UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.
Petitioner,
v.

AFFINITY LABS OF TEXAS, LLC Patent Owner

Patent No. 9,444,868
Issued: September 13, 2016
Filed: January 23, 2015
Inventors: Russell W. White/Kevin R. Imes
Title: System to Communicate Media

Inter Partes Review No. IPR2017-00122

PATENT OWNER'S PRELIMINARY RESPONSE

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Patent Trial and Appeal Board U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450



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IV.	Legal Standard	8
V.	Netflix and its expert take inconsistent and speculative positions regarding the meaning and scope of the challenged claims	8
A.	Netflix bears the burden to show obviousness of the challenged claims.	.10
В.	Netflix cannot establish obviousness where its expert's analysis of the meaning and scope of the challenged claims is based on speculation.	.12
	1. Netflix's expert testified that several terms of the challenged claims were "confusing" and as such, he would have to "guess" to find their scope and meaning.	.12
	2. Netflix was required to identify corresponding structure for the terms it alleges are construed under § 112 ¶ 6.	
VI.	Netflix failed to properly analyze the differences between the independent claims and the prior art, instead incorporating significant analysis by reference.	.16
A.	Netflix has not met its burden to show all limitations are obvious for Grounds 1 and 2	.20
VII.	Netflix's petition is redundant of the exact same art and argument already before the Examiner	.23
VIII	Conclusion	.27



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37 C.F.R. § 42.104(b)(3)	14, 15
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37 C.F.R. § 42.108(c)	8

Exhibit List

Exhibit No.	Description
Ex. 2001	Amended Declaration of Nader Mir in Support of Netflix's Opening Claim Construction Brief
Ex. 2002	Netflix's Opening Claim Construction Brief
Ex. 2003	Excerpts of Transcript for Markman Hearing held in Netflix, Inc. v. Affinity Labs of Texas, LLC
Ex. 2004	Excerpts from the Prosecution History of U.S. Patent No. 9,444,868



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