

Filed on behalf of: ShopSee, Inc.

Entered: December 16, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TIKTOK INC.,
Petitioner,

v.

SHOPSEE, INC.,
Patent Owner.

IPR2025-01485
Patent No. 11,134,316

**PATENT OWNER'S
PRELIMINARY RESPONSE**

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Exhibit List

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2001	Second Amended Scheduling Order, <i>Shopsee, Inc. v. Tiktok Inc.</i> , No. 7:24-cv-00333 (W.D. Tex. July 7, 2025), Dkt. No. 65
2002	Joint Motion to Extend the Deadline for TikTok's Response to ShopSee's Objections and Extend the Stay of Transfer, <i>Shopsee, Inc. v. Tiktok Inc.</i> , No. 7:24-cv-00333 (W.D. Tex. Sept. 22, 2025), Dkt. No. 100
2003	Defendant TikTok Inc.'s Preliminary Invalidity Contentions, <i>Shopsee, Inc. v. Tiktok Inc.</i> , No. 7:24-cv-00333 (W.D. Tex. May 22, 2025)
2004	Exhibit 316-A13, Invalidity Chart for U.S. Patent No. 11,134,316 In View of Ohliger
2005	Docket Sheet, <i>Shopsee, Inc. v. Tiktok Inc.</i> , No. 7:24-cv-00333 (W.D. Tex.)
2006	Exhibit 316-A04, Invalidity Chart for U.S. Patent No. 11,134,316 In View of Veepio
2007	Scott R. Boalick, <i>Final Written Decision Procedures for AIA Trial Proceedings</i> , U.S. Pat. & Trademark Off. (July 29, 2025), https://www.uspto.gov/sites/default/files/documents/20250729095727582.pdf
2008	Andrew Faile, <i>Signatory Authority Program</i> , Pat. Off. & Pro. Ass'n (Oct. 1, 2020), http://popa.org/static/media/uploads/uploads/2022/SigAuth_UtiExam.pdf
2009	Excerpts of File History for U.S. Patent No. 11,432,046 ("Ohliger FH Excerpts")
2010	Petition for a Writ of Certiorari, <i>Lynk Labs, Inc. v. Samsung Electronics Co.</i> , No. 2023-2346 (U.S. Sept. 12, 2025)

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2011	Nomination of John A. Squires To be Under Secretary of Commerce for Intellectual Property and the Director of the United States Patent and Trademark Office, Questions for the Record
2012	<i>Contest - ShopSee: US-11134316-B1 (Interactive Video Layers with Video Media)</i> , Patroll, https://patroll.unifiedpatents.com/contests/pF5hoC6yZGrxMEGBa (captured October 20, 2025)
2013	<i>\$2,000 Awarded For Shopsee Interactive Video Patent Prior Art</i> , Unified Patents (Mar. 13, 2025), https://www.unifiedpatents.com/insights/2025/3/13/2000-awarded-for-shopsee-interactive-video-patent-prior-art (captured October 20, 2025)
2014	Excerpt of Ex. 1004, pp.281-304 - Excel Table reflecting Examiner's search strategy and results
2015	Rocky Berndsen, <i>Trends and Implications of Decreasing Average Office Actions Per Patent at the USPTO</i> , Harrity & Harrity (Feb. 29, 2024), https://harrityllp.com/trends-and-implications-of-decreasing-average-office-actions-per-patent-at-the-uspto/ (captured October 20, 2025)
2016	<i>Shopsee</i> , https://myshopsee.com/ (captured October 20, 2025)
2017	<i>An Open Letter From America's Innovation Agency</i> , U.S. Pat. & Trademark Off. (Oct. 17, 2025), https://www.uspto.gov/sites/default/files/documents/open-letter-and-memo_20251017.pdf
2018	Coke Morgan Stewart, <i>Enforcement and Non-waiver of 37 C.F.R. § 42.104(B)(4) and Permissible Uses of General Knowledge in Inter Partes Reviews</i> , U.S. Pat. & Trademark Off. (July 31, 2025), https://www.uspto.gov/sites/default/files/documents/aapa_memo_final_signed.pdf?utm_campaign=subscriptioncenter&utm_medium=email&utm_source=govdelivery

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2019	John A. Squires, Precedential Designation of <i>Corning Optical Communications RF, LLC v. PPC Broadband Inc.</i> , IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015) (except for § II.E.1), U.S. Pat. & Trademark Off. (Oct. 28, 2025), https://www.uspto.gov/sites/default/files/documents/Precedential_designation_of_Corning_Optical_Communications_RF_LL_C_v._PPC_Broadband_Inc_Memo_-_Dated_10_28_25.pdf
2020	First Amended Complaint, <i>Shopsee, Inc. v. Tiktok Inc.</i> , No. 7:24-cv-00333 (W.D. Tex. Mar. 10, 2025), Dkt. No. 28
2021	Defendant's Corporate Disclosure Statement, <i>Shopsee, Inc. v. Tiktok Inc.</i> , No. 7:24-cv-00333 (W.D. Tex. Feb. 24, 2025), Dkt. No. 14
2022	U.S. Patent Application Publication No. 2012/0167145 ("Incorvia")

I. Introduction

Patent Owner ShopSee, Inc. (“Patent Owner” or “ShopSee”) respectfully submits that the Director should deny institution of the *inter partes* review (“IPR”) of claims 1-19 of U.S. Patent No. 11,134,316 (Ex.1001, the “’316 Patent”) filed by TikTok, Inc. (“Petitioner” or “TikTok”).

The Petition presents six obviousness grounds against the ’316 Patent’s claims: a single-reference obviousness ground based on Ohliger, and five additional grounds based on Ohliger and layered-on teachings of secondary references in various permutations. But at its core, TikTok’s Petition is little more than a failed attempt to retread obviousness theories that ShopSee overcame during prosecution.

One specific failure pervades each obviousness ground: “*generating video data comprising ... a second interactive video layer*” which “*comprises a social media portion*” is not disclosed or rendered obvious by any of the cited prior art. Through each of its six grounds, TikTok **only** relies on Ohliger as allegedly teaching this subject matter; none of the secondary references are cited to teach this subject matter. But critically, as detailed below, Ohliger only teaches, at best, one “*interactive video layer*”; Ohliger is silent on any “*second interactive video layer*” required by each claim. This is no different than Incorvia, the primary prior art reference applied by the Examiner—the Examiner rightfully conceded throughout prosecution that Incorvia did not disclose any “*second interactive video layer*”.

Because the Petition relies on a reference that exhibits the same failures as the prosecution prior art, TikTok's Petition does not justify occupying the Office's finite resources to engage in a re-do of prosecution. TikTok's Petition fails to show a reasonable likelihood of prevailing as to any claim, and IPR should not be instituted.

II. Background

A. The '316 Patent (Ex.1001)

The '316 Patent details an innovative method, system, and computer readable media for providing interactive video layers within video media to enable user interaction during media entertainment. *See* Ex.1001, 1:12-15, 2:8-50. The '316 Patent provides example scenarios that illustrate uses of its novel inventions, such as: (1) a user watching a home improvement television program who is interested in purchasing a power tool used in the show but lacks information about the tool; (2) a user who wants to purchase clothing the user sees on an actor in a TV show or movie; and (3) a user who enjoys a song played during a movie and wants to learn more about the artist. *Id.*, 32:55-33:15, 33:58-34:10, 34:12-22.

