

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

TWITTER, INC.

Petitioner

v.

VIDSTREAM, LLC

Patent Owner

---

Case IPR2017-00830  
U.S. Patent No. 9,083,997  
(Claims 20-35)

---

**VIDSTREAM LLC's PATENT OWNER'S RESPONSE**

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	PATENTABILITY OF ALL CLAIMS SHOULD BE UPHELD BECAUSE PETITIONER RELIES ON A 2015 VERSION OF BRADFORD AND CANNOT PROVE PUBLICATION IN 2011 .....	1
A.	Dr. Hsieh-Yee’s Testimony Is Not Based On Personal Knowledge, Is Internally Inconsistent, and Neglects Critical Details of the MARC Records On Which It Purportedly Relies .....	2
1.	<i>Dr. Hsieh-Yee neglects details of the MARC records that contradict her assertions.....</i>	5
2.	<i>Dr. Hsieh-Yee has no personal knowledge of the creation or maintenance of the MARC records her testimony relies upon .</i>	10
B.	The Copyright Office’s 2016 Webpage Is Hearsay That Is Not Tied To Any Particular Version of Bradford, Much Less A 2011 Version .....	12
C.	The Archived Webpages Are Hearsay And Are Not Tied To Any Particular Version of Bradford, Much Less A 2011 Version .....	12
D.	All Grounds Depend on Bradford and Must Therefore be Rejected ..	14
III.	THE ’997 PATENT .....	14
IV.	LEVEL OF ORDINARY SKILL IN THE ART .....	18
V.	CLAIM CONSTRUCTION .....	19
VI.	GROUND 1-2: NASSIRI AND BRADFORD DO NOT RENDER OBVIOUS PROVIDING A CONTENT CAPTURE USER INTERFACE WITHIN DISPLAYED INSTANCES OF A FIRST [GUI] . . . IN RESPONSE TO A USER SELECTION OF A LINK INCLUDED IN A GRAPHICAL USER INTERFACE . . . WHEREIN THE CONTENT CAPTURE USER INTERFACE IS PROVIDED WITHIN A FRAME DISPLAYED IN THE FIRST [GUI] .....	20
A.	Nassiri does not disclose a link to an iframe .....	22
B.	Nassiri’s iframe cannot be targeted by a link .....	23
C.	Dr. Almeroth’s opinions rest on a mischaracterization of Nassiri .....	24
D.	Nassiri’s overarching purpose is to entice and enable users into recording video responses .....	25

E.	A POSITA would not have modified Nassiri based on the teachings of Bradford as the Petitioners have described.....	26
F.	Dr. Almeroth’s asserted motivations for his proposed modifications to Nassiri simply did not exist in Nassiri’s system.....	30
G.	Nassiri and Bradford do not render obvious elements [20.1.3] and [20.2.1] of claim 20, or elements [31.1.3] and [31.2.1] of claim 31 ...	34
VII.	GROUND 2: A POSITA WOULD NOT HAVE BEEN MOTIVATED TO COMBINE TOSH.0 WITH NASSIRI, BRADFORD, AND ZHU .....	35
A.	Tosh.0 describes purely manual review and collection of videos .....	35
B.	A POSITA would not have been motivated to combine Tosh.0 with Nassiri.....	36
VIII.	CONCLUSION.....	37

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>In re Cuozzo Speed Techs.</i> , 793 F.3d 1268 (Fed. Cir. 2015) .....	19
<i>Dropbox, Inc. v. Synchronoss Tech., Inc.</i> , IPR2016-00851, slip op. (PTAB Oct. 5, 2017) (Paper 40) .....	3, 4
<i>Ferguson Beauregard/Logic Controls, Div. of Dover Res., Inc. v.</i> <i>Mega Sys., LLC</i> , 350 F.3d 1327 (Fed. Cir. 2003) .....	20
<i>Intel Corp. v. Alacratech, Inc.</i> , IPR2017-01395, slip. op (PTAB Nov. 22, 2017) (Paper 8), <i>aff'd on reh'g</i> .....	3
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005) ( <i>en banc</i> ) .....	19
<i>Rohm &amp; Haas Co. v. Brotech Corp.</i> , 127 F.3d 1089 (Fed. Cir. 1997) .....	11
<i>Straight Path IP Grp., Inc. v. Sipnet EU S.R.O.</i> , 806 F.3d 1356 (Fed. Cir. 2015) .....	19
<i>TriVascular, Inc. v. Samuels</i> , 812 F.3d 1056 (Fed. Cir. 2016) .....	19, 20
<b>Rules and Statutes</b>	
35 U.S.C. § 312(a)(3)(A) .....	3
<b>Other Authorities</b>	
37 C.F.R. 42.51(b)(1)(iii) .....	2
37 C.F.R. § 42.123(b) .....	4
77 FR 48756, 48763 (Aug. 14, 2012) .....	11
83 FR 21221 .....	19

**TABLE OF EXHIBITS**

<b>No.</b>	<b>Description</b>
2001	Declaration of Michael I. Shamos, Ph.D.
2002	Joint Claim Construction and Prehearing Statement, <i>Youtoo Technologies, LLC v. Twitter, Inc.</i> , Civil Action No. 3:16-cv-00764-N (filed January 26, 2017)
2003	Official Notice of Bankruptcy Case Filing, U.S. Bankruptcy Court for the Western District of Oklahoma, Case No., 17-14849 (filed November 30, 2017)
2004	Complete Scan of Bradford version from which Ex. 1010 was excerpted
2005	The LG Local Bibliographic Record and Local Data Fields, 2011 Update Number 4, Library of Congress (November 2011) (obtained from <a href="https://www.loc.gov/aba/publications/FreeDCM/DCM_2011-04.pdf">https://www.loc.gov/aba/publications/FreeDCM/DCM_2011-04.pdf</a> )
2006	Transcript of Deposition of Scott Bennett, Ph.D. in IPR2017-01131
2007	CV of Scott Bennett, Ph.D. excerpted from Ex. 1012 in IPR2017-01131
2008	Declaration of James Olivier, Ph.D.
2009	Transcript of Deposition of Kevin C. Almeroth, Ph.D.

## I. INTRODUCTION

All grounds asserted in the Petition rely on Bradford (Ex. 1010) to supply certain acknowledged deficiencies of Nassiri (Ex. 1009). However, Petitioner has not shown that Ex. 1010—which was not printed until 13 December 2015—qualifies as a printed publication as of the May 9, 2012 priority date of the '997 Patent. All asserted grounds therefore fail for this reason alone.

Additionally, Nassiri and Bradford fail to disclose or render obvious multiple features of each of independent claims 20 and 31, from which all other claims depend. As such, even if Bradford were prior art, all asserted grounds would still fail to show unpatentability of any challenged claim.

Patent Owner therefore respectfully asks the Board to uphold the patentability of claims 20-35.

## II. PATENTABILITY OF ALL CLAIMS SHOULD BE UPHELD BECAUSE PETITIONER RELIES ON A 2015 VERSION OF BRADFORD AND CANNOT PROVE PUBLICATION IN 2011

All instituted grounds depend on the asserted combination of Nassiri and Bradford. But Petitioner has not met its burden to establish that Bradford qualifies as a printed publication as of the May 9, 2012 priority date of the '997 Patent, or of its May 18, 2012 filing date. To the contrary, Petitioner's best evidence supports a publication date *no earlier than June 22, 2012*. For this reason alone, all instituted grounds must fail and the patentability of all challenged claims should be confirmed.

Petitioner offers testimony of one declarant, Dr. Hsieh-Yee (Ex. 1011), a purported library expert, in support of its contention that Bradford (Ex. 1010) qualifies as a printed publication. Petitioner also offers a 2016 Library of Congress webpage (Ex. 1015) and two archived webpages from the Wayback Machine (Ex. 1016). But none of Petitioner's evidence establishes that the version of Bradford on which all grounds rely was actually published prior to the May 9, 2012 priority date of the '997 Patent. Indeed, the version of Bradford on which the Petition relies shows on its face that it was not even printed until late in 2015.

