

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PETITIONER INC.,
Petitioner,

v.

NTECH PROPERTIES, INC.,
Patent Owner.

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

PATENT OWNER'S SUR-REPLY

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Other Authorities

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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>Petitioner, 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>Petitioner, 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>Petitioner 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
2027	Deposition transcript of Dr. Kevin Almeroth, <i>TikTok Inc. v. NTECH Properties, Inc.</i> , IPR2024-01340 and IPR2024-01342, taken on October 16, 2025

I. INTRODUCTION

The Board should confirm the patentability of the Challenged Claims over Grounds 1 and 2 because Whitehead does not disclose selecting a feed from a list of feeds and selecting and concatenating additional media elements with the feed. Petitioner's arguments in Reply rely on an overbroad construction of the claims, which allow for the selected feed to be an unpopulated container. This interpretation is inconsistent with the plain language of the claims, and the plain and ordinary meaning of the term "feed" in the context of the intrinsic and extrinsic evidence.

With respect to Ground 3, Petitioner concedes that Cristofalo's transmitting system (the alleged "publisher") does not "select, order, and concatenate" additional media elements with the selected feed, as claimed. Reply at 11 (acknowledging that Cristofalo's receiving system performs these tasks). Petitioner's new rationale for combining Cristofalo with Marcus '904 in an attempt to reach the Challenged Claims is untimely and does not facially meet the challenged claims because even in the new combination the alleged publisher does not create individual customized media programming from the selected feed and additional media elements selected, ordered, and concatenated with the feed.

II. CLAIM CONSTRUCTION

Although the parties fundamentally dispute the plain meaning of the term "feed," the Board need not formally construe the term. *Vivid Techs. Inc. v. Amer.*

Sci. Eng'g, Inc., 200 F.3d 795, 803 (Fed. Cir. 1999) (“[O]nly those terms need [to] be construed that are in controversy, and only to the extent necessary to resolve the controversy.”). The plain claim language requires that the selected feed include media elements at the time it is selected regardless of whether a feed could be a mere “container for media” in the abstract, as Petitioner contends. Reply at 2 (“A POSITA would understand that such feeds are **containers** for media but do not necessarily include media at all times.”).

On the merits, Petitioner's construction does not reflect the plain and ordinary meaning of the term because it is inconsistent with the intrinsic and extrinsic record, which consistently use the term “feed” in concert with its plain and ordinary meaning, which is “one or more associated media elements.” Patent Owner's Response (“POR”) at 4-7.

A. The Claim Language Requires That the Selected Feed Be Populated with Media Elements When it is Selected

Whether or not the term “feed” requires “one or more associated media elements” in the abstract, the plain language of the claims requires that the selected feed be populated with media at the time it is selected. POR at 5-6 (arguing that the term “concatenate” demands that the feed must include media elements at the time of concatenation and that antecedent basis for “the feed” refers back to the user-selected feed).

The parties' dispute over how to read the plain language of the claims is extremely narrow. Petitioner does not dispute that the claimed "feed" must include media elements, at least at the time it is "concatenated" with the "media elements." See Reply at 2; POR at 5-6. Petitioner also does not dispute that antecedent basis requires the selected feed to be the "same" feed that is concatenated with additional media elements. Reply at 2 (calling NTECH's "antecedent basis argument . . . irrelevant" but not disputing that "the feed" refers back to "the client . . . selection of one of the feeds").

Left with no real dispute over the scope of the claims, Petitioner resorts to arguing that a feed is the "same" whether it is a set of associated media elements or just a "container," but other claim language dispels that notion. Reply at 2 ("It is still the same 'feed' at both points in time. EX1022, ¶ 6."). When the claimed "media elements" are "selected, ordered, and concatenated with **the feed**," the result is not the "same" feed, as Petitioner's logic would demand. *Id.*; '753 Patent at Claim 1 (emphasis added). Instead, the new feed is referred to in the claims as "a publisher-initiated feed":

providing to the client individual customized media programming based on **a publisher-initiated feed** responsive to the feed selection and including media elements selected, ordered, and concatenated with **the feed** that are responsive at least in part to the user information.

