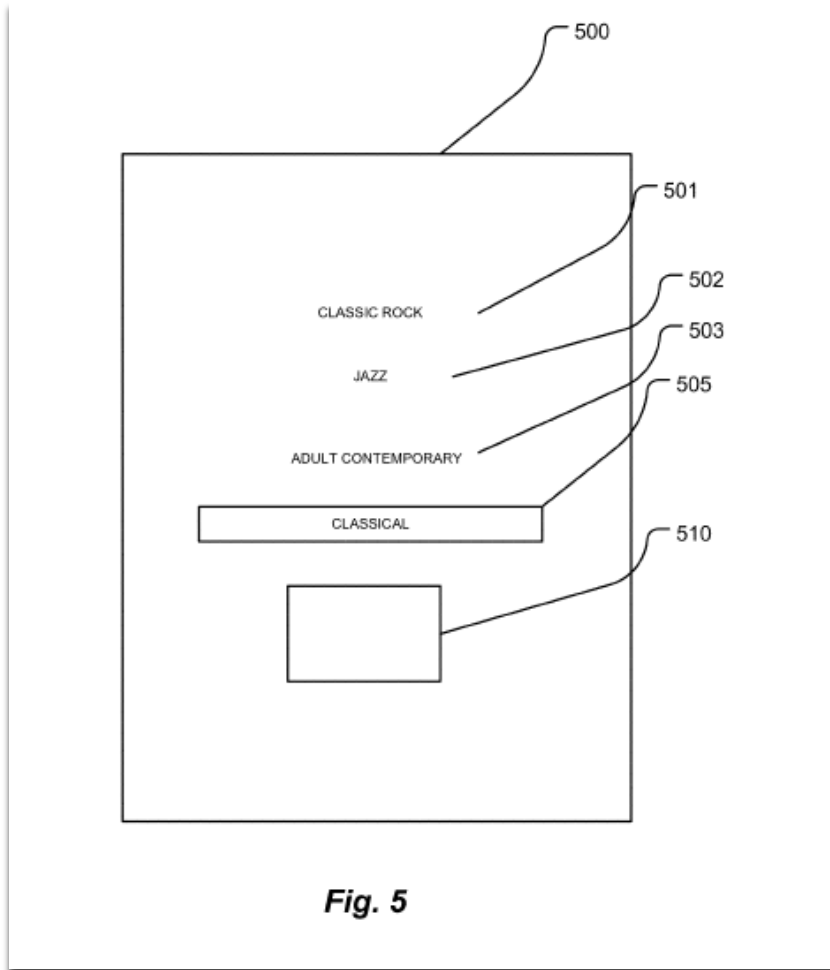
Term	NTECH’s Construction
“Media Stream”	A media stream is “a continuous sequence of media data.” POR at 4.

- **Antecedent basis:** confirms that a media stream consists of a continuous sequence of media element because:
 - “[T]he selected media stream” that is “assembled” with “other media elements” is the same stream in “a plurality of media streams” and the one “select[ed]” from the plurality.
- **The Specification:** describes a media stream as “media elements sequenced together.”
- **Dictionary definitions:** define a media stream as “a continuous sequence of media elements.”

POR at 4-8; ‘704 Patent, Claim 19, 1:63-64, 2:58-64, 4:39-41, 9:23-32; Exs. 2015, 2020.

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Overview of the '704 Patent



The Specification describes the media stream as having a sequence of media elements at selection:

- A selectable media stream (“classical”) is listed on a home page and its media elements displayed in a display window.
 - Each feed listed on a home page “contains predetermined content, not customized for a viewer or user.” ‘704 Patent at 11:24-33.
- Upon selection, individual customized media programming is generated.
 - The selected media stream is customized based on user information. ‘704 Patent at 11:60-12:8.

‘704 Patent at Fig. 5; Sur-Reply at 9.

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Claim Construction: “Output Signal” (Claim 19)

Term	NTECH’s Construction	Petitioner’s Construction
“An output signal including data indicative of the selection and of user data”	One or more signals, each “includ[ing] both data indicative of the selection and user data.” POR at 8; Sur-Reply at 6.	The plain meaning does not require both data types in a single signal. Pet. at 23.

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

HSFKRAMER.COM

// 11

Claim Construction: “Output Signal” (Claim 19)

Term	NTECH's Construction
“An output signal including data indicative of the selection and of user data”	One or more signals, each “include[ing] both data indicative of the selection and user data.” POR at 8; Sur-Reply at 6.

