

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,	)	
	)	
Petitioner,	)	Case
	)	IPR2023-00628
vs.	)	
	)	Patent No.
VIDEOLABS, INC.,	)	7,233,790
	)	
Patent Owner.	)	
	)	

Deposition of ANTHONY WECHSELBERGER, taken
remotely via Zoom, in the above-captioned cause,
before Rachel F. Gard, CSR, CCR, RPR, CRR,
commencing at the hour of 8:12 a.m. Pacific on
Thursday, December 7, 2023.

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

1 APPEARANCES (Via Zoom):

2 ON BEHALF OF THE PETITIONER:

3 WILLKIE FARR & GALLAGHER LLP

4 BY: ALIZA GEORGE CARRANO, ESQ.

5 787 7th Avenue

6 New York, New York 10019

7 202.303.1106

acarrano@willkie.com

8

9 ON BEHALF OF THE PATENT OWNER:

10 REICHMAN JORGENSEN LEHMAN & FELDBERG, LLP

BY: MICHAEL MATULEWICZ-CROWLEY, ESQ.

11 400 Madison Avenue

Suite 14D

12 New York, New York 10017

331.208.7170

13 mmatulewicz-crowley@reichmanjorgenson.com

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1 I N D E X

2 WITNESS PAGE

3 ANTHONY WECHSELBERGER

4 Cross-Examination

5 By Mr. Matulewicz-Crowley 4

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7 Redirect Examination

8 By Ms. Carrano 72

9

10 E X H I B I T S

11 EXHIBIT PAGE

12 Number 1001 U.S. Patent No. 7,233,790 7

13

14 Number 1002 Declaration 20

15

16 Number 1003 Mehta reference 20

17

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19

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22

1 (Witness sworn.)

2 MR. MATULEWICZ-CROWLEY: All right. This
3 is Michael Matulewicz-Crowley on behalf of patent
4 owner.

5 WHEREUPON:

6 ANTHONY WECHSELBERGER,
7 called as a witness herein, having been first duly
8 sworn, was examined and testified as follows:

9 CROSS-EXAMINATION

10 BY MR. MATULEWICZ-CROWLEY:

11 Q Can you please state your full name for
12 the record.

13 A Anthony J. Wechselberger.

14 Q So there are a few depositions that
15 I've dropped -- sorry, not depositions, documents
16 I've dropped into the link you should have access
17 to, but you might also have them in physical
18 copies in front of you.

19 So let's just actually first, can you just
20 let me know what you have physical copies of in
21 front of you?

22 A Yes. I was given this package, which

1 contains the '790 patent with the reexam cert, the
2 reference to Mehta and Schlapfer. And the second
3 package, which is a three-leaf binder, which
4 contains my declaration, supplemental declaration,
5 petition, POPR, POPR reply, POPR surreply, and
6 institution decision.

7 Q Okay.

8 MS. CARRANO: Sorry. I'm sorry. I just
9 want to announce myself for the record. Usually
10 we do that at the outset.

11 My name is Aliza George Carrano of Willkie
12 Farr, and I'm here on behalf of petitioner
13 Netflix.

14 Q And just to confirm, Mr. Wechselberger,
15 none of the documents that you just listed have
16 any markings or edits to them, right? They're all
17 clean?

18 A That's correct. I requested a clean set.
19 My working set is not within reach.

20 Q Sounds good.

21 Can you turn -- can you open up the '790
22 patent?

1 A Sure.

2 Okay. I have it.

3 MR. MATULEWICZ-CROWLEY: I'll confess, I
4 don't know the court reporter's or the
5 videographer's preference, but we can just refer
6 to this as Exhibit 1, if that works for you.

7 THE COURT REPORTER: That's fine with me,
8 however you want to call them in the transcript.

9 MR. MATULEWICZ-CROWLEY: Okay. So let's
10 just call the '790 patent Exhibit 1.

11 Q Do you understand, Mr. Wechselberger?

12 MS. CARRANO: Or should we just call it
13 the exhibit number it was in the petition so it
14 all matches up.

15 MR. MATULEWICZ-CROWLEY: That's fair.

16 MS. CARRANO: My suggestion would. I
17 don't know if the '790 patent with the reexam
18 certificate is actually Exhibit 1001, but we can
19 still use that one. I think that should be fine.