**Made in the USA  
Middletown, DE  
13 December 2015**

Ex. 2004 at 324/326. Despite 37 C.F.R. 42.51(b)(1)(iii), Petitioner did not serve this page of its 2015 version of Bradford (on which all grounds rely) with the Petition.

**A. Dr. Hsieh-Yee's Testimony Is Not Based On Personal Knowledge, Is Internally Inconsistent, and Neglects Critical Details of the MARC Records On Which It Purportedly Relies**

Dr. Hsieh-Yee's version of Bradford—from which Ex. 1010 was excerpted (*see* Ex. 1011 at 6/54 (¶ 12); Ex. 2004 at 1/326)—*was not printed until 2015*. *See* Ex. 2004 at 324/326. At the outset, Dr. Hsieh-Yee did not reveal that fact, the concealment of which was extended by Petitioner's resistance to providing a complete scan of its version of Bradford. *See, e.g.*, Paper 49. Thus, Dr. Hsieh-Yee's

declaration makes no attempt to establish that her 2015 version is the same as the version she alleges was published in 2011. That alone is fatal to the credibility of Dr. Hsieh-Yee's testimony.

In *Dropbox, Inc. v. Synchronoss Tech., Inc.*, the Board upheld the patentability of all claims because Petitioner failed to prove that the version of its asserted prior art was the same as the version addressed in its proffered evidence of prior publication: "At the outset, Petitioner has failed to show that Exhibit 1006 is the version of Kistler that was published in ACM TRANSACTIONS ON COMPUTER SYSTEMS." *Dropbox, Inc. v. Synchronoss Tech., Inc.*, IPR2016-00851, slip op. at 19 (PTAB Oct. 5, 2017) (Paper 40). The Board flatly rejected the Petitioner's attempt to shift its burden to require Patent Owner to show differences between the two versions:

Petitioner is mistaken because it is not Patent Owner's burden to show differences between the prior art Petitioner relies on in Exhibit 1006 and the actual document that Petitioner asserts is the published journal article in Exhibit 1027. Instead, it is Petitioner's burden to establish sufficient evidence that Exhibit 1006 is what its Petition and supporting declarations purport it to be. 35 U.S.C. § 312(a)(3)(A).

*Id.*; see also *Intel Corp. v. Alacratech, Inc.*, IPR2017-01395, slip. op at 7 (PTAB Nov. 22, 2017) (Paper 8), *aff'd on reh'g* (denying institution: "Patent Owner also observes that Stevens<sup>2</sup> specifically states that it is the "24th Printing September



2010.” Prelim. Resp. 30–31 (quoting Ex. 1013, .010). Petitioner provides *no evidence that the 24th printing generated in 2010 (long after the 1997 priority date of the ’948 patent) discloses the same material as earlier printings* that may antedate the ’948 patent. Thus, on its face, Exhibit 1013 contradicts Petitioner’s unsupported assertion that it pre-dates the ’948 patent priority date.” (emphasis added)).

The present circumstances are nearly identical to those in *Dropbox*, with the exception that the version of Bradford from which Ex. 1010 was excerpted *expressly contradicts* any assertion that it was published in 2011. Ex. 2004 at 324/326 (“Made in the USA,” “Middletown, DE,” “13 December 2015”). Petitioner has therefore failed to meet its “burden to establish sufficient evidence that Exhibit [1010] is what its Petition and supporting declarations purport it to be.” *Dropbox*, slip op. at 19-20. That alone is fatal to all grounds in the Petition.<sup>1</sup>

---

<sup>1</sup> It is too late for Petitioner to supplement the record on this point because evidence of publication in 2011, by its very nature, must have been previously available. 37 C.F.R. § 42.123(b) (untimely “motion to submit supplemental information must show why the supplemental information reasonably could not have been obtained earlier”); *see also Dropbox*, slip op. at 22-23 (granting motion to exclude untimely supplemental information submitted to show publication).

But that's not all; Dr. Hsieh-Yee's testimony does not establish when either GMU or the Library of Congress (LOC) actually received, indexed, or shelved any version of Bradford, and ignores parts of the LOC MARC<sup>2</sup> record showing the LOC did not make its version Bradford publicly available until *June 2012 at the earliest*.

***1. Dr. Hsieh-Yee neglects details of the MARC records that contradict her assertions***

As explained below, Dr. Hsieh-Yee neglects details of the MARC records that directly contradict her assertions about Bradford's purported publication. This is particularly troubling given Dr. Hsieh-Yee's experience with and that she is "fully familiar" with MARC records. Ex. 1011 at 3/54 (¶ 6). At base, the cited MARC records do not support—and contradict critical parts of—Dr. Hsieh-Yee's testimony.

***(a) The LOC MARC record shows the LOC did not index or shelve its version of Bradford until at least June 22, 2012***

Field 955 of a MARC record is intended to indicate "local functional identifying information." Ex. 2005 at 24/49. Ex. 2005 is a "Descriptive Cataloging Manual" publicly available from the website of the Library of Congress. See Ex. 2008 at ¶ 16. This LOC is the same library from which the LOC MARC record originated (see Ex. 1011 at 7/54 (¶ 14)) and from which the "Understanding MARC Bibliographic" document originated (see *id.* at 4/54 (¶ 8)), both documents Dr. Hsieh-Yee asserts that experts in her field would reasonably rely upon. The LOC

---

<sup>2</sup> See, e.g., Ex. 1011 at ¶ 7 ("Machine-Readable Cataloguing standard").

MARC record Dr. Hsieh-Yee relies on includes several subparts—*b*, *i*, and *w*—in its Field 955. *See id.* at 53/54.

Of these subparts, subpart *w* is intended to indicate “Dewey Decimal Classification,” (Ex. 2005 at 24/49) which corresponds to “[t]racking for assignment and inputting of a Dewey Decimal Classification (DDC) number.” *Id.* at 29/49 (under subheading “*C.16.16.6.12 \$w Dewey Decimal Classification (R)*”). As confirmed by Petitioner’s other librarian expert, Scott Bennett, Ph.D., in co-pending IPRs of two patents also asserted in the underlying litigation, “if there was a date associated with marked field 955, subfield W, it is unlikely that material associated with that record was available to review at the library prior to that date.” Ex. 2006 at 18:4-11 (“That is accurate with the proviso that we’re talking about a particular library, not about all libraries.”); *see also* Ex. 2007 (Dr. Bennett CV)<sup>3</sup>.

Here, the LOC MARC record on which Dr. Hsieh-Yee relies includes the date of **June 22, 2012** in subpart *w* of Field 955. Ex. 1011 at 53/54 (“955 . . . |w rd07 2012-06-22”); *see also* Ex. 2005 at 29/49; Ex. 2008 at ¶ 16. Thus, the LOC MARC record indicates that the LOC’s version of Bradford would not have been publicly available until at least June 22, 2012—which is *after* the earliest priority date of the ’997 Patent—May 9, 2012. *See id.*; *see also* Ex. 2006 at 18:4-11. That is critical

---

<sup>3</sup> Excerpted from Ex. 1012 in IPR2017-01131.

because it is the only evidence of record suggesting a time at which any version of Bradford was actually indexed and shelved for public access in a library, and that sole piece of evidence suggests Bradford *does not qualify* as a printed publication because the LOC's version of Bradford was not indexed and shelved for public access until *after* the critical date.

