

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TIKTOK INC.,
Petitioner,

v.

NTECH PROPERTIES, INC.,
Patent Owner.

IPR2024-01341
Patent 9,215,261 B2

Before KEN B. BARRETT, TERRENCE W. McMILLIN, and
SCOTT RAEVSKY, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. *Background and Summary*

TikTok Inc. (“Petitioner”)¹ filed a Petition requesting *inter partes* review of U.S. Patent No. 9,215,261 B2 (“the ’261 patent,” Ex. 1001). Paper 2 (“Pet.”). The Petition challenges the patentability of claims 1–10 of the ’261 patent. NTECH Properties, Inc. (“Patent Owner”)² filed a Preliminary Response to the Petition. Paper 6 (“Prelim. Resp.”).

An *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). Having considered the arguments and evidence presented by Petitioner and Patent Owner, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on at least one of the challenged claims of the ’261 patent. Accordingly, we do not institute an *inter partes* review of the challenged claims.

B. *Related Proceedings*

Both parties identify, as a matter involving or related to the ’261 patent, *NTECH Properties, Inc. v. ByteDance Ltd. et al.*, No. 2:24-cv-00130 (E.D. Tex.). Pet. 2; Paper 4, 1. We note that the following Patent Trial and Appeal Board cases may involve related patents: IPR2024-01338 (U.S. Patent No. 8,875,185), IPR2024-01339 (U.S. Patent No. 9,317,597),

¹ Petitioner identifies TikTok Inc., Bytedance Ltd., Bytedance Pte. Ltd., and TikTok Pte. Ltd. as real parties in interest. Pet. 2.

² Patent Owner identifies NTECH Properties, Inc. as the real party in interest. Paper 4, 1.

IPR2024-01340 (U.S. Patent No. 8,145,704), IPR2024-01342 (U.S. Patent No. 8,886,753), and IPR2024-01343 (U.S. Patent No. 9,923,947).

C. The '261 Patent

The '261 patent generally relates to providing media programming. Ex. 1001, 1:19–20. Figure 1 is reproduced below.