20 MR. MATULEWICZ-CROWLEY: I'm fine with
21 just going with it today, and we'll figure it out.

22 MS. CARRANO: Okay.

1 (Exhibit Number 1001 marked for
2 identification.)

3 Q Okay. Great. So can you pull up Exhibit
4 No. 1001, which is the '790 patent?

5 A I have it.

6 Q Okay. Can you go to claim 5 of that
7 patent?

8 A Okay.

9 Q Okay. So do you see that claim 5 requires
10 each provisioning model, includes a provisioning
11 protocol and a corresponding set of provisioning
12 attribute and descriptors for provisioning digital
13 content in wireless devices?

14 A Yes, you read from the claim. I see that.

15 Q Okay. What do you understand
16 "provisioning descriptors" to mean?

17 A I'm going to open my declaration, as soon
18 as I remove it from the three-leaf binder. Claim
19 5, it's page 66. By the way, when you see me
20 looking this way, that's where my realtime is.
21 It's on a separate monitor. I'm just going to
22 refresh the question.

1 MS. CARRANO: I'm going to object to form
2 for this question.

3 A So I address this provisioning descriptor
4 in paragraph 118 of my declaration. This is where
5 I cite to Schlapfer as an obviousness reference
6 and the disclosures within Schlapfer. And
7 Schlapfer discloses in its over-the-air
8 provisioning practice protocol, and within that
9 protocol is an appendix to the MID, MIDP
10 specification and describes how the MIDlets suites
11 can be deployed over the air. Schlapfer discloses
12 a number of MIDlets can be contained in a single
13 JAR file that is optionally accompanied by an
14 application descriptor. Schlapfer discloses an
15 application descriptor is a text file containing
16 selected information from the manifest file
17 together with the total size of the JAR file.

18 So in Schlapfer, the application
19 descriptor is information about the application,
20 and it's my opinion that falls within the claimed
21 provisioning -- I'm sorry, provisioning attributes
22 and descriptor of element 5[b].

1 MR. MATULEWICZ-CROWLEY: I didn't want to
2 cut you off, but can we go off the record for a
3 minute.

4 MS. CARRANO: Sure.

5 (Discussion off the record.)

6 MR. MATULEWICZ-CROWLEY: Okay. We can go
7 back on the record.

8 Q Mr. Wechselberger, I just want to confirm
9 on the record, you closed your realtime window,
10 correct?

11 A That's correct.

12 Q Okay. So you pointed me in your answer to
13 where in your declaration you talked about your
14 opinion regarding Schlapfer and the claim element,
15 but that's not what I asked.

16 So what I asked is: What does
17 provisioning descriptor as used in the '790 patent
18 in claim 5, what does that mean? What does that
19 term mean?

20 MS. CARRANO: Objection. Form.

21 Q I think you just moved to look at a
22 different document. Can you let me know what

1 document you're --

2 A It's the '790 patent.

3 Q Great.

4 A I would say it's simply anything that
5 would describe the provisioning model in some way,
6 provide information about it.

7 Q Okay. What is a provisioning attribute?

8 A I would say similarly, it's a
9 characteristic of the provisioning protocol as
10 claimed.

11 Q Okay. So the provisioning descriptor is
12 something that provides a description of the
13 provisioning model, right?

14 MS. CARRANO: Objection. Form.

15 A Of the provisioning protocol -- the claim
16 says a provisioning protocol in a corresponding
17 set of provisioning attributes and descriptors for
18 provisioning digital content.

19 Q Okay. So a provisioning descriptor is
20 something that has a description of the
21 provisioning protocol?

22 MS. CARRANO: Objection. Form.

1 A Yes.

2 Q And the provisioning attribute is
3 something that has an attribute of the
4 provisioning protocol, right?

5 MS. CARRANO: Objection. Form.

6 A I would agree with that.

7 Q Okay. Claim 5 also recites the term
8 "provisioning models," right?

9 A Yes.

10 Q And when you say Mehta discloses
11 provisioning models, you're pointing to walled
12 garden provisioning, open provisioning, static
13 provisioning, and dynamic provisioning, correct?