In one aspect, the '316 Patent describes a software application that employs the claimed inventions to provide the user with information on items depicted in the video (such as the power tool, clothing, or songs/artists) as well as information about how to purchase or otherwise interact with the items (e.g., analyze reviews about the product, filter the type of clothing the user is interested in, or purchase tickets to a

concert). *Id.* Additional interactive layers make other capabilities available to the user, such as a social media layer to discuss items with friends or view reviews on the product. *Id.*, 33:5-10, 34:5-10, 34:19-21.

The '316 Patent explains that the claimed interactive video layers provide an improvement over the prior art, enabling a “seamless entertainment and marketing experience.” *Id.*, 2:8-10. In particular, “[t]he unique method of generating several interactive video layers onto one platform can be integrated into an existing platform for online streaming,” and the claimed “interactive video layers create a unique model for online advertising.” *Id.*, 2:22-27. Through interaction with the video layers, users may “control their shopping experience without permanent interruption such as windows or prompts that other technology uses.” *Id.*, 2:37-39.

Unlike the prior art, “[w]hen the user makes a purchase by clicking or selecting the selectable visual indicator to an on position, the user is not directed to another web site; instead, the first interactive video layer is still on while video media is streaming content.” *Id.*, 3:29-33. This means that “the user never leaves the video media and is able to purchase the item of interest while watching their television show or movie and the user continues to view more items of interest as the television show or movie plays.” *Id.*, 3:33-37. In a similar fashion, the '316 Patent describes generating and employing a second interactive video layer that includes social media and “allows a user to interact with other users thereby eliminating the need for a

second screen (such as a smart phone, tablet, or other personal device) for such an interaction while watching the television show, episode, movie, or other forms of media entertainment.” *Id.*, 3:38-43. For example, the ’316 Patent describes that in one aspect, a method may include “generating a video data that includes a video media, a first interactive video layer, and a second interactive video layer.” *Id.*, 30:43-53; *see also id.* Fig. 3, 15:33-37. The specification describes the advancements the interactive video layers achieve over the prior art, which repeatedly interrupted users with windows and prompts. *See, e.g., id.*, 2:32-39. These and other novel features described in the specification are explicitly recited in the claims, and are not found in TikTok’s prior art or rendered obvious under any of TikTok’s theories.

B. Prosecution History

As ShopSee’s brief requesting discretionary denial explained, the ’316 Patent’s prosecution was extensive: the application received a thorough examination, and the Examiner’s reasoned decision to allow the claims over the prior art of record was correct and without error. The Petition presents teachings that are merely cumulative to the disclosures in the numerous prior art references considered by the Examiner, and fails to show that a second look at the ’316 Patent is warranted.

Shortly after the application was filed, ShopSee filed an information disclosure statement listing various references, including U.S. Patent Application

Publication No. 2012/0167145 to Incorvia. Ex.1004, 87-89; *see also* Ex.2022 (Incorvia). In the first non-final Office Action, and continuing throughout prosecution (including in four subsequent office actions), the Examiner rejected the claims in light of certain teachings in Incorvia, and additional teachings in secondary references, such as Law. *See, e.g.*, Ex.1004, 100-114, 138-153, 176-191, 213-231, 258-276. In each Response, the applicant submitted amendments and arguments to demonstrate how the claimed invention was non-obvious over the Examiner's analysis, including arguments showing that certain limitations were not found in Incorvia. *See, e.g.*, Ex.1004, 130-137, 166-174, 195-203, 238-245, 311-320. Additionally, after two of the Office Actions, the applicant and Examiner conducted interviews to advance prosecution and identify allowable subject matter. *See, e.g.*, Ex.1004, 209-212, 307-309.

In the response to the third non-final Office Action, the applicant amended the claims to recite, *inter alia*, “*generating a video data comprising the video media, the first interactive video layer, and a second interactive video layer, wherein the video data is configured to be provided to a user via a first media playback device and to at least one guest via a second media playback device, wherein the second interactive video layer comprises a social media portion controllable by a user via*

the first media playback device ...”¹ This claim language and proposed amendment was previously discussed in an interview between the applicant's representative and the Examiner. *See* Ex.1004, 308, 317.

In response to the third non-final Office Action, the applicant explained that Incorvia did not teach this subject matter, which the Office had previously acknowledged. In fact, starting from the first Office Action, the Examiner conceded that Incorvia “fails to specifically disclose providing both the first interactive video layer and a second interactive video layer having a social media portion” (Ex.1004, 105) and the applicant's responses repeatedly agreed and appreciated the Examiner's acknowledgment of this deficiency of Incorvia. *See, e.g.*, Ex.1004, 135 (“Applicant appreciates the Office for acknowledging that Incorvia fails to disclose providing both the first interactive video layer and a second interactive video layer having a social media portion, as recited in claim 1.”). The applicant's response to the third non-final Office Action further argued that the other references the Examiner relied on—Law and DeWeese—did not cure the deficiencies of Incorvia with respect to this subject matter and other subject matter recited in the claims. Ex.1004, 318-319.

¹ Throughout this Preliminary Response, claim language is presented in quotations with italics added.

Subsequently, the Examiner issued a third final Office Action, which recognized that the claims contained allowable subject matter, subject to clarifying amendments. Ex.1004, 330. TikTok argues the “examiner only allowed the claims once they were amended to specify that each user views the video and overlays on their own respective devices.” Pet. 8-9. The prosecution history refutes TikTok’s incomplete characterization: the amendment filed before the Examiner identified allowable subject matter included more substantial amendments, including the amendments adding the “*generating a video data*” subject matter. In any event, responsive to the Examiner’s requested clarifications and Section 112(b) rejection, the applicant amended the claims (Ex.1004, 340-350), and the ’316 Patent then issued on September 28, 2021. *See* Ex.1004, 420.

As shown below, the Examiner’s conclusion that the prior art of record did not render obvious the unique combination of features recited in the claims was correct and should not be disturbed. Incorvia failed to render obvious at least the subject matter discussed by the Examiner and applicant, and the Petition’s primary prior art reference, Ohliger, likewise fails to render obvious this subject matter.

C. Person of Ordinary Skill in the Art

Solely for the purpose of this Preliminary Response, ShopSee does not challenge Petitioner’s proposed POSITA definition. *See* Pet. 9. ShopSee reserves the right to provide an alternative definition if an IPR is instituted or in district court.

D. Claim Construction

As relevant to the Director's institution determination and the analysis presented herein, the Director should reject TikTok's implicit and improper claim interpretation of certain limitations recited in claim 1.

Claim 1 recites, *inter alia*, “generating a video data comprising the video media, the first interactive video layer, and a second interactive video layer ... wherein the second interactive video layer comprises a social media portion controllable by the user via the first media playback device”² TikTok does not offer a construction of this limitation in its Petition, and did not seek to construe these limitations in district court. *See* Ex.1016. Instead of providing a construction, TikTok alleges “PO contends ... that this limitation is met regardless of how video media and the two layers are provided to a user device (which includes transmitting them separately), as long as they are displayed together.” Pet. 41.

