

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TikTok Inc.,
Petitioner,

v.

NTECH Properties, Inc.,
Patent Owner.

Case No. IPR2024-01341
U.S. Patent No. 9,215,261

PETITIONER'S REQUEST FOR DIRECTOR REVIEW

I. INTRODUCTION

Petitioner respectfully requests Director review of the Panel’s decision not to institute IPR2024-01341.¹ Review is appropriate here because the Panel’s denial is irreconcilably inconsistent with decisions **granting** institution in two, contemporaneously filed petitions on related patents also filed by Petitioner, that have virtually identical claims and grounds. The Panel’s decision in this case simply cannot be squared with the two decisions granting institution.

In addition to the inconsistency, the denial in this case constitutes an abuse of discretion because the ruling contains erroneous findings of material fact. First, the Panel refused to consider Petitioner’s mappings for the claimed “media feeds,” contending they were “too confusing to follow.” Yet, in the two instituted IPRs, involving the **same** claim limitations and the **same** mappings, both PO **and the same Panel** was able to follow, and, in the case of the Panel, agree with Petitioner’s contentions. Second, the Panel **ignored** an embodiment cited by Petitioner in coming to the erroneous conclusion that the Whitehead reference does not disclose the

¹ Petitioner is also seeking Director Review in IPR2024-01343. The challenged claims in that request are nearly identical to the claims at issue here and were denied for essentially the same reason. Accordingly, the arguments raised in this request and in the ‘1343 request are essentially the same.

“receiving” limitation. If that cited embodiment is considered, it is plain that Whitehead discloses the “receiving” limitation – again, a conclusion the very same Panel came to in instituting the two other related petitions, which included identical limitations, and that were mapped in the very same manner.

II. BACKGROUND

Petitioner filed IPRs against four patents that are continuations of each other and share the same specification: U.S. Pat. No. 8,145,704 (IPR2024-01340), U.S. Pat. No. 8,886,753 (IPR2024-01342), U.S. Pat. No. 9,215,261 (IPR2024-01341), and U.S. Pat. No. 9,923,947 (IPR2024-01343). The ‘1340 and ‘1342 Petitions were instituted; the present ‘1341 Petition and the ‘1343 Petition were denied.

Importantly, **all** of the patents include independent claims with the same set of limitations:² (1) providing by an aggregator to a client device a list of “media feeds”; (2) receiving at the aggregator from the client device a “selection” of one of those “media feeds” and “user information”; (3) forwarding the “selection” and the “user information” from the aggregator to a publisher; and (4) generating “media programming” comprising the selected “media feed” and other “media elements”

² All independent claims of the ‘753, ‘261 and ‘947 patent include these limitations. Independent claims 19 and 23 of the ‘704 also include these limitations. Only ‘704 patent claim 1 is different.

based on the “user information.” *Compare, e.g.,* ’261 patent claim 1 with ’753 patent claim 1. Given these near identical limitations, Petitioner proposed the **same** grounds across this petition and the two instituted petitions, including the same Ground 1: obviousness based on the “Whitehead” prior art alone.

PO’s POPR in each case also presented overlapping arguments across this IPR and the two instituted petitions. Specifically, in relation to Ground 1, PO argued primarily that Whitehead does not disclose receiving a selection of an existing “media feed” and then assembling that “media feed” into “media programming.” ‘1340 POPR at 17-22; ‘1341 POPR at 7-12; ‘1342 POPR at 8-14; ‘1343 POPR at 8-13. The Panel considered and rejected this argument in the instituted petitions, finding that PO’s argument regarding the “media feeds” limitations was “not commensurate with the scope of the claims.” ‘1340 ID at 13; ‘1342 ID at 10.

In contrast, here, on identical limitations, the Panel ignored PO’s arguments, instead denied institution based on arguments PO never raised. Indeed, the **same** Panel found that the **same art** failed to disclose the **same** limitations that it previously found met the burden for institution. Specifically, and in connection with the “media feeds” limitations, the Panel here found that Petitioner’s two alternative mappings were “too confusing to follow” and on that basis alone held that Petitioner did not meet its burden. ‘1341 ID at 13-16. This is despite the fact that both PO and the **same Panel** had no difficulty following the **identical mappings** in the two instituted

petitions. The Panel’s refusal to institute based on this finding is, respectfully, simply not supported, and constitutes a clearly erroneous ruling. **Second**, the Panel found that Whitehead does not disclose that the aggregator receives a user selection “**from the client device**,” because the selection is allegedly received from a separate remote control 111 rather than media player 115. ‘1341 ID at 10-13. In reaching this conclusion, the Panel ignored Petitioner’s reliance on a different embodiment and theory where the selection is received from **computer 105** (the claimed “client device”) which **does not have a separate remote control**. Indeed, the Panel in the ‘1342 institution decision agreed that Whitehead met the “receiving” claim limitation.

