

Exhibit 1026

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,
Petitioner,

v.

VIDEOLABS, INC.,
Patent Owner.

Case No. IPR2023-00628

U.S. Patent No. 7,233,790

SUPPLEMENTAL DECLARATION OF ANTHONY WECHSELBERGER

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PETITIONER’S EXHIBIT LIST

Exhibit Number	Description
1001	Patent-at-Issue: U.S. Patent No. 7,233,790 to Kjellberg, “Device Capability Based Discovery, Packaging and Provisioning of Content for Wireless Mobile Devices,” filed June 19, 2003 (“the ’790 patent”).
1002	Declaration of Anthony Wechselberger.
1003	U.S. Patent Application Publication No. 2002/0131404 to Mehta, “Method and System for Maintaining and Distributing Wireless Applications,” filed November 28, 2001 (“Mehta”).
1004	File History of the ’790 patent (Application No. 10/600,746 (’790 patent FH)).
1005	U.S. Provisional Application No. 60/393,024.
1006	U.S. Provisional Application No. 60/392,383.
1007	U.S. Provisional Application No. 60/393,041.
1008	U.S. Provisional Application No. 60/392,999.
1009	C. Schläpfer, M. Kubik, and G. Zavagli, “Mobile Applications with J2ME,” A White Paper, Ericsson Radio Systems AB, July 7, 2001 (“Schlapfer”).
1010	U.S. Patent No. 7,283,811 to Gidron, “System and Method for Aggregation of User Applications for Limited-Resource Devices,” filed on November 15, 2001 (“Gidron”).
1011	U.S. Patent No. 7,266,369 to Moles, “System and Method for Provisioning or Updating a Mobile Station Using Over-The-Air Transfer of Interpreted Byte-Code Program,” filed on April 4, 2000 (“Moles”).
1012	U.S. Patent No. 8,107,937 to Jokinen, “System and Method for Automatic Provisioning Detection and Notification,” filed on July 31, 2001 (“Jokinen”).

1013	U.S. Patent No. 7,093,198 to Paatero, “Skins for Mobile Communication Devices,” filed on August 16, 2001 (“Paatero”).
1014	U.S. Patent Application Publication No. 2002/0069263 to Sears, “Wireless Java Technology,” filed on September 28, 2001 (“Sears”).
1015	U.S. Patent Application Publication No. 2002/0124065 to Barritt, “Mobile Computing System Architecture,” filed on August 6, 2001 (“Barritt”).
1016	U.S. Patent Application Publication No. 2003/0101246 to Lahti, “System and Method for Identifying and Accessing Network Services,” filed on November 29, 2001 (“Lahti”).
1017	EP 1303153B1 to Chanrasiri, “Apparatus and method for selecting software modules in a mobile terminal,” filed on October 8, 2002 (“Chanrasiri”).
1018	<i>Starz Entm’t, LLC v. VL Collective IP, LLC</i> , Joint Claim Construction Statement, pages 1-16 (Dkt. 64).
1019	<i>Unwired Planet, LLC v. Apple, Inc.</i> , Joint Claim Construction Statement, pages 1-7 (Dkt. 199).
1020	<i>VideoLabs, Inc. v. Netflix Inc.</i> , Motion to Dismiss for Failure to State a Claim filed by Petitioner, pages 1-5 (Dkt. 15).
1021	<i>VideoLabs, Inc. v. Netflix Inc.</i> , Opening Brief in Support re Motion to Dismiss for Failure to State a Claim filed by Petitioner, pages 1-31 (Dkt. 16).
1022	<i>VideoLabs, Inc. v. Netflix Inc.</i> , Answering Brief in Opposition re Motion to Dismiss for Failure to State a Claim filed by Patent Owner, pages 1-32 (Dkt. 18).
1023	<i>VideoLabs, Inc. v. Netflix Inc.</i> , Reply Brief re Motion to Dismiss for Failure to State a Claim filed by Petitioner, pages 1-18 (Dkt. 19).

1024	M. Eyer, “The Challenge of a Standard Software API,” 2000 NCTA Tech. Papers, pp. 242-253, May 7-10, 2000.
1025	<i>Starz Entm’t, LLC v. VL Collective IP, LLC</i> , Claim Construction Order, pages 1-4 (Dkt. 88).