**(b) *BCTCA's initial creation of a MARC record does not suggest publication***

Dr. Hsieh-Yee asserts that the George Mason University ("GMU") MARC record attached to her declaration purportedly suggests publication as of August 25, 2011 because this 2016 version of GMU's MARC record indicates it was created by the book *vendor* Baker & Taylor Incorporated Technical Services & Product Development ("BCTCA"), Ex. 1011 at 6/54 (¶ 13), and "[t]he MARC record is also made available to the public on WorldCat, which is a Web search portal maintained by OCLC that provides a user-friendly interface for the public to use data in MARC records." *Id.* at 4/54 (¶ 7). But this conclusion illogically leaps over a number of contradictory facts, including that: (1) BCTCA is alleged to be the book *vendor*—*not* a library; (2) Worldcat is not alleged to be a library, and there is no indication it included an online version of Bradford, and (3) Dr. Hsieh-Yee does not assert that the GMU MARC record includes any indication of when any library (much less GMU) actually indexed and shelved any version of Bradford. As such, there is no indication in the 2016 GMU MARC record (or even Dr. Hsieh-Yee's analysis

thereof) that any version of the book itself was publicly available as of August 25, 2011.<sup>4</sup>

(c) ***The GMU MARC record does not indicate when GMU received the book, nor when it was indexed or shelved***

Dr. Hsieh-Yee herself recognizes that “[t]he George Mason MARC record is adopted from the BTCTA record *after* several libraries modified the record (see subfield ‘d’ for library symbols).” Ex. 1011 at 6/54-7/54 (¶ 13). Thus, GMU did not even have this MARC record until sufficient time had passed for “several libraries” to have received and modified it—*i.e.*, at some indeterminate time well after August 25, 2011. Dr. Hsieh-Yee identifies neither a date on which GMU purportedly modified the MARC record, nor any date on which GMU purportedly received, indexed, or shelved any version of the book.

Nor does Dr. Hsieh-Yee have any personal knowledge of GMU’s indexing and shelving policies. Her conclusions that the book was made available appear to rely solely on her assertion that “[a]fter a MARC record is searchable on a library catalog, it is customary library practice to have the physical volume processed for public access soon after, usually within a couple of weeks.” Ex. 1011 at 6/54 (¶ 11).

---

<sup>4</sup> Petitioner’s own purported evidence—itself uncorroborated hearsay—contradicts Dr. Hsieh-Yee’s assertion that Bradford might have been published in July of 2011. See Ex. 1015 at 4/4 (“Date of Publication: 2011-11-08”).

But that, again, is unsupported. Dr. Hsieh-Yee does not attempt to show that it was “customary library practice” for GMU in particular. And Dr. Hsieh-Yee’s failure to support, much less identify, any particular date on which GMU made its version of the book “searchable on [its] library catalog” (*id.*) leaves the generic “within a couple of weeks” without any reference from which to extrapolate.<sup>5</sup> Thus, Dr. Hsieh-Yee’s assertion that “the first available MARC record was created on August 8, 2011, adopted by George Mason University, and modified by the Library of Congress on December 4, 2011” is structurally misleading and should be rejected. Ex. 1011 at 7/54 (¶ 15).

***(d) The LOC MARC record shows that Dr. Hsieh-Yee’s testimony on MARC records is unreliable***

Further, the LOC MARC record undercuts other statements on which Dr. Hsieh-Yee’s opinions rely. Specifically, Dr. Hsieh-Yee opines that “[t]he date of creation for the MARC record appears in Field 008 . . . [which] element is computer-generated to record the date a MARC record is created.” Ex. 1011 at ¶ 10. Dr. Hsieh-Yee further opines that:

- “[n]o matter how many times a MARC record has been modified, this data element is ***never changed***” (*id.* (emphasis added)); and

---

<sup>5</sup> For example, Dr. Hsieh-Yee has not asserted that GMU or any other library received the book on August 25, 2011.

- “the first available MARC record was created on August 8, 2011, adopted by George Mason University, and modified by the Library of Congress on December 4, 2011” (*id.* at ¶ 15).

Based on Dr. Hsieh-Yee’s own testimony, both of these statements cannot be true. In particular, if the LOC MARC record was in fact adopted and “modified by the Library of Congress,” then the LOC MARC record should have the same date in Field 008 as the GMU MARC record. *See id.* at ¶ 10 (“No matter how many times a MARC record has been modified, this data element is ***never changed*** . . . .” (emphasis added)). But their respective Fields 008 are not the same, calling into question the accuracy of both records and Dr. Hsieh-Yee’s credibility in relying on dates recited in present-day records, the creation and maintenance of which she has no personal knowledge. *Compare id.* at App. C (“008 110825 . . .”) with *id.* at App. D (“008 120411 . . .”).

**2. Dr. Hsieh-Yee has no personal knowledge of the creation or maintenance of the MARC records her testimony relies upon**

Dr. Hsieh-Yee’s testimony and CV reveal that she has never worked at George Mason University (“GMU”) or the Library of Congress (“LOC”) and therefore has no basis to establish the accuracy or reliability of the 2016 MARC records on which she relies. *See* Ex. 1011 at 50/54 (App. C), and 53/54 (App. B). Other than pointing to a similar ISBN-13 number, Dr. Hsieh-Yee makes no attempt to relate either of these 2016 MARC records to any particular version of Bradford, much less one

printed or published in 2011. *See* Ex. 1011 at 6/54-7/54 (¶¶ 13, 14). And any suggestion in those 2016 MARC records that any version of Bradford was received by a library as of a certain date is hearsay, pure and simple, and not competent evidence that any version of Bradford was actually published as of that date. Dr. Hsieh-Yee does not establish any foundation for those 2016 MARC records to qualify as business records, and does not otherwise attest to their reliability.

Dr. Hsieh-Yee attempts to remedy these deficiencies by asserting that experts in her field would rely on such MARC records. *See* Ex. 1011 at 4/54 (¶ 8). But for what? Dr. Hsieh-Yee does not purport to be a forensic librarian. She offers no basis to assume that her experience and expertise involve precisely determining the publication date of books from present-day records of libraries at which she has not worked. If anything, her CV suggests this to be an ad-hoc vocation adopted only recently. As such, her assertions that experts in her field would reasonably rely on such MARC records is no more than self-serving *ipse dixit*, which should be given no credit. *See, e.g.*, 77 FR 48756, 48763 (Aug. 14, 2012) (citing *Rohm & Haas Co. v. Brotech Corp.*, 127 F.3d 1089, 1092 (Fed. Cir. 1997)). Indeed, crediting this statement would permit Dr. Hsieh-Yee to fabricate for herself a new field of expertise and a corresponding scope of reasonable reliance—on the current records of institutions with which she has no personal knowledge—merely because she herself asserts that it is reasonable to do so.



**B. The Copyright Office’s 2016 Webpage Is Hearsay That Is Not Tied To Any Particular Version of Bradford, Much Less A 2011 Version**

Mr. Braden testifies that he—in 2016—accessed the Copyright Office’s website, a printout of which is attached to his declaration. *See* Ex. 1015 at 2/4 (¶ 2) and 4/4 (App. A). Mr. Braden states that that printout purportedly “evidences that . . . [Bradford] was published at least as of November 8, 2011.” *Id.* at ¶ 2. But Mr. Braden’s only support for that assertion is the statement in the printout from the Copyright Office’s website, which is hearsay and, thus, not competent evidence that any version of Bradford was actually published as of that date. Mr. Braden’s declaration does not tie his testimony to a physical copy of Bradford, much less one that was alleged to have even been in existence as of November 8, 2011. Nor does Mr. Braden’s testimony attempt to establish how or when the underlying Copyright Office record was created or maintained, whether the assertions in that record are verified, or that it was publicly available as of November 8, 2011.

