

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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NETFLIX, INC.  
Petitioner,

v.

AFFINITY LABS OF TEXAS, LLC,  
Patent Owner

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Case IPR2017-00122  
Patent 9,444,868 B2

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**PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE**

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## I. INTRODUCTION

Affinity's Patent Owner Response ("POR") reiterates, verbatim, the unpersuasive arguments it made in the Preliminary Patent Owner Response ("Preliminary Response"). The POR does not address or respond to the Board's preliminary findings in the Institution Decision ("ID"). Nor does the POR provide any additional evidentiary or expert support for those already-rejected arguments. The only new argument Affinity presents is misplaced constitutionality challenge that the Board cannot resolve here.

Substantively, Affinity's POR raises again the same failed arguments the Board already rejected in the Institution Decision. With respect to Grounds 1 and 2, Affinity argues that "[t]he availability of different Internet radio links a user can select in Treyz does not comprise links or network locations to *segments* of the same available media at different output rates as required by the claims." POR at 27. Not so. As the Board held, this argument is unpersuasive because "an available media" is disclosed in Treyz as "songs or stations in playlist or parts of an Internet radio broadcast" and the claimed "segment" is "broad enough to encompass an individual song, video, or station contained within a broader collection of audio or video files." ID at 9-10. The Board concluded that the evidence presented in the Petition "demonstrates sufficiently that the links in Treyz and Fuller are to segments of an available media that are available at different output rates." *Id.* at

12. Affinity's POR does not address its faulty argument or otherwise explain why this limitation is not met and therefore the argument should yet again be rejected.

The POR also repeats Affinity's incorrect belief that Netflix and its expert have taken inconsistent claim construction positions in this IPR and in the related District Court case and, therefore, the Petition's invalidity arguments are speculative. As the Board previously found, Affinity's arguments are misplaced. They raise claim constructions issues that have not been presented to the Board—Affinity has not argued that any of the claim terms are indeed means-plus-function terms. Further, Netflix and its expert, while unable to “identify the precise contours of certain claim limitations before the District Court, provided detailed citations and arguments in this proceeding explaining where each limitation of the challenged claims is disclosed in the recited prior art.” ID at 7. The POR does not present any new claim construction position nor does it address the Board's findings on this issue and therefore these arguments remain unpersuasive.

In sum, neither Affinity's failed substantive arguments nor any of its other arguments made in the POR rebut the Board's preliminary determination that the Petition demonstrates that claims 1-20 of the '868 patent would have been obvious over the cited prior art. Accordingly, these claims should be cancelled.

## II. TREYZ-FULLER DISCLOSES A LIST OF ADDRESSES TO SEGMENTS OF AVAILABLE MEDIA

Affinity’s only substantive challenge to the two instituted Grounds is that the disclosure identified in the Treyz reference supposedly does not disclose “the claim elements, which require generating network links or addresses to segments of an available media.” POR at 26. As mentioned in the Petition, the Board previously found that Treyz discloses “a list of network addresses for a plurality of portions of an available media” resulting in invalidation of the claims of a patent in the same family of the ’868 patent. *See Samsung Elecs. Co. v. Affinity Labs of Texas, LLC*, Case IPR2014-00408, Pet. at 23-24 (PTAB Jan. 31, 2014) (Paper 1) IPR2014-00408; *id.*, ID at 10-12; *see also, Samsung Electronics Co. v. Affinity Labs of Texas, LLC*, Case IPR2014-00407, slip. op. at 22 (PTAB July 20, 2015) (Paper 48). That limitation is materially the same as the limitation at issue here, *e.g.*, “the list includes a first URL for the given segment file and a different URL for the different segment file [of an available media]<sup>1</sup> . . .” Ex. 1001 at 18:65-67 (claim 1).

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<sup>1</sup> Claim 1 contains another limitation, “to receive an HTTP communication from the remotely located requesting device that indicates a desire to access the available media; to send information representing the playlist to the remotely located requesting device . . .” making clear that the independent segment files for

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