The following exhibit was not previously submitted:

1026	Supplemental Declaration of Anthony Wechselberger.
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I. INTRODUCTION

1. My name is Anthony Wechselberger, and I have been retained by counsel for Netflix, Inc. (“Netflix” or “Petitioner”) as an expert witness to provide assistance regarding U.S. Patent No. 7,233,790 (“the ’790 patent”) (Ex. 1001), which I understand has been assigned to VideoLabs, Inc. (“VideoLabs” or “Patent Owner”).

2. I have been asked to opine on whether claims 1-14 of the ’790 patent (the “Challenged Claims”) is anticipated and/or rendered obvious by the prior art, and the understanding of a person of ordinary skill in the art as of June 28, 2002 (“POSITA”). I have personal knowledge of the facts and opinions set forth in this declaration and believe them to be true. If called upon to do so, I would testify competently thereto.

3. In my original declaration filed with the Petition on February 22, 2023 (EX1002; also referred to herein as Ex. 1002 or “Original Declaration”), I provided analysis documenting how certain prior art anticipates certain claims of the ’790 patent and how a combination of prior art rendered obvious the claims of the ’790 patent. In view of the outcome of *Ex Parte* Reexamination, Control No. 90/015,063 (“063 Reexam”), which resulted in claims 1 and 8 being amended, and in view of the Institution Decision rendered by the Board in this IPR proceeding, I have since been asked to provide a supplemental declaration to determine whether the Petition

and evidence cited therein demonstrates that the prior art asserted in the grounds anticipates and renders obvious the elements of amended claims 1 and 8.

4. My opinions are based on my years of education, research and experience, as well as my investigation and study of relevant materials, including those cited herein.

5. I may rely upon these materials, my knowledge and experience, and/or additional materials (including materials cited and relied upon in my Original Declaration) to address any statements or issues raised in the Institution Decision entered in the current IPR proceeding involving the '790 patent. Further, I may also consider additional documents and information in forming any necessary opinions, including documents that may not yet have been provided to me.

6. My analysis of the materials produced in this investigation is ongoing, and I will continue to review any new material as it is provided. The combination of my Original Declaration and this supplemental declaration represents only those opinions I have formed to date. I reserve the right to revise, supplement, and/or amend my opinions stated herein based on new information and on my continuing analysis of the materials already provided.

7. I am being compensated at my standard consulting rate for my time spent working on issues in this matter. I am also being reimbursed for any reasonable and customary expenses associated with my work and testimony. I have no financial

interest in, or affiliation with, Petitioner or Patent Owner. My compensation is not dependent upon the outcome of, or my testimony in, the present IPR or any litigation proceedings.

8. For information surrounding my background and qualifications, as well as information surrounding the legal standards at issue, please refer to Sections II and VI of my Original Declaration. For an overview of the technology background and the '790 patent, please refer to Sections VII and VIII of my Original Declaration. Since this is a supplemental declaration I hereby incorporate the analysis of my Original Declaration in full.

II. PROCEDURAL BACKGROUND

9. As noted in the Institution Decision, the 063 Reexam request was filed on June 23, 2022. *See* Institution Decision, Paper 17 at 3.

10. On February 23, 2023, the Petition and supporting exhibits, including my Original Declaration (EX1002) were filed.

11. I understand that during the 063 Reexam proceedings, the Patent Owner twice amended claims 1 and 8: on March 31, 2023 and again on June 5, 2023. *See* Ex. 2008 (dated March 31, 2023), Ex. 2010 (dated June 5, 2023).

12. On July 5, 2023, Patent Owner filed its Preliminary Response, notifying the Board for the first time of the 063 Reexam. *See* Paper 17 at 3, n. 1. By July 5,

2023, a Notice of Intent to Issue *Ex-Parte* Reexamination Certificate had issued. *See* Ex. 2011 (dated June 20, 2023).

13. On August 11, 2023, the Reexamination Certificate for the '790 patent issued. *See* Ex. 2018. I am informed that the results of the 063 Reexam are as follows: Claims 1 and 8 were amended; claims 3, 5-7, and 10-14 were not reexamined; and claims 2, 4, and 9 were confirmed patentable in view of the prior art asserted in the reexamination proceeding. I understand that original claims 1 and 8 no longer exist because they have been replaced by amended claims 1 and 8. *See* Paper 17 at 18. On October 3, 2023, the Board instituted trial on claims 1-14 of the '790 patent.