'753 Patent at Claim 1 (emphasis added); *see also id.* at Claim 5 (reinforcing the conclusion that feeds with different content are different feeds). For the same reason, it cannot be said that an empty container is the “same” as a feed populated with media elements, so antecedent basis demands that the selected feed is the same feed that is later concatenated with other media elements. *Id.*

Tellingly, Petitioner cannot muster any real evidence in favor of its view that a POSITA would recognize an empty container to be the “same” as a feed. The sole support Petitioner musters for this claim is the conclusory testimony of its expert, Dr. Almeroth, who merely parrots Petitioner's position verbatim. Ex. 1024, ¶ 6. Such conclusory testimony is entitled to very little weight, and it is the only evidence supporting Petitioner's reading of the claim language. *Xerox Corp. v. Bytemark, Inc.*, No. IPR2022-00624, Paper 9 at 15-17 (P.T.A.B. Aug 24, 2022) (precedential) (finding expert declaration insufficient where it provided only conclusory statements).

The Board should, therefore, find that the plain language of the claims requires that the feed include media elements when it is selected. Even if an empty container could be considered a feed (it cannot), once it is “populated with specific media elements” it is no longer the “same” feed. Reply at 2. Accordingly, the claims *do* “prohibit[] the ‘feed’ from being selected first and then populated with specific

media elements later but still prior to being concatenated with other ‘media elements.’” *Id.*

B. Petitioner’s Overbroad Construction of the Term “feed” is Inconsistent with the Intrinsic Record

Petitioner’s overbroad construction is also wrong on the merits because it is inconsistent with the specification. In response to the POR’s argument that the ’753 Patent consistently uses the term feed to refer to one or more associated media elements, Petitioner contends that the specification “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.” Reply at 2. Petitioner misreads the specification, which discloses that cable and satellite providers “generat[e] feeds **based on existing channels and/or additional stored media elements**” (*e.g.*, feeds). ’753 Patent at 5:18-22 (emphasis added).

The portion of the specification cited in the Reply exactly tracks the language of the claims under NTECH’s construction. The feed that the cable or satellite provider generates in response to the feed selection corresponds to the claimed “publisher-initiated feed responsive to the feed selection,” and the “existing channels and/or additional stored media elements” corresponds to the claimed feed concatenated with additional media elements. *Compare* Reply at 2-3 (citing ’753

Patent at 5:11-22) *with* '753 Patent at Claim 1. Thus, nothing in this passage suggests that the feed the user selects can be an empty container when it is selected.

Finally, NTECH's construction does not result in any absurdities, as Petitioner suggests (Reply at 3), because while a channel may present a feed, those terms are not synonyms. Unchallenged evidence establishes that a "channel" is "a conduit for content to pass through." POR at 12; *see also* Ex. 2020 at 94 (defining a "channel" as "[a] path or link through which information passes" through). Thus, the selection of a "channel" at night "does not qualify as a selection of a 'feed'" (Reply at 3) for the basic reason that there is no feed associated with the channel:

Q. What about a television channel? Would you consider that an empty husk?

A. Yes, absolutely. In fact, when I was a little boy, there was times when I got up in the middle of the night thinking I could go watch television; and it would just be static, literally an empty husk with no content.

Ex. 1028, Goodrich Depo. at 53:9-15.

Accordingly, Petitioner fails to identify any portion of the specification that justifies broadening the term "feed" beyond its plain and ordinary meaning.

C. Petitioner's Overbroad Construction of the Term "feed" is Inconsistent with the Extrinsic Record

Dictionary definitions also define "feed" as including media elements. Ex. 2017 at 1 (a "feed" includes "information, including text, images, audio and video"); Ex. 2018 at 1 (a "feed" includes a "dynamic stream of content"); Ex. 2019 at 1 (a "feed" includes "a stream of content"). Contrary to Petitioner's assertion, Ex. 2019's use of "dynamic" does not imply that a feed is "independent of the content . . . and can be dynamically assembled after selection." Reply at 3. To the contrary, dynamic in the definition implies that ***the media content in the feed*** can change given "engagement, relevance, [and] user behavior." Ex. 2018 at 1. Therefore, Petitioner's assertion that a feed is independent of content and can be an empty container is inconsistent with the customary meaning of feed. Without an associated set of media elements, no feed exists.