**C. The Archived Webpages Are Hearsay And Are Not Tied To Any Particular Version of Bradford, Much Less A 2011 Version**

Mr. Butler, an employee of the internet archive known as the Wayback Machine, testifies that the webpages attached to Ex. 1016 were archived on November 28, 2011. *See* Ex. 1016 at 1/8 (¶ 6). Any suggestion in those archived webpages that any version of Bradford was on sale as of November 28, 2011 is unsupported hearsay and, thus, not competent evidence that any version of Bradford

was actually published as of that date. Mr. Butler testifies that those webpages were archived on a particular date, but the HTML5 website did not purport to sell that book; rather, the “>>Order on Amazon” link merely referred to the Amazon webpage. *See* Ex. 1016 at 4/8. Likewise, Mr. Butler does not show that a person could purchase any version of Butler from that webpage as of November 28, 2011 or any other date. *See, e.g.*, Ex. 1016 at 6/8 (under “Customer Reviews”—“There are no customer reviews yet.”).

Further, neither Mr. Butler’s declaration, nor any other evidence of record, ties either webpage included in Ex. 1016 to any particular version of Bradford, much less one printed in 2011. To the extent the Amazon webpage is given any weight, it suggests that the 2015 version of Bradford on which Petitioner relies is different than whatever version was referenced in the Amazon webpage. This is because Petitioner’s 2015 version has a *different number of pages* than the one referenced on the archived Amazon webpage. Specifically, the archived Amazon webpage reflects that its version of Bradford has 316 pages. *See* Ex. 1016 at 6/8 (under “Product Details”—“Paperback: 316 pages”). But Dr. Hsieh-Yee’s version of Bradford, from which Ex. 1010 was excerpted, has only 313 numbered pages, including 20 pages numbered i-xx (*see* Ex. 2004 at 5/326-24/326) and 293 pages numbered 1-293 (*see id.* at 25/326-317/326), totaling only 313 numbered pages (*see*

*id.* at 5/326-317/326).<sup>6</sup> And Dr. Hsieh-Yee’s version of Bradford includes additional un-numbered blank pages (*id.* at 318/326-324/326), for a total of 320 pages.

#### **D. All Grounds Depend on Bradford and Must Therefore be Rejected**

Each of Grounds 1-2 depends on Bradford to supplement Nassiri. *See* Pet. at 18-21 (citing Ex. 1007 at ¶¶ 103-106) (asserted motivations to combine Nassiri and Bradford); Pet. at 27-30 (citing Ex. 1007 at ¶¶ 129-138) (claim element [20.1.3]); Pet. at 30-31 (citing Ex. 1007 at ¶¶ 139-140) (claim element [20.2.1]); Pet. at 54 (claim element [31.1.3], referring back to the Petition’s explanation of claim element [20.1.3]); and Pet. at 54-55 (claim element [31.2.1], referring back to the Petition’s explanation of claim element [20.2.1]). Because Petitioner has not met its burden to show that Bradford qualifies as a printed publication, Petitioner has also *not* shown by a preponderance of the evidence that the prior art would have rendered obvious either of independent claims 20 or 31 (or their respective dependent claims 21-30 and 32-35). The patentability of all challenged claims should therefore be upheld for this reason alone.

### **III. THE ’997 PATENT**

The ’997 Patent discloses methods, systems, and computer storage mediums “for recording and publishing content on social networking websites and other

---

<sup>6</sup> Excluding 3/326-4/326 and 325/326 as opposing sides of front and back covers.

websites.” *See* Ex. 1001 at Abstract. Specifically, the ’997 Patent provides “systems and methods of allowing users to record videos within a social networking webpage.” *Id.* at 5:25-26. Figure 1A depicts “an architecture 100 for embedding a media recorder in a social networking website” to facilitate the video recording. *Id.* at 6:45-47.

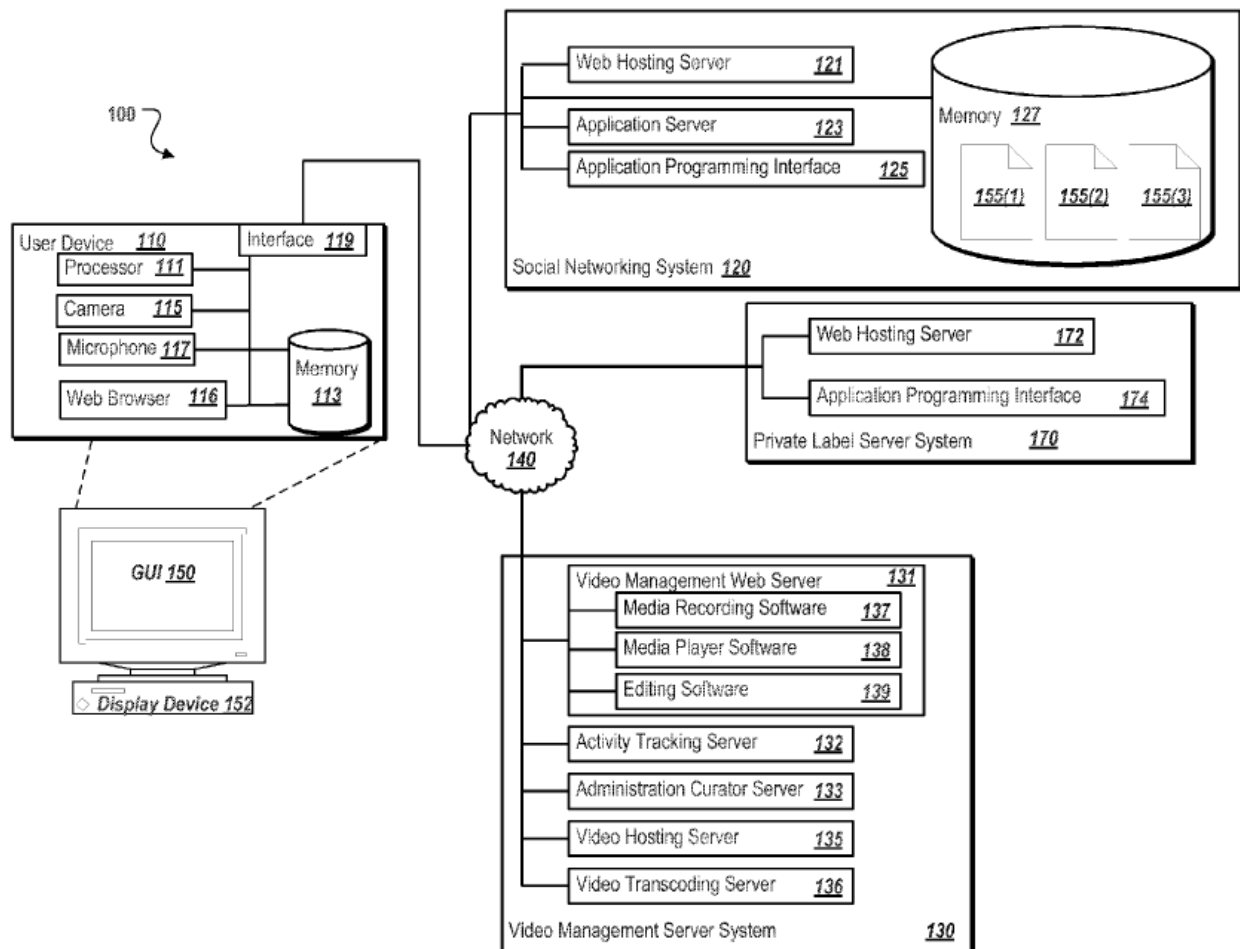


FIG. 1A

“The architecture includes a user device 110, a social ‘networking system 120, a video management server system 130, and a private label server system 170.” *Id.* at 6:47-49. In some embodiments, “[f]unctionalities of each of the social networking

system 120, the video management server system 130, and the private label server system 170 can be . . . combined in different ways . . . (e.g., some of the functions described as being performed by different servers could be combined in a single server).” *Id.* at 14:1-7.

To enable the recording and editing of video on social media websites, “a third party can embed a link within a social networking webpage.” *Id.* at 5:30. “When a user selects the link, a frame within the page can be opened in which a media recorder hosted by a third party server can be displayed.” *Id.* at 5:31-33. The media recorder “can be used to record videos at the third party server using a camera built into or otherwise connected to a user computer.” *Id.* at 5:37-39.