III. AMENDED CLAIMS 1 AND 8

14. Amended claims 1 and 8 are both independent claims, and they have no dependent claims.

15. Amended claims 1 and 8 are provided below. Throughout this supplemental declaration, claim language enclosed in heavy double brackets with a strikethrough is language that originally appeared in the '790 patent, but has been deleted and is no longer a part of the patent as a result of the 063 Reexam; claim language printed in italics indicates additions made to the '790 patent.

1[pre] A method of providing access to <i>digital</i> content for use on wireless communication devices, the method comprising:
1[a][1] receiving and storing <i>in a server system</i> a plurality of items of <i>digital</i> content to be made available for use in wireless communication devices used by a plurality of wireless services subscribers,
1[a][2] including receiving <i>and storing</i> a plurality of different implementations of at least one of the items of digital content, where each implementation of any given item of <i>digital</i> content corresponds to a different set of device capabilities; ~~[[and,]]~~
1[b] ~~[[maintaining]]~~ <i>operating the server system to maintain</i> a product catalog containing a description of the items of <i>digital</i> content, <i>wherein</i> the product catalog ~~[[including]]~~ <i>includes</i> , in association with each item of <i>digital</i> content, a reference to each implementation of said item of <i>digital</i> content ~~[[:]]~~ ;
1[c] <i>receiving a request from one of the wireless communication devices;</i>
1[d] <i>in response to the request, selecting a portion of the product catalog to be presented on the one wireless communication device, based in part on device capabilities of the one wireless communication device; and</i>
1[e] <i>presenting the selected portion of the product catalog to the one wireless communication device, such that the selected portion, as presented, provides a single description of each item of digital content in said portion, regardless of a number of implementations that are available for each said item.</i>

8[pre] A system <i>that provides access to digital content for use on wireless communication devices, said system</i> comprising:
8[a] a network interface through which to communicate over a communication network; and
8[b] a download manager to:
8[b][1] receive and store a plurality of items of <i>digital</i> content to be made available for use in wireless communication devices used by a plurality of wireless telecommunications subscribers, including receiving <i>and storing</i> a plurality of different implementations of at least one of the items of <i>digital</i> content, where each implementation of any given item of <i>digital</i> content corresponds to a different set of device capabilities; ~~[[and]]~~
8[c] maintain a product catalog containing a description of the items of <i>digital</i> content, <i>wherein</i> the product catalog ~~[[including]]~~ <i>includes</i> , in association with each item of <i>digital</i> content, a reference to each implementation of said item of <i>digital</i> content ~~[[:]]~~

8[d] <i>receive a request from one of the wireless communication devices;</i>
8[e] <i>in response to the request, select a portion of the product catalog to be presented on the one wireless communication device, based in part on device capabilities of the one wireless communication device; and</i>
8[f] <i>present the selected portion of the product catalog to the one wireless communication device, such that the selected portion, as presented, provides a single description of each item of digital content in said portion, regardless of a number of implementations that are available for each said item.</i>

IV. CLAIM CONSTRUCTION (37 C.F.R. § 42.104(B)(3))

16. For the purposes of this supplemental declaration, for any new claim language added to amended claims 1 or 8 that was not previously in any of the original 14 claims of the '790 patent, I have been asked to assume that no constructions are necessary, and that the ordinary and customary meanings of those claim terms to a POSITA at the time of the alleged invention of the '790 patent apply.

V. APPLICATION OF EVIDENCE IN ORIGINAL DECLARATION TO AMENDED CLAIMS 1 AND 8

17. I confirm that the analysis in my Original Declaration of the original claims that was filed with the Petition, fully address claims 1 and 8 as amended.

18. In the Original Declaration, I identify the following invalidity Grounds for the '790 patent:

Ground 1	Mehta (Ex. 1003) Anticipates Claims 1-4 and 8-11
Ground 2	Mehta (Ex. 1003) in View of Schlapfer (Ex. 1009) Renders Claims 1-14 Obvious

19. As explained below, based on the evidence already presented in the Original Declaration, amended claims 1 and 8 are unpatentable under both Grounds 1 and 2.