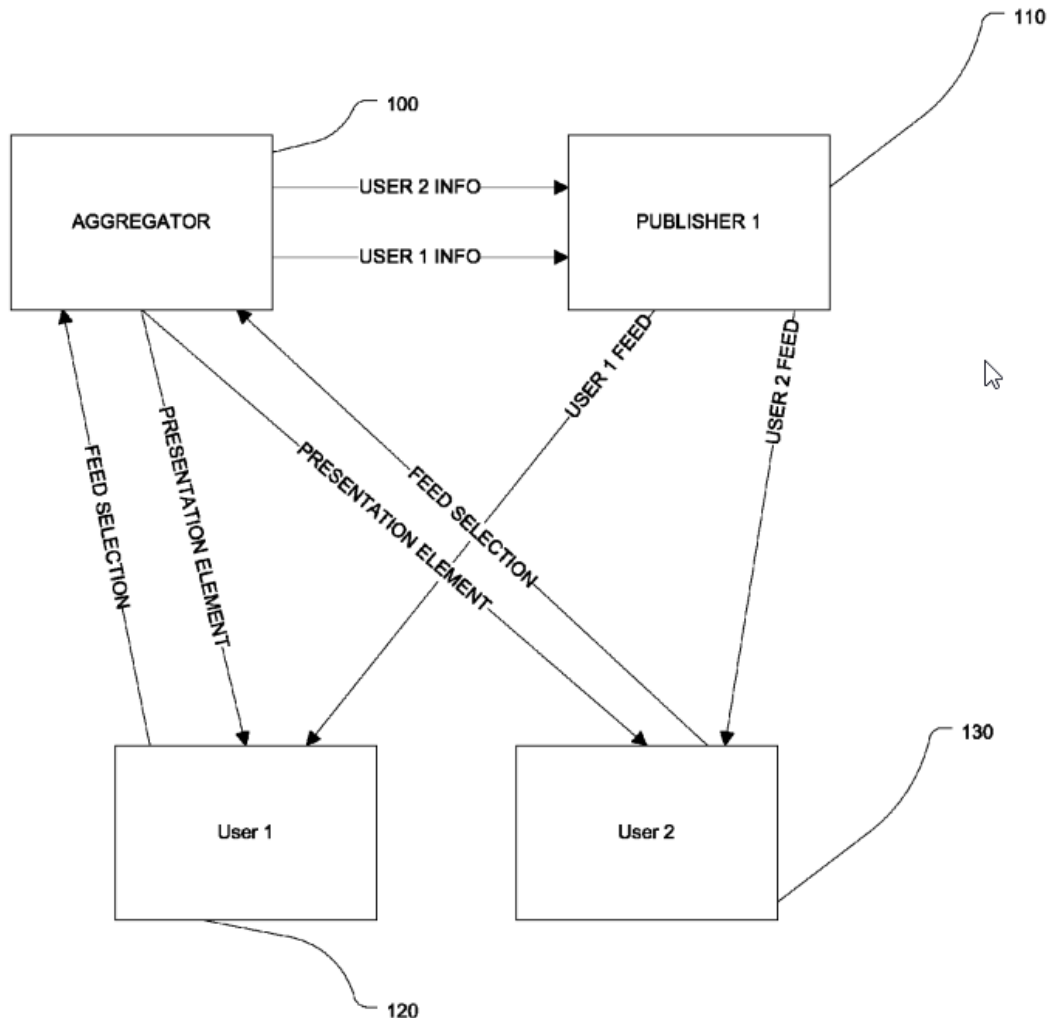


Fig. 1

Figure 1 depicts a system for providing media programming. *Id.* at 2:50–3:40. In Figure 1, aggregator 100 (which may be a web server) provides a presentation element, including one or more feeds, to user 1 and user 2. *Id.*

at 2:50–58, 3:22–24. The users each provide a selection of a feed to aggregator 100. *Id.* at 2:58–60. Aggregator 100 provides information relating to each user to publisher 110. *Id.* at 2:60–61. “Based on the selected feed and the user information, publisher 110 provides individual feeds to user 1 120 and user 2 130, which feeds are responsive at least in part to the user information, in addition to feed selection.” *Id.* at 2:61–65.

Figure 5 is reproduced below.

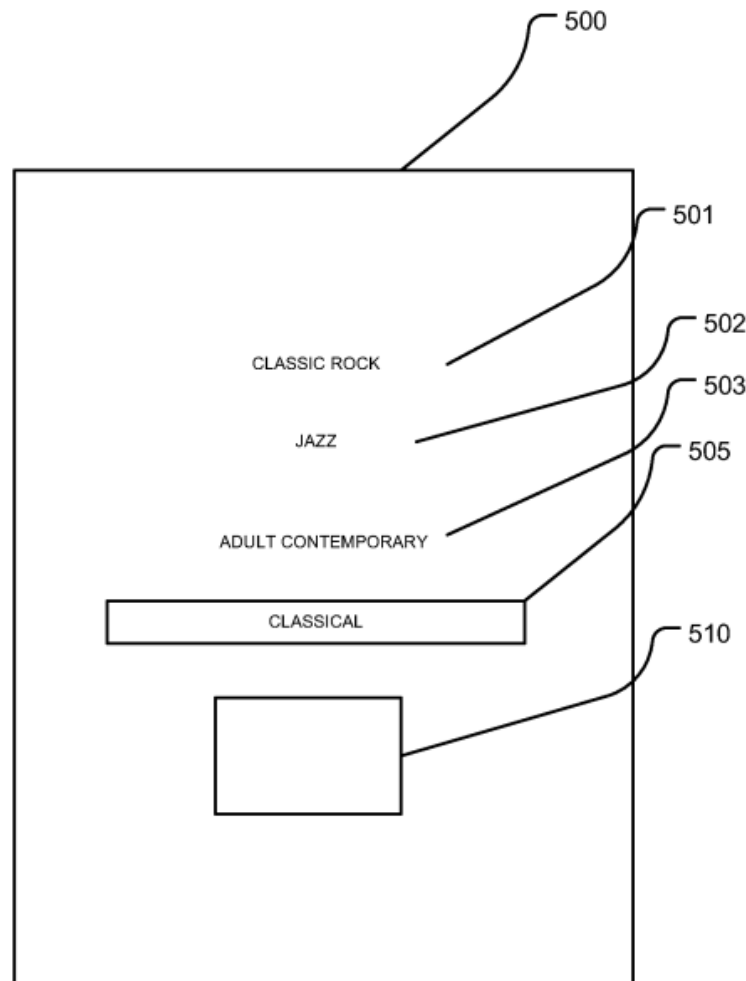


Fig. 5

Figure 5 depicts an example display 500 showing a presentation element generated by an aggregator. *Id.* at 5:67–6:2. In display 500 of Figure 5,

music feeds 501–503, 505 are available, and “classical” feed 505 has been highlighted in response to user selection. *See id.* at 6:2–7.