III. ARGUMENT

A. The Panel Erred in Finding Whitehead Fails to Render Obvious Displaying Media Feeds and Generating Media Programming

The Panel found that Petitioner’s arguments on the “media feeds” limitations was “too confusing” and on that basis alone, found that the Petition failed to establish the prior art disclosed these limitations. ‘1341 ID at 16. Yet in the instituted petitions, both PO and the **same** Panel considered and understood **identical contentions** against the **same** limitations; PO responded to the same, and the Panel **adopted** Petitioner’s contentions.

The limitations at issue require, in relevant part, receiving a selection of a “media feed” and then generating “media programming” based on the “selected media feed.” Petitioner presented two theories for those limitations, and, for sake of clarity, labeled them as “Media Feed Mapping 1” and “Media Feed Mapping 2.” ‘1341 Pet. at 17. Where the mappings required different analysis, Petitioner then addressed invalidity under each mapping in separate subsections. *See* ‘1341 Pet. at 17-18, 38 (analysis for Media Feed Mapping 1); ‘1341 Pet. at 18-20, 38 (analysis for Media Feed Mapping 2). Where the mappings relied on the same analysis, the Petition addressed them together. ‘1341 Pet. at 20-22, 29-30.

The Panel understood those same mappings in IPR2024-01342. The ‘1342 Petition challenged virtually identical claim language and thus mapped Whitehead to the claimed “media feeds” ***identically*** to how it is mapped here. ‘1342 Pet. at 17. Yet in the ‘1342 Petition, the ***same*** Panel not only followed but ***adopted*** Petitioner’s mapping and instituted the Petition. The Panel explained those mappings in its ‘1342 institution decision:

Petitioner presents two mappings for the claimed “media feeds”: the feeds are either (1) custom media channels 170 made available by mixing server 130 to content processing device 110 (“Media Feed Mapping 1”), or (2) media content transmitted by content sources 135 to mixing server 130 (“Media Feed Mapping 2”). ...

For limitation 1[b], “receiving by the aggregator from the client [device] a selection [identifying at least one of said media] feeds,” Petitioner asserts that content processing device 110 (“aggregator”) receives a user selection of a custom media channel 170 (Media Feed Mapping 1) and selection of the content source 135 corresponding to that channel (Media Feed Mapping 2). ...

For limitation 1[e], “[initiating ... individual customized media programming comprising media elements ... correspond[ing] to at least one selected media feed],” Petitioner asserts that Whitehead’s mixing server 130 (“publisher”) instantiates custom media channel 170 consisting of media content 155 (“[selected media feed]”) and then inserts advertising content 140

At this stage, after considering Patent Owner’s arguments, which we address below, we determine that Petitioner has sufficiently shown that Whitehead discloses limitations 1[b] and 1[e]

‘1342 ID at 9-10 (revised to reflect ’261 patent language):

PO also understood Petitioner’s two mappings for the “media feeds” limitations. Indeed, PO responded to these mapping in detail in its POPR in this case. ‘1341 POPR at 7-12. PO never argued, in either this Petition or in the two instituted petitions, that these mappings were too confusing to follow.

Thus, the finding by the Panel in this case that Petitioner’s contentions were allegedly “too confusing to follow” is directly at odds with both the PO and the Panel

in ‘1342 having no trouble following, explaining, and in the case of the Panel in ‘1342, even adopting those same contentions.

In any event, the Panel’s criticism of Petitioner’s contentions lacks merit. In support of its view that Petitioner’s mappings were “too confusing,” the Panel cites a block quote from the Petition regarding the last limitation of claim 1 as evidence of the allegedly confusing nature of Petitioner’s contentions, and states that “Petitioner appears to contend that the custom medial channel is both the end product and the ingredients that make up that product.” ‘1341 ID at 16. The Panel’s confusion is unwarranted—it is Whitehead itself that uses the same term “custom media channel” to refer to both the “ingredients” and the “end product,” as the Panel put it. Specifically, Whitehead uses the term “custom media channel” to refer to both the initial, user-selected menu item corresponding to a profile 160 (the “ingredients” per the Panel’s parlance) and the eventually-transmitted combination of content 155 defined by profile 160 and separately selected advertising 140 (the “end product” per the Panel’s parlance). *See, e.g.*, Ex. 1003 at 8:53-59, 11:40-43, 12:18-13:27; *see also* ‘1341 Pet. at 21, 29 (explaining process and citing relevant disclosure). The petition thus accurately mapped the specific claim requirements to Whitehead’s disclosure using Whitehead’s own terminology.