As the camera is recording, “the video recorder interface is adapted to allow a user to record video to the external video management server system from within the displayed instance of the first social networking webpage.” *Id.* at 2:15-18. A video stream can be sent to the external video management server system, which “generat[es] a video file using the received video stream, and stores the video file.” *Id.* at 2:21-23.

The ’997 Patent also discloses providing “the stored video file for display within a plurality of displayed instances” (*Id.* at 2:27-29), such as “selecting video defined in the video file for inclusion on an additional webpage” or in “a linear television program.” *Id.* at 2:54-55, 2:63-64.

To this end, “[t]he video file is transcoded to an appropriate video file format automatically depending up[on] an intended destination.” *Id.* at 2:42-44. When “video content [is] captured on a user device,” it can be “formatted according to predetermined constraints using a web application or an installed application.” *Id.* at 5:41-43. “By formatting the video content according to predetermined constraints, the video content can be transcoded into a format appropriate for inclusion in a linear television programming schedule.” *Id.* at 5:45-48.

The ’997 Patent further discloses that “[a]ccess to editing tools is provided through the media play software, wherein the editing tools allow a user to edit the stored video file.” *Id.* at 2:67-3:3. “Videos can be edited by the user using editing functionalities of the media player software, either through editing tools built into the video playback interface or using a separate editing interface built into the media player software or provided by separate media editing software.” *Id.* at 4:47-52. Furthermore, “[v]ideos can also be edited by an administrator or producer.” *Id.* at 4:52-53.

The ’997 Patent discloses that “[i]nformation associated with a user account for at least some of the displayed instances of the social networking webpage is received and stored.” *Id.* at 3:38-41. The “viewer responses to the stored video files [can be] monitored” based on the user accounts. *Id.* at 3:43. Additionally, “[o]ne or more of the stored video files are selected for inclusion on the social networking

webpage based upon predefined criteria relating to viewer responses.” *Id.* at 3:48-51.

#### IV. LEVEL OF ORDINARY SKILL IN THE ART

The pertinent art is video recording and publishing across a communication network. Ex. 2008 at ¶ 31.

As of the relevant date, a person of ordinary skill in the art (POSITA) “would have had a combination of technical education and experience that would have given such person a first-hand understanding of the types of tools, particularly web-based tools, used in video recording and publishing across a communication network.” Ex. 2008 at ¶ 32.

Dr. Olivier explains that “[t]he technology addressed in the ’997 Patent was moderately sophisticated and would have required some experience to fully appreciate and understand.” *Id.* at ¶ 33. In general, the problem addressed and solved by the ’997 Patent was “creating various forms of content on social media websites and publishing that s[a]me content.” See ’997 Patent at 1:19-21.

Based on these factors, a POSITA would have had a bachelor’s degree in Electrical Engineering, Computer Engineering, or Computer Science, and about two years of technical experience with networked video, or equivalent experience and education. *Id.* at ¶ 34.

## V. CLAIM CONSTRUCTION

In construing claim terms, the Board must determine the scope of the claims by giving them their broadest reasonable interpretation (“BRI”) in light of the specification as they would be interpreted by one of ordinary skill in the art.<sup>7</sup> *TriVascular, Inc. v. Samuels*, 812 F.3d 1056, 1062 (Fed. Cir. 2016) (citing *In re Cuozzo Speed Techs.*, 793 F.3d 1268, 1279–80 (Fed. Cir. 2015)). Under the BRI standard, words of the claim are given their plain meaning unless it would be inconsistent with the specification and prosecution history. *See Straight Path IP Grp., Inc. v. Sipnet EU S.R.O.*, 806 F.3d 1356, 1362 (Fed. Cir. 2015).

It is not reasonable to construe individual words of a claim without considering the context in which those words appear. *See Trivascular*, 812 F.3d at 1062. Instead, it is the “use of the words in the context of the written description

---

<sup>7</sup> On May 9, 2018, the USPTO issued a notice of proposed rulemaking (83 FR 21221) proposing to amend the rules for IPR proceedings by replacing the BRI standard for unexpired claims, with an approach that follows *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (*en banc*) (“*Phillips* standard”). This response first applies the existing BRI standard to claim construction. If the construction of a term in the ’997 Patent would differ under the *Phillips* standard in a way that impacts the analysis set forth herein, a *Phillips* standard construction is also provided.



and customarily by those of skill in the relevant art that accurately reflects both the ‘ordinary’ and ‘customary’ meaning of the terms in the claims.” *Id.* (citing *Ferguson Beauregard/Logic Controls, Div. of Dover Res., Inc. v. Mega Sys., LLC*, 350 F.3d 1327, 1338 (Fed. Cir. 2003)).

Patent Owner does not concede that Petitioner’s claim constructions are appropriate. However, the points on which Patent Owner disagrees do not appear to meaningfully impact Dr. Olivier’s analysis (Ex. 2008 at ¶ 44) or the issues addressed in detail below. As such Patent Owner does not propose alternate or additional constructions for purposes of this proceeding.

**VI. GROUNDS 1-2: NASSIRI AND BRADFORD DO NOT RENDER OBVIOUS PROVIDING A CONTENT CAPTURE USER INTERFACE WITHIN DISPLAYED INSTANCES OF A FIRST [GUI] ... IN RESPONSE TO A USER SELECTION OF A LINK INCLUDED IN A GRAPHICAL USER INTERFACE ... WHEREIN THE CONTENT CAPTURE USER INTERFACE IS PROVIDED WITHIN A FRAME DISPLAYED IN THE FIRST [GUI]**

Ground 1 and Dr. Almeroth’s testimony in support thereof depend on a combination of Nassiri and Bradford as disclosing the following elements of independent claims 20 and 31:

- “[20.1.3] in response to a user selection of a link included in a graphical user interface that includes display elements hosted on the web server system” (Pet. at 27-30 (citing Ex. 1007 at ¶¶ 129-138); *see also* Pet. at 18-21 (citing Ex. 1007 at ¶¶ 103-106);

- “[20.2.1] wherein the content capture user interface is provided within a frame displayed in the first graphical user interface” (Pet. at 30-31 (citing Ex. 1007 at ¶¶ 139-140); *see also* Pet. at 18-21 (citing Ex. 1007 at ¶¶ 103-106));
- “[31.1.3] in response to a user selection of a link included in a graphical user interface that includes display elements hosted on the web server system” (Pet. at 54 (referring back to the Petition’s explanation of claim element [20.1.3]); and
- “[31.2.1] wherein the content capture user interface is provided within a frame displayed in the first graphical user interface” (Pet. at 54-55 (referring back to the Petition’s explanation of claim element [20.2.1])).

Ex. 2008 at ¶¶ 45, 91. Specifically, the Petition relies on Nassiri’s disclosure of an iframe that automatically displays a video recorder, and Bradford’s disclosure of a link targeting an iframe, to contend that the above-referenced claim features would have been obvious to a POSITA as of May 2012. *Id.* However, for the reasons explained by Dr. Olivier and set forth in more detail below, “a POSITA would not have been motivated to modify Nassiri with Bradford’s teachings as proposed in the Petition and by Dr. Almeroth,” and in fact “would have instead been motivated to avoid those changes so as to not restrict or interfere with Nassiri’s purpose.” *Id.* at ¶ 92.

**A. Nassiri does not disclose a link to an iframe**

Nassiri discloses two different ways for executable instructions in a webpage to include instructions for video capture (Ex. 2008 at ¶ 46), in which “[t]he executable instructions for video capture 115 . . . may or may not be embedded within the executable instructions for website display.” Ex. 1009 at ¶ [0018].