A. Amended Claim 1

20. Amended claim 1 has claim elements that are either identical or are nearly identical to the elements in claim 2. I provide a side-by-side comparison of the claim language of amended claim 1 and claim 2 and highlight the claim language in amended claim 1 that does not appear in claim 2.

Amended Claim 1	Claim 2
1[pre] A method of providing access to <i>digital</i> content for use on wireless communication devices, the method comprising:	2[pre] A method of providing access to digital content for use on wireless communication devices, the method comprising:
1[a][1] receiving and storing <i>in a server system</i> a plurality of items of <i>digital</i> content to be made available for use in wireless communication devices used by a plurality of wireless services subscribers,	2[a][1] receiving and storing in a server system a plurality of items of digital content to be made available for use in wireless communication devices used by a plurality of wireless services subscribers,
1[a][2] including receiving <i>and storing</i> a plurality of different implementations of at least one of the items of digital content, where each implementation of any given item of <i>digital</i> content corresponds to a different set of device capabilities; [[and,]]	2[a][2] including receiving and storing a plurality of different implementations of at least one of the items of digital content, where each implementation of any given item of digital content corresponds to a different set of device capabilities;
1[b] [[maintaining]] <i>operating the server system to maintain</i> a product catalog containing a description of the items of <i>digital</i> content, <i>wherein</i> the product catalog [[including]]	2[b] operating the server system to maintain a product catalog containing a description of the items of digital content, wherein the product catalog includes, in

<i>includes, in association with each item of digital content, a reference to each implementation of said item of digital content</i> [[.]];	association with each item of digital content, a reference to each implementation of said item of digital content;
1[c] <i>receiving a request from one of the wireless communication devices;</i>	2[c] receiving a request from a wireless device used by one of the subscribers;
1[d] <i>in response to the request, selecting a portion of the product catalog to be presented on the one wireless communication device, based in part on device capabilities of the one wireless communication device; and</i>	2[d] in response to the request, selecting a portion of the product catalog to be presented to the subscriber, based on device capabilities of the wireless device used by the subscriber; and
1[e] <i>presenting the selected portion of the product catalog to the one wireless communication device, such that the selected portion, as presented, provides a single description of each item of digital content in said portion, regardless of a number of implementations that are available for each said item.</i>	2[e] presenting the selected portion of the product catalog to the subscriber via a wireless network, such that the selected portion, as presented to the subscriber, provides only a single description of each item of digital content in said portion, regardless of the number of implementations of each said item.

1. Amended Claim Elements 1[pre], 1[a][1], 1[a][2], and 1[b]

21. Based on the comparison of the claim language in amended claim 1 and claim 2, amended claim elements 1[pre], 1[a][1], 1[a][2], and 1[b] are identical to claim elements 2[pre], 2[a][1], 2[a][2], and 2[b], respectively. The Board acknowledges that these elements appear to be identical. *See* Paper 17, at 21-22.

22. As to Ground 1, I confirm that the evidence presented in my Original Declaration with respect to claim elements 2[pre], 2[a][1], 2[a][2], and 2[b] (Ex. 1002 at ¶¶ 69-72) and original claim elements 1[pre], 1[a][1], 1[a][2], and 1[b] (Ex.

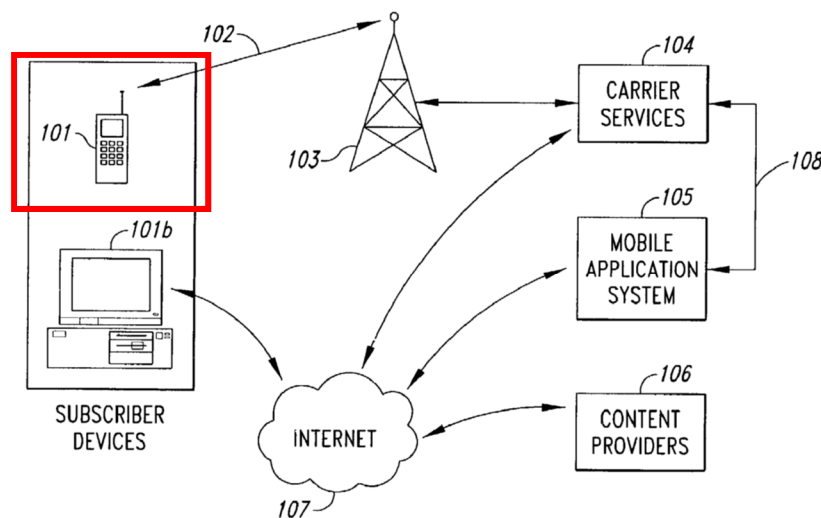
1002 at ¶¶ 63-66) would apply to amended claim elements 1[pre], 1[a][1], 1[a][2], and 1[b]. Thus, the evidence provided in my Original Declaration demonstrates that amended claim elements 1[pre], 1[a][1], 1[a][2], and 1[b] are anticipated by Mehta.