- While the indefinite article “an” implies one or more, each “output signal” includes both data types.
- The word “including” in the claim language confirms that an “output signal” requires both data types.
- The specification discloses that “a signal . . . includ[es] data indicative of a selection of a feed and user information.”

POR at 8-9; Sur-Reply at 6; '704 Patent, Claim 19, 3:53-64.

Claim Construction: “Accessing by the Aggregator” (Claim 1)

Term	NTECH’s Construction	
“Accessing by the aggregator” in “accessing by the aggregator over a network the plurality of media streams”	“accessing by the aggregator” refers to “the aggregator using media streams” POR at 10.	

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

HSFKRAMER.COM

// 13

Claim Construction: “Accessing by the Aggregator” (Claim 1)

Term	NTECH's Construction
“Accessing by the aggregator” in “accessing by the aggregator over a network the plurality of media streams”	“ accessing by the aggregator ” refers to “ the aggregator using media streams ” POR at 10.

Dictionary definitions of the term “access” confirm that the term refers to being able to use something. Ex. 2022 at 2 (defining “access” to mean “to be able to use”); Ex. 2027 at 1 (“access something (computing) to open a computer file or use a computer system”), Ex. 2028 at 1 (“[T]he opportunity for use of a resource” and “[t]o store data on and retrieve data from a disk or other peripheral device”). In the context of computing, the term to refer to being able to obtain and use computer files, data, etc. See Goodrich PO Resp. Decl. at ¶ 48.

POR at 10

Consistent with the dictionary definitions, the specification describes an embodiment where the aggregator obtains and uses media streams to modify the content of the streams. See '704 Patent at 9:43-10:47. In the embodiment, media streams are provided to the aggregator for modification:

[M]ultiple streams, which may be customizable or predetermined, are provided to an aggregator; based on user information, such as user actions or user profile, the streams are modified, if they are customizable.

This customization approach may employ *appropriate stream metadata to identify the ‘character’ of the stream’s content* and local caching to *facilitate aesthetically-suitable switching*.

Id. at 9:48-54 (emphasis added).

[M]odify the contents of a stream with any combination of switching (with or without caching) between media feeds such as video RSS feeds to the aggregation location.

Id. at 9:18-23 (emphasis added); see also Goodrich PO Resp. Decl. at ¶ 49.

Claim 1 is Directed to and Covers this Embodiment.

POR at 11



Grounds 1 and 2: Whitehead

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

The Relevant Asserted Reference: Whitehead

Whitehead does not disclose providing media programming by assembling the selected media stream and other media elements in response to the user's selection of the media stream, as in the Challenged Claims.

Instead

Whitehead's custom media channels 170 are provided either by:

“(1) selecting a characteristic (e.g., attribute) corresponding to the channel that causes the creation of the custom media channel 170; or
(2) selecting a pre-generated custom media channel that is simply presented.” POR at 13.

Whitehead Does Not Disclose Selecting a Media Stream and Assembling Other Media Elements with the Selected Stream (Independent Claims 19 and 23)

- Whitehead describes two embodiments: (1) a real-time embodiment; and (2) a pre-generated embodiment

The real-time embodiment:

upon selection of a menu item, creates a custom media channel 170.



No selection of an existing media stream.

The pre-generated embodiment:

A custom media channel 170 is previously generated and is simply presented upon selection.



No other media elements are assembled with the existing channel responsive to the channel selection.

Whitehead Does Not Disclose Selecting a Media Stream and Assembling Other Media Elements with the Selected Stream (Independent Claims 19 and 23)

The Petition's Media Stream Mapping 1 fails because:

- **Real-time embodiment:** the selected menu item (e.g., names, identifiers) does not correspond to an existing media stream because no custom media channel 170 exists at selection.
- **Pre-generated embodiment:** the pre-generated channel is not assembled with other media elements in response to the channel's selection.

POR at 15-20

- The Reply does not dispute that Whitehead's real-time embodiment does not reach the Challenged Claims given that there is no existing media stream selected from the menu.
- The Reply's pre-generated embodiment argument fails because media elements are added **responsive to changes in the corresponding profile.**
 - The Challenged Claims require assembling other media elements with the selected media stream "**responsive to the media stream selection.**"

⁷704 Patent at Claim 19.