14 A I'm looking at paragraph 115 in my
15 declaration where that's discussed.

16 Q Okay. And I might be able to help you
17 out. If you look at the bottom of paragraph 116
18 between pages 68 and 69 ...

19 A Yeah, I'm aware that those are additional
20 citations. But in the middle of that same page,
21 Mehta discloses that provisioning includes
22 packaging and steps needed to ready an application

1 for downloading to a targeted device. And it
2 talks about protocol conversions are performed on
3 the incoming request and outgoing messages to
4 enable communication with the subscriber devices.

5 Mehta then goes on, as you pointed me out,
6 to point to the device identifier in Mehta
7 determines the type and capabilities of the
8 subscriber device from which the request was made
9 and determines whether device capabilities are
10 sufficient to support a specific application.

11 Then Mehta does describe four different
12 types of provisioning models: walled garden, open
13 provisioning, static provisioning, and dynamic
14 provisioning.

15 Q Walled garden provisioning, open
16 provisioning, static provisioning, and dynamic
17 provisioning are, in your opinion, provisioning
18 models disclosed by Mehta, correct?

19 A They would be, yes, as well as the other
20 information that was described earlier in
21 paragraph 115.

22 Q What in paragraph 115 is a provisioning

1 model?

2 A I'm sorry?

3 Q What in paragraph 115 is a provisioning
4 model, besides walled garden provisioning, open
5 provisioning, static provisioning, and dynamic
6 provisioning?

7 A 115, paragraph 115 begins by citing to the
8 '790 patent and its definition of a provisioning
9 model, which is a particular provisioning protocol
10 and a content packaging format.

11 The bulk of what's on page 68 under
12 paragraph 115 is Mehta information which revolves
13 around a provisioning protocol and/or content
14 packaging format. And so what one gets from Mehta
15 is the fact that, for example, customizing and
16 distributing of content includes accommodation for
17 different communications requirements, which is a
18 provisioning protocol.

19 And then later on, it specifically talks
20 about packaging, provisioning includes packaging
21 and steps need to ready an application for
22 downloading. So Mehta explicitly talks about

1 those components of a provisioning model that are
2 cited in the '790 patent, in particular a
3 provisioning protocol and a content packaging
4 format.

5 Q You say at the beginning of paragraph 115,
6 that a provisioning model includes a particular
7 provisioning protocol in a content packaging
8 format, right?

9 A I don't say that. I'm citing from the
10 '790 patent.

11 Q Well, I mean, it does say that in your
12 declaration, right? It's a quote, but just to be
13 clear --

14 A Yes.

15 Q -- it does say that in your declaration?

16 A Yes.

17 Q You're not saying that a provisioning
18 model is the same thing as a provisioning
19 protocol, right?

20 A According to the '790 patent, the
21 provisioning model is comprised or includes a
22 provisioning protocol and content packaging

1 format. To answer your question, provisioning
2 model and particular provisioning protocol are two
3 different things according to the '790 patent.

4 Q All right. So on page 68 of your
5 declaration, you talk about a number of
6 provisioning protocols and packaging, right?

7 A I talk about that Mehta discloses both of
8 those items. A provisioning protocol is discussed
9 by Mehta, disclosed by Mehta, as well as
10 provisioning -- as a packaging format that are
11 both --

12 Q The examples -- sorry. The examples of a
13 provisioning model in Mehta, the only ones you
14 point to are walled garden provisioning, open
15 provisioning, static provisioning, and dynamic
16 provisioning, correct?

17 A No, I disagree with that because, once
18 again, the provisioning model is comprised of two
19 different components. One is the provisioning
20 protocol, which is a protocol that's been
21 customized for, according to Mehta, or as
22 disclosed by Mehta, customizing and distributing

1 of content includes accommodation for different
2 communication requirements.

3 A person of ordinary skill in the art
4 would understand that within the concept of a
5 provisioning protocol is that item we call
6 protocol, and certainly part of protocol is
7 whatever communication requirement you need to
8 communicate between two devices.

9 And so at the end of the paragraph, the
10 provisioning models -- wall garden, open, static,
11 and so forth -- are I would say are coin names for
12 what Mehta says are examples of provisioning
13 models.