23. Regarding Ground 2, I note that in my Original Declaration, I opine “the elements of claims 1 and 8 are disclosed by Mehta.” Ex. 1002 at ¶ 135. Thus, I confirm that the evidence presented in my Original Declaration with respect to claim elements 2[pre], 2[a][1], 2[a][2], and 2[b] (Ex. 1002 at ¶¶ 98-102) and original claim elements 1[pre], 1[a][1], 1[a][2], and 1[b] (Ex. 1002 at ¶¶ 63-66, 135) would apply to amended claim elements 1[pre], 1[a][1], 1[a][2], and 1[b]. Thus, the evidence provided in my Original Declaration demonstrates that amended claim 1 elements 1[pre], 1[a][1], 1[a][2], and 1[b] are rendered obvious by the combination of Mehta in view of Schlapfer.

2. Amended Claim Element 1[c]

24. Amended claim element 1[c] recites “receiving a request from one of the wireless communication devices,” and element 2[c] recites “receiving a request from a wireless device used by one of the subscribers.” In my Original Declaration, in relation to original claim element 1[a][1], which recites “wireless communication devices,” I opine “in Mehta, the one or more (plurality) of subscriber devices 101 communicate across the wireless network 102 to the wireless carrier services 104, whose services the subscriber has arranged to use.” Ex. 1002 at ¶ 64. In relation to

claim element 2[c], I point to the same subscriber devices 101 that satisfy the “wireless communication devices” claim term in original claim element 1[a][1] and opine that “[a]s is evident from Fig. 1, reproduced below, the MAS 105 receives a request from a wireless device 101.” Ex. 1002 at ¶ 73. I have reproduced Figure 1 of Mehta below and have annotated it with a red box to indicate wireless device 101. See Ex. 1003, Fig. 1.



25. Thus, regarding Ground 1, I confirm that the evidence presented in my Original Declaration with respect to claim element 2[c] and original claim element 1[a][1] (Ex. 1002 at ¶¶ 64, 73, respectively) would apply to amended claim element 1[c]. Other analysis that I provide in my Original Declaration may also apply to amended claim element 1[c], and I reserve the right to rely on those sections, if needed. Accordingly, the evidence provided in my Original Declaration demonstrates that amended claim element 1[c] is anticipated by Mehta.

26. With respect to Ground 2, I note that in my Original Declaration, I opine “the elements of claims 1 and 8 are disclosed by Mehta.” Ex. 1002 at ¶ 135. Thus, I confirm that the evidence presented in my Original Declaration with respect to claim element 2[c] and original claim element 1[a][1] (Ex. 1002 at ¶¶ 103, 73, respectively) and paragraph 135 in Exhibit 1002 would apply to amended claim element 1[c]. Other analysis that I provide in my Original Declaration may also apply to amended claim element 1[c], and I reserve the right to rely on those sections, if needed. Thus, amended claim element 1[c] is rendered obvious by the combination of Mehta in view of Schlapfer.

3. Amended Claim Element 1[d]

27. Amended claim element 1[d] refers to the “one wireless communication device” introduced in amended claim element 1[c]. Thus, I incorporate by reference the analysis above in paragraphs 24-26.

28. Amended claim element 1[d] also requires that the “selecting a portion of the product catalog” be “based *in part* on the device capabilities of the one wireless communications device.” (Emphasis added). The requirement that the selecting a portion of the product catalog be based “in part” is not in claim element 2[d].

29. By including the “in part” language, a POSITA would understand this element to mean that something in addition to device capabilities influences what is to be presented to the one wireless communications device.