Sur-Reply at 9-10; Whitehead at 11:59-12:7

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Whitehead Does Not Disclose Selecting a Media Stream and Assembling Other Media Elements with the Selected Stream (Independent Claims 19 and 23)

The Petition's Media Stream Mapping 2 fails because:

- Petitioner relies on the selection of a custom media channel 170 from a menu. This selection is either of a menu item to generate in real-time a channel (real-time embodiment) or the selection of a previously-created channel that is simply played (pre-generated embodiment).
- Therefore, Media Stream Mapping 2 shares the same deficiencies as media stream mapping 1.

POR at 15-20; Sur-Reply at 8-11

The Reply's real-time embodiment one-to-one correspondence between a user profile 160 and a content source 135 is meritless because:

- A content source is not the claimed "media stream" presented in a plurality of media stream and selected from the plurality.
- When Whitehead's custom media channel is generated in real-time, the user selects a menu item placeholder that triggers the real-time creation of the channel.

POR at 19-20; Sur-Reply at 10-11; Whitehead at 7:5-18, 12:18-31.

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Whitehead Does Not Disclose an “Output Signal” Provided After “Receiving a Signal Having Data Indicative of a Selection of one of the Media Streams” (Independent Claim 19)

In response to NTECH’s argument that neither of Whitehead’s embodiments discloses providing user data after selection of the custom media channel (POR at 22-26), Petitioner confined its theory to Whitehead’s pre-generated embodiment:

Petitioner’s theory is based on selecting a previously-created custom media channel [the pre-generated embodiment] In each instance, the custom media channel was previously generated, and the user is merely accessing the same.

Reply at 9; *id.* (“Petitioner never mapped creating . . . custom media channel in the first instance”). However, even in this embodiment, the profile is sent to the mixing server before the user selects the custom media channel.

Sur-Reply at 12 (citing Reply at 9)

On cross examination, Petitioner’s expert testified that a “previously-created custom media channel” *is* a media stream *including media elements at the time of selection*:

Q. Okay. What is your definition of a “previously created custom media channel”?

A. Well, here I’m referencing what the petitioner’s theory is so I believe it’s the petitioner that described what the previously created custom media channel would need to be I believe it is in Paragraph 4 and it says: Patent owner seeks to construe media stream as, quote, *continuous sequence of media data*, end quote. And then adding a requirement that the media stream *must include a plurality of media elements at the time selected from a plurality of media stream*. And so I think that’s what the patent owner is describing in terms of its requirement *that I’m describing in Paragraph 28*.

Paper 29 at 4 (citing Ex. 2032 at 23:25-24:15)

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Whitehead Does Not Disclose an “Output Signal” Provided After “Receiving a Signal Having Data Indicative of a Selection of one of the Media Streams” (Independent Claim 19)

- Petitioner confined its theory to Whitehead’s pre-generated embodiment in expressly stating that:
 - “Petitioner’s theory is based on ***selecting a previously-created custom media channel*** (i.e. including media elements at the time of selection). Paper 29 at 4 (citing Ex. 2032 at 23:25-24:15).
- This previously-created custom media channel theory fails.
 - The Challenged Claims require that the user data is provided ***after*** the selection of the existing media stream.
 - In Whitehead’s pre-generated embodiment, profile 160 (the alleged “user data”) is provided ***before*** the selection of the “previously-created custom media channel.”

Whitehead Does Not Disclose an “Output Signal” Provided After “Receiving a Signal Having Data Indicative of a Selection of one of the Media Streams” (Independent Claim 19)

▪ Petitioner’s Output Signal Mapping 1 Fails under the theory because:

- When a user selects a pre-generated custom media channel, profile 160 has already been provided to create or modify the channel.
 - As Whitehead discloses that creating profile 160 invokes a process for “**creating or modifying** one or more custom media channels 170... prior to a user’s request to access the [pre-generated] channel.” Sur-Reply at 12-13 (citing Whitehead at 11:59-12:17).

▪ Petitioner’s Output Signal Mapping 2 Fails under the theory because:

- Manual updates to profile 160 are also provided **before** user selection of the updated channel.
 - Figure 5’s flow diagram depicts a user selecting the administration option to manually update profile 160 which triggers the process for modifying the channel (**step 515**).
Whitehead at 12:14-17, 16:1-3, 16:36-43, Fig. 5.
 - Afterwards, the user selects the now modified pre-generated custom media channel for presentation (**step 520**). Whitehead at 16:45-47.