14 But technically and more meaningfully or
15 as meaningful is the fact that on page 68 are
16 citations that shows Mehta really does talk about
17 customizing a communication protocol and it also
18 explicitly talks about customizing the packaging
19 process for preparing an application for
20 downloading.

21 Q But the only provisioning models
22 explicitly identified in Mehta are the four,

1 walled garden provisioning, open provisioning,
2 static provisioning, and dynamic provisioning?

3 MS. CARRANO: Objection.

4 A No, I still continue to disagree. Those
5 are examples of --

6 Q Can you identify any other provisioning
7 models that are explicitly identified in Mehta
8 besides those four?

9 A If one could read the disclosure within
10 Mehta and find examples, disclosures of developing
11 a specific provisioning protocol and Mehta does
12 that by saying it includes -- I'm sorry, the
13 customizing and distributing of content includes
14 the accommodation of different communication
15 requirements, that's a provisioning protocol.
16 That's one-half of the definition of a model.

17 And then Mehta also describes provisioning
18 includes packagings and the steps needed to ready
19 an application for downloading to a target device.
20 Those two features, those two functionalities are
21 what the '790 patent discloses that comprise a
22 provisioning model.

1 So you can -- you don't need to put a
2 label on it like a wall garden, although you can,
3 but it's more generally the customizing for a
4 particular protocol and customizing for a
5 particular packaging. That is what '790 says is a
6 provisioning model.

7 Q Okay. The only two labels for a
8 provisioning model disclosed in Mehta are walled
9 garden, open, static, and dynamic, right? And I
10 apologize. I think I misspoke because I said two,
11 so let me strike that and reask the question.

12 The only labels for provisioning models
13 disclosed in Mehta are walled garden, open,
14 static, and dynamic, correct?

15 MS. CARRANO: Objection. Form.

16 A Those are the only -- I would agree. We
17 can call those labels, yes, four labels that he
18 has disclosed.

19 Q Okay. In your view, is anything that has
20 a provisioning protocol and a content packaging
21 format a provisioning model?

22 MS. CARRANO: Objection. Form.

1 A Ask the question again.

2 Q Is anything that has a provisioning
3 protocol and a content packaging format a
4 provisioning model?

5 MS. CARRANO: Objection.

6 A I would say that any implementation that
7 has it featured to develop a particular
8 provisioning protocol and content packaging format
9 would be included, would fit the description of a
10 provisioning model as described in the '790
11 patent.

12 Q So let me give like an example to kind of
13 help explain my question. You might say a wicker
14 basket includes woven fiber, right. And that's
15 true. But not everything with woven fiber is a
16 basket. You need more things to make it a basket.

17 So what I'm trying to figure out is, you
18 say a provisioning model includes a particular
19 provisioning protocol in a content packaging
20 format, and you quote from the patent. Is
21 anything, as long as it has a particular
22 provisioning protocol and a content packaging

1 format, is it automatically a provisioning model
2 or as a provisioning model, does it need more?

3 MS. CARRANO: Objection. Form.

4 A Well, according to the '790 patent, it
5 does not need more. It could, because the word
6 "include" is there, it could -- more features
7 might be in a provisioning model. But it appears
8 to me that since it explicitly says it includes a
9 particular provisioning protocol and a content
10 packaging format, that you would need to have an
11 application or implementation that can do at least
12 those two things. And if it can do those two
13 things, then it would fit -- then it would be
14 under the '790 patent's interpretation, a
15 provisioning model.

16 Q Can you turn to paragraph 8 of Mehta?

17 A Paragraph 8, you said?

18 (Exhibit Number 1002 marked for
19 identification.)

20 (Exhibit Number 1003 marked for
21 identification.)

22 Q Yes. And Mehta is Exhibit 1003, and your

1 declaration we were just looking at is
2 Exhibit 1002.

3 A Okay. I have paragraph 8 of Mehta in
4 front of me.

5 Q Paragraph 8 talks about walled garden
6 provisioning, right?

7 A Yes.

8 Q Paragraph 8 also explains that one way of
9 doing walled garden provisioning is to use static
10 provisioning, correct?