D. Illustrative Claim

Of the challenged claims of the ’261 patent, claim 1 is an independent claim. The remaining challenged claims depend directly or indirectly from Claim 1. Claim 1, reproduced below with bracketed annotations³ inserted, is illustrative.

1. [1Pre] 1. A method of generating customized media programming, comprising the steps of:
 - [1a] delivering by an aggregator, to a client device associated with a user, a selectable menu of media feeds available from at least one publisher, [1b] wherein each said media feed comprises a plurality of media elements selected from audio media elements, visual media elements, and combinations thereof, and each said media element is tagged in at least one library in communication with at least one publisher;
 - [1c] receiving by the aggregator from the client device a selection identifying at least one of said media feeds;
 - [1d] providing by the aggregator, to said publisher, an identification of each selected media feed;
 - [1e] providing by the aggregator, to said publisher, client information comprising information about the user and information about the associated client device; and
 - [1f] initiating, by the aggregator, for display at the client device, individual customized media programming comprising media elements selected from one or more libraries in communication with said publisher, wherein the selected media elements (i) correspond to at least one selected media feed and are responsive to said user information, and (ii) are

³ We utilize Petitioner’s annotations for claim 1 but have retained the paragraph formatting from the issued patent.

ordered and concatenated at least in part according to each selected media feed and said user information.

Ex. 1001, 14:49–15:7.

E. Evidence

Petitioner relies on the following references:

Name	Reference	Exhibit No.
Whitehead	US 8,555,318 B2, filed Dec. 6, 2006, issued Oct. 8, 2013	1003
Cristofalo	US 2002/0152117 A1, filed Apr. 12, 2001, published Oct. 17, 2002	1004
Marcus '904	US 2006/0015904 A1, filed June 16, 2005, published Jan. 19, 2006	1005

Petitioner also relies on the declaration of Dr. Kevin Almeroth (Ex. 1002) in support of its arguments, and Patent Owner relies on the declaration of Dr. Michael T. Goodrich (Ex. 2001) in support of its arguments. The parties also rely on other exhibits as discussed below.

F. Asserted Grounds of Unpatentability

Petitioner asserts that the challenged claims are unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §⁴	Reference(s)/Basis
1–10	103(a)	Whitehead
1–10	103(a)	Whitehead, Marcus '904
1–10	103(a)	Cristofalo, Marcus '904

⁴ For purposes of this Decision, we assume the challenged claims have an effective filing date prior to March 16, 2013, the effective date of the relevant aspects of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), and we apply the pre-AIA version of 35 U.S.C. § 103.

II. ANALYSIS

A. Principles of Law

Petitioner bears the burden of persuasion to prove unpatentability of the claims challenged in the Petition, and that burden never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) if present, any objective evidence of obviousness or non-obviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B. The Level of Ordinary Skill in the Art

In determining the level of ordinary skill in the art, various factors may be considered, including the “type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (quoting *Custom Accessories, Inc. v. Jeffrey–Allan Indus., Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986)).

Petitioner contends:

A person of ordinary skill in the art at the time of the '261 patent ("POSITA") had 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. 13 (citing Ex. 1002 ¶¶ 47–50).

Patent Owner's contends:

A person of ordinary skill in the art ("POSITA") at the relevant time period between 2006 and 2007 would be one having a bachelor's degree in computer science, computer engineering, or an equivalent, or two years of professional experience in the field of distributed computing. More education can supplement for less professional experience, and vice versa.

Prelim. Resp. 3 (citing Ex. 2001 ¶ 17).

The parties' definitions are similar, although we observe that Patent Owner proposes that the person of ordinary skill would have a bachelor's degree *or* professional experience, whereas Petitioner proposes that such a person would have both a degree and experience.

Petitioner's definition is consistent with the level of ordinary skill reflected in the prior art references of record. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (recognizing that the prior art itself may reflect an appropriate level of skill in the art). For purposes of this decision, we apply Petitioner's definition of the person of ordinary skill in the art. *Cf.* Ex. 2001 ¶ 17 (Patent Owner's declarant, Dr. Goodrich, stating that "[m]y opinions in this declaration would not change were I to adopt the definition of a POSITA offered by [Petitioner's declarant] Dr. Almeroth.").