Sur-Reply at 12-13, 14-15; POR at 22-26

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Whitehead Does Not Disclose an “Accessing by the Aggregator” Media Streams Under the Proper Constructions

Term	NTECH's Construction
“Accessing by the aggregator” in “accessing by the aggregator over a network the plurality of media streams”	“ accessing by the aggregator ” refers to “ the aggregator using media streams ” POR at 10.

- Rather than **using media streams**, a continuous sequence of media data, to form media programming, Whitehead’s alleged aggregator uses individual media elements.
- Petitioner does not dispute this. Instead, Petitioner alleges that an individual media element can be by itself a media stream. Sur-Reply at 16; Reply at 18-19.

BUT

An individual media element



“a continuous sequence of media data” (a media stream)

Term	NTECH's Construction
“Media Stream”	A media stream is “ a continuous sequence of media data. ” POR at 4.

A “continuous sequence of media data” means “[t]here’s an order to it. . . a first element, a second element, third element continuous in that sense.” Sur-Reply (citing Dr. Goodrich (Ex. 1028) at 42:7-11).

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Sur-Reply at 16-17

Whitehead Does Not Disclose Providing Predetermined Media Programming and Media Programming Responsive to User Information at Different Time Periods (Dependent Claim 13)

- **Claim 13 requires:** (1) providing predetermined media programming (non-user specific) at a first time period, and (2) providing “media programming responsive to the user information” (user-specific) at a second time period. Sur-Reply at 24.
- Whitehead only furnishes a single custom media channel in real-time. Pet. at 46 (acknowledging that the custom media channel is generated in or near real time).
- Contrary to Petitioner’s position, it would not have been obvious to provide a predetermined advertisements (15 to 30 seconds long) beforehand:

Because Whitehead’s custom channels are delivered in real-time or near real-time, the custom channel is available to the user “immediately or almost immediately,” so there is no need to provide a pre-determined advertisement ahead of time. See Ex. 2031 at 1 (“Real time data is information that is updated continuously and available immediately or almost immediately.”). Petitioner’s

Sur-Reply at 17

Whitehead Does Not Disclose Providing Predetermined Media Programming and Media Programming Responsive to User Information at Different Time Periods (Dependent Claim 13)

Petitioner's Reply argument that it would have been obvious to provide a predetermined advertisement beforehand is based on movie theaters playing advertisements and the full download time for a hypothetical media file. Reply at 21-22 (citing Ex. 1023 at ¶¶ 53-54).

Petitioner's reply argument is meritless because:

- Movie theaters playing advertisements and downloading an entire media file are irrelevant to Whitehead's streaming service, involving playing the content before the entire file is downloaded.

Whitehead Does Not Disclose Providing Predetermined Media Programming and Media Programming Responsive to User Information at Different Time Periods (Dependent Claim 13)

In reply, Petitioner also argues that an advertisement media element can be a “first media programming” and a media content element can be a “second media programming” because NTECH does not show why it cannot be. Reply at 20.

Petitioner’s reply argument is meritless because:

- (1) Petitioner improperly shifts the burden to NTECH to demonstrate why a single custom media channel 170 cannot contain both a first (advertisement media element) and second (media content element) media programming.
- (2) A single media element is not a “media stream” in the media programming.

BUT

An individual media element



“a continuous sequence of media data” (a media stream’)

Dependent Claims 18 and 24 Are Patentable Over Whitehead

2. **Dependent Claim 18: Whitehead Does Not Disclose “Caching by the Aggregator Media Streams” and “Switching Between Streams”**

Dependent Claim 18 is patentable because Whitehead’s mixing server 130 does not cache media streams and switch between these media streams. Rather than cache a plurality of *media streams*, Whitehead stores individual media elements. And rather *than switch between cached streams* to modify these existing media streams, Whitehead generates new custom media channels using only individual media elements. *See* Goodrich PO Resp. Decl. at ¶ 108.

POR at 40

18. The method of claim 1, further comprising caching by the aggregator the media streams prior to providing the elements in the media programming, whereby switching between streams at optimal times is facilitated.

‘704 Patent at Claim 18

3. **Dependent Claim 24: Whitehead Does Not Disclose “the Step of Providing Media Programming Compris[ing] Switching at Least Between the Selected Media Stream and the Second Media Stream in Accordance With the Temporal Sequence”**

Dependent Claim 24 is patentable because Whitehead does not provide media programming comprising the selected media stream, let alone switching to a second media stream in accordance to a temporal sequence. *See* Goodrich PO Resp. Decl. at ¶¶ 110-111.

