

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TIKTOK INC.,
Petitioner,

v.

NTECH PROPERTIES, INC.,
Patent Owner.

Case No. IPR2024-01342
U.S. Patent No. 8,886,753

PATENT OWNER'S RESPONSE

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE ’753 PATENT	2
III.	LEVEL OF ORDINARY SKILL IN THE ART	3
IV.	CLAIM CONSTRUCTION	4
A.	“Feed” (All Challenged Claims)	4
V.	THE RELEVANT ASSERTED REFERENCES	8
A.	Whitehead (Grounds 1 and 2)	8
B.	Cristofalo (Ground 3)	9
VI.	GROUND 1: THE CHALLENGED CLAIMS ARE PATENTABLE OVER WHITEHEAD	10
A.	Whitehead Does Not Disclose a Publisher “Acquiring the Feed Selection” and “Provid[ing] Individual Customized Media Programming” by “Concatenat[ing]” Media Elements With the Feed Selected.....	10
1.	Media Feed Mapping 1: Custom Media Channels are Not Selected and Incorporated Into Media Programming	11
2.	Media Feed Mapping 2: The User Does Not Select Media Feeds from Content Sources	14
B.	Dependent Claim 5: Whitehead Does Not Disclose “Furnish[ing]” a “First Feed” and a “Second Feed” During First and Second Time Periods	15
VII.	GROUND 2: THE CHALLENGED CLAIMS ARE PATENTABLE OVER WHITEHEAD IN VIEW OF MARCUS ’904	18
VIII.	GROUND 3: THE CHALLENGED CLAIMS ARE PATENTABLE OVER CRISTOFALO IN VIEW OF MARCUS ’904	19

A. Cristofalo in View of Marcus ’904 Does Not Disclose a *Publisher* Selecting, Ordering and Concatenating Media Elements With a Feed (Limitation 1[e]) 19

1. Cristofalo’s Alleged Aggregator Generates the Final Media Programming 20

2. Petitioner Fails to Provide Adequate Rationale on Why a POSITA Would Have Implemented Marcus ’904’s Algorithm at Cristofalo’s Transmitting System 22

B. Cristofalo Does Not Disclose the Publisher Collecting “From the Aggregator Client Information . . . Compris[ing] User Information” 26

C. Dependent Claim 5: Cristofalo in View of Marcus ’904 Does Not Disclose “Furnish[ing]” a “First Feed” and a “Second Feed” During First and Second Time Periods 27

IX. CONCLUSION.....28

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Alice Corp. Pty. Ltd. v. CLS Bank Int'l</i> , 573 U.S. 208 (2014).....	24
<i>Arendi S.A.R.L. v. Apple Inc.</i> , 832 F.3d 1355 (Fed. Cir. 2016)	17
<i>KSR Int'l Co. v. Teleflex, Inc.</i> , 550 U.S. 398 (2007).....	24
<i>Medivis, Inc. v. Novard Corp.</i> , No. IPR2023-00042, Paper 35 (P.T.A.B. Mar. 6, 2024).....	24, 25
<i>Nystrom v. TREX Co.</i> , 424 F.3d 1136 (Fed. Cir. 2005)	7
<i>Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.</i> , 520 F.3d 1358 (Fed. Cir. 2008)	16
<i>Plantronics, Inc. v. Aliph, Inc.</i> , 724 F.3d 1343 (Fed. Cir. 2013)	23, 26
<i>Process Control Corp. v. HydReclaim Corp.</i> , 190 F.3d 1350 (Fed. Cir. 1999)	5
<i>In re Schweickert</i> , 676 F. App'x 988 (Fed. Cir. 2017)	25
<i>TikTok Inc. v. NTECH Properties, Inc.</i> , No. IPR2024-01340, Paper 7 (P.T.A.B. Mar. 10, 2025).....	4
<i>Wi-LAN USA, Inc. v. Apple Inc.</i> , 830 F.3d 1374 (Fed. Cir. 2016)	6
Other Authorities	
37 C.F.R. § 42.22(a)(2).....	17

PATENT OWNER'S EXHIBIT LIST

Exhibit	Description
2001	Declaration of Michael T. Goodrich, Ph.D. in Support of Patent Owner's Preliminary Response
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	Intentionally Omitted
2005	Intentionally Omitted
2006	Intentionally Omitted
2007	Intentionally Omitted
2008	Petition for <i>Inter Partes</i> Review of U.S. Patent No. 9,923,947, <i>TikTok, Inc. v. NTECH Properties, Inc.</i> , No. IPR2024-01343, Paper 2 (P.T.A.B. Aug. 23, 2024)
2009	Intentionally Omitted
2010	Digital Ocean Article, "Load balancing 101: Increasing the availability and resilience of your applications," available at https://www.digitalocean.com/resources/articles/load-balancing , dated Nov. 7, 2024
2011	M. Chesire, et al., "Measurement and Analysis of a Streaming-Media Workload," 3rd USENIX Symposium on Internet Technologies and Systems (2001)

Exhibit	Description
2012	“Amazon EC2 Instance Types,” Amazon Web Services.com archived at Internet Wayback Machine on October 22, 2008 at https://web.archive.org/web/20081022140520/http://aws.amazon.com:80/ec2/instance-types/
2013	Petition for <i>Inter Partes</i> Review of U.S. Patent No. 8,145,704, <i>TikTok, Inc. v. NTECH Properties, Inc.</i> , No. IPR2024-01340, Paper 2 (P.T.A.B. Aug. 23, 2024)
2014	Declaration of Michael T. Goodrich, Ph.D. in Support of Patent Owner's Response
2015	Merriam-Webster Dictionary webpage, definition of “concatenate” available at https://www.merriam-webster.com/dictionary/concatenate , dated May 12, 2025
2016	Deposition transcript of Dr. Kevin Almeroth, <i>Tiktok Inc. v. NTECH Properties, Inc.</i> , IPR2024-01340 and IPR2024-01342, taken on May 30, 2025
2017	PC Mag Encyclopedia webpage, definition of “feed” available at https://www.pcmag.com/encyclopedia/term/feed , dated May 13, 2025
2018	Sprinklr Glossary webpage, “What is Feed” available at https://www.sprinklr.com/social-media-glossary/feed/ , dated May 13, 2025
2019	Google Ad Manager Help webpage, “What is a feed?” available at https://support.google.com/admanager/answer/9189559?hl=en , dated June 4, 2025
2020	Excerpts from Microsoft Computer Dictionary (5th ed. 2002)
2021	Customerly webpage, “Media Channel” available at https://www.customerly.io/glossary/media-channel/ , dated May 13, 2025

Exhibit	Description
2022	ScyllaDB webpage, “Real Time Data” available at https://www.scylladb.com/glossary/real-time-data/ , dated May 6, 2025
2023	Information Security Office webpage – Separation of System Resources Guideline, available at https://security.berkeley.edu/separation-system-resources-guideline , dated Nov. 18, 2014
2024	Temok webpage, “6 Reasons Why You Should Start Using A Multi Server Environment,” available at https://www.temok.com/blog/multi-server-environment/ , dated Nov. 7, 2019
2025	Merriam-Webster Dictionary webpage, definition of “furnish” available at https://www.merriam-webster.com/dictionary/furnish , dated March 27, 2025
2026	Collins English Dictionary webpage, definition of “furnish” available at https://www.collinsdictionary.com/us/dictionary/english/furnish , dated March 27, 2025

I. INTRODUCTION

Patent Owner respectfully requests that the Board find the Challenged Claims of the '753 Patent patentable because neither Whitehead (Ex. 1003) nor Cristofalo (Ex. 1004), alone or in combination with Marcus '904 (Ex. 1005), teaches a user selecting a feed from a list of feeds and a publisher receiving the feed selection and combining the selected feed with additional media elements chosen and arranged based on user information. '753 Patent at Claim 1.

The Challenged Claims are patentable over Grounds 1 and 2 because Whitehead does not disclose a user selecting a “feed” from a “list of feeds” or a publisher that concatenates the selected feed additional media elements, and Petitioner does not argue that Marcus '904 cures this deficiency. Pet. at 33. In Whitehead's system, when a user selects a “custom media channel,” the system either plays a pre-generated custom media channel or generates the custom media channel in real time. In the former embodiment, no additional media elements are concatenated with the alleged selected feed. In the latter embodiment, there is no existing “feed” available to be selected and concatenated with additional media elements.

Ground 3 is also meritless because Cristofalo does not disclose a ***publisher*** that provides individual customized media programming to a client, and Marcus '904 does not cure Cristofalo's deficiency. '753 Patent at Claim 1. Instead,

Cristofalo's alleged *aggregator* provides the alleged customized media program when it selects advertisements based on user profile information and inserts them into the programming selected for presentation. Cristofalo at ¶¶ [0045]-[0050], Fig. 4. Marcus '904 does not resolve Cristofalo's deficiency because, like Cristofalo, Marcus '904 teaches assembling customized media programming at an aggregator, and the record evidence contradicts Petitioner's conclusory, hindsight-laden argument that a POSITA would have executed Marcus '904's algorithm at Cristofalo's publisher.

II. OVERVIEW OF THE '753 PATENT

The '753 Patent describes and claims a publisher that provides individual customized media programming in response to a selection of a feed from a list of feeds provided to users. *See* '753 Patent at Abstract, 2:65-3:5, Claim 1. The selection of one of the feeds causes the publisher to compile individual customized media programming by selecting, ordering, and concatenating media elements with the feed selected based on user information. *See id.* at 11:29-12:39, 13:18-27. The result is a customized and tailored feed for each user as illustrated in Figure 1:

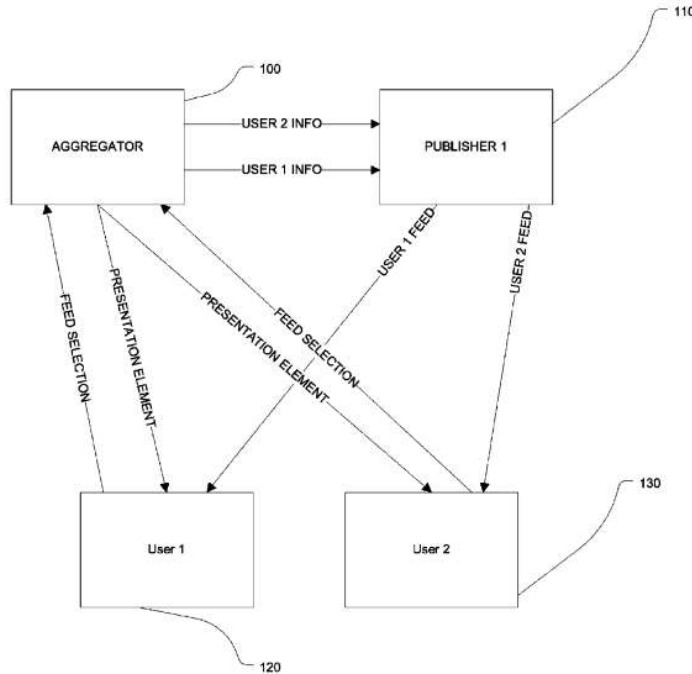


Fig. 1

'753 Patent at Fig. 1; *see also id.* at 2:48-3:9 (disclosing that the publisher selects and concatenates media elements with the selected feed based on each user's user information), 5:26-52 (disclosing that the publisher server's processor executes software to provide customized media programming); *see also* Ex. 2014 ("Goodrich PO Resp. Decl.") at ¶¶ 30-32.

III. LEVEL OF ORDINARY SKILL IN THE ART

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. Goodrich PO Resp. Decl. at ¶¶ 15-19.

IV. CLAIM CONSTRUCTION

A. “Feed” (All Challenged Claims)

The plain and ordinary meaning of “feed” is *one or more associated¹ media elements*. This construction is dispositive for at least Grounds 1 and 2 because Whitehead does not disclose a user selecting a feed from a list and providing individual customized media programming compiled by selecting, ordering, and concatenating media elements with the selected feed. *See* § VI.A, *infra*; Goodrich PO Resp. Decl. at ¶¶ 33-34.

Although the Institution Decision in this case did not reach the issue of whether the selected feed must exist (i.e., whether it must contain at least one media element) at the time of selection, the Board evaluated a similar question in IPR2024-01340. *See TikTok Inc. v. NTECH Properties, Inc.*, No. IPR2024-01340, Paper 7 at

¹ The word “associated” is meant to be understood broadly to include any association between the media elements and does not imply that the media elements in a feed must share any particular characteristics. For example, a feed may be a group of randomly selected of media elements, but the fact that the media elements were selected to be part of the group is sufficient for them to be “associated.”

12-13 (P.T.A.B. Mar. 10, 2025) (finding that the claims did not require “combining an ‘existing’ channel with other media elements”). NTECH respectfully disagrees with the Board’s conclusion for the reasons stated in its Preliminary Response in IPR2024-01340 and the Patent Owner Response being filed concurrently with this Response. In this case, the intrinsic and extrinsic records preclude applying such an interpretation to the claimed “feed” for at least the following reasons. Goodrich PO Resp. Decl. at ¶ 35.

The plain language of the claims confirms that the term “feed” refers to one or more associated media elements because each claim requires the “feed” to be concatenated with additional media elements. ’753 Patent at Claim 1 (reciting (1) that a user is presented with a “list of feeds” and selects “one of the feeds” and (2) that the publisher “acquir[es] . . . the feed selection” and “select[s], order[s], and concatenate[s]” additional media elements” with “the feed.”). This language requiring the concatenation of “additional” media elements with the feed would make little sense if “the feed” did not also include media elements. *See* Ex. 2015 at 1 (describing “concatenate” as “to link together in a series or chain”); Goodrich PO Resp. Decl. at ¶ 36.

Antecedent basis confirms that the feed must also include at least one media element at the time selected from “a list of feeds.” *See Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1356-57 (Fed. Cir. 1999) (noting the importance

of an antecedent basis in claim construction). Because “the feed” derives antecedent basis from “a list of feeds” and the “selection,” “the feed” is the *same* feed listed and selected. Ex. 2016 at 76:5-77:7 (Almeroth Tr.) (agreeing that “the feed” is “referring to the feeds that are identified in the list of feeds.”). Therefore, at the time the feed is selected from the list, the feed must include at least one media element to be “concatenated with” additional media elements selected and ordered based on user information. Goodrich PO Resp. Decl. at ¶ 37.

Dictionary definitions of the term “feed” confirm that the term refers to at least one associated media element. These definitions show that the term is known in the art to refer to an associated set of media elements, such as a podcast feed or a user’s social media feed. *See* Ex. 2017 (describing a feed as “[a] general term for the electronic distribution of information, including text, images, audio and video”); Ex. 2018 (describing a feed as “the dynamic stream of content” with the “content that can show up on a user’s feed include[ing] text posts, links, ads, and visuals”); Ex. 2019 at 2 (describing a feed as “a stream of content that you can scroll through” and the “content appears in similar-looking blocks that repeat one after the other”); *see also* Goodrich PO Resp. Decl. at ¶ 38.

The specification also uses the term “feed” in concert with this plain and ordinary meaning because it consistently refers to feeds as collections of media elements that are associated in one way or another. *See Wi-LAN USA, Inc. v. Apple*

Inc., 830 F.3d 1374, 1382 (Fed. Cir. 2016) (“Consistent use of a term in a particular way in the specification can inform the proper construction of that term.”) (citations omitted). For example, while all feeds described in the ’753 Patent are described a collection of media elements, the individual media elements in any given feed might be compiled in different ways (e.g., in a “concatenated sequence” or a “dynamically-varying sequence”), and media elements selected for a given feed may be chosen according to different criteria (e.g., the user’s feed selection and information about the user):

The feeds may include a concatenated sequence of media elements, in which the order and selection of media elements is determined by algorithms The content of a media feed may include a video feed, an audio only feed, a sequence of still images, and a combination of one or more of audio, video and still images.

’753 Patent at 3:1-9 (emphasis added); *see also id.* at 12:30-31 (“Each such feed may include a dynamically-varying sequence of media elements.”), 2:59-65 (“The feeds may include media elements selected and concatenated by the publisher responsive to at least both feed selection and user information.”); Goodrich PO Resp. Decl. at ¶ 39.

Nor is there evidence that the inventor meant the claims to cover more than the ordinary meaning of feed, such as a placeholder devoid of media elements. *See Nystrom v. TREX Co.*, 424 F.3d 1136, 1145 (Fed. Cir. 2005) (“In the absence of

something in the written description and/or prosecution history to provide explicit or implicit notice to the public . . . that the inventor intended a disputed term to cover more than the ordinary and customary meaning revealed by the context of the intrinsic record, it is improper to read the term to encompass a broader definition”) (citations omitted). There are no examples of a “feed” in the ’753 Patent that would support re-defining the term “feed” in such a way, so it would be improper to expand the scope of the claims to cover a feed selection that is something other than the existing feed itself. *See* Goodrich PO Resp. Decl. at ¶ 40.

In view of the foregoing, “feed” refers to *one or more associated media elements*. *Id.* at ¶ 41.

V. THE RELEVANT ASSERTED REFERENCES

A. Whitehead (Grounds 1 and 2)

Whitehead does not disclose a publisher receiving a selected feed and providing individual customized media programming (compiled by selecting, ordering, and concatenating media elements with the feed selected based on user information). *See* Goodrich PO Resp. Decl. at ¶¶ 42-45. 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. *See, e.g.,* Whitehead at 16:1-14. Neither embodiment involves a user selecting an

existing feed and a publisher concatenating the existing feed with additional user-specific media elements.

In fact, there is no feed that is part of custom media channels 170. A custom media channel 170 is made up of only individual media content items that are assembled based on playlist 205, as depicted below:

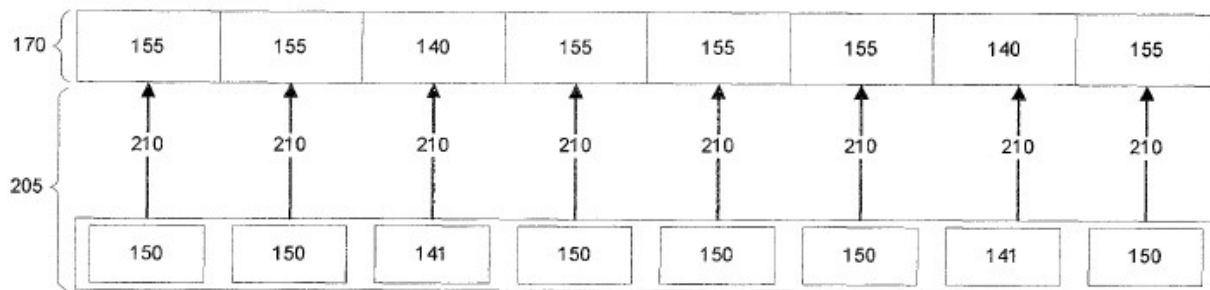


FIG. 2

Whitehead at Fig. 2. The custom media channel is specific to each user, as its individual media content items are selected from a database based upon profile 160. *Id.* at 5:9-13, 5:24-55, *id.* at 8:34-38 (“[T]he particular advertising content 140 and/or media content 155 included in custom media channel 170 depends at least in part on a custom channel profile 160 . . .”).

B. Cristofalo (Ground 3)

Unlike the claims of the '753 Patent, which require a ***publisher*** to compile and provide custom media programming to a client, Cristofalo's final media programming is generated by the alleged ***aggregator***. See Goodrich PO Resp. Decl.

at ¶¶ 48-50. Cristofalo discloses a system including transmitting system 102, receiving system 104, and user profiling system 106. Cristofalo at ¶ [0020]. In this system, receiving system 104 (identified as the aggregator) assembles media objects (advertisements) with a user's selected programming. *Id.* at ¶¶ [0045]-[0050], Fig. 4. For example, receiving system 104 can receive multiple advertisements from transmitting system 102, select advertisements based on the user's profile, and assemble the advertisements with the selected programming (e.g., Monday Night Football) that is then presented to the client. *Id.* at ¶ [0049], Fig. 4.

VI. GROUND 1: THE CHALLENGED CLAIMS ARE PATENTABLE OVER WHITEHEAD

A. Whitehead Does Not Disclose a Publisher “Acquiring the Feed Selection” and “Provid[ing] Individual Customized Media Programming” by “Concatenat[ing]” Media Elements With the Feed Selected

At institution, the Board found that Independent Claim 1 “does not require the . . . selection of a feed to *cause* providing to the client individual customized media programming.” Paper 9 at 10. Regardless of the level of causation required by the claims, each independent claim expressly requires the selection of a feed and the concatenation of that feed with additional media elements. *See* § IV.A, *supra*. Whitehead does not disclose such a feature. Goodrich PO Resp. Decl. at ¶¶ 51-52.

Whitehead discloses two distinct embodiments, neither of which discloses the publisher receiving a selected feed and concatenating that feed with additional media

elements to provide individual customized media programming (compiled by selecting, ordering, and concatenating media elements with the feed selected based on user information). In Whitehead, the user's selection of "custom media channels 170" (allegedly, the "individual custom media programming") causes the system to either (1) play a pre-generated custom media channel (the "pre-generated embodiment") or (2) generate a custom media channel in real-time (the "real-time embodiment"). *See, e.g.,* Whitehead at 16:1-21; Goodrich PO Resp. Decl. at ¶ 52.

In the pre-generated embodiment, the selection of the already created custom media channel 170 simply causes its presentation without the publisher "providing" "customized media programming" (compiled by selecting, ordering, and concatenating the feed selected with additional user-specific media elements). In Whitehead's real-time embodiment, the user's selection of a custom media channel is not a selection of a "feed" because there is no existing feed for the user to select or for the publisher to concatenate with additional user-specific media elements. Although Petitioner presents two "Media Feed Mapping[s]," each is deficient for these reasons. *See* Pet. at 13-16; Goodrich PO Resp. Decl. at ¶¶ 53-54.

1. Media Feed Mapping 1: Custom Media Channels are Not Selected and Incorporated Into Media Programming

In "Media Feed Mapping 1," Petitioner alleges that "custom media channels 170 are themselves the claimed 'media feeds.'" Pet. at 12-13 (emphasis omitted). In this mapping, the claimed invention is patentable over Whitehead because neither

of its embodiments discloses a user selecting a “feed,” as properly construed, and concatenating the feed with additional user-specific media elements to provide to the client “individual customized media programming.” *See* § IV.A, *supra*; Goodrich PO Resp. Decl. at ¶ 55.

In Whitehead's real-time embodiment, the user's selection of custom media channel 170 causes the mixing server to generate the custom media channel in real-time. Whitehead at 11:43-49 (“That is, a playlist 205 may be generated and a custom media channel 170 may be created in real-time or near real-time when a user ‘tunes’ to the channel 170 or otherwise selects the channel 170 for viewing through playback device 115.”). In this embodiment, a user tunes to a channel, and the custom channel is generated. Goodrich PO Resp. Decl. at ¶ 56.

Whitehead uses the term channel in the same way as used in the art to refer to “[a] path or link through which information passes between two devices,” but it does not imply the existence of any content delivered by the channel. Ex. 2020 at 94; Ex. 2021 (“A media channel, also known as a communication channel, refers to the medium through which information, news, entertainment, education, data, or promotional messages are disseminated.”). Unlike a “feed,” a channel is simply a conduit for content to pass through and does not carry the implication that it includes any media elements at any given time. Whitehead at 11:45-49 (disclosing that “a custom media channel 170 may be created in real-time or near real-time when a user

‘tunes’ to the channel 170 or otherwise selects the channel 170”). Goodrich PO Resp. Decl. at ¶ 57.

That is why, when a custom media channel is generated in real-time, the channels are presented according to “names or identifiers selected by a user when creating channel profiles 160,” or “according to attributes” like “baseball” or “weather,” or organized into other groups or structures. *Id.* at 16:5-14. The selection of one of these characteristics is not a “feed” under the proper construction, let alone can such a characteristic be concatenated with additional media elements, as is required by the Challenged Claims. Goodrich PO Resp. Decl. at ¶ 58.

Accordingly, in the real-time embodiment, there is no feed selected that results in the creation of custom media channel 170 as in the manner claimed, *i.e.* ***selecting a feed*** and “providing . . . individual customized media programming . . . including media elements selected, ordered, and ***concatenated with the feed***” based on user information. ’753 Patent at Claim 1 (emphasis added); Goodrich PO Resp. Decl. at ¶ 59.

In Whitehead’s pre-generated embodiment, pre-generated custom media channels 170 and their media elements are listed in the menu for selection and playback. Whitehead at 16:14-21 (disclosing that “particular ***items of media content 155 included in a custom media channel 170 may be listed in the menu***” where “a

user may interactively browse and *select one or more clips, i.e., items of media content 155, for playback*") (emphasis added); Goodrich PO Resp. Decl. at ¶ 60.

Where custom media channels 170 are pre-generated, the user's selection of the channel is not fed to a publisher that concatenates the channel with additional media elements, it simply plays the pre-generated channel. Whitehead at 11:59-12:7 ("Embodiments are also possible in which a custom media channel 170 is created and stored prior to a user's request to access the channel 170."). Rather than the user's selection identifying a feed that is then concatenated with other media elements, the user's selection merely plays the already created custom channel. *See id.* at 16:66-17:17 (disclosing either playing stored files according to a playlist or determining in real-time which media content is necessary and retrieving that content from a library); Goodrich PO Resp. Decl. at ¶¶ 60-62.

2. Media Feed Mapping 2: The User Does Not Select Media Feeds from Content Sources

In "Media Feed Mapping 2," Petitioner alleges that "each custom media channel 170 generated by mixing server 130 corresponds to a 'media stream'² [sic] from a different content source." Pet. at 14; Goodrich PO Resp. Decl. at ¶ 62.

Petitioner's Mapping 2 ultimately shares the same deficiency as "Media Feed Mapping 1" because it still relies on the user's "selection" of a custom media channel

² Presumably, Petitioner means "feeds."

170 from a menu of available media channels. *Id.* at 11-12, 14-15. As discussed above, the user's selection of a custom media channel does not result in Whitehead's system providing "individual customized media programming" under either one of Whitehead's embodiments. *See* § VI.A.1, *supra*. Thus, even if content sources 135 provide "feeds," there is no sense in which the user's selection of a custom media channel selects a Content Source's "feed." Rather, the user still selects the custom media channel 170 from the menu, which causes the system to either generate the custom channel in real-time (in which case, the user's selection of a characteristic does not correspond to an existing feed that can be concatenated with additional media elements) or play the pre-generated custom media channel (in which case, the system does not concatenate this existing custom channel with additional media elements specific to the user to then provide the "individual customized media programming"). Goodrich PO Resp. Decl. at ¶¶ 63-64.

B. Dependent Claim 5: Whitehead Does Not Disclose "Furnish[ing]" a "First Feed" and a "Second Feed" During First and Second Time Periods

Dependent Claim 5 is patentable for the same reasons Independent Claim 1 is patentable over Whitehead and for the additional reasons that follow. Dependent Claim 5 recites that "responsive to the selection of one of the feeds" "a first feed . . . is furnished during a first time period and a second feed comprising the individual customized media programming is furnished during a second time period." '753

Patent at Claim 5. Rather than furnish two different feeds at different time periods, Whitehead provides only a single custom media channel 170. Petitioner does not dispute this but argues that it would have been obvious to modify Whitehead's system to play a non-personalized advertisement before playing the requested custom media channel. Pet. at 28; Goodrich PO Resp. Decl. at ¶¶ 65-71.

Petitioner's argument is the product of hindsight because it does nothing more than retrace the steps of the inventor. *Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.*, 520 F.3d 1358, 1364 (Fed. Cir. 2008) ("In retrospect, [the inventor's] pathway to the invention, of course, seems to follow the logical steps to produce these properties, but at the time of invention, the inventor's insights, willingness to confront and overcome obstacles, and yes, even serendipity, cannot be discounted."). The only location in the record where this limitation is disclosed is in the '753 Patent itself. *See, e.g.*, '753 Patent at 7:54-59 ("In one embodiment, in response to the received selection of a feed, the publisher provides a predetermined feed during a first time period, and provides a feed responsive to the received client information in a second time period. Thus, the same initial feed may be provided to all users who make a particular selection.").

Petitioner reasons that because there may be a delay between the time the user selects Whitehead's custom media channel and the time that it is actually played back, it would have been obvious to furnish a predetermined advertisement

(allegedly, the “first feed”) before furnishing the custom media channel. *See* Pet. at 28. However, Petitioner does not attempt to estimate how long such a delay would be expected to take in Whitehead’s system or demonstrate that any such delay would be on the right order of magnitude to make it **obvious** to fill that time with an advertisement. Petitioner has not, therefore, provided “a detailed explanation of the significance of the evidence” as required under 37 C.F.R. § 42.22(a)(2).

Moreover, Petitioner’s argument regarding claim 5 does not meet the relatively high bar for using common sense to support a single-reference obviousness ground. *See Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1362 (Fed. Cir. 2016) (holding that invoking common sense “to supply a limitation that was admittedly *missing* from the prior art . . . ought to be treated as the exception, rather than the rule”). As the Federal Circuit held in that case, this exception exists only when the “limitation in question [is] unusually simple and the technology particularly straightforward” and when the missing limitation does not “play[] a major role in the subject matter claimed.” *Id.*

Petitioner’s proposed modification does not meet this standard. Indeed, given that Whitehead states that the custom media channel may be delivered in or close to real-time, it is reasonable to infer that a POSITA would **not** have found it obvious to delay the delivery of the custom media channel in order to play a non-personalized advertisement. Whitehead discloses that its custom media channels 170 are meant

to improve over “generic” and “predetermined” programming, and Petitioner does not explain why a POSITA would have, nevertheless, delayed the delivery of such programming when it can be provided “in real-time or near real-time,” which, Petitioner admits, is a “short interval.” *See* Whitehead at 1:37-40, 11:45-47; Pet. at 28; Ex. 2022 at 1 (describing “real-time” as “available immediately or almost immediately”); Goodrich PO Resp. Decl. at ¶¶ 70-71.

For at least the foregoing reasons, NTECH respectfully requests that the Board determine that Claim 5 is patentable over Whitehead.

VII. GROUND 2: THE CHALLENGED CLAIMS ARE PATENTABLE OVER WHITEHEAD IN VIEW OF MARCUS '904

Although Ground 2 challenges Independent Claim 1 and its dependents with the addition of Marcus '904, this reference is used only for its algorithm that, according to Petitioner, “receiv[es], select[s], order[s], and assembl[es] different media streams.” Pet. at 33 (alleging that a “POSITA would have modified Whitehead’s mixing server 130 to incorporate Marcus '904’s algorithm (running on Marcus '904’s receiver)”). Accordingly, Marcus '904 does not resolve the deficiencies of Ground 1. Therefore, Ground 2 fails for the same reasons Ground 1 fails. Goodrich PO Resp. Decl. at ¶¶ 72-73.

VIII. GROUND 3: THE CHALLENGED CLAIMS ARE PATENTABLE OVER CRISTOFALO IN VIEW OF MARCUS '904

At institution, the Board expressed concerns with Petitioner's "proposed rationale to combine and limitation 1[e]" under the reasonable likelihood of success institution standard. Paper 9 at 15 (citing Prelim. Resp. at 26); *see also id.* at 15-18. If Petitioner could not meet its burden under the lower institution standard, it cannot meet its burden here under the higher preponderance of the evidence standard for the reasons that follow.

A. Cristofalo in View of Marcus '904 Does Not Disclose a *Publisher* Selecting, Ordering and Concatenating Media Elements With a Feed (Limitation 1[e])

The Challenged Claims are patentable over Cristofalo and 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 publisher. '753 Patent at Claim 1 (the "***publisher***" "acquiring . . . ***the feed selection***" and "providing . . . individual customized media programming . . . including media elements selected, ordered, and ***concatenated with the feed***") (emphasis added); Goodrich PO Resp. Decl. at ¶¶ 74-75.

1. Cristofalo's Alleged Aggregator Generates the Final Media Programming

Cristofalo's alleged aggregator (receiving system 104) finalizes its final media programming, not the alleged publisher (transmitting system 102). Pet. at 39 (referencing Cristofalo's "final media programming" as "custom programming" provided to the user). As Petitioner admitted in IPR2024-01343, Cristofalo's *receiving system 104* "receive[s] multiple, multiplexed media objects and select[s] the *appropriate media object for inclusion in the programming*." Ex. 2008 at 9 (emphasis added). By Petitioner's own admission, Cristofalo's transmitting system does not generate the final media programming. Goodrich PO Resp. Decl. at ¶¶ 76-77.

Petitioner's admission is consistent with Cristofalo's disclosure, which discloses that the receiving system generates the final media programming. See Cristofalo at ¶ [0049] ("Upon receiving the multi-object programming [advertisements] signal, the receiving system 104 then selects specific media objects for decompression, composition and presentation based upon the user's profile (Block 408)."); see also *id.* ¶¶ [0045]-[0048]. As described with respect to Figure 4, for example, Cristofalo states that after a user selects desired programming (e.g., "Monday Night Football" (see Pet. at 43 (program guide depicting)) at step 404, the *receiving system* receives media objects (e.g., advertisements) at step 406, selects advertisements based upon the user profile at step 408, and composes the final media

programming at step 410. Cristofalo at Fig. 4; *see also id.* at ¶¶ [0045]-[0050]. Accordingly, Cristofalo's final media programming is generated at the receiving end, where advertisements are included with the selected programming based on user profile information. *See id.* at ¶ [0049]; Goodrich PO Resp. Decl. at ¶ 78.

Although Petitioner argues that transmitting system 102 does the generating, that argument is based on a misrepresentation of Cristofalo's "programming signal." *See* Pet. at 47-48 (identifying Cristofalo's "programming signal"); Goodrich PO Resp. Decl. at ¶¶ 79-80. As established above, the "programming signal" contains advertisements that are received by the receiving system. *See, e.g.,* Cristofalo at ¶¶ [0048]-[0050], *see also id.* at ¶ [0036] (a "programming signal" contains "media objects (the convertible roof and the hard top roof" advertisements). Indeed, as Petitioner admits elsewhere, Cristofalo's receiving system is the component that "receive[s] multiple, multiplexed media objects and *select[s] the appropriate media object for inclusion in the programming.*" Ex. 2008, IPR2024-01343 Petition at 9 (emphasis added).

Thus, the Petition's citation to Cristofalo's "programing signal" shows, at best, that transmitting system 102 selects and sends advertisements to receiving system 104. *See* Pet. at 47 (asserting that "transmitting system 102 generates media programming consisting of media objects based on the user's choice and user profile information"). However, the transmitting system does not select, order, and

concatenate these advertisements *with the selected programming* to generate the final media programming in Cristofalo, as in the manner required by the Challenged Claims. Goodrich PO Resp. Decl. at ¶ 81.

For at least the foregoing reasons, Cristofalo does not disclose the claimed publisher “providing . . . individual customized media programming . . . including media elements selected, ordered, and concatenated with the feed.” ’753 Patent at Claim 1; Goodrich PO Resp. Decl. at ¶ 82.

2. Petitioner Fails to Provide Adequate Rationale on Why a POSITA Would Have Implemented Marcus ’904’s Algorithm at Cristofalo’s Transmitting System

Petitioner also fails to present sufficient rationale for why a POSITA would have implemented Marcus ’904’s algorithm at Cristofalo’s transmitting system. Petitioner’s rationale is founded on Marcus ’904 providing “additional disclosure of targeting media programming to specific users” that could “benefit[]” Cristofalo. Pet. at 38, 39 (alleging that “[t]he additional disclosure in Marcus ’904 . . . provides such additional details” on how “Cristofalo’s media objects are selected” and how “the final media programming is generated and formatted for display.”). However, none of that “additional disclosure” suggests implementing Marcus ’904’s algorithm at a publisher. Goodrich PO Resp. Decl. at ¶ 83.

At institution, the Board expressed concerns with Petitioner’s rationale, calling it “vague and unexplained.” See Paper 9 at 16 (noting that Petitioner’s

rationale hinges on Marcus '904's "additional disclosure of targeting media programming" and detailing "how final media programming is generated and formatted for display"). These disclosures may contain additional details about how to generate media programming, but they do not suggest generating media programming at a publisher instead of an aggregator, which is the deficiency in Cristofalo that Marcus '904 is meant to cure. Where, as here, the necessary reasoning is absent, the Board cannot "simply assume that 'an ordinary artisan would be awakened to modify prior art in such a way as to lead to an obviousness rejection.'" *Plantronics, Inc. v. Aliph, Inc.*, 724 F.3d 1343, 1354 (Fed. Cir. 2013) (citation omitted).

Indeed, the record evidence does not suggest the incorporation of Marcus '904's algorithm at Cristofalo's transmitting system (Pet. at 38-39) because, like Cristofalo, Marcus '904 discloses assembling media programming at a receiver, not a transmitter. *Id.* at 37-38 ("Marcus '904's **algorithm (running** on Marcus '904's **receiver)** for receiving, selecting, ordering, and assembling different media streams [sic] (both for content and advertising)"); *id.* at 48 ("[Marcus '904] . . . describe[es] **a receiver 100** that 'collects media' from different 'media source[s]' and '**assembles** a program from the collected media.'" (citing Marcus '904 at ¶ [0030])) (emphases added). Marcus '904's **receiver** "selects media elements from the media streams for inclusion in the programming based upon the user data," "arranges the selected data

elements into an order based upon the user data,” and concatenates the result. Pet. at 48-49 (citing Marcus '904 at ¶ [0040]). Because the evidence does not support incorporation at the transmitting end, it is unexplained why additional disclosure of targeting media programming would have motivated a POSITA to modify Cristofalo's transmitting end. See Goodrich PO Resp. Decl. at ¶¶ 84-85.

Aside from the lack of evidence, Petitioner's rationale is also vague because it “could ‘swallow all of patent law,’” as the Board correctly recognized. Paper 9 at 16 (quoting *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014)) (“[F]ail[ing] to see, at this stage, how merely disclosing additional details would motivate a skilled artisan to combine references [T]his could ‘swallow all of patent law.’”). That a reference provides additional disclosure is no different than merely stating that the reference provides technology that another reference could take advantage of, which does not meet *KSR* standards.

The Board's decision in *Medivis, Inc. v. Novard Corp.*, No. IPR2023-00042, Paper 35 at 24 (P.T.A.B. Mar. 6, 2024) is instructive on this point. In *Medivis*, the Board found that the petitioner's rationale of a reference taking advantage of technology disclosed in another reference did not meet the *KSR* standard. *Id.* The Board concluded that an advantage of the technology approach does not meet *KSR*'s “articulated reasoning” standard because it is “so vague and broad that it could be applied to combine any two references.” *Id.* (citing *KSR Int'l Co. v. Teleflex, Inc.*,

550 U.S. 398, 418 (2007)) (further citation omitted). Likewise, Petitioner additional disclosure on targeting media programming approach does not meet *KSR*'s "articulated reasoning" standard as it too is "so vague and broad that it could be applied to combine any two references." *Medivis*, Paper 35 at 24 (citation omitted).

Even if Petitioner's rationale was not vague (it is), it is still irrelevant because Cristofalo "already" details how it assembles final media programming, including targeted advertisements, and therefore a POSITA would have found such an implementation entirely "unnecessary." *In re Schweickert*, 676 F. App'x 988, 995 (Fed. Cir. 2017) (determining that the proposed modification is "unnecessary" because the reference "already" performs the function); Paper 9 at 16 (crediting NTECH's argument that "Cristofalo already discloses targeting advertising to users"). Cristofalo details that receiving system 104 includes demultiplexers 204 for selecting advertisements based on user profiles, a synchronization unit for "coordinat[ing] and synchroniz[ing]" the advertisements, and a composition generator 210 for "compos[ing] . . . a composite presentation signal," *i.e.* user-specific targeted programming. Cristofalo at ¶¶ [0029]-[0032]; *see also id* at ¶ [0036] (disclosing that the receiving system accesses a region indicator (which user profiling system utilizes) "to determine which of the received data packets the demultiplexer 204 is to select"), ¶ [0034]; Goodrich PO Resp. Decl. at ¶ 86.

In view of the above, the necessary reasoning with underlying evidentiary support for incorporating Marcus '904's algorithm at Cristofalo's transmitting system is absent here. Therefore, the Board must "guard against the dangers of hindsight bias" presented here and hold the Challenged Claims Patentable over Cristofalo. *Plantronics*, 724 F.3d at 1354.

B. Cristofalo Does Not Disclose the Publisher Collecting "From the Aggregator Client Information . . . Compris[ing] User Information"

Petitioner's argument that Cristofalo discloses this limitation because "user profile information . . . is received and analyzed by the transmitting system" fails because receiving system 104 does not send any user profile information to transmitting system 102. Pet. at 45-46; Goodrich PO Resp. Decl. at ¶¶ 87-89.

Instead, user profiling system 106 sends this information to the transmitting system. Cristofalo at ¶ [0039] (disclosing that user profiling system 106 "generat[es] user profiles based upon user viewing habits" based on the user's current selection of feed, not receiving system 104); *see also* Pet. at 46 (depicting user profiling system 106 transmitting profile information to transmitting system 102).

Nor does the fact that the profiling system 106 might be "co-located" with transmitting system 102 mean that sending profile information from receiving system 104 to user profiling system 106 is tantamount to sending profile information from a receiving server 104 to transmitting system 102. Cristofalo at ¶ [0037]. Two

separate servers remain separate servers even when they are on the same network and/or in physical proximity. A profile server, such as user profiling system 106 that stores users' personal information, would be separated from a media server, such as transmitting system 102, to reduce the risk of comprising users' personal information. *See* Goodrich PO Resp. Decl. at ¶ 89 (citing Ex. 2023 at 2 (stating that “[c]ritical services storing, processing and transmitting covered data should be hosted on separate physical or logical servers to reduce the risk of a compromised service”)); Ex. 2024 at 2).

C. Dependent Claim 5: Cristofalo in View of Marcus '904 Does Not Disclose “Furnish[ing]” a “First Feed” and a “Second Feed” During First and Second Time Periods

Dependent Claim 5 is patentable for the same reasons Independent Claim 1 is patentable over the Cristofalo-Marcus '904 combination. Dependent Claim 5 is also patentable because the Cristofalo-Marcus '904 combination *only furnishes one feed*: a user-specific final media programming. *See* § VIII.A.1, *supra* (establishing that receiving system 104 selects and inserts advertisements in the selected programming with the final media program provided to the client). Dependent Claim 5, however, requires furnishing *two* feeds. '753 Patent at Claim 5; Goodrich PO Resp. Decl. at ¶ 90.

Petitioner ignores that a “first feed” and “second feed” must *both* furnished to the client. *See* Pet. at 51. Here, Petitioner asserts that the selected programming

plays “during a first time period” and “the other media elements only play once they are reached (‘during a second time’).” *Id.* (emphasis omitted). But the selected programming and “other media elements” (advertisements) are part of the same user-specific final media programming provided to the client. *See* Cristofalo at ¶ [0050] (explaining that “[t]he process then continues with synchronizing the various objects and presenting the programming (Block 410).”). That is, only the user-specific final media programming—the selected programming and targeted media objects (advertisements)—is furnished. Missing from the Petition, and Cristofalo, is the identification of a “first feed” that is “furnished during a first time period.” ’753 Patent at Claim 5; Goodrich PO Resp. Decl. at ¶ 91.

IX. CONCLUSION

For at least the foregoing reasons, the Board should hold patentable the Challenged Claims.

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CERTIFICATE OF COMPLIANCE WITH 37 C.F.R. § 42.24

The undersigned hereby certifies that the foregoing **PATENT OWNER'S RESPONSE** has 6,151 words in compliance with the 14,000 word limit set forth in 37 C.F.R. § 42.24(b). This word count was prepared using the Microsoft Word word-processing system used to prepare this paper.

Dated: June 10, 2025

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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.

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