C. Claim Construction

We apply the same claim construction standard used in district court actions under 35 U.S.C. § 282(b), namely that articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). *See* 37 C.F.R. § 42.100(b). In applying that standard, claim terms generally are given their ordinary and customary meaning as would have been understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *Phillips*, 415 F.3d at 1312–13. “In determining the meaning of the disputed claim limitation, we look principally to the intrinsic evidence of record, examining the claim language itself, the written description, and the prosecution history, if in evidence.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1014 (Fed. Cir. 2006) (citing *Phillips*, 415 F.3d at 1312–17). “[W]hile extrinsic evidence can shed useful light on the relevant art, . . . it is less significant than the intrinsic record in determining the legally operative meaning of claim language.” *Phillips*, 415 F.3d at 1317 (internal quotation marks omitted).

Petitioner states, “[n]o express constructions are required to find the ’261 patent claims invalid; however, Petitioner identifies and addresses the plain meaning of certain terms in the analysis for the presented Grounds.” Pet. 13 (citing Ex. 1002 ¶¶ 51–53).

Patent Owner’s Preliminary Response does not contain a section dedicated to claim construction, but Patent Owner does address claim construction in its discussion of Petitioner’s challenges. *See, e.g.*, Prelim. Resp. 13 (Patent Owner arguing: “Petitioner’s primary argument regarding this limitation depends on an interpretation of the claim that gives no patentable weight to the requirement that the aggregator provide this information to the publisher. The Board should reject Petitioner’s attempt to

read limitations out of the claims.” (citation omitted)). Because our decision does not turn on this proposed construction, we need not address it.

On this record and for purposes of this decision, we determine that no claim terms require express construction.

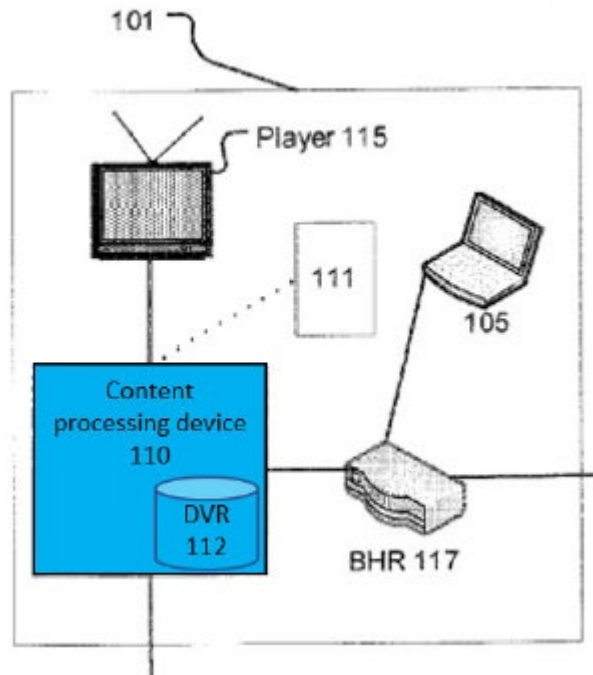
D. The Alleged Obviousness of Claims 1–10 over Whitehead (Ground 1)

Petitioner alleges that claims 1–10 of the ’261 patent would have been obvious over Whitehead. *See* Pet. 13–31 (addressing claim 1). For at least the reasons discussed below, Petitioner has not shown a reasonable likelihood that it would prevail in establishing unpatentability of independent claim 1, or its dependent claims 2–10, as obvious over Whitehead.

1. Limitation 1c

Claim 1 (in limitation 1a) calls for the aggregator to deliver, to a client device, a selectable menu of available media feeds. *See* Ex. 1001, 14:51–53. Limitation 1c recites, “receiving by the aggregator *from the client device* a selection identifying at least one of said media feeds.” *Id.* at 14:59–60 (emphasis added).

A portion of Petitioner’s annotated version of Whitehead’s Figure 1 is reproduced below.



Pet. 15. Above is a portion of Whitehead’s Figure 1 (“an exemplary system 100 for delivering a video signal 128 and for displaying information and supporting custom media channels 170”) depicting customer premises 101, and with content processing device 110 annotated in blue by Petitioner. Ex. 1003, 2:4–7.