TikTok does not cite any intrinsic evidence to support its claim interpretation. Instead, TikTok broadly cites four pages of ShopSee's preliminary infringement

² The Petition's analysis labels this subject matter as limitations 1[c] and 1[c][ii] (Pet. 40-49), while the List of Challenged Claims labels this subject matter as limitations 1[c][i] and 1[c][iii] (Pet. 4). For the Director's reference, this Preliminary Response will use the labels in the Petition's analysis, 1[c] and 1[c][ii].

contention claim chart, tasking the Director with determining where TikTok's interpretation might have support in the cited pages. TikTok's vague assertions fail to carry its burden to show "[h]ow the challenged claim is to be construed." 37 C.F.R. § 42.104(b)(3). And, even if the Director undertook this task, there is no support for TikTok's strained interpretation. The claim chart is extrinsic evidence, at best, and merely shows an "illustrative and not exhaustive" mapping of the TikTok Accused Products to the '316 Patent claim limitations. It provides no basis to adopt TikTok's crafted-for-IPR view of how the Director should interpret ShopSee's claims. *Cf. Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 (PTAB Nov. 3, 2025) (precedential) (a petitioner must explain why it takes different claim construction positions in the petition and in district court). The extrinsic claim chart does not provide sufficient evidence to carry TikTok's burden to show that the claim should be construed in this manner for the IPR only, or for the Director/Board to adopt and apply this claim construction.

Instead of applying TikTok's crafted-for-IPR interpretation, the Director should apply the plain and ordinary meaning of this term, as with all other claim terms. The Petition's prior art and analysis fail to disclose the subject matter of the challenged claims under any reasonable construction, including their plain meaning.

III. Summary of the Prior Art

A. Ohliger (Ex.1006)

Each and every Ground in TikTok's Petition relies primarily on U.S. Patent No. 11,432,046 to Ohliger et al. ("Ohliger"). Ohliger was filed June 13, 2016, with a non-publication request, and was made publicly available upon its issuance on August 30, 2022—after ShopSee's '316 Patent issued. *See* Ex.2009, 3.

TikTok contends Ohliger "is prior art under at least AIA 35 U.S.C. § 102(a)." Pet. 16. For purposes of this Preliminary Response, ShopSee does not contest whether Ohliger qualifies as prior art, but reserves the right to argue that Ohliger is not prior art under at least 35 U.S.C. § 102(a)(2), pending the Supreme Court's consideration of *Lynk Labs, Inc. v. Samsung Elecs. Co.*, U.S. No. 25-308.

Ohliger describes a "system ... for identifying objects in still images or in video" and making those objects "interactive in the image or in every frame of the video that they appear." Ex.1006, Abstract. Ohliger purports to make objects interactive using a "Veepio Layer" which "[s]its on top of video/picture and allows objects to be clicked." Ex.1006, 35:1-6, Fig. 30C. The Veepio layer makes "one or more objects in the image ... clickable" and upon the user clicking, "a browser is opened that automatically navigates to the previously stored URL of the e-commerce site." Ex.1006, 36:66-37:6. Ohliger provides this single interactive layer using a

“server 300” which executes an “overlay generation application” to create “a video overlay including at least one selectable hyperlink.” Ex.1006, 19:24-29.

Ohliger does not disclose any other interactive layers as part of its invention, aside from the interactive layer that makes objects clickable. *See, e.g.*, Ex.1006, Fig. 30C (“Veepio Layer”), 2:16-21 (background section describing “segmenting video into layers such as a static background layer and a dynamic foreground layer”), 2:66-3:5 (“hyperlinks that are embedded within the interactive layer of video objects”), 8:58-9:2 (“region definition data representing each video object on an interactive layer”), 16:32-33 (“active regions for an interactive layer for a video application”). Critically, despite TikTok’s assertions, Ohliger does not disclose, teach, or suggest a “comments layer.” Indeed, there is no “comments layer” in Ohliger.

As detailed below, because Ohliger’s disclosure is limited to its single “Veepio Layer” without any teaching of a “comments layer,” it does not render obvious any challenged claim, all of which require video data with at least two “*interactive video layer[s]*” including a “*second interactive video layer*” which “*comprises a social media portion.*”

B. Additional References

TikTok’s Petition also relies on teachings in Sakhartov (Ex.1013), Kaiserlian (Ex.1014), and Tapissier (Ex.1007). These references are not relied on to cure the deficiencies of Ohliger detailed herein, and any pertinent aspects of these references

are discussed below. ShopSee reserves the right to address the substance of these references and their failures to render any claim obvious if trial is instituted.

IV. Ground 1 Fails to Show Any Claim is Obvious: Petitioner Fails to Show that Ohliger Teaches Generating Video Data Comprising the Video Media, the First Interactive Video Layer, and a Second Interactive Video Layer that Comprises a Social Media Portion

Claim 1 recites, *inter alia*, “generating a video data comprising the video media, the first interactive video layer, and a second interactive video layer ... wherein the second interactive video layer comprises a social media portion.”

Ohliger does not render obvious this subject matter.

In the Petition, TikTok argues that Ohliger describes “generating video data that includes the video itself (*video media*), the video objects’ box overlays (*first interactive video layer*), and the social media overlays (*second interactive video layer*).” Pet. 40 (original emphasis). TikTok then advances three alternative mappings of Ohliger on this claim language: “Ohliger describes this video data as generated by either a consumer server, a broadcaster server, and/or a video server.” Pet. 40. None of these mappings show that Ohliger teaches generating the video data, with its specific requirements, as claimed. Accordingly, Ohliger does not render obvious each and every limitation of the independent claims. TikTok has not established a reasonable likelihood of prevailing sufficient to institute trial.

A. Ohliger's Video Consumer Server Discussion Does Not Render Obvious Generating Video Data Comprising the Second Interactive Video Layer

TikTok argues: “Ohliger discloses a ‘video consumer server’ which generates video data by rendering the overlay onto the video content.” Pet. 41, citing Ex.1006, 19:30-37, 20:15-20; *see also* Ex.1002, ¶116 (arguing same and citing same portions of Ex.1006). But TikTok fails to show Ohliger teaches the claim language. Indeed, Ohliger scarcely describes the “video consumer server” and its functionality; the phrase appears only twice in Ohliger, in the two citations relied on by TikTok, and no figure depicts a “video consumer server.” Ex.1006, 19:30-37, 20:15-20. In any event, Ohliger's minimal “video consumer server” discussion falls far short of rendering obvious this claim limitation.

Just before the portions of Ohliger that TikTok cites, Ohliger teaches that the “overlay” rendered onto the video content by the “video consumer server” is limited. Critically, the overlay rendered by the “video consumer server” is not a “*social media portion*” as recited: the “overlay” is only “a video overlay including at least one selectable hyperlink whose shape and position (coordinates) track a dynamic location of the video object in the video.” Ex.1006, 19:26-30; *see also id.*, 20:7-15 (“overlay including matched wireframe representations of the video object wherein the shape and position (coordinates) of the wireframe representation track a dynamic

location of the video object in the video”). That is, the only “overlay” rendered by the “video consumer server” is the single Veepio layer detailed above. *Supra* § III.A.