III. GROUNDS 1 AND 2: THE CHALLENGED CLAIMS ARE PATENTABLE OVER WHITEHEAD AND MARCUS '904

The Board should confirm the Challenged Claims because Whitehead does not disclose selecting a feed and concatenating media elements with the selected feed. POR at 10-15. The Challenged Claims are patentable over Ground 2 because Petitioner leaves undisputed that Marcus '904 does not resolve any of the deficiencies of Ground 1. POR at 18; Reply at 9.

A. Whitehead Does Not Disclose Selecting a Feed and Concatenating Media Elements with the Selected Feed

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

Petitioner does not dispute that Whitehead's real-time embodiment fails to reach the Challenged Claims with respect to its Media Feed Mapping 1. See Reply at 4-5 (focusing solely on Whitehead's pre-generated channels). Whitehead's real-time embodiment is meritless because it does not disclose an existing feed selected from a list. See *id.* at 4 (asserting that "the user may select custom media channels 170 '**according to names or identifier.**'") (emphasis added); see also POR at 12-13.

With respect to channels that are generated in real-time, the names and identifiers shown in the menu do not correspond to any "feed" because there are not yet any media elements associated with the channel. POR at 12-13; § II.A, *supra* (antecedent basis requires the feed to be populated when it is selected). For example, when a user selects a menu item in this embodiment, such as "baseball," there is no existing "baseball" feed for the user to select because the entire feed is generated after selection. POR at 13. Accordingly, the user's selection of a custom media channel is not the selection of a "feed" because no feed yet exists to be concatenated with other media elements. *Cf.* Reply at 4-5.

There is also no basis for Petitioner to compare Whitehead to the '753 Patent's "exemplary feeds" because the '753 Patent's "Classic Rock" category is associated

with an actual feed with media elements at the time of selection. Reply at 4-5 (arguing that the '753 Patent's "Classic Rock" selection is of just a characteristic); '753 Patent at 11:25-38 (describing that "each [music] feed" listed on a home page "contains predetermined content, not customized for a viewer or user"). Additional media elements are then selected, ordered, and concatenated with the selected feed in response to the user's selection. '753 Patent at 11:65-12:13 (describing that the selected music feed is customized based on user information).

Petitioner's argument that Whitehead "discloses selection of a pre-generated custom media channel (**feed**) and **then** concatenating that channel with new media content (**media elements selected**)" fails because these "media elements" are selected responsive to changes in the corresponding profile, not "responsive to the feed selection." Reply at 5-6; '753 Patent at Claim 1. Whitehead discloses updating a pre-generated channel when the corresponding profile has been "revised" or when "new media content 155 was available" but **not** in response to the user's selection of the channel. Whitehead at 11:59-12:7.

This argument also fails because Whitehead's custom media channels are played in real-time, or near real-time, which is why Whitehead discloses updating custom media channels **before** the user selects a channel. Whitehead at 16:36-17:1, Fig. 5 (profile update occurs at step 515 prior to a pre-generated channel being selected at step 520, and no updates occur between step 520 and step 530, when the

channel is played); *see also id.* at 11:59-12:17 (describing profile 160 message invoking a process for “**modifying** one or more custom media channels 170” that is “**prior to a user’s request** to access the channel”) (emphasis added). There is no time between when the user selects the channel and when playback begins for the user to **also** update the corresponding user profile.

Accordingly, Petitioner’s Media Feed Mapping 1 does not reach the Challenged Claims.

2. Media Feed Mapping 2: A Selection of a Custom Media Channel is Not a Selection of a Content Source, Let Alone a Feed

Petitioner does not argue that Whitehead’s pre-generated media channel embodiment is relevant to Media Feed Mapping 2, and its arguments regarding its real-time embodiment are meritless for the same reasons discussed above—namely, that when Whitehead’s channels are generated in real-time, the does not choose an existing feed to concatenate with additional media elements, even under a one-to-one correspondence between a user profile 160 and a single content source 135. Reply at 6; § III.A.1, *supra*.