In the first case, the video capture instructions are *not* embedded. Ex. 2008 at ¶ 47 (quoting Ex. 1009 at ¶ [0018]). Rather, a link is provided (*e.g.*, in an email) to a separate video capture page: “In some examples, the executable instructions for video capture 115 include a link to a separate video capture page.” *See* Ex. 1009 at ¶ [0018]. Dr. Almeroth does not assert that this first case corresponds to the claims of the ’997 Patent. Ex. 2008 at ¶ 47.

In the second case, Nassiri uses an iframe to embed the instructions for video capture in the web page provided by the enterprise computing system: “For example, an HTML iframe may be used to embed a video recorder in a web page provided by the enterprise computing system 110.” *See* Ex. 1009 at ¶ [0019]. As explained by Dr. Olivier, “[t]his iframe directly embeds the instructions for video capture into the current webpage, such that the video capture interface is automatically loaded into the iframe when the webpage is loaded.” Ex. 2008 at ¶ 48. Specifically, the instructions for video capture are retrieved from the Universal Resource Locator (“URL”) at <http://record.videogenie.com/media/> as src attribute

indicates. *See* Ex. 1009 at ¶ [0019]. Nassiri’s “embedded link” is the web address for the video capture interface that is included in the ‘src’ attribute for the iframe code, “such that the link is *never* displayed on the webpage or selected by a user.” Ex. 2008 at ¶ 48. Dr. Almeroth recognizes this functionality in his declaration: “When the *contributor computing system accesses the enterprise computing system’s webpage* with that inline frame code, the ‘src’ tag and its corresponding URL value calls the executable instructions for video recording hosted on the video host computing system, which causes *a video recorder interface to be displayed at the contributor computing system.*” Ex. 1007 at ¶ 84 (emphasis added); *see also* Ex. 2008 at ¶ 49.

Thus, when the iframe html code in a webpage is displayed at the contributor system, the video recorder is automatically displayed in the iframe, meaning that “the link to the video recorder software is *not* displayed on the webpage or selected by a user.” Ex. 2008 at ¶¶ 49-50.

#### **B. Nassiri’s iframe cannot be targeted by a link**

As explained by Dr. Olivier, Nassiri’s iframe code would need to be modified before it could ever be targeted by a link, at least because Nassiri’s iframe does not include the optional ‘name’ attribute. Ex. 2008 at ¶ 51 (quoting Ex. 1009 at ¶ [0019] and citing Ex. 1007 at ¶ 83). “The absence of the ‘name’ attribute means it would have been impossible for Nassiri to contain a link to this iframe.” Ex. 2008 at ¶ 52

(pointing out the concession implicit in Dr. Almeroth's reliance on Bradford to modify Nassiri at ¶¶ 136-137 of Ex. 1007). For this reason, Nassiri does not disclose "providing, on a first webpage, a[n imbedded] link to media recorder software stored on a video management server system; [or] receiving a request to invoke the media recorder software within a [frame included in a] displayed instance of the first webpage." Ex. 2008 at ¶ 52.

**C. Dr. Almeroth's opinions rest on a mischaracterization of Nassiri**

Dr. Almeroth asserts that "[w]hen Bradford's teachings are considered in light of Nassiri, a POSITA would have understood that, for example, the link to the executable instructions for video recording on a webpage would target an iframe on the webpage using the target attribute, and the video recorder would be loaded inside the inline frame of the webpage having the name specified in the target attribute." Ex. 1007 at ¶ 137. But this is misleading. Ex. 2008 at ¶ 53. There is no disclosure in Nassiri for a link which when clicked could update only a portion of the webpage with the iframe, nor can there be. "Because the iframe disclosed in Nassiri does not contain a name attribute, there can be no other link anywhere in Nassiri which can reference this iframe." *See Supra*, §§ VI.A-VI.B. As Bradford explains, it is the name attribute that makes an iframe capable of being a target for a link. Ex. 2008 at ¶ 53. And again, Dr. Almeroth agrees: "Bradford also describes the use of the '*name*' attribute *for targeting inline frames*, such that content from a particular link

on a webpage can be loaded into a specific iframe.” *See* Ex. 1007 at ¶ 99 (emphasis added); *see also id.* at ¶ 136 (relying on Bradford for use of the ‘name’ attribute of an iframe to target the iframe with a link); *see also* Ex. 2008 at ¶ 54.

The Petition and Dr. Almeroth thus turn to Bradford to supply the missing link. Ex. 2008 at ¶ 55. But modifying Nassiri as suggested would directly and needlessly interfere with Nassiri’s purpose, without offering any corresponding benefit.

**D. Nassiri’s overarching purpose is to entice and enable users into recording video responses**

Nassiri’s stated purpose is “to obtain authentic marketing materials from customers or other individuals” and, in particular, “promotional videos may be received directly from customers or other individuals.” Ex. 1009 at ¶ [0015]; *see also* Ex. 2008 at ¶ 56. Nassiri describes two ways in which its system receives a request “to display or otherwise access a video recorder.” *Id.* at ¶ [0030].

- “the request may be a *request* initiated by a contributor *to access a standalone video recorder site*” (*id.* (emphasis added)); or
- “the request may come from an enterprise in accordance with embedded code in another of the enterprise’s sites or content providing applications” (*id.*).

Ex. 2008 at ¶ 56. In the first option, a user intentionally requests the video recorder:

“the request may accordingly be initiated by the contributor computing system 130.”

Ex. 1009 at ¶ [0030]; *see also* Ex. 2008 at ¶ 56. In the second option, the enterprise

intentionally loads the video recorder: “the request may accordingly be initiated by

. . . or the enterprise computing system 130.” Ex. 1009 at ¶ [0030]; *see also* Ex.

2008 at ¶ 56. In either, the entity requesting the video recorder *intends* to request

the video recorder. Ex. 2008 at ¶ 56.

**E. A POSITA would not have modified Nassiri based on the teachings of Bradford as the Petitioners have described**

The Petition suggests modifying Nassiri’s iframe to add a name attribute as described in Bradford. Pet. at 18-21, Pet at 27-31 (claim elements [20.1.3] and [20.2.1]), and 54-55 (claim elements [31.1.3] and [30.2.1]). But the addition of the ‘name’ attribute is not enough to provide the features missing from Nassiri because “adding a name attribute to the iframe of Nassiri does not provide for a link to this iframe.” Ex. 2008 at ¶ 57. Because “there was no name for the iframe in Nassiri, there can be no link [in Nassiri] which targets this iframe.” *Id.* Importantly, *this means that Nassiri does not already disclose a link that targets its iframe.* *Id.* The Petition never asserts that a POSITA would have added such a link, and instead relies on Nassiri’s generic teachings of links.

Nevertheless, the Petition and Dr. Almeroth contend that “[w]hen Bradford’s teachings are considered in light of Nassiri, a POSITA would have understood that, for example, the link to the executable instructions for video recording on a webpage would target an iframe on the webpage using the target attribute, and the video recorder would be loaded inside the inline frame of the webpage having the name specified in the target attribute.” Ex. 1007 at ¶ 137; *see also* Pet. at 30 (citing Ex. 1007 at ¶ 137).

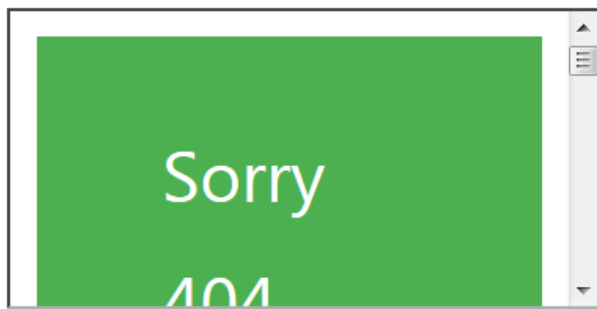
Dr. Almeroth offers no example of a modified version of Nassiri’s HTML code that would implement a link on the webpage with the iframe that would call the video recorder into the iframe. Ex. 2008 at ¶ 58. Assuming for the sake of argument that the Petition and Dr. Almeroth had proposed adding such a link, doing so would not have been obvious to a POSITA. *Id.* at ¶¶ 59-81.