This “video overlay” in Ohliger is what TikTok maps to the “*selectable visual indicator*” in the “*first interactive video layer*” in its analysis of earlier limitations. *See* Pet. 37 (identifying “overlay ‘whose shape and position (coordinates) track a dynamic location of the video object in the video’” as “*selectable visual indicator*”), 38 (“server then displays the overlay (*selectable visual indicator*) via an ‘interactive layer’ (*first interactive video layer*)” (original emphasis)). Accordingly, the Ohliger “video overlay” including the “selectable hyperlink” does not refer to, include, or correspond to Ohliger’s “comments overlay,” which TikTok later alleges maps to the claimed “*second interactive video layer*.” Pet. 46; *see also* Pet. 48. Thus, TikTok has not, and cannot, show that the “video consumer server” overlays any “comments layer” to disclose, teach, or render obvious “*generating a video data comprising ... a second interactive layer*.”

TikTok’s first theory therefore fails to show that Ohliger renders obvious these limitations of claim 1.

B. Ohliger’s Broadcaster Server Discussion Does Not Render Obvious Generating Video Data Comprising the Second Interactive Video Layer

TikTok’s second argument alleges “Ohliger describes that the broadcaster server can provide the video ‘along with’ the overlays.” Pet. 41, citing Ex.1006,

22:7-11. This argument conveniently and self-servingly overextends Ohliger by omitting critical aspects of Ohliger's disclosure. For example, Ohliger only contemplates the broadcaster providing the video along with **one** overlay: the overlay having hyperlinks. Ohliger does not contemplate the broadcaster providing video with plural "overlays" as TikTok argues. Instead, Ohliger simply states:

The VOHE server 300 includes an object association application which **creates a video overlay** used to associating relevant hyperlinks received from the retailers/brands/affiliates/advertisers 500 with the video objects. **The overlay is supplied** by the VOHE server 300 to the broadcaster 120 and in turn **from the broadcaster 120 to the viewer 124 along with the underlying video**. Alternatively, the overlay may be supplied by the VOHE server 300 to the viewer 124.

Ex.1006, 22:4-11 (emphasis added). Thus, just like TikTok's first argument, this portion of Ohliger unmistakably shows that the "broadcaster server" only supplies a single overlay, which has nothing more than "relevant hyperlinks." This overlay, again, corresponds to TikTok's mapping of the "*first interactive video layer*." TikTok's quoted portion of Ohliger is likewise silent on overlaying comments, or what TikTok alleges to be the "*second interactive video layer*."

The cited portions of Dr. Almeroth's declaration, Ex.1002, ¶¶ 117-119, do not remedy the Petition's failures. Dr. Almeroth discusses "particular requirements for compatible content" and "format considerations," but does not fill the gap in Ohliger's disclosure—i.e., Dr. Almeroth does not cite anything to show that Ohliger

discusses the broadcaster server supplying a comments overlay. TikTok's second theory thus fails to show that Ohliger renders obvious these limitations of claim 1, because Ohliger does not describe the broadcaster server providing video having a "*second interactive video layer*" comprising a "*social media portion*" as recited.

TikTok argues that "even if the video and the overlays are separately sent as different pieces of data, this teaching would still meet PO's interpretation of the term." Pet. 41. TikTok is wrong for two reasons. First, TikTok's characterization of "PO's interpretation of the term" has no basis: TikTok does not provide any claim construction analysis that would support finding that the claim should be interpreted according to TikTok's crafted interpretation. Neither party requested construction for these terms; instead, both parties agreed (aside from terms TikTok alleged were indefinite) that all claim terms should be given their plain meaning. TikTok sources its characterization from ShopSee's preliminary infringement claim chart mapping claim 1 to the TikTok Accused Products, but the cited pages show that TikTok's characterization lacks merit because ShopSee's claim chart does not support, explicitly or implicitly, TikTok's interpretation. *See* Ex.1005, 32-35.

TikTok's analysis, based on its implicit claim interpretation, should also be rejected on the merits because it would render claim language superfluous. Specifically, TikTok appears to equate displaying with generating when alleging that "Ohliger provides the video and overlays displayed together, and thus discloses the

claimed ***generating a video data*** at least under PO's interpretation." Pet. 41 (original emphasis). This argument violates black letter law holding that "[d]ifferent claim terms are presumed to have different meanings." *Bd. of Regents of the Univ. of Tex. Sys. v. BENQ Am. Corp.*, 533 F.3d 1362, 1371 (Fed. Cir. 2008). Claim 1 includes other limitations that require display, e.g., "*an interface displayed in the second interactive video layer*" and "*the second interactive video layer displays an interaction.*" TikTok's implication that generating and displaying have the same meaning is therefore contrary to Federal Circuit precedent, and its assumption that "provid[ing] the video and overlays displayed together ... discloses the claimed ***generating a video data***" is unsupported. Pet. 41 (original emphasis).

Additionally, the cited portion of Ohliger, Figure 18, does not support TikTok's obviousness theory. TikTok offers no analysis to show that Figure 18 includes the requirements of the generated "*video data.*" Dr. Almeroth likewise fails to provide the necessary obviousness analysis; his declaration simply parrots the Petition. Ex.1002, ¶120.

TikTok's argument also fails because TikTok does not even argue that the "comments overlay" in Ohliger is "sent" at all, which is necessary to provide the required underpinning for a finding that "the video and the overlays are separately sent as different pieces of data." Pet. 41. "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated

reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). The Petition is silent on where Ohliger teaches that a “comments overlay” is “provided to a user device” such that they “are displayed together” (Pet. 41) as TikTok claims. TikTok does not allege Ohliger inherently or obviously provides the comments overlay, and TikTok does not provide the necessary evidence to show inherency or obviousness. Nor does Dr. Almeroth. Thus, TikTok has not shown that the “comments overlay” is sent, such that a finding that “Ohliger provides the video and overlays displayed together” is sustainable, even if TikTok’s baseless and incorrect characterization of ShopSee’s extrinsic preliminary infringement claim chart were adopted. For these additional reasons, TikTok’s second theory fails to show that Ohliger renders obvious these limitations of claim 1.

C. Ohliger’s Video Server or VOHE Server Discussion, and its Backup Obviousness Theory, Do Not Show Generating Video Data Comprising the Second Interactive Video Layer

TikTok’s third theory fails for similar reasons. Here, TikTok alleges “Ohliger describes that the video server provides to viewers the video ‘along with’ the overlays.” Pet. 42. Specifically, TikTok argues “[i]n this configuration, the video server generates the *video data* that includes the video content ‘along with’ the overlays.” Pet. 42 (original emphasis). It relies again on the same disclosure from Ohliger’s column 22 as in its second theory, which only describes sending the video

content along with the overlay corresponding to the “*first interactive video layer*,” and which is silent on any “comments overlay” or what TikTok alleges corresponds to the claimed “*second interactive video layer*.” Thus, TikTok’s third theory fails to show that Ohliger renders obvious these limitations of claim 1.