Petitioner has not established that a “content source” is a “feed” under any reasonable construction of the term. Reply at 6. As the ’753 Patent discloses, feeds represent the content **drawn from** content sources, and it refers to those sources themselves as “publishers.” ’753 Patent at 6:14-21. Accordingly, the hypothetical

scenario that Petitioner poses involves, at best, a user selecting a custom media channel that will draw content from a particular publisher. Reply at 6. Indeed, after specifying a particular content source 135 in a profile 160, Whitehead discloses querying the content source for any media elements of interest, which confirms that Petitioner's argument impermissibly conflates content sources with feeds. Whitehead at 7:5-18, 12:18-31 (emphasis added).

The critical fact, therefore, remains that selection of custom media channel 170 is not the selection of an existing feed, it is the selection of a pre-generated custom media channel (which is not further concatenated with additional media elements) or the selection of a placeholder for a channel that will be created from individual media elements. NTECH respectfully requests, therefore, that the Board find the Challenged Claims patentable over Whitehead and Marcus '904.

B. Dependent Claim 5: Whitehead Does Not Furnish a “First Feed” and a “Second Feed” at Different Times

Whitehead does not furnish a “first feed” and “second feed” at different times. '753 Patent at Claim 5. Petitioner's argument that it would have been obvious to provide a pre-determined advertisement before the custom media channel 170 is played finds no support in the record. POR at 15-18; Pet. at 28 (acknowledging that custom media channel 170 is generated in or near real time). Petitioner's *new*

argument—that each media element in a feed is itself a feed—is at odds with the plain language of the claims under any interpretation of the term. Reply at 7-8.

Because Whitehead's custom channels are delivered in real-time or near real-time, the custom channel is available to the user “immediately or almost immediately,” so there is no need to provide a pre-determined advertisement ahead of time. *Compare* Reply at 9 with Ex. 2022 at 1 (“Real time data is information that is updated continuously and available immediately or almost immediately.”). Petitioner's position to the contrary is based on movie theaters playing advertisements before a movie and the full download time for an entire (hypothetical) media file. Reply at 8-9; Ex. 1024 at ¶ 19 (discussing download times of an entire media file). Neither is relevant to Whitehead's **streaming** service, which involves playing received content before the entire file is downloaded. Whitehead at 8:45-51 (disclosing that custom media channel 170 is “**streamed** . . . on a real time or near real-time basis”); Pet. at 13 (alleging that Whitehead's custom media channels are “media feeds” because they are ““**streamed**””), 24 n.5, 25, 30, 31, 31 n.6 (similar); Ex. 2027, Almeroth Tr. 2 at 34:22-35:2, 35:17-20. Accordingly, it would take no more bandwidth to receive and begin streaming the beginning of the custom media channel than it would to receive and begin streaming an advertisement.

Petitioner's new argument that a custom media channel's advertisement **element** can be a "first feed" and its media content **element** can be a "second feed" is meritless. Reply at 7-8. First, Petitioner improperly shifts the burden to NTECH to demonstrate why "a single custom media channel 170 cannot contain both a first and second feed." *Id.* at 8; *Dynamic Drinkware, LLC v. National Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015); *E.I. DuPont de Nemours & Co. v. Synvina C.V.*, 904 F.3d 996, 1008 (Fed. Cir. 2018) ("[A] patentee technically has no 'burden' to do anything to defend the validity of its patent other than hold the patent challenger to its own burden of persuasion"). It is Petitioner's burden to construe the claims and explain with specificity how the Challenged Claims are unpatentable, not NTECH's to show why not. 37 C.F.R. 42.104(b)(3)-(4). In any event, Petitioner's argument is specious.

First, under NTECH's proposed construction, a "feed" is an **associated set** of media elements, which does not admit an interpretation where each media element of a feed is, itself, a feed. See §§ II.B-C, *supra*; Reply 6-8. Accordingly, while custom media channel 170 of Whitehead's Figure 2 is a "feed" because it contains an associated set of media elements, each media element is part of the associated group and not its own "feed."

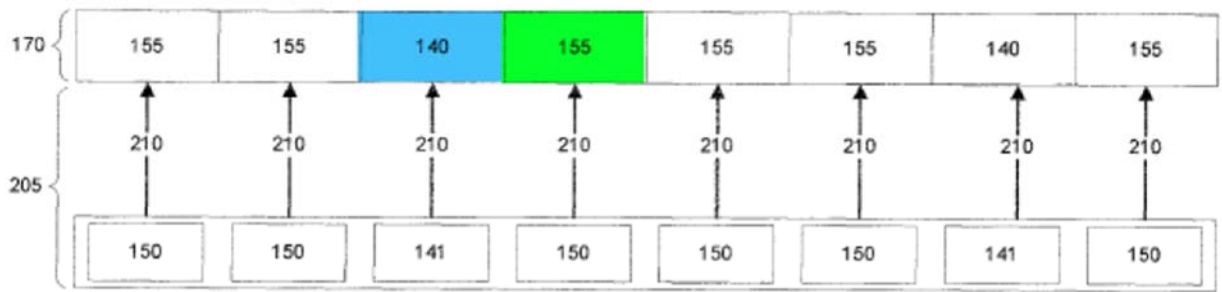


FIG. 2

Reply at 7.

Second, even granting the premise of Petitioner's argument, Whitehead still facially fails to meet the Challenged Claims because the claimed "second feed" cannot contain only one media element. *Cf.* Reply at 6-7; Pet. at 24 n.5 (asserting that "individual media content 155" is "a media element"). Independent Claim 1 recites "individual customized media programming . . . including **media elements**," and Claim 5 further recites "a second feed comprising the individual customized media programming." '753 Patent at Claim 1, 5 (emphasis added). Based on the express claim language, the claimed "second feed" must include multiple media elements. Whitehead's "media content 155"—an individual media element—does not.

Accordingly, NTECH respectfully requests that the Board confirm the patentability of Claim 5 over Whitehead and Marcus '904.

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

**A. All Claims: Cristofalo in View of Marcus '904 Does Not Disclose
the Claimed “Publisher”**

1. Cristofalo's Transmitting System is Not the Claimed
“Publisher” Because it Does Not Select, Order, and
Concatenate Additional Media Elements with the Selected Feed

Cristofalo's transmitting system is not a “publisher” because it does not “select[], order[], and concatenate[]” advertisements with the selected program to generate “individual customized media programming” (coined by Petitioner as the “final media programming”). Pet. at 39; *see also id.* at 48-49 (the final programming consists of “a ‘primary’ stream desired by the user . . . and additional media elements, such as advertising”), 51 (the final programming “consists of a desired program selected by the user and other data elements interested in response”).¹

¹ For the “a selection of one of the feeds” and “acquiring . . . the feed selection” limitations (*i.e.* “the feed” concatenated with additional media elements), Petitioner identifies Cristofalo's “user's choice of programming (media feed selection).”

Pet. at 45 (internal quotation marks omitted); *id.* at 42-43 (Cristofalo's user to be able to “select[] the desired programming”); *id.* at 43, Fig. 12A diagram (“Monday Night Football”).

Unlike the '753 Patent, Cristofalo's receiving system (the alleged "aggregator") performs the relevant actions. See POR at 20-22. Petitioner acknowledges this in reply: "Cristofalo's insertion of media objects [(advertisements) are] **at the receiving system.**" Reply at 11 (emphasis added); see *also id.* at 9-10. Thus, by Petitioner's own admission, Cristofalo's receiving end, not transmitting end, generates its "final media programming" consisting of the selected program inserted with advertisements. Pet. at 39; see *also* POR at 21-22.