11 A I know he talks about static and dynamic.
12 I've got to find the locations.

13 Q And I'm not trying to trick you, but he
14 does talk about it in paragraph 8. You're, of
15 course, free to look in Mehta more generally. I'm
16 not trying to limit you, but there is -- the
17 reference that I was referring to is in
18 paragraph 8.

19 MS. CARRANO: Objection. Form.

20 A I'm sorry. I missed that. Yes, he talks
21 about one way of -- in some embodiments, the
22 published content is pre-provisioned, which is

1 static provisioning.

2 Q Static provisioning is one embodiment of
3 walled garden provisioning, right?

4 A I would agree with that.

5 Q And dynamic provisioning is another
6 embodiment of walled garden provisioning, right?

7 A That's what Mehta explains, yes.

8 Q There is no static provisioning in an open
9 provisioning model, correct?

10 MS. CARRANO: Objection. Form. Scope.

11 A The question is again?

12 Q There's no static provisioning in an open
13 provisioning model, correct?

14 MS. CARRANO: Objection. Form. Scope.

15 A Mehta doesn't expressly disclose either
16 way. The concept behind static provisioning is
17 that the content is pre-provisioned. Under open
18 provisioning, Mehta discloses how the content is
19 located via a URL and the MAS intercepts the
20 request and downloads the content from the URL
21 address, inspects the content, and if it's
22 successful, then provisions the content for the

1 subscriber.

2 But it does not say whether or not it
3 could not having also provisioned that content, go
4 ahead and pre -- and go ahead and post it or store
5 it in the MAS. If one were to do that, then it
6 would be pre-provisioned for the next person that
7 would ask for it. I don't see any overlap there,
8 but I don't see anything that says it couldn't
9 happen.

10 Q The initial open provisioning request that
11 the MAS intercepts, that can't be -- that can't
12 have been pre-provisioned and therefore static
13 provisioned, correct?

14 MS. CARRANO: Objection. Form.

15 A That would seem to be correct.

16 Q So if content has already been submitted
17 to the MAS, then Mehta uses walled garden
18 provisioning, right?

19 MS. CARRANO: Objection. Scope.

20 A The question again?

21 Q If content has already been submitted to
22 the MAS, then Mehta uses walled garden

1 provisioning, correct?

2 MS. CARRANO: Same objection.

3 A Well, I mean, that's what Mehta says. In
4 one embodiment, at least, walled garden
5 provisioning is provided and submitted to the MAS,
6 according to your question, inspected, and if
7 approved, published to the MAS. So that's one --
8 that's certainly what walled garden includes.

9 Q So in Mehta, if content has already been
10 submitted to the MAS, walled garden provisioning
11 is used?

12 MS. CARRANO: Same objection.

13 A Well, the last sentence of paragraph 8
14 says, and this is under walled garden, it says:
15 In other embodiments, the published content is
16 provisioned dynamically upon download request. So
17 that would not be an example of pre-provisioning.

18 Q Well, in that embodiment, the content is
19 not pre-provisioned but it has already been
20 submitted to the MAS to be inspected for malicious
21 or banned code and for the presence of particular
22 API, et cetera, correct?

1 A I don't think I can agree with that
2 because the sentence says in other embodiments,
3 the published content is provisioned dynamically
4 upon a download or request. That would seem to be
5 upon request from content, someone who wants to
6 access content.

7 Q Okay. Well, let's walk through
8 paragraph 8 then. So paragraph 8 says that in
9 walled garden provisioning, content is submitted
10 to the MAS, inspected for malicious or banned code
11 or for the presence of particular API, approved,
12 and published by the MAS, correct?

13 A Yes.

14 Q And then it provides two different
15 embodiments after that: static provisioning and
16 dynamic provisioning, correct?

17 A It appears that under the walled garden
18 embodiment, there are apparently two, consider it
19 sub embodiments, two different flavors of that
20 walled garden embodiment, one he calls static and
21 the other is called dynamic.

22 Q So walled garden provisioning is when

1 content has already been submitted to and
2 published by the MAS, right?