Assuming such a link were added to the webpage with Nassiri’s iframe, it would presumably reference the instructions for video recording on a webpage, <http://record.videogenie.com/media/>, and load that URL into the iframe with the newly added ‘name’ attribute. Ex. 2008 at ¶ 58. However, as Dr. Olivier explains, that begs the question—unanswered by the Petition or Dr. Almeroth—of what to do with the ‘src’ attribute that Nassiri’s iframe already includes. *Id.* at ¶ 59. “If the src attribute was left just as it was in the example from Nassiri, then the video recorder at <http://record.videogenie.com/media/> would automatically load and display in the



iframe.” *Id.* And, if the iframe automatically loads the video recorder, then adding a link to re-load that video recorder would completely undercut all of the purported benefits that Dr. Almeroth asserts. *See* Pet. at 18-21 (citing Ex. 1007 at ¶¶ 103-106. Specifically, the “result would be two separate loads of the exact same software on the webpage,” as Dr. Olivier illustrates at paragraphs 72-74 of his declaration. *See* Ex. 2008 at ¶¶ 71-73; *see also id.* at ¶¶ 60-70 (explaining tools and process to generate the illustrations). Re-loading the same video recorder that had previously been loaded into the iframe “which would make no sense to a POSITA, as it is extremely wasteful of resources for no gain.” Ex. 2008 at ¶ 73.

If instead the URL for Nassiri’s video recorder were removed and the ‘src’ attribute left blank, then the iframe would serve no purpose when the webpage initially loaded. Ex. 2008 at ¶¶ 74-75 Specifically, if the target reference is removed and the src attribute is left blank, then an error would occur, as shown below.



[Do you want to load the video capture software?](#)

**Note:** Because the target of the link matches the name of the iframe, the link will open in the iframe.

Ex. 2008 at ¶ 76. If instead the src attribute were removed entirely, the iframe would also perform no function when the webpage with the iframe first loads, as it would simply be empty as shown below:



[Do you want to load the video capture software?](#)

**Note:** Because the target of the link matches the name of the iframe, the link will open in the iframe.

Ex. 2008 at ¶¶ 77-78.

As Dr. Olivier explains, “[t]his large blank space in the middle of the webpage would be confusing to users and would not facilitate the capture of promotional videos, which is a goal of Nassiri.” *Id.* at 79. Rather, it too would give the impression to users that an error had occurred. *Id.*

But Nassiri’s entire point was to present the video recorder to contributors to facilitate the submission videos. Ex. 2008 at ¶ 80. And Nassiri provides only two paths to the video recorder: the user decides to record a promotional video and then requests the video recorder (meaning there is no point in asking again), or the enterprise has pre-embedded the video recorder in a webpage served to a user (and the presentation of the webpage itself is the request). *Id.* (citing Ex. 1009 at ¶ [0030]). Nonsensically, the changes proposed in the Petition and Dr. Almeroth’s

declaration would “stop the user in his tracks rather than making it easy for the user to provide the requested video.” Ex. 2008 at ¶ 80. That is the opposite of what a POSITA would have desired, which was “to make webpages easier to use, not more difficult.” *Id.* A POSITA “would have been acutely aware that adding steps and difficulty would negatively impact the number of user promotional videos captured by Nassiri.” *Id.* Because the proposed modifications to Nassiri would have inhibited and slowed the loading of a video recorder, a POSITA would have reasonably expected those modifications to lower the capture rate of videos and thereby frustrate the purpose of Nassiri’s system. *Id.* As such, a POSITA would have been strongly motivated to **not** make these changes. *Id.* at ¶ 81.

**F. Dr. Almeroth’s asserted motivations for his proposed modifications to Nassiri simply did not exist in Nassiri’s system**

The Petition also refers to Dr. Almeroth’s assertions of reasons a POSITA allegedly would have been motivated to modify Nassiri with the teachings of Bradford. *See* Pet. at 20-21 (citing Ex. 1007 at ¶ 105-106). Dr. Almeroth’s contentions do not change the fact that neither Nassiri nor Bradford discloses or suggests receiving a video stream at a server. Nor should they be given any weight, at least because none are supported by objective evidence. Ex. 2008 at ¶ 82. Nevertheless, each purported motivation to combine Nassiri and Bradford also fails substantively.

First, the Petition relies on Dr. Almeroth's contention that:

only users who expressed an intention to record a video—by clicking the link—would cause the video recording software to execute thereby sparing valuable resources on the video host computing system

*See* Pet. at 20 (citing Ex. 1007 at ¶ 105). However, as Dr. Olivier explains, “[t]his is misguided and ignores the teachings of Nassiri.” Ex. 2008 at ¶ 84. As explained in Sections VI.A and VI.D above, Nassiri discloses only two types of requests to load the video recorder, which are both *intentional*:

- “the request may be a *request* initiated by a contributor *to access a standalone video recorder site*” (*id.* at ¶ [0030] (emphasis added)); or
- “the request may come from an enterprise in accordance with embedded code in another of the enterprise’s sites or content providing applications” (*id.*).

Ex. 2008 at ¶ 84. “In either instance, there is no mistake: the entity making the request is intending to request the video recorder, such that there is no point in further asking a user whether they wish to record a video.” *Id.* A user who decides not to record a video, will simply not record a video. *Id.* Neither the Petition nor Dr. Almeroth can point to any evidence suggesting that there was any problem here to solve. *Id.*

Additionally, Dr. Olivier explains that “the system of Nassiri is designed to receive large numbers of videos, which are extremely large in size and bandwidth

compared to the loading of links to video recording software that remains hosted on the video host computing system 120.” Ex. 2008 at ¶ 85. As such, “the resources required to simply load the link already embedded in Nassiri’s iframe are relatively miniscule,” meaning that “resources on the video host computing system are relatively cheap compared to the potential loss of promotional videos which his proposed changes would cause.” *Id.* A POSITA would therefore have reasonably concluded that the expected loss of videos, user confusion, and error messages would have outweighed the relatively very small amount of resources potentially saved by Dr. Almeroth’s proposed solution. *Id.*

The Petition also relies on Dr. Almeroth’s contention that his proposed changes allow:

Nassiri’s video recorder interface to be presented to the user within the context of the already-loaded webpage, and without causing the user’s web browser to load an entirely new webpage.

*See* Pet. at 20 (citing Ex. 1007 at ¶ 106). But Nassiri already presented the video recorder interface within an already loaded webpage because this is precisely what Nassiri’s iframe already accomplished. Ex. 2008 at ¶ 87 (citing Ex. 1009 at ¶¶ [0019], [0018], [0030]). As such, “because Nassiri already loaded the video recorder into Nassiri’s iframe—‘without causing the user’s web browser to load an entirely new webpage’—there was simply no motivation to modify Nassiri to do so.” Ex. 2008 at ¶ 87.

The Petition attempts to support this last asserted motivation by contending that: “[l]oading an entirely new webpage is slower and requires more resources (e.g., bandwidth, CPU time) than loading a portion of a webpage, e.g., loading only the iframe portion.” Pet. at 20 (citing Ex. 1007 at ¶ 106). But this contention depends on a false choice. Ex. 2008 at ¶ 88. As explained by Dr. Olivier, “Nassiri already loads its webpage with the iframe, such that there is no simply need to “load an entirely new webpage” to access the video recorder.” *Id.*

The Petition concludes that “[a]ccordingly, it would have been obvious to a POSITA that more efficient resource usage and faster webpage loading times could be achieved by using a link within the webpage that, when selected, loads the video recorder interface within an iframe of the currently displayed webpage.” Pet. at 20-21 (citing Ex. 1007 at ¶ 106). However, as explained above, the system resources required to load the webpage are so miniscule relative to those required to receive, process, and redistribute videos that no reasonable POSITA would be motivated by the savings. *See Supra*, § VI.F; *see also* Ex. 2008 at ¶ 89. To the contrary, a POSITA would have avoided making the proposed modification because doing so would have been expected to make it more difficult for users to submit videos and therefore reduce the number of videos received, which would have directly interfered with Nassiri’s purpose. *See Supra*, §§ VI.E And VI.F; *see also* Ex. 2008 at ¶ 89.