30. In my Original Declaration in relation to claim element 2[d], I opine “[u]pon receiving a request from the subscriber, the MAS determines an initial list and ‘filters this initial list based upon subscriber and device capabilities’ . . . to select a portion of the initial list to be presented to the subscriber.” Ex. 1002 at ¶ 74.

31. By using “subscriber capabilities” in addition to “device capabilities” to determine the portion of the initial list to be presented, the “in part” requirement in amended claim element 1[d] has been met.

32. Thus, regarding Ground 1, I confirm that the evidence presented in my Original Declaration with respect to claim element 2[d] (Ex. 1002 at ¶ 74) would apply to amended claim element 1[d]. Other analysis that I provide in my Original Declaration may also apply to amended claim element 1[d], and I reserve the right to rely on those sections, if needed. Accordingly, the evidence provided in my Original Declaration demonstrates that amended claim element 1[d] is anticipated by Mehta.

33. With respect to Ground 2, I note that in my Original Declaration, I opine “the elements of claims 1 and 8 are disclosed by Mehta.” Ex. 1002 at ¶ 135. Thus, I confirm that the evidence presented in my Original Declaration with respect to claim

element 2[d] (Ex. 1002 at ¶ 104) and paragraph 135 in Exhibit 1002 would apply to amended claim element 1[d]. Other analysis that I provide in my Original Declaration may also apply to amended claim element 1[d], and I reserve the right to rely on those sections, if needed. Thus, amended claim element 1[d] is rendered obvious by the combination of Mehta in view of Schlapfer.

4. Amended Claim Element 1[e]

34. Amended claim element 1[e] refers to the “one wireless communication device” introduced in amended claim element 1[c]. Thus, I incorporate by reference the analysis above in paragraphs 24-33.

35. There are other differences in claim language between amended claim element 1[e] and claim element 2[e]. For example, amended claim element 1[e] does not include the “presenting . . . to the subscriber” language, nor does it include that the “selected portion . . . provides *only* a single description of each item of digital content.” (Emphasis added). It is my opinion that a POSITA would determine that the differences between amended claim element 1[e] and claim element 2[e] do not result in a meaningful change in claim scope.

36. In my Original Declaration, in relation to claim element 2[e], I opine “Mehta teaches that ‘the list provided to the subscriber device during application discovery is filtered to display only content that has been verified according to the

procedures” which satisfies amended claim element 1[e]. Ex. 1002 at ¶ 75; *see also* Ex. 1002 at ¶ 77.

37. Thus, regarding Ground 1, I confirm that the evidence presented in my Original Declaration with respect to claim element 2[e] (Ex. 1002 at ¶¶ 75-77) would apply to amended claim element 1[e]. Other analysis that I provide in my Original Declaration may also apply to amended claim element 1[e], and I reserve the right to rely on those sections, if needed. Accordingly, the evidence provided in my Original Declaration demonstrates that amended claim element 1[e] is anticipated by Mehta.

38. With respect to Ground 2, I note that in my Original Declaration, I opine “the elements of claims 1 and 8 are disclosed by Mehta.” Ex. 1002 at ¶ 135. Thus, I confirm that the evidence presented in my Original Declaration with respect to claim element 2[e] (Ex. 1002 at ¶¶ 105-108) and paragraph 135 in Exhibit 1002 would apply to amended claim element 1[e]. Other analysis that I provide in my Original Declaration may also apply to amended claim element 1[e], and I reserve the right to rely on those sections, if needed. Thus, amended claim element 1[e] is rendered obvious by the combination of Mehta in view of Schlapfer.

B. Amended Claim 8

39. Amended claim 8 has claim elements that are either identical or are nearly identical to the elements in claims 2 and 9. I note that in my Original

Declaration, I opine “Mehta anticipates claim 8 in view of substantially the same evidence of anticipation for claim 2.” Ex. 1002 at ¶ 85; *see also* Ex. 1002 at ¶ 135. I provide a side-by-side comparison of the claim language of amended claim 8 and claim 2 and highlight the claim language in amended claim 8 that does not appear in claim 2.