3 MS. CARRANO: Objection. Form.

4 A That appears to be correct because in
5 paragraph 8, the second sentence says: Content is
6 submitted to the MAS, inspected, and published.
7 And then so the keyword, the word I'm keying on is
8 "published by the MAS."

9 And then in the first static embodiment,
10 it says: The published content is pre-positioned.

11 And then finally. It says: In other
12 embodiments the published content is provisioned
13 dynamically upon download request. So in both
14 static and dynamic, the word "published" is
15 attached to the content and according to the
16 opening of paragraph 8, that is done by the MAS.

17 Q So in Mehta, if the content has already
18 been submitted to and published by the MAS, then
19 walled -- then that's walled garden provisioning,
20 correct?

21 MS. CARRANO: Objection. Form.

22 A Well, walled gardening would certainly

1 include that. I don't know that it's restricted,
2 but it certainly says those two characteristics
3 are referred to as walled garden.

4 Q And if the content has not been submitted
5 to and published by the MAS but is instead just
6 out on the Internet, then in Mehta, it uses open
7 provisioning, correct?

8 A Read the question back, please.

9 Q If the content has not been submitted to
10 and published by the MAS but instead is out on the
11 Internet, then in Mehta, it uses open
12 provisioning, correct?

13 MS. CARRANO: Objection. Form.

14 A At least -- I would say yes, at least the
15 first time the content is accessed by the MAS. As
16 I had said earlier, once the MAS has done its
17 thing, it could publish it. There's nothing that
18 says that couldn't happen.

19 Q But when the content has not been
20 published by the MAS, Mehta discloses using open
21 provisioning?

22 MS. CARRANO: Objection. Form.

1 A Well, I'm reading paragraph 9 where it
2 discusses the open provisioning, and it doesn't --
3 MAS does not disclose the published descriptor of
4 that content.

5 Q So when the content has not been published
6 by the MAS, Mehta discloses using open
7 provisioning, correct?

8 MS. CARRANO: Same objection.

9 A Well, once again, looking through some of
10 the paragraphs after paragraphs 8 and 9, I don't
11 see disclosure of open provisioning being --
12 including the concept of publishing the content.
13 It really is focused on provisioning of the
14 content. So I would conclude that Mehta uses the
15 term "open provisioning" to refer to at least the
16 processes that are involved when the content is
17 first accessed via URL.

18 Q Okay. So whether the MAS uses walled
19 garden provisioning or open provisioning depends
20 on whether the content has been published by the
21 MAS?

22 MS. CARRANO: Same objection.

1 A I mean, I don't know how to -- I can only
2 interpret and explain what Mehta discloses. I
3 can't -- I can't go inside the head of this
4 inventor and understand all four corners. I can
5 only interpret what is disclosed, and so I
6 wouldn't narrow -- I wouldn't assume -- I would
7 assume what is explained here is what he means.
8 But your question seems to go beyond what is
9 disclosed here, so ...

10 Q Okay. I'm not meaning to go beyond what
11 is disclosed in Mehta, so there must be some
12 miscommunication then.

13 Mehta discloses that MAS uses walled
14 garden provisioning when the MAS has published the
15 application, correct?

16 A I would say MAS uses the term "walled
17 garden" for information that has been -- for
18 content that's been pre-provisioned.

19 I've lost track of the question again,
20 what was it.

21 Q Okay. So whether the MAS uses walled
22 garden provisioning or open provisioning depends

1 on whether the content has been published by the
2 MAS, right?

3 MS. CARRANO: Same objection.

4 A Well, walled garden is certainly used in
5 conjunction with published content. And as I said
6 in paragraph 9, which begins to talk about open
7 provisioning, at least includes content that has
8 not yet been published by the MAS. And it talks
9 about and is accessed through a URL. The MAS
10 intercepts the request and then provisions the
11 content for the user.

12 Q Okay. So if I'm -- from what's disclosed
13 in Mehta if I'm looking at content A and it has
14 been published by the MAS, Mehta discloses that
15 the MAS is going to use walled garden
16 provisioning, right?

17 MS. CARRANO: Objection. Form.

18 A That fits under the description of what
19 Mehta says for walled garden.

20 Q And if I'm looking at content B and it's
21 not been published by the MAS, then Mehta
22 discloses using open provisioning, right?