Petitioner contends that Whitehead’s content processing device 110 is the recited aggregator, Pet. 14, and that it delivers the recited menu to media player 115, which Petitioner contends is the “client device associated with a user,” *id.* at 16–17. For limitation 1c, Petitioner contends that “Whitehead’s content processing device 100 receives a user selection of one of these custom media channels 170 (*‘a selection identifying at least one of the feeds’*) from media player 115 (*‘client device’*).” Pet. 21⁵ (citing Ex. 1003, 4:45–52, 11:9–16, 11:40–58, 15:16–16:53, 18:47–62; Ex. 1002 ¶ 87). We

⁵ We remove text coloring and bolding when quoting the Petition without noting “emphasis omitted” throughout.

determine that Petitioner has not adequately explained how Whitehead discloses a selection provided by media player 115.

Whitehead explains:

As illustrated in FIG. 1, a customer premise[s] 101 includes a content processing device 110, which may be controlled by a user through a control 111. Content processing device 110 provides video or other multimedia to a user on a *media player 115, e.g., a television set or video monitor*. Content processing device 110 may be a set top box (STB) or similar device known for receiving a video signal from a network and for providing programming such as video to media player 115. . . .

Control 111 is generally a remote control that selectively communicates with content processing device 110 through known wireless communications, such as infrared (IR) or radio frequency (RF) communications. Control 111 generally includes numeric keys for selecting channels of media, e.g., video programming, as well as other keys for making selections and request according to menus provided on media player 115, in addition to arrow keys and the like for changing channels, changing volume, etc.

Ex. 1003, 2:7–15, 2:31–39 (emphasis added); *see also, e.g., id.* at 15:25–29 (“For example, a user accessing control 111 may select a channel in content processing device 110 associated with a custom media channel 170 . . .”).

Thus, according to Whitehead, the purported client device (media player 115) is a TV or monitor that displays menus, whereas the selection of programming is performed by the remote control 111 in conjunction with the set top box (content processing device 110). Petitioner does not explain adequately how the TV/monitor itself has the capability of selecting a program or, in terms of the claim, how the aggregator (set top box) receives a media feed selection from the TV/monitor. Petitioner’s lengthy string cite, *see* Pet. 21, is not an adequate substitute for an explanation in the Petition,

and we decline to study all the cited portions to try to discern whether Petitioner might have a viable explanation as to how the TV/monitor selects programming.

We acknowledge that Petitioner also identifies computer 105 (depicted as a laptop computer in Figure 1) as a “client device.” Pet. 16. However, Petitioner does not contend that the purported aggregator (content processing device 110) delivers a menu to that computer or receives a selection from the computer. *See* Pet. 16–17 (contention that the menu is delivered to media player 115); *id.* at 21 (contention that the selection is received from media player 115).

In light of the above, Petitioner has failed to demonstrate a reasonable likelihood of prevailing in showing that the challenged claims would have been obvious over Whitehead.

2. Limitations 1a, 1b, 1c, and 1f

Patent Owner argues that “the prior art of record does not disclose . . . initiating an individual customized media programming comprising media elements *after* a user’s selection of a media feed.” Prelim. Resp. 1 (emphasis added). Thus, Patent Owner is asserting that there is a chronological aspect, namely that the selection must precede the initiating. As to this Ground 1, Patent Owner argues that “Whitehead does not disclose receiving, by an aggregator, a user’s selection of ‘media feeds available from at least one publisher, wherein each said media feed comprises a plurality of media elements’ and ‘initiating, individual customized media programming comprising media elements selected from one or more libraries in communication with said publisher.’” *Id.* at 7. Patent Owner further elaborates on its chronological aspect assertion, arguing that:

In Whitehead, the user's selection of a "custom media channel" causes the system to either (1) play a predetermined version of the custom media channel or (2) generate the custom media channel in real-time. *See, e.g.,* Whitehead at 16:66–17:17. In the former embodiment, the user's selection of a custom media channel merely causes the system to play the predetermined channel without "initiating" any further "customized media programming." In the latter embodiment, the user is not presented with a menu of media feeds, each including "a plurality of media elements," because those feeds are not yet generated and do not contain any "media elements."

Id.

Patent Owner's arguments implicate several limitations and the interrelationship of those limitations. Limitations 1a through 1c involve the receipt of the selection of one or more media feeds (1c), with that selection being from a menu of feeds, "wherein each said media feed comprises a plurality of media elements" (1a and 1b). Ex. 1001, 14:51–60. Independent claim 1 is, as stated in the preamble, "[a] method of generating customized media programming." *Id.* at 14:49–50. Limitation 1f, consistent with the preamble, recites, "initiating . . . individual customized media programming," with that programming comprised of media elements and with those media elements, *inter alia*, corresponding to at least one "selected media feed." *Id.* at 14:66–15:4.

Comparing Patent Owner's arguments against the contentions in the Petition, we conclude that Petitioner has failed to concretely explain how all of the limitations of independent claim 1 are satisfied by specific teachings in Whitehead arranged in the same way as in the claim. For example, Petitioner's articulation for the limitation calling for the delivery of a menu of media feeds (limitation 1a) contains contentions that Whitehead discloses media feeds under two alternative mappings—either as custom media

channels 170 or as that provided by content sources 135. *See* Pet. 17–20. Petitioner also contends that if Mapping 2 is not disclosed, then it would have been obvious, and with that obviousness contention having two alternatives—where the mixing server stores media content for later inclusion in a custom media channel 170 and where the mixing server switches to a channel in real time to generate custom media channel 170. *See id.* at 19–20. These multiple permutations must be considered in evaluating multiple other limitations that are also tied to these mappings. Petitioner’s mapping is unclear and overly burdens the Board in attempting to assess Petitioner’s challenge to the claimed subject matter.

For limitation 1a, Petitioner contends that the purported aggregator delivers a menu “‘indicat[ing] a plurality of custom media channels 170’ (*‘selectable menu of media feeds’*) that are available from mixing server 130.” Pet. 16–17. And, it appears that Petitioner contends that the menu is of custom media channels 170 under either “media feeds” mapping. *See id.* at 18–19 (“Whitehead’s menu of available custom media channels is a ‘*selectable menu of media feeds*’ . . . because each custom media channel 170 generated by mixing server 130 corresponds to a ‘*media stream*’ from a different content source 135.”). For the “initiating” limitation 1f, Petitioner contends that the transmission of the user’s selection initiates the creation of the custom media channel 170, which is now mapped to the “individual customized media programming.” *See id.* at 29. Consistent with our understanding that Petitioner maps custom media channel 170 to both the “feeds” featured in the menu and the customized media programming generated in response to a selection from that menu, Petitioner contends:

Whitehead's mixing server 130 includes in custom media channel 170 ("*individual customized media programming*") media content 155 ("*selected media elements*"), which is from custom media channel 170 ("*at least one of the media feeds*" under Media Feed Mapping 1) and from content source 135 corresponding to that custom media channel 170 ("*at least one of the media feeds*" under Media Feed Mapping 2), selected based on profile 160 ("said user information").

Id. at 29–30. We note that the first part of this contention is, in effect, that custom media channel 170 includes content from custom media channel 170. In other words, Petitioner appears to contend that the custom media channel is both the end product and the ingredients that make up that product. We also note that Petitioner, in the block quote above, confusingly utilizes both alternative media feed mappings in a single contention.

We find the Petition to be too confusing to follow. It is Petitioner's burden to articulate a coherent and discernable case that is readily understandable by the Board and that places Patent Owner on notice of the basis of Petitioner's case so that Patent Owner may have the opportunity to respond. *See* 37 C.F.R. § 42.104(b) ("[T]he petition must set forth . . . a statement of the *precise* relief requested for each claim challenged," including "specify[ing] where each element of the claim is found in the prior art." (emphasis added)).

In light of the above, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on its Whitehead obviousness challenge.

E. The Alleged Obviousness of Claims 1–10 over Whitehead and Marcus '904 (Ground 2)

Petitioner also alleges that claims 1–10 would have been obvious over Whitehead and Marcus '904. *See* Pet. 41–45. Petitioner contends that a

person of ordinary skill in the art “would have modified Whitehead’s mixing server 130 to incorporate *Marcus ’904’s algorithm* (running on Marcus ’904’s receiver) for receiving, selecting, ordering, and assembling different media streams (both for content and advertising).” Pet. 41 (emphasis added). It is not clear how Petitioner proposes to rely on Marcus ’904 but, regardless, Petitioner’s articulation of this Ground 2 does not cure the defects in Ground 1. We also note that an “algorithm” is not recited in independent claim 1, although it is a term in the claims of related U.S. Patent No. 8,145,704 B2 (the subject of IPR2024-01340).

Additionally, Petitioner confusingly relies on Cristofalo, which is not a reference listed in this Ground 2. *See* Pet. 41–42 (“Cristofalo also discloses providing both content and advertising to users.” (citing Ex. 1004 (Cristofalo) ¶¶ 29, 35–36)). And, Petitioner addresses, in a single section for this Ground 2, three claims by incorporating contentions from Ground 3 (i.e., a ground that comes later in the Petition) along with a conclusory assertion of obviousness:

For limitations 1[f] and 2[b] and claim 4, as addressed in Ground 3, Marcus ’904 discloses all aspects of the challenged claim pertaining to an algorithm for selecting, sequencing of media elements, assembling the media elements based on “*user information*.” *See* Section VII.C.2.f, VII.C.5. To the extent any of those elements are missing from Whitehead, they are rendered obvious by Marcus ’904. EX1002 ¶ 129.

Id. at 44.

We determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in its challenge to claims 1–10 as being obvious over Whitehead and Marcus ’904.

F. The Alleged Obviousness of Claims 1–10 over Cristofalo and Marcus '904 (Ground 3)

Petitioner further alleges that claims 1–10 would have been obvious over Cristofalo and Marcus '904. *See* Pet. 46–59 (addressing claim 1). For at least the reasons discussed below, Petitioner has not shown a reasonable likelihood that it would prevail in establishing unpatentability of independent claim 1, or its dependent claims 2–10, as obvious over Cristofalo and Marcus '904.

1. Limitations 1d and 1e

Claim 1 recites:

[1d] providing by the aggregator, to said publisher, an identification of each selected media feed;

[1e] providing by the aggregator, to said publisher, client information comprising information about the user and information about the associated client device.

Ex. 1001, 14:61–65. Thus, the claim requires the aggregator to provide two things to the publisher—the user’s selection of a media feed and client information.

We understand Patent Owner to argue that Petitioner improperly maps the same information—the user’s feed selection—to both the “identification of each selected media feed” of limitation 1d and the “client information” of limitation 1e. *See* Prelim. Resp. 24–25. Patent Owner argues that, “[u]nder the doctrine of claim differentiation, a user’s current media feed selection cannot be the user information because ‘selected media feed’ and ‘client information’ are distinct claim elements.” *Id.* at 25.

For limitation 1d, Petitioner contends that “Cristofalo discloses that ‘the user’s choice of programming’ (*selection identifying at least one of said media feeds*) is provided” from the aggregator to the publisher. Pet. 53

(citing, *inter alia*, Ex. 1004 ¶ 46). For limitation 1e, Petitioner contends that Cristofalo also discloses that the aggregator provides to the publisher “information on programs selected by the user and content to receive (*‘client information’*).” *Id.*; *see also id.* (the next sentence referring to “client information” as “including programs selected by the user and content received.” (citing Ex. 1004 ¶¶ 37, 39)). Thus, Patent Owner appears to be correct that Petitioner is mapping the user’s selection in Cristofalo to two different types of information recited in the subject limitations.

Also, the Petition, in trying to explain how the publisher receives information from the aggregator indirectly via the profiling system, confusingly appears to shift from mapping the recited “client information” to “information on programs selected by the user and content to receive” to mapping the “client information” to “user profile information.” *See id.* at 53–54.

We determine that Petitioner has not explained adequately how Cristofalo (or the proposed combination) discloses or suggests the aggregator providing “information about the user” of limitation 1e in addition to providing the “identification of each selected media feed” of limitation 1d.

2. *Limitation 1f*

Limitation 1f recites, in part, “initiating, by the aggregator, for display at the client device, individual customized media programming comprising media elements selected from one or more libraries in communication with said publisher.” Ex. 1001, 14:66–15:2.

We understand both parties to contend that independent claim 1 requires the publisher to generate the recited “media programming.” *See, e.g.*, Pet. 12 (“Claims 1–10 recite three basic steps. . . . Step 3: The *publisher*

generates custom media programming comprising the selected media feed and advertising or other media elements and provides the custom media programming to the user.”); Prelim. Resp. 6 (“Cristofalo is very different from the claimed invention for many reasons. . . . Cristofalo’s transmitting system 102 [mapped to the publisher] does not generate a programming feed.”).