Amended Claim 8	Claim 2
8[pre] A system <i>that provides access to digital content for use on wireless communication devices, said system</i> comprising:	2[pre] A method of providing access to digital content for use on wireless communication devices, the method comprising:
8[a] a network interface through which to communicate over a communication network; and	
8[b] a download manager to:	
8[b][1] receive and store a plurality of items of <i>digital</i> content to be made available for use in wireless communication devices used by a plurality of wireless telecommunications subscribers, including receiving <i>and storing</i> a plurality of different implementations of at least one of the items of <i>digital</i> content, where each implementation of any given item of <i>digital</i> content corresponds to a different set of device capabilities; [[and]]	2[a][1] receiving and storing in a server system a plurality of items of digital content to be made available for use in wireless communication devices used by a plurality of wireless services subscribers,
8[c] maintain a product catalog containing a description of the items of <i>digital</i> content, <i>wherein</i> the product catalog [[including]] <i>includes</i> , in association with each item of <i>digital</i> content, a reference to	2[a][2] including receiving and storing a plurality of different implementations of at least one of the items of digital content, where each implementation of any given item of digital content corresponds to a different set of device capabilities;
	2[b] operating the server system to maintain a product catalog containing a description of the items of digital content, wherein the product catalog includes, in association with each item of digital

each implementation of said item of digital content[[-]]	content, a reference to each implementation of said item of digital content;
8[d] <i>receive a request from one of the wireless communication devices;</i>	2[c] receiving a request from a wireless device used by one of the subscribers;
8[e] <i>in response to the request, select a portion of the product catalog to be presented on the one wireless communication device, based in part on device capabilities of the one wireless communication device; and</i>	2[d] in response to the request, selecting a portion of the product catalog to be presented to the subscriber, based on device capabilities of the wireless device used by the subscriber; and
8[f] <i>present the selected portion of the product catalog to the one wireless communication device, such that the selected portion, as presented, provides a single description of each item of digital content in said portion, regardless of a number of implementations that are available for each said item.</i>	2[e] presenting the selected portion of the product catalog to the subscriber via a wireless network, such that the selected portion, as presented to the subscriber, provides only a single description of each item of digital content in said portion, regardless of the number of implementations of each said item.

1. Amended Claim Element 8[pre]

40. Amended claim element 8[pre] claims a system while claim element 2[pre] claims a method. Otherwise the elements are nearly identical.

41. Regarding Ground 1, I confirm that the evidence presented in my Original Declaration with respect to claim element 2[pre] (Ex. 1002 at ¶ 86) would apply to amended claim element 8[pre]. As cited in claim element 2[pre], Mehta at paragraph [0005] teaches a Mobile Application System (“MAS”). See Ex. 1002 at ¶ 86. Accordingly, the evidence provided in my Original Declaration demonstrates that amended element 8[e] is anticipated by Mehta.

42. Regarding Ground 2, I note that in my Original Declaration, I opine “the elements of claims 1 and 8 are disclosed by Mehta.” Ex. 1002 at ¶ 135. Thus, I confirm that the evidence presented in my Original Declaration with respect to claim element 2[pre] (Ex. 1002 at ¶ 86) and original claim element 1[pre] (Ex. 1002 at ¶ 63) would apply to amended claim element 8[pre]. Thus, the evidence provided in my Original Declaration demonstrates that amended claim element 8[pre] is rendered obvious by the combination of Mehta in view of Schlapfer.

2. Amended Claim Elements 8[a], 8[b]

43. Amended claim elements 8[a] and 8[b] are found in original claim 8. The Board also acknowledges that these elements are found in claim 8. *See* Paper 17, at 24.

44. Regarding Ground 1, I confirm that the evidence presented in my Original Declaration with respect to claim element 8[a] (Ex. 1002 at ¶ 87) would apply to amended claim element 8[a]. I further confirm that the evidence presented in my Original Declaration with respect to claim element 8[b][1] (Ex. 1002 at ¶ 88) would apply to amended claim element 8[b]. Accordingly, the evidence provided in my Original Declaration demonstrates that amended claim elements 8[a] and 8[b] are anticipated by Mehta.

45. Regarding Ground 2, I note that in my Original Declaration, I opine “the elements of claims 1 and 8 are disclosed by Mehta.” Ex. 1002 at ¶ 135. Thus, I

confirm that the evidence presented in my Original Declaration with respect to claim elements 8[a] and 8[b][1] (Ex. 1002 at ¶¶ 87, 8) would apply to amended claim elements 8[a] and 8[b], respectively. Accordingly, the evidence provided in my Original Declaration demonstrates that amended claim elements 8[a] and 8[b] are rendered obvious by the combination of Mehta in view of Schlapfer.