TikTok then presents an alternative argument, alleging “it would have been obvious for the VOHE server 300 to generate the video data by combining the video and overlays.” Pet. 42. But the critical fact that underlies TikTok’s obviousness position does not support its theory, making its obviousness conclusion nonviable.

TikTok alleges “Ohliger discloses that the VOHE server 300 stores both the video and the overlays.” Pet. 42 (citing Ex.1006, 26:33-46, 15:59-67, Fig. 2). While Ohliger’s VOHE server 300 may store the overlay having the hyperlinks with video objects, i.e., the disclosure in Ohliger that TikTok maps to the “*first interactive video layer*,” Ohliger **does not disclose** that VOHE server 300 stores the “comments overlay” (the alleged “*second interactive video layer*”).

For example, TikTok first cites Ex.1006, 26:33-46. That passage states:

The system includes a video server 200,300 which communicates with a viewer server 400 over; for example, a distributed network such as the internet (a.k.a. World Wide Web). At least one video file stored in a video database 108 on or accessible to video server 200. Similarly, an object inventory database 114 stored on or accessible to the video server 200. The **object inventory database 114 stores information describing a location of at least one video object within the at least**

one video file. Relevant content in a database stored on or accessible to the video server 200. A video overlay links the relevant content with a given video object and creating a selectable hyperlink whose position tracks a dynamic location of the video object in the video.

Ex.1006, 22:33-46 (emphasis added). At most, this supports that Ohliger's VOHE server 300 stores the location of objects in a video, but it says nothing about the "comments overlay." This is confirmed by Ohliger's Figure 7 (reproduced below), which depicts "an exemplary object inventory database."

unique object ID	semantic description of object	unique object occurrence ID and reference data	film data	context and verbatim of occurrence	metadata viewer profile	bid per viewer profile channel 1	bid per viewer profile channel n	winning bid, owner data, run time
1.1.1.1.1.1	silver necklace	1.1.1.1.1.A, x,y,z,t	HBO, comedy-drama, sex and the city, cable television series, picture format 480i SDTV etc	Charlotte York (Kristin Davis) having lunch with Miranda Hobbes (Cynthia Nixon) at Sushi Samba discussing birthday present. "...bla, bla, bla...."	target: female, 30y, income 80k, etc, transaction history, viewer profile etc	MMXV: \$1 MMXZ: \$3	MMXV: \$1.5 MMXZ: \$2	Tiffany, December 1, 2008-december 31, 2008
1.1.1.1.1.1	silver necklace	1.1.1.1.1.B, x,y,z,t						
1.1.1.1.1.1	silver necklace	1.1.1.1.1.C, x,y,z,t						
1.1.1.1.1.1	silver necklace	1.1.1.1.1.D, x,y,z,t						
1.1.1.1.1.1	silver necklace	1.1.1.1.1.E, x,y,z,t						
1.1.1.1.1.2								

FIG. 7

Figure 7 does not indicate or support storage of comments, or anything that might suggest a “comments overlay,” within VOHE server 300. For example, none of the column labels in Figure 7 suggest storage of comments.

TikTok's next cited passage fares no better, and its relevance to this claim language is minimal, at best. That passage states:

The database 102 contains unprocessed or raw video content which is accessed by a video content segmentation and classification engine 106 hereinafter referred to as a content analysis application. The content analysis application can also be used by a video creator to manually identify and describe objects. The phrase “raw video content” refers to video which has not been processed to identify objects.

Ex.1006, 15:59-67. Storing “unprocessed or raw video” does not support finding that the VOHE server 300 stores the “comments overlay,” let alone support TikTok's incorrect assertion that “VOHE server 300 stores both the video and the overlays.”

Finally, TikTok cites Ohliger's Figure 2 (reproduced below), which “is a block diagram of a video object hyperlink exchange (VOHE) system.”

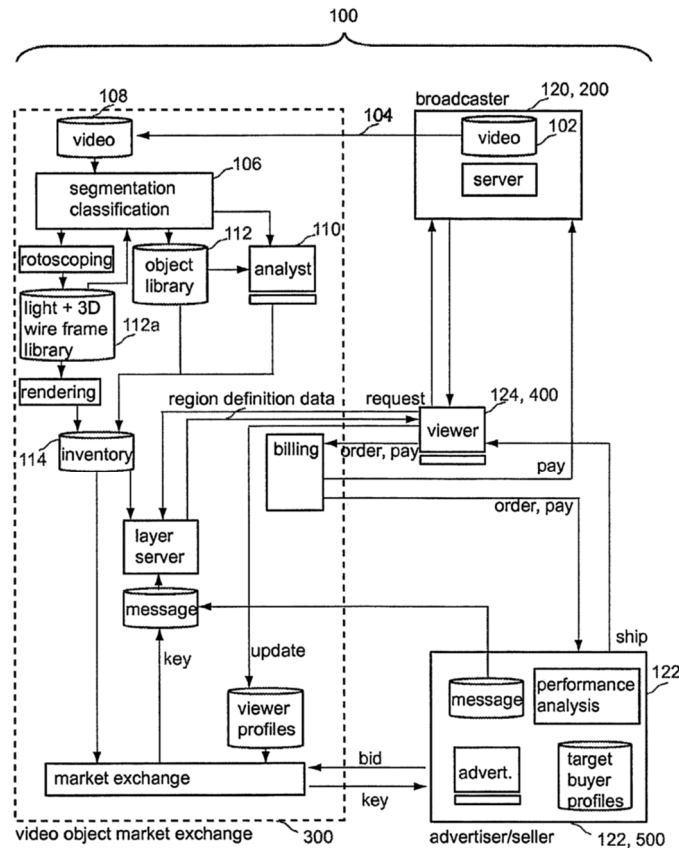


FIG. 2

Ohliger's Figure 2 does not support TikTok's obviousness theory either. None of the components in Ohliger's Figure 2 are described as storing the "comments layer" or "comments overlay." For example, while Figure 2 includes various cylinder objects, which commonly (in patent drawings) denote storage, the corresponding description of the cylinder objects in Figure 2 does not support that the "comments overlay" is stored within VOHE 300. Taking each in turn:

- Cylinder 108 is referred to as the “video file database 108” having “raw video content.” Ex.1006, 15:66-67, 16:13-15, 16:19-21. Raw video content does not teach or suggest a “comments layer.”

- Cylinder 112 is the “object information library 112 containing 2D/3D wire frame models or characteristics for identifying one or more pre-defined objects from one or more differing perspectives.” Ex.1006, 13:27-32. Wire frame models and characteristics does not teach or suggest a “comments layer.”
- Cylinder 112a is an optional “wireframe database 112A” which “stores three-dimensional wireframe representations of at least one video object” and “a lighting model which defines/specifies the light distribution of the video object.” Ex.1006, 19:38-43, 19:56-58. Neither teaches or suggests a “comments layer.”
- Cylinder 114 is the “video object inventory 114” which “is a database containing region definition data in form of pointers or references to video objects within video or animation files.” Ex.1006, 9:26-28, 23:7-14. Ohliger further explains “the region definition data is used to make the video interactive by providing the ability to link supplemental information with a specific video object within a video.” Ex.1006, 9:29-31. Nothing in this disclosure teaches or suggests storing the “comments layer.”
- The closest description corresponding to the unnumbered cylinder “message” states: “The retailer/brand/affiliate/advertiser may decide to

push an overlay message content on the video object while a user with a certain multifaceted user profile views it. The interaction of a viewer with video objects may be used to refine the messages pushed to the viewer in the same way as search terms are currently used to refine messages to users while searching for something.” Ex.1006, 23:18-24. Nothing in this disclosure teaches or suggests storing the “comments layer.”