2. Marcus '904 Does Not Resolve Cristofalo's Deficiencies, and
Petitioner's New Rationale Demonstrates Nonobviousness

Marcus '904 does not resolve Cristofalo's deficiencies because it also discloses implementing its algorithm at the receiving end. See POR at 23-24. Petitioner does not dispute this in Reply. Nor does Petitioner dispute that the Petition's rationale was vague and unexplained as to why a POSITA would implement Marcus '904's algorithm at Cristofalo's transmitting end when both references execute their functionality at the receiving end. *Id.* at 24-25.

Instead, Petitioner presents a new rationale for implementing Marcus '904's algorithm at Cristofalo's transmitting system. Reply at 10-11 (alleging that a POSITA would "seek to expand [Cristofalo's] customization capabilities."). As a preliminary matter, this argument should be disregarded as untimely because it is not responsive to any arguments made in the POR. *Intelligent Bio-Systems, Inc. v.*

Illumina Cambridge Ltd., 821 F.3d 1359, 1366 (Fed. Cir. 2016); 37 C.F.R. § 42.23(b). Rather, Petitioner's new rationale is responsive to the fact that its original rationale (which it does not repeat in reply) was meritless. Reply at 11. The newly alleged motivation is also nonsensical because it is not the "best of both worlds" to have to customize advertisements to the user at both the transmitting and receiving ends. *Id.*

In any event, the resulting combination does not facially reach the claimed invention because Cristofalo's receiving end still would insert advertisements into the selected programing. Reply at 11 ("The proposed combination captures the best of both worlds" as it "**avoid[s]** competing with Cristofalo's insertion of media objects [advertisements] at the **receiving system.**") (emphasis added). Thus, regardless of whether Cristofalo's transmitting system would customize some aspects of advertisements using Marcus '904's algorithm (in a way that the inventor did not disclose), the transmitting system still does not "select, order, and concatenate the[] advertisements **with the selected programming,**" (*id.* at 10), as claimed. POR at 21-22.

Accordingly, whether or not the claims require the "publisher" to furnish the "final" media programming, Cristofalo still does not disclose "a ***publisher-initiated feed*** responsive to the feed selection and ***including media elements*** selected, ordered, and concatenated with the feed," as claimed.

B. Dependent Claim 5: Cristofalo Does Not Furnish a “First Feed” and a “Second Feed” at Different Times

Petitioner concedes that Cristofalo provides only a user-specific final media programming (one feed) but sets forth a new argument that shifts the burden to NTECH to show patentability. POR at 27-28 (demonstrating that Cristofalo only provides one feed, not a “first” and “second” feed at differing times).

Petitioner asserts that “PO provides no explanation why a single ‘user-specific final media programming’” cannot contain “both a first and second feed.” Reply at 12-13. (alleging that under NTECH’s construction a “‘feed’ can be just ‘one . . . media element[]’”). As explained in § III.B, *supra*, Petitioner improperly shifts the burden onto NTECH to show why the claims are patentable when the burden rests on Petitioner to construe the claims and demonstrate that they are unpatentable. *Dynamic Drinkware, LLC*, 800 F.3d at 1378; *E.I. DuPont de Nemours*, 904 F.3d at 1008. And as discussed above, Petitioner’s argument is meritless because the “second feed” **must** contain multiple media elements, so an individual media element in the user-specific final media programming cannot be a “second feed” that includes more than one media element.

V. CONCLUSION

For at least the foregoing reasons and those in the POR, the Board should hold patentable the Challenged Claims.

Dated: October 31, 2025

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

The undersigned hereby certifies that the foregoing **PATENT OWNER'S SUR-REPLY** has 3,965 words in compliance with the word limit set forth in 37 C.F.R. § 42.24(c). This word count was prepared using the Microsoft Word word-processing system used to prepare this paper.

Dated: October 31, 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.

<i>Date of service</i>	October 31, 2025
<i>Manner of service</i>	Electronic Filing and Electronic Mail (jimglass@quinnemanuel.com; ogizivojnovic@quinnemanuel.com; junzheng@quinnemanuel.com; qe-bytedance-ntech-iprs@quinnemanuel.com)
<i>Documents served</i>	PATENT OWNER'S SUR-REPLY
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