Petitioner’s skipping argument highlights Whitehead’s deficiencies. Specifically, Petitioner argues that Whitehead’s system “switch[es] between content elements” in playlist 205 by “skip[ping] to another item of media content.” Pet. at 35-36. But skipping between items of media content in custom media channel is not switching media streams altogether. Indeed, when a user skips items of media content, they are still provided the same playlist. This is also true when a user skips to advertising content. Whitehead at 8:28-41, Fig. 2. The advertisements are

24. The method of claim 23, further comprising receiving a second media stream, and wherein the step of providing media programming comprises switching at least between the selected media stream and the second media stream in accordance with the temporal sequence.

‘704 Patent at Claim 24

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

POR at 41

Ground 2: The Challenged Claims are Patentable Over Whitehead and Marcus '904

- **Independent Claims 19 and 23 and their dependents:**

- Ground 2 fails for the same reasons Ground 1 fails. POR at 42.

- **Independent Claim 1 and its dependents:**

- The Petition's Ground 2 fails for the same reasons Ground 1 fails, and Petitioner's new argument on reply should not be considered. POR at 42.
- Petitioner's new argument in reply relies on Marcus '904 for the "accessing" limitation, which is a different from its reliance on Whitehead in the Petition.
 - The Petition relying on Whitehead for all independent claim limitations, including "accessing," except for "selecting, ordering, and assembling media programming." Pet. at 51 n.8, 55.



Ground 3: Cristofalo and Marcus '904

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE



The Relevant Asserted Reference: Cristofalo

- Cristofalo's media programming is generated by the alleged *aggregator* (receiving system 104), not the alleged *publisher* (transmitting system 102).
 - Upon the selection of a program (402), the receiving system is: pushed multiple advertisements from transmitting system (406), selects advertisements based on the user's profile (408), and assembles the advertisements with the selected program (410).

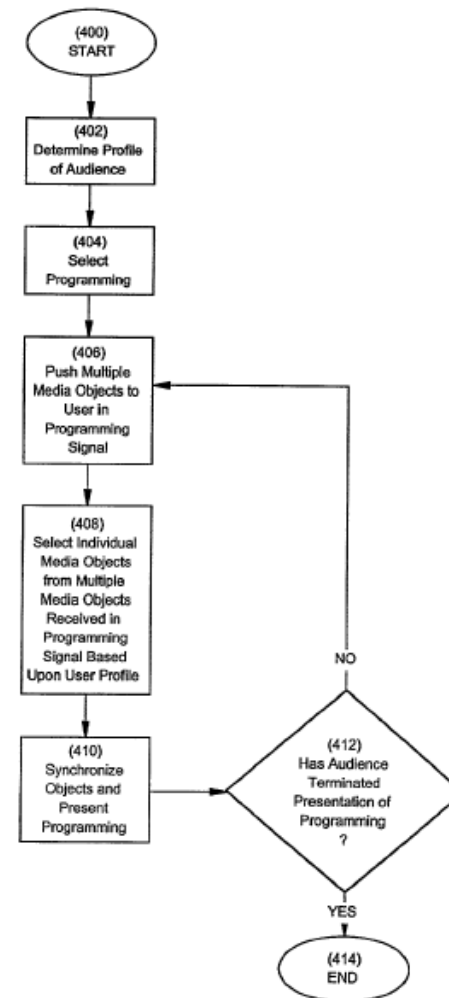


Figure 4

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Cristofalo in view of Marcus '904 Does Not Disclose the Claimed “Publisher” (Independent Claims 19 and 23)

- The independent claims are patentable over Cristofalo in view of Marcus '904 because neither reference discloses generating customized media programming at a publisher, and Petitioner does not adequately explain why a POSITA would have found it obvious to implement Marcus '904's algorithm at Cristofalo's alleged publisher.
- At institution, the Board expressed concerns with Petitioner's arguments and proposed rationale, which Petitioner does not cure in reply.

Cristofalo in view of Marcus '904 Does Not Disclose the Claimed “Publisher” (Independent Claims 19 and 23)

Cristofalo's transmitting end (the alleged publisher) does **not** assemble advertisements with the selected media program.

Instead

Cristofalo's receiving end (the alleged aggregator) inserts advertisements with the selected media program.