- The closest description corresponding to the unnumbered cylinder “viewer profiles” states: “The viewer profile may be a multifaceted viewer profile identifying, among other things, the viewer's click history, purchasing habits, social network, history of geographic locations, browsing and search habits, and/or additional demographic data. The multifaceted viewer profile may be compiled, inter alia, from cookies stored on the viewer's computer, or from third party information of the viewer. The multifaceted viewer profile information may be used in determining the relative value of a given viewer for a given bidder (retailer/brand/affiliate/advertiser).” Ex.1006, 14:12-21. Nothing in this disclosure teaches or suggests storing the “comments layer.”

Accordingly, the fundamental premise on which TikTok's obviousness theory relies—that VOHE 300 stores the “comments layer”—is inconsistent with Ohliger and does not establish that this limitation would have been obvious to a POSITA.

Thus, TikTok's argument that a “POSITA would have been motivated to combine [the video and the overlays] before transmission to circumvent ad-blocking software that blocks content like overlays based on network origin or separate receipt” (Pet. 42) has no factual basis because Ohliger's video and the overlays **could not be combined** before transmission. Ohliger's VOHE server 300 does not have the comments overlay to combine with the video to render obvious “*generating a video data comprising the video media, the first interactive video layer, and a second interactive video layer ... wherein the second interactive video layer comprises a social media portion*” as recited.

TikTok's alternative obviousness theory, alleging circumventing ad-blocking software would motivate combining the video and overlays (Pet. 42), also fails to provide sufficient evidence to support a *prima facie* case of obviousness. TikTok argues that ad-blocking software may block “content like overlays based on network origin or separate receipt” because it may “mistake overlays for advertising.” Pet. 42. While that may be true for the object overlays in Ohliger that identify products for purchase (the “*first interactive video layer*”), TikTok does not establish that the same would hold true for comments, i.e., user interactions, not commercial messages

or advertising. Dr. Almeroth's declaration confirms that any purported motivation relates only to "advertising capabilities" and "auctioning off object overlays" to "provide the benefit of increased revenue to advertisers." Ex.1002, ¶123. But, again, Ohliger does not disclose comments as advertising, auctioning off comment overlays, or revenue from comments. Thus, even if Ohliger disclosed a comments overlay (it does not), there is no motivation to modify Ohliger as TikTok alleges.

The limited evidence that TikTok and Dr. Almeroth cite does not bridge the gap. Both cite Lane, a non-grounds reference, to support this obviousness theory. *See* Pet. 42 (citing Ex.1010, 11:55-59). But the cited disclosure in Lane merely states that "advertisements ... may be insulated from ad-blocking software." Ex.1010, 11:55-59. Like Ohliger, Lane says nothing about insulating comments or user interactions from ad-blocking software, or why a POSITA would have wanted to do so. Intuitively, it is hard to imagine a motivation to insulate user interactions from ad-blocking software: discussions between users about a product would typically not contain advertisements such that Lane's teachings would provide any benefit.

TikTok then alleges "a POSITA would have been motivated to merge them on the server because it has superior rendering hardware." Pet. 42. This theory fails from the start because, as discussed above, Ohliger does not disclose a comments layer that can be merged at all. *See generally* Ex.1006. Dr. Almeroth's cited testimony, and the additional references that TikTok and Dr. Almeroth cite (i.e.,

Maghfourian (Ex.1020) and Jakobson (Ex.1021)) do not discuss comments or a comments layer, let alone provide a motivation for merging a comments layer as TikTok alleges.

Likewise, TikTok's argument that "a POSITA would have been motivated to provide the video and the interactive video layers from VOHE server 300 to viewer 124" (Pet. 43) is wrong because it assumes that "VOHE server 300 already stored both." That assumption is incorrect, as shown above. TikTok also alleges that providing the interactive layers from VOHE server is preferred, because this arrangement "would have bypassed broadcaster 120." Pet. 43. According to TikTok, for "video creators who merely use the Veepio mobile application, the creator would not have the same uptime as VOHE server 300." Pet. 43. That is, according to TikTok, "broadcaster 120" is an end-user operating a mobile device. But this characterization is not consistent with Ohliger, which implies that broadcaster 120 is a company operating a website (*see* Ex.1006, 22:57-62), and that broadcaster 120 has "viewer profile information for the video viewer (consumer) 124" (Ex.1006, 22:62-65). Broadcaster 120 in Ohliger does not have the "uptime" limitations TikTok conjures (e.g., "limited phone power or Internet connectivity") and "improved ... availability" is not necessary. Pet. 43.

Moreover, TikTok's argument confirms that Ohliger's VOHE server 300 would **not** provide any alleged comments layer. As TikTok concedes, Ohliger refers

to “social networking sites ... e.g. Instagram, Vine, Twitter, and Snapchat.” Pet. 43. Ohliger explains that the viewer 124 “may include a software plug-in” for such a social networking site. Ex.1006, 25:47-54. The viewer 124 is an end-user or customer that uses “a computer, mobile phone or another electronic device ... to access the video content made available by broadcaster 120.” Ex.1006, 22:28-33. A software plug-in for a social networking site therefore executes on the end user’s device. Thus, any content from such a social networking site (e.g., comments) would originate from the social networking site and be delivered to the viewer 124 without passing through VOHE server 300. TikTok’s theory would require modifying Ohliger such that social networking content would **not** go to viewer 124, but instead (unnecessarily) would pass through an intermediary, VOHE server 300, before being transmitted to viewer 124. That is not contemplated by Ohliger. It is also illogical because it would burden the VOHE server 300 with receiving and transmitting additional data (the comments) for no apparent benefit, instead of having comments being transmitted directly from the social networking sites themselves. TikTok itself does not even try to support this theory; in fact, TikTok suggests that an approach with a “middleman” is less desirable. Ex.1002, ¶127. TikTok’s theory of providing video layers from VOHE server 300 to viewer 124 fails for this additional reason.

Later, in the analysis of limitation 1[c][ii] and the discussion of the “*second interactive video layer*” which “*comprises a social media portion,*” TikTok alleges

“Ohliger teaches that comments are displayed on an interactive overlay on the video, as in Figure 26.” Pet. 47. TikTok cites Ohliger to support this theory, but again, the cited discussion does not show Ohliger teaches the VOHE server 300 providing any alleged comments layer or “*generating a video data comprising ... a second interactive video layer*” having a social media portion. In the cited discussion, Ohliger states, “Once the object has been selected ... the viewer displays an abstract of the video” and this “[a]bstract may include ... comments by other viewers.” Ex.1006, 24:46-57. However, as discussed above, Ohliger does not teach storing comments, and it does not specify where comments originate. Further, given its integration with social networking sites as described above, Ohliger suggests that comments are received from social networking sites and are not part of any generated “*video data comprising ... a second interactive video layer*” as claim 1 requires.