Patent Owner argues that Petitioner incorrectly asserts that Cristofalo’s purported publisher (transmitting system 102) generates media programming. *See* Prelim. Resp. 21–22.⁶ According to Patent Owner, it is Cristofalo’s purported aggregator (receiving system 104) that performs that media programming generation. *See id.* at 22.

Petitioner contends, in pertinent part:

In response to receiving system 104 transmitting user selection information (“*initiating, by the aggregator*”) the transmitting system 102 [mapped to the recited publisher] generates media programming . . . and provides that media programming to the user EX1004 ¶¶ 9, 19, 22, 34, 38, 47–48, 54; *see also* EX1004 at FIG. 1 (“programming signal”). EX1002 ¶ 158.

Cristofalo discloses that the transmitting system 102 generates media programming (“*individual customized media programming comprising media elements*”) based on the desired program selected by the user . . . and user profile information EX1004 ¶¶ 9, 19, 22, 32, 17, 34, 38, 47–48, 54; EX1002 ¶ 159.

Pet. 57–58 (annotated Figure 1 of Cristofalo omitted); *see also, e.g., id.* at 48 (“Cristofalo discloses that both its transmitting system 102 and receiving

⁶ In light of our reasons herein, we do not rely on the purported admission by Petitioner in a related case, IPR2024-01343, that Cristofalo’s transmitting system (publisher) does not generate media programming. *See* Prelim. Resp. 21–22 (citing Ex. 2008, 9 (the petition in the related case)).

system 104 have access to use profile information and customize media programming based on the same.” (citing Ex. 1004 ¶¶ 35–36, 44, 49)).

These contentions may or may not have merit, but, regardless, it is unclear what teachings of Cristofalo Petitioner relies on. As shown above, Petitioner asserts that Cristofalo’s transmitting system 102 generates and provides media programming to the user but, instead of explaining why, merely provides string cites to Cristofalo. Pet. 57–58. Petitioner’s assertion, which relies on long string cites to Cristofalo without explanation, transfers the burden to the Board to figure out its argument and the evidentiary basis therefor. But “[j]udges are not like pigs, hunting for truffles buried in briefs.” *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (per curiam), *quoted with approval in Halliburton Energy Servs., Inc. v. M-I LLC*, 514 F.3d 1244, 1250 n.2 (Fed. Cir. 2008).

Petitioner’s articulation for limitation 1f also contains an obviousness contention based on the assertion that “Marcus ’904 addresses the lack of detail in Cristofalo regarding targeting by transmitting system 102 by describing a receiver 100 that ‘collects media’ from different ‘media source[s]’ and ‘assembles a program from the collected media.’” Pet. 58 (citing Ex. 1005 ¶ 30) (alteration in original). Petitioner contends that a person of ordinary skill in the art “would have modified Cristofalo’s transmitting system 102 to incorporate Marcus ’904’s algorithm (running on Marcus ’904’s receiver) for receiving, selecting, ordering, and assembling different media streams (both for content and advertising).” *Id.* at 46.

Petitioner’s reliance on Marcus ’904 (and Marcus ’156⁷) appears to be for “how the final media programming is generated,” *id.* at 47, and the “ordered and concatenated” aspect recited at the end of limitation 1f, *see id.* at 58–59. Petitioner does not explain adequately or persuasively how the Marcus references cure the above-described defects in Petitioner’s contentions regarding Cristofalo purportedly disclosing the “publisher” generating the customized media programming.

We determine that Petitioner has not demonstrated a reasonable likelihood of proving during trial that, as Petitioner contends, Cristofalo (or the proposed combination of Cristofalo and Marcus ’904) discloses or suggests a publisher generating customized media programming.

III. CONCLUSION

Petitioner has not demonstrated that there is a reasonable likelihood of establishing the unpatentability of any of the challenged claims of the ’261 patent.

IV. ORDER

For the foregoing reasons, it is

ORDERED that the Petition is *denied* and no trial is instituted.

⁷ U.S. Patent No. 6,032,156, issued February 29, 2000. Ex. 1008. Petitioner states that Marcus ’156 is incorporated by reference in Marcus ’904. Pet. 59.

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