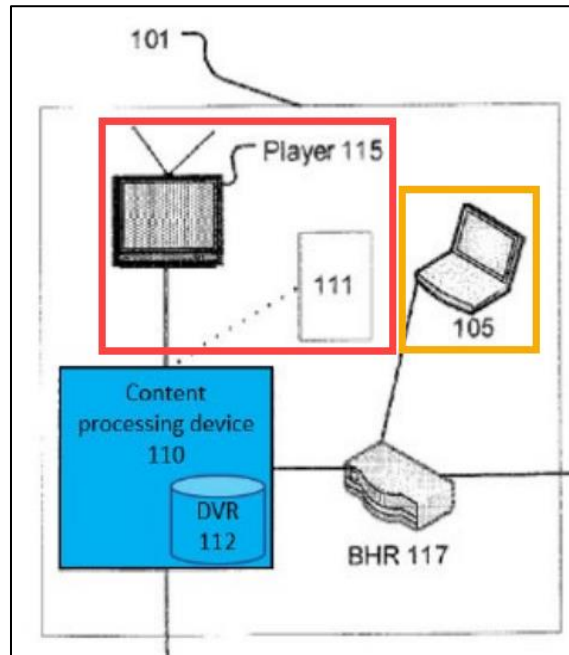
Accordingly, the Panel had no basis to disregard Petitioner’s analysis as allegedly “too confusing to follow” in IPR2024-01341, and its failure to consider Petitioner’s contentions on that basis was clearly erroneous.

B. The Panel Erred in Finding that Whitehead Fails to Render Obvious “Receiving ... from the Client Device a Selection”

The Panel found Petitioner did not meet its burden of showing that Whitehead renders obvious “receiving by the aggregator from the client device a selection identifying at least one of said media feeds” because the “selection” in Whitehead is allegedly received from a separate remote control instead of the “client device.” ‘1341 ID at 10-13. Not even Patent Owner espoused this position in light of Whitehead’s clear disclosure of receiving the “selection” from a computer 105 (“client device”) that does **not** have a separate remote control. Specifically, PO contested whether Whitehead’s selection of a custom media channel qualifies as the claimed “selection of one of the feeds” but never disputed that Whitehead’s “selection” was received from “the client device.” See ‘1341 POPR at 7-12.

It is not surprising Patent Owner did not dispute this claim limitation was disclosed in Whitehead: the Panel’s holding in IPR2024-01341 is based on a misunderstanding of Petitioner’s contentions and a failure to appreciate Whitehead’s teachings cited by Petitioner. As Petitioner argued, Whitehead expressly discloses two different devices for allowing a user to select and play Whitehead’s custom

media channel: a stand-alone media player 115, such as a TV with a remote control 111 (red box), **or** computer 105 (orange box). ‘1341 Pet. at 16. This is expressly shown in Whitehead’s Figure 1, copied below from the institution decision. See ‘1341 ID at 11 (further annotated with red and orange boxes).



The Panel erred here by not considering the embodiment where “media player 115” is software running on computer 105. ‘1341 ID at 10-13. As shown in the image above, in the computer 105 embodiment, there is no separate remote control 111, and the Panel’s criticism is thus inapplicable to Whitehead’s computer 105 embodiment.

Indeed, the Panel in IPR2024-01342 **agreed** that Whitehead discloses the “receiving” claim limitation. In the ‘1342 Petition, Petitioner challenged that same limitation based on the same disclosure in Whitehead. Compare ‘1342 Pet. at 21

(instituted) *with* ‘1341 Pet. at 21 (not instituted). The Panel substantively considered this limitation and found that Petitioner met its burden. ‘1342 ID at 9-11. Thus, the Panel’s holding in IPR2024-01341 that Whitehead does not disclose “receiving ... from the client device a selection” (’261 patent claim 1) cannot be squared with the Panel’s holding in IPR2024-01342 that Whitehead does disclose “receiving ... from the client a selection” (’753 patent claim 1). *Compare* ‘1341 ID at 10-13 *with* ‘1342 ID at 9-11.

The Panel justified ignoring Whitehead’s computer 105 embodiment because “Petitioner does not contend that the purported aggregator ... delivers a menu to that computer or receives a selection from the computer” and Petitioner allegedly only contends “that the menu is delivered to media player 115” and “the selection is received from media player 115.” ‘1341 ID at 13. That is demonstrably incorrect: Petitioner expressly mapped the “computer 105” to the claimed *client device* and expressly stated that “media player 115” is *software running on that computer*. ‘1341 Pet. at 16 (highlighting added):

Whitehead also discloses media player 115 that is either a stand-alone device or software running on computer 105 (“*client device*”) and that a user is interfacing with (“*associated with a user*”). EX1003 at 2:4-16, 2:31-39, 2:52-3:7, 3:59-4:9, 15:16-16:53; EX1002 ¶ 75.

Thus, when Petitioner points to “the menu ... delivered to media player 115” and “the selection ... received from media player 115,” the Panel overlooked that it is computer 105 (claimed “client device”) running that media player 115 software that displays the menu and provides the selection. Once Petitioner’s contentions and Whitehead’s cited disclosure are correctly understood, there is no dispute that Whitehead’s content processing device 110 (claimed “aggregator”) receives a user selection of a custom media channel (claimed “media feed”) from Whitehead’s computer 105 with the media player 115 software (claimed “client device”).

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Request for Director Review

IPR2024-01341

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Respectfully submitted,

Dated: April 9, 2025

By: /s/ James M. Glass

James M. Glass, Reg. No. 46,729

Counsel for Petitioner

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on April 9, 2025 via email directed to counsel of record for Patent Owner.

Dated: April 9, 2025

/s/ James M. Glass

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