TikTok's expert, Dr. Almeroth, does not provide any additional insight that would help TikTok. Instead, he simply parrots TikTok's Petition allegation that “Ohliger discloses that the VOHE server 300 stores both the video content and the overlay layers,” citing the same three aspects of Ohliger. Ex.1002, ¶122. As shown above, TikTok and Dr. Almeroth are wrong: VOHE server 300 does not store the “comments overlay.”

In fact, TikTok's position is contradicted by Ohliger and TikTok's characterization of Ohliger. In its mapping of the “*social media portion*” limitation

(Pet. 45-46), TikTok alleges that “Ohliger’s system integrated with well-known social media platforms” and contends Ohliger describes “integration with Facebook, Twitter, Instagram, Vine, and Snapchat.” Pet. 46. Thus, Ohliger appears to rely on third-party services, e.g., Facebook or Twitter, to provide comment functionality. Dr. Almeroth seemingly concurs: he alleges “[t]hrough **these social media connections**, Ohliger enables sharing and discussion of interactive video content, confirming that the second interactive layer functions as a social media portion.” Ex.1002, ¶139 (original emphasis omitted, bold emphasis added). Thus, Ohliger suggests reliance on Facebook’s servers, or Twitter’s servers, to store the comments. Ohliger therefore confirms comments are not stored by VOHE server 300 and could not be combined with video by VOHE server 300, as TikTok alleges in its backup obviousness argument.

Accordingly, TikTok’s third argument and its related obviousness backup position fail to show that Ohliger discloses or renders obvious this limitation.

D. The Prosecution History Confirms That Ohliger Does Not Render Obvious The Challenged Claims

In relevant part, Ohliger is no different than Incorvia, which the Examiner repeatedly applied during prosecution. Incorvia “enable[s] users to obtain information about items that appear in video media” using “tagged objects.” Ex.2022, Abstract, [0006]. In the Incorvia system, “video media may be processed to tag objects within the video frames to create an interactive video layer” such that

the user “may then interact with the tagged objects and/or conduct searches relative to the objects.” Ex.2022, [0025].

But just as Incorvia did not render any of the '316 Patent's claims obvious, Ohliger similarly fails to do so, as detailed above. The Examiner conceded during prosecution that Incorvia failed to disclose providing the “*second interactive video layer ... wherein the second interactive layer comprises a social media portion ...*” as the claims recited then and now. See Ex.1004, 317. Ohliger similarly does not teach the “*second interactive video layer*” limitations for the reasons above. The additional references relied on by the Examiner during prosecution—Law and DeWeese—also did not teach this subject matter. Law, for example, did not disclose at least a “second interactive video layer” having “a social media portion.” DeWeese did not provide the second interactive layer “as an overlay to the video media” as recited in the claims.

Because TikTok's reliance on Ohliger is no different than the Examiner's application of Incorvia during prosecution, the Director should follow the Examiner's reasoned conclusion and also find that Ohliger does not disclose, teach, or render obvious the “*second interactive video layer*” limitations in claim 1.

E. Ground 1 Conclusion

Because TikTok's Petition does not show that these limitations of claim 1 are disclosed, taught, or rendered obvious by Ohliger, Ground 1 fails to show a

reasonable likelihood of prevailing. Claim 17 recites identical limitations, and is therefore also not rendered obvious by Ohliger. Claim 18 recites similar subject matter, and TikTok's Petition relies on the same teachings in Ohliger. Accordingly, claim 18 is also not rendered obvious by Ohliger.

The Director should deny institution.

V. Ground 2 Fails to Show Any Claim is Obvious: Petitioner Fails to Show that Sakhartov Cures the Deficiencies of Ohliger

In Ground 2, TikTok alleges that the combination of Ohliger and Sakhartov renders obvious every claim. Specifically, TikTok alleges that “Ohliger's system would be modified, according to the teachings of Sakhartov, to use the ‘merging process’ of Sakhartov to ‘aggregate[] and combine[] to form the final video.’” Pet. 89 (citing Ex.1013, 7:56-62). TikTok further explains “Ohliger's ‘overlay’ and ‘video content’ would be merged into Sakhartov's ‘final video’ for sending to Ohliger's viewer 124.” Pet. 89.

However, Sakhartov does not cure the deficiencies of Ohliger identified above with respect to Ground 1, and TikTok does not allege that it does. For example, TikTok does not allege that Sakhartov supplies teachings of the claimed “*second interactive video layer*.”

Instead, TikTok relies on Ohliger to allegedly provide the “*second interactive video layer*.” TikTok asserts that its Ground 2 analysis “incorporates by reference the analysis for Ground 1” and “provides additional analysis for individual claim

limitations” allegedly shown by the combination. Pet. 92. But TikTok only relies on Sakhartov for “merging interactive layers,” and it remains reliant on Ohliger to render obvious the recited “*second interactive video layer*”: “Ohliger describes the video (*video media*) and overlays (*first* and *second interactive video layer*) being distributed to viewers by the broadcaster.” Pet. 92 (original emphasis).

As shown above, TikTok has not established that Ohliger shows the “*second interactive video layer*” being distributed to viewers by the broadcaster. *See supra* §§IV.A-E. Thus, Sakhartov does not cure the deficiencies of Ohliger identified above, and the combination does not render obvious any claim. Ground 2 similarly fails to show a reasonable likelihood of prevailing, and the Director should deny institution.

VI. Ground 3 Fails to Show Any Claim is Obvious: Petitioner Fails to Show that Kaiserlian Cures the Deficiencies of Ohliger

In Ground 3, TikTok argues that the combination of Ohliger and Kaiserlian renders obvious every claim. In this proposed combination, TikTok alleges that “Ohliger’s system would be enhanced to use Kaiserlian’s ‘conversation thread[ing]’ in Ohliger’s comments overlay.” Pet. 93 (citing Ex.1014, 14:42-47).

However, Kaiserlian does not cure the deficiencies of Ohliger identified above with respect to Ground 1, and TikTok does not allege that it does. For example, TikTok does not allege that Kaiserlian supplies teachings of the claimed “*second interactive video layer*.” TikTok only brings in Kaiserlian to teach “organizing the

comments into collapsible threads,” not to teach the existence of comments themselves, or a teaching of the “*second interactive video layer*.” Pet. 95-99. That alleged teaching still comes from Ohliger, because TikTok states its Ground 3 analysis “incorporates by reference the analysis for Ground 1” and only “provides additional analysis for individual claim limitations rendered obvious by the proposed combination of Ohliger and Kaiserlian.” Pet. 96. In the Ground 3-specific analysis, TikTok only analyzes limitation 1[c][vi], relating to “maintaining and toggling,” which comes after the “*second interactive video layer*” is introduced in the claim.

Thus, like Ground 2, TikTok relies on Ohliger to allegedly provide the “*second interactive video layer*.” And, as shown above, TikTok has not established that Ohliger shows the “*second interactive video layer*” being distributed to viewers by the broadcaster. *See supra* §§IV.A-E. Thus, Kaiserlian does not cure the deficiencies of Ohliger identified above, and the combination does not render obvious any claim. Ground 3 similarly fails to show a reasonable likelihood of prevailing, and the Director should deny institution.

VII. Ground 4 Fails to Show Any Claim is Obvious: Petitioner Fails to Show that Tapissier Cures the Deficiencies of Ohliger

In Ground 4, TikTok argues that the combination of Ohliger and Tapissier renders obvious every claim. In this proposed combination, TikTok alleges that “Ohliger’s system would be modified, according to the teachings of Tapissier, to combine Tapissier’s overlaid chatroom with Ohliger’s interactive videos.” Pet. 99

(citing Ex.1007, [0064]). TikTok explains “Ohliger’s interactive videos would include the chatroom overlay, as in Tapissier’s Figure 18, to allow for chat room functionality including toggling between different chat rooms associated with a video.” Pet. 99-100 (citing Ex.1007, Fig. 18).

But just like with the failures of Grounds 2 and 3 detailed above, Tapissier does not cure the deficiencies of Ohliger identified above with respect to Ground 1, and TikTok does not allege that it does. For example, TikTok does not allege that Tapissier supplies teachings of the claimed “*second interactive video layer*.” In fact, TikTok contemplates relying on Ohliger’s alleged teachings of this limitation, unambiguously stating that “the discussion above regarding generating, **providing**, and controlling **Ohliger’s sub-comments (e.g., that they are provided as part of the video data** to and controllable by multiple viewers using different devices) apply equally to Tapissier’s chat rooms.” Pet. 104 (emphasis added). In its claim analysis, TikTok only relies on Tapissier for “toggling,” and maintains its reliance on Ohliger for “comments for each object appearing in a video.” Pet. 104.

Thus, like Grounds 2 and 3, TikTok relies on Ohliger to allegedly provide the “*second interactive video layer*.” And, as shown above, TikTok has not established that Ohliger shows the “*second interactive video layer*” being distributed to viewers. *See supra* §§IV.A-E. Thus, Tapissier does not cure the deficiencies of Ohliger identified above, and the combination does not render obvious any claim. Ground 4

similarly fails to show a reasonable likelihood of prevailing, and institution should be denied.

VIII. Ground(s) 5 Fails to Show Any Claim is Obvious: Petitioner's Catch All Ground Fails to Cure Ohliger's Deficiencies

TikTok labels Ground 5 as “Ohliger, Sakhartov, and Kaiserlian or Tapissier” which implies two grounds: (1) Ohliger, Sakhartov and Kaiserlian; and (2) Ohliger, Sakhartov, and Tapissier.³ TikTok provides only one sentence of explanation: “For the reasons set forth in Grounds 3-4, it would further be obvious to combine Ohliger and Sakhartov (Ground 2) with either Kaiserlian (Ground 3) or Tapissier (Ground 4) to arrive at the challenged claims of the '316 patent.” Pet. 108. Institution on TikTok's unfocused Grounds 5A-5B is not warranted.

As to Ground 5A (Ohliger, Sakhartov, and Kaiserlian), as demonstrated above in Sections V-VI, TikTok does not allege that either Sakhartov or Kaiserlian cures Ohliger's deficiencies identified in Section IV. Specifically, neither Sakhartov nor Kaiserlian is cited as providing teachings of the “*second interactive video layer*.” Instead, TikTok maintains its reliance on Ohliger to teach this subject matter, but it does not, as detailed above. *See supra* §§IV.A-E. Accordingly, Ground 5A does not show reasonable likelihood of prevailing, and the Board should deny institution.

³ For clarity, this Preliminary Response will refer to TikTok's two Grounds as Grounds 5A and 5B, respectively.

Ground 5B (Ohliger, Sakhartov, and Tapissier) fails for the same reasons. As demonstrated above in Sections V and VII, TikTok does not allege either Sakhartov or Tapissier cures Ohliger's deficiencies identified in Section IV; neither is cited as providing teachings of the "*second interactive video layer*," only Ohliger is. Accordingly, Ground 5B does not show reasonable likelihood of prevailing, and the Board should deny institution.

IX. Dr. Almeroth's Opinions Should Be Given Little to No Weight Because They Lack Objective Evidence and Scientific Reasoning

Notwithstanding the multiple failures in TikTok's Petition, discussed above, TikTok's heavy reliance on the conclusory testimony from Dr. Almeroth further weighs in favor of denying institution.

TikTok cites Dr. Almeroth's Declaration (Ex.1002) throughout its Petition, but it does not provide sufficient support or evidence to fill in the gaps, especially for critical claim limitations. TikTok's reliance is particularly improper because Dr. Almeroth's testimony merely regurgitates TikTok's attorney arguments to supplement teachings missing from the references themselves. Indeed, aside from content on the expert's background, materials considered, and discussion of applicable legal standards, the declaration largely parrots TikTok's attorney arguments throughout the Petition—in many cases using exactly the same wording in the Petition without adding evidence to support Dr. Almeroth's opinions.

Dr. Almeroth's parroting of attorney arguments should be given (at most) "little weight" because his Declaration does nothing but "repeat[], *verbatim*, the conclusory assertion[s] for which it is offered to support." *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15-17 (PTAB Aug. 24, 2022) (precedential) (original emphasis) (according "little weight" to expert testimony that contains a verbatim restatement of a petition's conclusory assertions without additional supporting evidence or reasoning); *see also Upjohn Co. v. Mova Pharm. Corp.*, 225 F.3d 1306, 1311 (Fed. Cir. 2000) ("Lack of factual support for expert opinion going to factual determinations, however, may render the testimony of little probative value in a validity determination.") (quoting *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 294 (Fed. Cir. 1985)); *Facebook, Inc. v. Windy City Innovations, LLC*, 973 F.3d 1321, 1340-41 (Fed. Cir. 2020). TikTok's heavy reliance on Dr. Almeroth's verbatim testimony is "particularly problematic" here because the "expert testimony is offered not simply to provide a motivation to combine prior-art teachings, but rather to *supply a limitation missing from the prior art.*" *Xerox*, IPR2022-00624, Paper 9 at 15-17 (emphasis added).

Accordingly, because the evidence on which TikTok's case relies is conclusory and merely repeats TikTok's attorney argument in the form of an expert declaration, it deserves little to no weight. For this additional reason, the Petition does not present a reasonable likelihood of prevailing sufficient to merit institution.

In the face of such deficient evidence, a trial to determine whether TikTok can show by a preponderance of the evidence that it has established unpatentability would waste the Board's resources, and institution should therefore be denied.

X. Conclusion

For the reasons above, the Director should deny the Petition for *Inter Partes* Review.

Respectfully submitted,

Dated: December 16, 2025

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

I hereby certify that this Patent Owner's Preliminary Response complies with the word count limitation of 37 C.F.R. § 42.24(b)(1) because the Patent Owner's Preliminary Response contains 8,354 words using Microsoft Word's counting feature, excluding the cover page, signature block, and the parts of the Patent Owner's Preliminary Response exempted by 37 C.F.R. § 42.24(b)(1).

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 16th day of December 2025, a true and correct copy of the foregoing **Patent Owner's Preliminary Response and Exhibit 2022** were served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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