Petitioner admits this in its - 01342 reply: “Cristofalo's insertion of media objects [advertisements are] at the receiving end.” Sur-Reply at 21 (citing IPR2024-01342, Paper 22 at 11.

Cristofalo in view of Marcus '904 Does Not Disclose the Claimed “Publisher” (Independent Claims 19 and 23)

Petitioner fails to provide sufficient rationale for why a POSITA would have implemented Marcus '904's algorithm at Cristofalo's transmitting end because:

- Marcus '904, like Cristofalo, discloses assembling media programming with advertisements at the receiving end. POR at 47.
- The Petition's additional disclosure rationale is vague and unexplained. POR at. 46-50.
 - That a reference provides additional disclosure is so vague that it could be applied to combine any two references.
 - Cristofalo already details how it assembles its final media programming, including targeted advertisements and the selected program, consequently a POSITA would not have needed to look to Marcus '904's additional disclosure.

Cristofalo in view of Marcus '904 Does Not Disclose the Claimed “Publisher” (Independent Claims 19 and 23)

- In reply, Petitioner does not dispute that the Petition’s rationale was vague and unexplained.
- Instead, Petitioner presents a new rationale for implementing Marcus '904 at Cristofalo’s transmitting end. **But this fails because:**
 1. It was not advanced in the Petition; and
 2. The resulting combination does not even facially reach the claimed invention since Cristofalo’s receiving end still inserts advertisements into the selected program:

into the selected program. IPR2024-01342, Paper 22 at 11 (“The proposed combination captures the best of both worlds” as it “avoid[s] competing with Cristofalo’s insertion of media objects [advertisements] at the *receiving system*.”) (emphasis added). Thus, regardless of whether Cristofalo’s transmitting system

Sur-Reply at 22

Cristofalo in view of Marcus '904 Does Not Disclose “An Output Signal” under the Proper Construction

Term	NTECH's Construction
“An output signal including data indicative of the selection and of user data”	One or more signals, each “include[ing] both data indicative of the selection and user data.” POR at 8; Sur-Reply at 6.

- Petitioner does not dispute that Cristofalo does not disclose an “output signal,” as properly construed, because there is no signal with both “data indicative of the selection” and “user data.” POR at 50-53; Sur-Reply at 23.
- In reply, Petitioner advances a new argument that it would have been obvious “to include a username with the selection . . . to determine which user profile to access.” Reply at 25.
 - **But** the Challenged Claims require that “the user data” included in the “output signal” is used in “an algorithm” to “select a temporal sequence of media programming.
 - A username is not used in such an algorithm. Instead, it only determines which user profile to access. Sur-Reply at 23.

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Cristofalo in view of Marcus '904 Does Not Reach Independent Claim 1

- For “data relating to a plurality of streams,” the Petition relied on Cristofalo’s “user identifiers.” **However**, user identifiers represent data about the user, not the stream. POR at 53-54.
- In reply, Petitioner shifts its theory to Marcus 904’s tags.
 - **But** Petitioner provides no rationale for why or how a POSITA would have used this teaching to modify Cristofalo.
 - **In fact**, Petitioner does not dispute that “the Petition’s additional disclosure rationale is vague and Cristofalo already provides details on how its system generates user-specific targeted programming.” Sur-Reply at 24; Reply at 25.

Dependent Claims 13 is Patentable Over Cristofalo in View of Marcus '904

- **Claim 13 requires:** (1) providing predetermined media programming (non-user specific) at a first time period, and (2) providing “media programming responsive to the user information” (user-specific) at a second time period. Sur-Reply at 24.
- Cristofalo-Marcus '904 only provides a single user-specific media programming. POR at 57.

Petitioner does not dispute that Cristofalo-Marcus '904 simply provides a single user-specific media programming. Sur-Reply at 24.

Dependent Claims 18 is Patentable Over Cristofalo in View of Marcus '904

Cristofalo in view of Marcus '904 does not disclose “caching” media streams and “switching between streams” to provide “media programming comprising the media elements.”

- Petitioner does not explain how or why a POSITA would combine Cristofalo with Marcus '904 to reach this limitation because:
 - Petitioner’s additional disclosure of targeting media programming rationale is insufficient;
 - Petitioner fails to show how Cristofalo’s media objects are “media streams” when combined with Marcus '904; and
 - Cristofalo simply inserts advertisement into a selected program, there is no catching and switching between programs.

POR at 59

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE