

IN THE 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

CORRECTED PETITIONER'S REPLY

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EXHIBIT LIST

EX	Description
EX1001	U.S. Patent No. 8,886,753 (“’753 patent”)
EX1002	Declaration of Kevin Almeroth, Ph.D.
EX1003	U.S. Pat. No. 8,555,318 (“Whitehead”)
EX1004	U.S. Pat. Pub. No. 2002/0152117 (“Cristofalo”)
EX1005	U.S. Pat. Pub. No. 2006/0015904 (“Marcus ’904”)
EX1006	U.S. Patent No. 6,177,931
EX1007	Int’l Publ. No. WO 00/40021
EX1008	U.S. Pat. No. 6,032,156 (“Marcus ’156”)
EX1009	Provisional Application for U.S. Pat. No. 8,145,704 (U.S. Prov. Appl. No. 60/934,456)
EX1010	D. Wilkerson, “ACTV hopes to steal print's thunder” (Dec. 8, 2000)
EX1011	Amended Complaint in <i>NTECH Properties, Inc. v. ByteDance Ltd. et al.</i> , No. 2:24-cv-00130 (E.D. TEX)
EX1012	B. Hammerseley, “Audible revolution” (Feb. 11, 2004)
EX1013	U.S. Pat. No. 6,388,714
EX1014	U.S. Pat. No. 7,467,398
EX1015	Verizon, “Verizon Unlocks Full Potential of Fiber-Based FiOS Internet and Video Services With Advanced 100-Mbps Broadband Home Router” (June 28, 2006)
EX1016	Prosecution History for U.S. Pat. No. 8,145,704
EX 1017	Prosecution History for U.S. Pat. No. 8,886,753

EX1018	Prosecution History for U.S. Pat. No. 9,215,261
EX1019	Prosecution History for U.S. Pat. No. 9,923,947
EX1020	List of Recent Expert Witness Engagements of Dr. Kevin Almeroth
EX1021	Curriculum Vitae of Dr. Kevin Almeroth
EX1022	Ph.D. R. Gelles-Watnick, "Americans' Use of Mobile Technology and Home Broadband" (January 31, 2024)
EX1023	NTECH Properties, Inc.'s Infringement Claim Chart for U.S. Patent No. 8,886,753
EX1024	Supplemental Declaration of Kevin Almeroth, Ph.D.
EX1025	INTENTIONALLY OMITTED
EX1026	INTENTIONALLY OMITTED
EX1027	https://www.zdnet.com/article/movie-screen-advertising-reached-438-mln-in-2004/
EX1028	Transcript of Deposition of Dr. Goodrich on September 11, 2025

I. INTRODUCTION

PO's arguments are based on improper, narrowing constructions or misconstrue the record. As such they should be rejected.

II. CLAIM CONSTRUCTION¹

PO proposes three narrowing constructions without any basis in lexicography, disclaimer, or disavowal. EX1028, 43:13-18. Because PO's proposed constructions do not reflect the plain meaning, they should be rejected. EX1024, ¶3.

A. "feed"

While PO seeks to construe "feed" as "one or more associated media elements," PO's focus is on adding a requirement that "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." POR, 6. But nothing in the record requires a feed to at all times contain specific media elements or that it stops being a "feed" whenever it does not contain specific media elements. EX1024, ¶4.

PO's proposed construction is not supported by the claim language. Claim 1 requires "delivering by an aggregator to a client a list of feeds," receiving "a selection of one of the feeds," and then "including media elements selected, ordered,

¹ The parties also agree that the "media programming" is provided by the "publisher." EX1028, 35:22-36:11.

and concatenated with the feed.” Nothing in the claim language requires that the “selected feed” must consist of an already-selected set of media elements. EX1024, ¶5.

In addition, even assuming that the “feed” must contain “media elements” at the time it is concatenated with other “media elements,” that does not require that it *always* contain specific media elements. PO’s antecedent basis argument (POR, 5-6) is irrelevant because nothing in the claims prohibits the “feed” from being selected first and then populated with specific media elements later but still prior to being concatenated with other “media elements.” It is still the same “feed” at both points in time. EX1024, ¶6.

The specification also supports the plain meaning. The specification describes feeds as corresponding to “sources of media content,” such as an “XML feed.” EX1001, 6:9-21. A POSITA would understand that such feeds are **containers** for media but do not necessarily include media at all times. EX1024, ¶7.

Moreover, the ’753 patent explicitly discloses that a feed can be **first** selected by a user and only **then** generated, confirming there is no requirement that the claimed “feed” contain specific media elements at the time of selection:

EPG 410 serves the function of an aggregator. EPG 410 may cause **a list of feeds to be displayed** on television 415, and the user may be able to navigate and **select the list of feeds** employing user input 420.... The set top box

then provides the selection and user information to ... cable provider 430 or satellite provider 440. Cable provider 430 and satellite provider 440 each have processors and software suitable for **generating feeds** based on existing channels and/or additional stored media elements; the **selected feed is then provided** as a customized channel to the user.

EX1001, 5:11-22. EX1024, ¶8.

Finally, PO goes so far as to argue that a “channel” is not a feed. POR, 13-14. But PO’s position is not consistent with the ’753 patent, which frequently describes media feeds as channels. EX1001, 5:21-22, 7:13-15, 9:56-63, 11:39-40. Indeed, PO’s construction results in the absurd outcome that selection of a channel at night (if there is no scheduled programming) does not qualify as a selection of a “feed,” but selection of that **same** channel during the day (when there is scheduled programming) does. EX1024, ¶9; EX1028, 28:18-22, 53:9-25.

PO’s dictionaries do not warrant a different outcome. Exhibit 2017 addresses that a feed is a “general term for electronic distribution of information” but does not negate that a “feed” can be selected before it is received in this manner. Exhibit 2018, which actually describes a “feed” as “dynamic” implies the contrary, that feeds are independent of the content included in that feed and can be dynamically assembled after selection. Exhibit 2019 is also silent on whether selecting the feed can happen before the feed “appears.” EX1024, ¶10.

III. GROUND 1: WHITEHEAD

A. “Selection of One of the Feeds” (Claim 1)

PO's argument for both Media Feed Mapping 1 and 2 relies on its overly narrow claim construction of “feed.” POR, 11-14. If a “feed” need not contain specific “media elements” at the time of the user selection, there is no dispute Whitehead meets this limitation. As PO's own expert admits while addressing Whitehead in the context of the co-pending IPR against the related '704 patent, “[a] POSITA would understand that for a user to be able to select a custom media channel from a menu, then some form of custom media channel *must* exist *prior* to the content information device 110 receiving the menu.” IPR2024-1340, EX2014 ¶187; *see also* EX1028, 52:1-13. Indeed, Whitehead's user selection of a custom media channel matches embodiments in the '704 patent specification. *See, e.g.*, EX1001, 6:22-27 (describing claimed selection as a “channel selection”). EX1024, ¶11.

PO's only argument applicable under the plain meaning is that, instead of selection of the channel, the user selects a “characteristic” of the channel. POR, 8, 13. Yet Whitehead is clear that the user sends a “request to access *the* channel 170,” and that the user may select custom media channels 170 “according to names or identifier” assigned to them. EX1003, 11:43-45, 16:5-9. Thus, it is not simply a “characteristic” that is selected, but a specific custom media channel itself. Indeed,

the '704 patent's exemplary feeds (e.g., "Classic Rock") are equally if not more so just "characteristic[s]." EX1001, Fig. 5. EX1024, ¶12.

Moreover, Whitehead discloses this limitation even under PO's improperly narrow construction (EX1024, ¶13):

1. Media Feed Mapping 1

PO characterizes Whitehead as disclosing two separate embodiments for custom media channels: real-time channels and pre-generated channels. POR, 11-14. With respect to pre-generated channels, the user can select and update a profile 160 corresponding to a particular custom media channel 170 that has been pre-generated. EX1003, 10:33-39, 16:38-43. Updating a profile 160 on profile server 165 causes mixing server 130 to "receive a message from profile server 165 that a custom channel profile 160 has been created or revised" and "to invoke a process for creating **or modifying** one or more custom media channels 170 based on profile 160 provided in the message." EX1003, 11:40-43, 11:59-63, 12:14-17. In fact, even PO acknowledges in the co-pending IPR against the related '704 patent that Whitehead discloses "updated pre-generated custom media channels" where "mixing server 130 ... queries media content to determine whether new media content 155 can be included in the custom media channel." IPR2024-1340 POR, 23-24. Thus, even under PO's incorrect construction of "feed," Whitehead discloses selection of a pre-generated custom media channel (**feed**) and **then** concatenating

that channel with new media content (*media elements selected*) based on updated user profile information. EX1024, ¶14.

2. Media Feed Mapping 2

Regarding Media Feed Mapping 2, PO does not dispute that Whitehead's content sources 135 are existing "feeds." POR, 14-15. Instead, PO argues that Whitehead's user selects a custom media channel rather than a particular content source. *Id.* That is not true. PO's own expert agrees that Whitehead discloses "a scenario where there is a custom media channel 170 that has a one-to-one mapping with a profile of 160, and that profile 160 identifies one content source 135 providing media content." EX1028, 20:5-10; EX1003, 6:10-12, 7:5-18 (profile identifies "**one** or more content sources" in addition to other user data such as "a username"), EX1003, 10:51-54 (profile for custom media channel "may indicate an interest in receiving content broadcast from a particular content source 135" in addition to other "interest[s]"). Therefore, by selecting the custom media channel 170, a user also selects the specific content source 135 ("*feed*") corresponding to that channel. EX1024, ¶15.

B. "First Feed" in a "First Time Period" and "Second Feed" in a "Second Time Period" (Claim 5)

First, as to anticipation, PO argues that that, "[r]ather than furnish two different feeds at different time periods, Whitehead provides only a single custom media channel." POR, 15-16. PO's argument is betrayed by its position that a "feed"

can be just “one ... media element[.]”(POR, 4) and its allegation that claim 5 does not require anything beyond what is recited in claim 1 (EX1023, 52 (arguing “[t]his claim element is met for the same reasons discussed above regarding claim 1”)).² Thus, under PO’s own interpretation, Whitehead discloses streaming and playing (i.e., “*furnish[ing]*”) first advertising content 140 (“*first feed*”) at a first point in time (e.g., blue box in the custom media channel of Fig. 2 shown below) followed by second media content 155 (“*second feed*”) at a second point in time (e.g., green box in the custom media channel of Fig. 2 shown below) EX1024, ¶16:

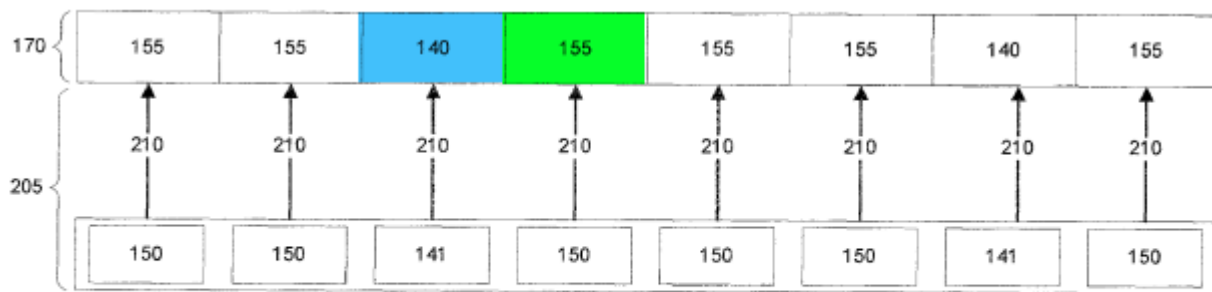


FIG. 2

The provision of the first advertising content 140 (“*first feed*”), like all of custom media channel 170, is triggered by a user selection of that custom media channel and thus “*responsive to the selection of one of the feeds.*” The second media content 155 (“*second feed*”) also includes part of the resultant custom media channel

² Both of these are positions PO took for the first time only **after** the Petition was already filed.

170 and thus “*compris[es] the individual customized media programming.*” That is all claim 13 requires under PO’s interpretations. Importantly, PO provides no explanation why a single custom media channel 170 cannot contain both a first and second feed, such as advertising content 140 and media content 155, respectively, under PO’s construction of “feed.” EX1024, ¶17.

Second, as to obviousness, PO challenges Petitioner’s motivation to combine disclosure already found in Whitehead. POR, 38. Importantly, however, PO does not dispute that Whitehead discloses advertisements that are not targeted based on user profile information (i.e., “*first feed*”) or the claimed “*media programming responsive to the user information.*” Pet. 46-47.³ PO instead only challenges Petitioner’s motivation to modify Whitehead to play the predetermined advertisement before the custom media programming. POR, 38. But there is no dispute that Whitehead’s teaching reveals a delay between a user selection of a custom media channel and playback of the resultant media programming. Pet. 46-47. Moreover, a POSITA would be aware of the practice of playing advertisements before media programming, including movie theaters playing advertisements before a movie. EX1024, ¶18; EX1027.

³ Accordingly, Petitioner does not rely on “common sense” to supply any “missing limitations.” POR, 39.

Indeed, PO's only particularized challenge to Petitioner's obviousness analysis is the allegation that Petitioner did not estimate the length of such delay and whether a predetermined advertisement could fill that time. POR, 39. But having the user just wait during any noticeable amount of delay is undesirable, and a POSITA would be motivated to fill any such delay with advertising to generate revenue (even if that means further delaying playback). Moreover, where an eight clip custom media channel (EX1003, Fig. 2) is "instantiated as a single multimedia file" (EX1003, 8:53-59) encoding and transmitting that file may require up to 240 seconds – ample time to transmit and play a 15 or 30-second advertisement. EX1024, ¶19.⁴

IV. GROUND 2: WHITEHEAD AND MARCUS '904

PO does not dispute any of the limitations addressed in Ground 2. EX1024, ¶20.

V. GROUND 3: CRISTOFALO AND MARCUS '904

A. "Publisher" (Claim 1)

Cristofalo's "transmitting system" provides a "programming" feed consisting of content and advertisements to a "receiving system." The transmitting system also selects and sends a group of "media objects" to the receiving system, and the receiving system then picks one of those media objects based on user profile

⁴ See also <https://www.ooma.com/blog/average-us-internet-speeds-over-time/>

information to further customize the advertisement by, e.g., modifying a car advertisement to depict different cars in different geographic areas. EX1004 at cl. 16, ¶¶ 20, 35-36, 40; POR, 20-21. In Petitioner's combination for claim 1, Cristofalo's transmitting system's customization is extended to include selecting custom advertisements for concatenating with content, as taught by Marcus '904, rather than just sending the same advertisements to everybody. Pet., 39-40; EX1024, ¶¶21-22; EX1004, ¶¶ ¶ 20, 25, 29, 32, 46, 49; Pet., 39-40.

In response, PO argues that Cristofalo's transmitting system cannot be the recited "publisher" because Cristofalo's receiving system "finalizes its final media programming provided to the user." POR, 20-22. PO's argument imports a requirement that a "publisher" must generate the "final" media programming that is then displayed without further customization. No such requirement exists in the claim language, nor is there any basis to import one. EX1024, ¶¶23-24; EX1004, ¶¶ 9, 35, 40, 47, 49, 54; EX1028, 43:13-18; ID, 7 n.6.

PO's argument that Cristofalo's "transmitting system does not select, order, and concatenate these advertisements *with the selected programming*" (POR, 21-22) attacks Cristofalo in isolation. In Ground 3, those limitations are supplied by Marcus '904. EX1024, ¶¶23-24; EX1004, ¶¶ 9, 35, 40, 47, 49, 54; EX1028, 43:13-18; ID, 7 n.6.

PO also argues that the Petition did not provide a sufficient rationale to combine Cristofalo's "transmitting system" and Marcus '904's "receiver." Although Cristofalo already provides targeted advertisements to users (*see* ID, 16), it does so by modifying only portions of an advertisement via "media objects." A POSITA would recognize this limitation in Cristofalo and seek to expand its customization capabilities. A POSITA would thus turn to Marcus '904's algorithm, which describes in detail how to select and concatenate custom content for individual users, including advertisements. EX1005 ¶¶37-40, 48, FIG. 4-5. And because Cristofalo repeatedly discloses that its transmitting system is already capable of some customization (EX1004, ¶¶40, 47, 49, 54), a POSITA would be motivated to implement Marcus '904's algorithm there to avoid competing with Cristofalo's insertion of media objects at the receiving system. The proposed combination captures the best of both worlds by first allowing the Cristofalo's transmitting system to target advertisements, as taught by Marcus '904, and allowing Cristofalo's receiving system to further customize those advertisements using media objects, as taught by Cristofalo. EX1024, ¶25; EX1004, ¶¶40, 49; EX1005, ¶¶32-40, 142, 251-252, 312, 641 FIG. 4; Pet., 57.

B. "Collecting by the Publisher from the Aggregator Client Information ... Compris[ing] User Information" (Claim 1)

PO argues that Cristofalo's transmitting system does not collect the user information from its the receiving system, only the user profiling system. POR, 26.

But nothing in the claim language precludes Cristofalo's transmitting system from collecting the user information from the receiving system **via the profiling system**.

In its institution decision, the Board found that "Patent Owner appears to rely on an overly restrictive interpretation of 'collecting by the publisher from the aggregator client information,' which would require the publisher to directly collect client information from the aggregator" and that "as written, the claim does not appear to require direct collection without any intermediary devices." ID, 12. PO does not present any additional analysis that would compel a different outcome post-institution. The plain language of claim 1 does not preclude Cristofalo's transmitting system ("***publisher***") from collecting user information from Cristofalo's receiving system ("***aggregator***") via an "intermediary device," Cristofalo's "user profiling system 106." EX1024, ¶¶26-27.

C. "First Feed" in a "First Time Period" and "Second Feed" in a "Second Time Period" (Claim 5)

PO argues that that, in Cristofalo, "the selected programming and "other media elements" (advertisements) are part of the same user-specific final media programming provided to the client" and that Cristofalo thus allegedly lacks a separate "'first feed' that is 'furnished during a first time period.'" POR, 27-28. PO's argument is betrayed, however, by its position that a "feed" can be just "one ... media element[]" (POR, 4) and its allegation that claim 5 does not require anything beyond what is recited in claim 1 (EX1023, 52 (arguing "[t]his claim element is met

for the same reasons discussed above regarding claim 1”)). PO provides no explanation why a single “user-specific final media programming” consisting of contain both a first and second feed, such as “selected programming and targeted media objects (advertisements),” respectively, under PO’s construction of “feed.” POR, 28; EX1024, ¶¶28-29; EX1004; EX1028, 42:7-11.

Date: September 25, 2025

Respectfully submitted,

By: /s/ James M. Glass
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**CERTIFICATE OF COMPLIANCE WITH
TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS,
AND TYPE STYLE REQUIREMENTS**

1. This Petition complies with the type-volume limitation of 5,600 words, comprising 2,655 words, as counted using the Microsoft Word software that was used to prepare this paper, excluding the parts exempted by 37 C.F.R. § 42.24(a).

2. This Petition complies with the general format requirements of 37 C.F.R. § 42.6(a) and has been prepared using Microsoft® Word 2016 in 14-point Times New Roman.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 25, 2025, true and correct copies of the foregoing document and supporting materials were served in their entirety by electronic mail on the following counsel for Patent Owner as authorized in Patent Owner's Mandatory Notices:

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