**G. Nassiri and Bradford do not render obvious elements [20.1.3] and [20.2.1] of claim 20, or elements [31.1.3] and [31.2.1] of claim 31**

For the foregoing reasons, the asserted combination of Nassiri and Bradford does not render obvious claim elements:

- “[20.1.3] in response to a user selection of a link included in a graphical user interface that includes display elements hosted on the web server system” (Pet. at 27-30 (citing Ex. 1007 at ¶¶ 129-138); *see also* Pet. at 18-21 (citing Ex. 1007 at ¶¶ 103-106);
- “[20.2.1] wherein the content capture user interface is provided within a frame displayed in the first graphical user interface” (Pet. at 30-31 (citing Ex. 1007 at ¶¶ 139-140); *see also* Pet. at 18-21 (citing Ex. 1007 at ¶¶ 103-106);
- “[31.1.3] in response to a user selection of a link included in a graphical user interface that includes display elements hosted on the web server system” (Pet. at 54 (referring back to the Petition’s explanation of claim element [20.1.3])); and
- “[31.2.1] wherein the content capture user interface is provided within a frame displayed in the first graphical user interface” (Pet. at 54-55 (referring back to the Petition’s explanation of claim element [20.2.1])).

Ex. 2008 at ¶¶ 90-93. And, because all other claims addressed in Grounds 1-2—claims 21-30 and 32-35—are dependent claims, they also require the elements recited in the independent claim from which each depends. The proposed combination of Nassiri, Bradford, and Zhu (and Tosh.0) therefore also fails to

disclose or suggest all features of any of these dependent claims. *Id.* As such, the patentability of claims 20-35 should be upheld for this additional reason.

**VII. GROUND 2: A POSITA WOULD NOT HAVE BEEN MOTIVATED TO COMBINE TOSH.0 WITH NASSIRI, BRADFORD, AND ZHU**

The Petition alleges that the combination of Nassiri, Bradford, and Tosh.0 renders claims 28, 30, and 33 obvious. Pet. at 58. However, at least “because there is no indication that Nassiri would be a useful source of videos for Tosh.0, and Tosh.0 itself does not otherwise suggest even compatibility with Nassiri’s system, a POSITA simply would not have been motivated to combine Nassiri and Tosh.0.” Ex. 2008 at ¶¶ 94-100.

**A. Tosh.0 describes purely manual review and collection of videos**

Tosh.0 is a New York Times article that describes a Comedy Central television show that broadcasts short video clips found by Comedy Central employees, and individually *pulled* from YouTube—*not* submitted to Comedy Central for inclusion in the show. See Ex. 1017 at 2/3. Tosh.0 does not suggest that the show asks for or otherwise seeks submissions. Ex. 2008 at ¶ 95. The videos are instead “amateur Internet videos” that two full-time Comedy Central employees manually search for on YouTube. Ex. 1017 at 2/3. “The scouring of YouTube takes two full-time researchers, ‘who spend most of their time online, searching for the worst and the weirdest and the funniest clips.’” See *id.* “The researchers add suitable



clips to a database of sorts that can be mined by writers and producers.” *See id.* Tosh.0 contains no suggestion of user submission to Comedy Central, no suggestion of automated selection, and no suggestion of any other automation that might in any way be compatible with Nassiri. Ex. 2008 at ¶ 95.

**B. A POSITA would not have been motivated to combine Tosh.0 with Nassiri**

The Petition contends Nassiri’s disclosure of a “set top box” is sufficient disclosure of a “connect[ion] to a television for displaying traditional television programming” to motivate a POSITA to combine it with Tosh.0, a non-technical newspaper article exalting a television program that includes playback of video clips from the Internet. Pet. at 58-59. However, while Nassiri mentions that its system “may be implemented as any of a variety of devices including, but not limited to . . . set top boxes” (Ex. 1009 at ¶ [0016]), this does not mean such a set top box is the type that plays conventional television programming. Ex. 2008 at ¶ 96. Dr. Almeroth conceded as much his deposition, admitting that “set top box” does not necessarily imply traditional television programming. Ex. 2009 at 53:25-55:13.

Tosh.0 discloses manual review of videos by “two full-time researchers, who spend most of their time only, searching” for video clips to select for use in a television show. *See* Ex. 1017 at 3/3; *see also* Ex. 2008 at ¶ 97. Tosh.0 purposefully relies on manual review and selection of video clips, depending upon a human’s

sense of humor to filter out “the worst and the weirdest and the funniest clips.” *See id.*

As such, as Dr. Olivier explains, “a POSITA looking to combine Nassiri with another reference would find no connections between these two references sufficient to suggest combining them.” Ex. 2008 at ¶ 98. Nor is there any reason to think Tosh.0’s full-time reviewers—searching for “the worst and the weirdest and the funniest clips”—would find anything of interest in Nassiri’s customer videos. Ex. 2008 at ¶ 99; *see also* Ex. 1017 at 3/3 ( “both intentionally and unintentionally funny,” as determined by “professional funny-video watchers”).

For at least the foregoing reason, Nassiri, Bradford, and Tosh.0 do not render obvious any of claims 28, 30, and 33.

## VIII. CONCLUSION

For the foregoing reasons, Petitioner has failed to invalidate any of the challenged claims on any of the instituted Grounds.

Dated: June 29, 2018

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

/Eagle H. Robinson/

Eagle H. Robinson (Reg. No. 61,361)

*Lead Counsel for Patent Owner*

**CERTIFICATE OF WORD COUNT**

Pursuant to 37 C.F.R. § 42.24(a)(i), the undersigned certifies that this Paper—exclusive of the table of contents, table of authorities, certificate of service, and this certificate of word count—includes 8,653 words.

/Eagle H. Robinson/

Eagle H. Robinson (Reg. No. 61,361)

**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on June 29, 2018, complete copies of VidStream LLC's Patent Owner Response and the accompanying Exhibits 2004-2009 were served on the following:

David L. McCombs, Reg. No. 32,271 Haynes and Boone, LLP 2323 Victory Ave. Suite 700 Dallas, TX 75219 T: 214-651-5533 F: 214-200-0853	Gregory P. Huh, Reg. No. 70,480 T: 972-739-6939 Theodore M. Foster, Reg. No. 57,456 T: 972-739-8649 Raghav Bajaj, Reg. No. 66,630 T: 512-867-8520 Jamie H. McDole, Reg. No. 69,875 Haynes and Boone, LLP 2323 Victory Ave. Suite 700 Dallas, TX 75219 F: 214-200-0853  Sonal Mehta, <i>pro hac vice</i> Durie Tangri LLP 217 Leidesdorff St. San Francisco, CA 94111 T: 415-362-6666 F: 415-236-6300
---	---

via email (by consent), as follows:

[david.mccombs.ipr@haynesboone.com](mailto:david.mccombs.ipr@haynesboone.com)  
[gregory.huh.ipr@haynesboone.com](mailto:gregory.huh.ipr@haynesboone.com)  
[ipr.theo.foster@haynesboone.com](mailto:ipr.theo.foster@haynesboone.com)  
[raghav.bajaj.ipr@haynesboone.com](mailto:raghav.bajaj.ipr@haynesboone.com)  
[Jamie.mcdole@haynesboone.com](mailto:Jamie.mcdole@haynesboone.com)  
[smehta@durietangri.com](mailto:smehta@durietangri.com)

/Eagle Robinson/

Eagle Robinson (Reg. No. 61,361)