3. Amended Claim Elements 8[b][1], 8[c]

46. Amended claim elements 8[b][1] and 8[c] recite elements that are identical to elements found in claim 9. I provide a chart comparing these elements.

8[b][1] receive and store a plurality of items of <i>digital</i> content to be made available for use in wireless communication devices used by a plurality of wireless telecommunications subscribers, including receiving <i>and storing</i> a plurality of different implementations of at least one of the items of <i>digital</i> content, where each implementation of any given item of <i>digital</i> content corresponds to a different set of device capabilities; ~~[[and]]~~	9[b][2] receive and store a plurality of items of digital content to be made available for use in wireless communication devices used by a plurality of wireless telecommunications subscribers, including receiving and storing a plurality of different implementations of at least one of the items of digital content, where each implementation of any given item of digital content corresponds to a different set of device capabilities;
8[c] maintain a product catalog containing a description of the items of <i>digital</i> content, <i>wherein</i> the product catalog ~~[[including]]~~ <i>includes</i>, in association with each item of <i>digital</i> content, a reference to each implementation of said item of <i>digital</i> content~~[-]~~	9[c] maintain a product catalog containing a description of the items of digital content, wherein the product catalog includes, in association with each item of digital content, a reference to each implementation of said item of digital content;

47. The Board also acknowledges that these elements appear to be identical. *See* Paper 17, at 24-25.

48. Regarding Ground 1, I confirm that the evidence presented in my Original Declaration with respect to claim elements 9[b][2], 2[a][2], and 1[a][2], (Ex. 1002 at ¶¶ 65, 66, 71, 95) would apply to amended claim element 8[b]. I further confirm that the evidence presented in my Original Declaration with respect to claim elements 9[c], 2[b], and 1[b], (Ex. 1002 at ¶¶ 67, 68, 72, 95) would apply to amended claim element 8[c]. Accordingly, the evidence provided in my Original Declaration demonstrates that amended claim elements 8[b] and 8[c] are anticipated by Mehta.

49. With respect to Ground 2, I note that in my Original Declaration, I opine “the elements of claims 1 and 8 are disclosed by Mehta.” Ex. 1002 at ¶ 135. Thus, I confirm that the evidence presented in my Original Declaration with respect to claim elements 9[b][2], 2[a][2], and 1[a][2], (Ex. 1002 at ¶¶ 65, 66, 71, 95) would apply to amended claim element 8[b]. I further confirm that the evidence presented in my Original Declaration with respect to claim elements 9[c], 2[b], and 1[b], (Ex. 1002 at ¶¶ 67, 68, 72, 95) would apply to amended claim element 8[c]. Accordingly, the evidence provided in my Original Declaration demonstrates that amended claim elements 8[a] and 8[b] are rendered obvious by the combination of Mehta in view of Schlapfer.

4. Amended Claim Elements 8[d], 8[e], 8[f]

50. Amended claim elements 8[d], 8[e], and 8[f] recite elements nearly identical to amended claim elements 1[c], 1[d], and 1[e]. I incorporate by reference my analysis above in paragraphs 24 through 38 with respect to amended claim elements 1[c], 1[d], and 1[e].

51. I confirm that the evidence presented in my Original Declaration as identified above with respect to amended claim elements 1[c], 1[d], and 1[e] would apply to amended claim elements 8[d], 8[e], and 8[f], respectively, for both Grounds 1 and 2.

C. Motivation to Combine

52. The opinions and evidence that I provide in my Original Declaration with respect to the motivations to combine Mehta with Schlapfer (Ex. 1002, paragraphs 136 through 141) would apply to amended claims 1 and 8.

VI. CONCLUSION

53. Based on my review of amended claims 1 and 8 and evaluating the evidence and opinions presented in my Original Declaration, as explained above, I confirm that the Petition and evidence cited therein (which includes my Original Declaration) demonstrate that amended claims 1 and 8 of the '790 patent are anticipated by Mehta and would have been obvious to a POSITA in view of Mehta and Schlapfer.

54. I declare under penalty of perjury that the foregoing is true and correct. I declare that all statements made herein of my knowledge are true, and that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed this 17nd day of November, 2023, in Escondido, California.



Anthony Wechselberger