1 A Again, paragraph 9 begins by describing
2 open provisioning is provided when the subscriber
3 browses to a site on the network, specifies a
4 request by URL, the MAS intercepts this request,
5 downloads the content, and takes over from there,
6 inspects it and then provisions it. So it doesn't
7 say anything about whether it goes on to publish
8 that, so one doesn't know what happens other than
9 that, although it is provisioned for the
10 subscriber.

11 Q But, Mr. Wechselberger if I'm looking at
12 content B and it's not already been published by
13 the MAS, then Mehta discloses using open
14 provisioning?

15 MS. CARRANO: Same objection.

16 A Ask the question again.

17 Q If I'm looking at a piece of content and
18 it's not already been published by the MAS, then
19 Mehta discloses using open provisioning, right?

20 MS. CARRANO: Same objection.

21 A Well, paragraph 9 describes content that's
22 apparently not been pre-provisioned or otherwise

1 published but becomes what is accessed via URL and
2 then provisioned for the consumer, and that's all
3 under open provisioning. Maybe that answers the
4 question.

5 Q Close but not quite. The question is: If
6 I'm looking at a piece of content and it's not
7 already been published by the MAS, Mehta discloses
8 using open provisioning then, correct?

9 MS. CARRANO: Same objection.

10 A The thing that has me a little less
11 willing to limit my answer to what you're trying
12 to get out of me is the fact that under the walled
13 garden embodiment, the published content is
14 provisioned dynamically upon download request.
15 And there's a part of that which sounds similar to
16 what is going on under open provisioning.

17 Q Well, the difference there is that in that
18 dynamic provisioning in paragraph 8, it's
19 referring to content that's already been published
20 by the MAS but has just not been pre-provisioned
21 for a particular user, it still needs to be
22 dynamically provisioned, right?

1 MS. CARRANO: Objection. Form.

2 A That seems like a use case that would fall
3 under that sentence, I would agree with that.

4 Q Right. So if there's a piece of content
5 that's not already been published by the MAS, then
6 Mehta discloses to use open provisioning, correct?

7 MS. CARRANO: Same objection.

8 A Maybe we can get there. That's certainly
9 an option following the disclosure of Mehta.

10 Q What is an option?

11 A To use open provisioning if it's not
12 already been published in the MAS.

13 Q Okay. And if it's not already been
14 published in the MAS, then you can't use walled
15 garden provisioning, right?

16 A If it hasn't yet been published but it has
17 been accessed through open provisioning, it makes
18 sense that you could, in fact, follow the open
19 provisioning processing with walled garden
20 publishing of that same piece of content.

21 Q Well, walled garden is defined by the fact
22 that the content has already been published,

1 right?

2 MS. CARRANO: Objection. Form.

3 A Walled garden, all I'm saying is the open
4 provisioning process could be followed by a
5 publishing process.

6 Q So I understand you can do something
7 different later. But if you have content that has
8 not been published, then when you access it, you
9 use open provisioning; you can't use walled garden
10 provisioning, correct?

11 MS. CARRANO: Same objection.

12 A Your question again?

13 Q If content has not been published, then
14 when you access it, you can't use walled garden
15 provisioning to access it that first time, right?

16 MS. CARRANO: Same objection.

17 A I don't think I can agree with that
18 because, again, I'm zeroing in on the last
19 sentence of paragraph 8. It says: Other
20 embodiments, the published content is provisioned
21 dynamically upon download request.

22 In paragraph 9, there is clearly a request

1 to URL, I mean. And so there's a request to the
2 URL and the MAS intercepts that request, inspects
3 the content, and if the inspection is successful,
4 the MAS then provisions the content for the
5 subscriber. Now, that could be -- that could
6 happen under the last sentence of paragraph 8,
7 another dynamic -- which is a walled garden
8 example, embodiment.

9 Q Well --

10 A Other embodiments, the published content
11 is provisioned dynamically, and so open
12 provisioning is another way of provisioning.

13 Q Mr. Wechselberger, that's not true, right?
14 Because explicitly that embodiment only refers to
15 the published content, which is referring in
16 paragraph 8 to content published by the MAS,
17 correct?

18 MS. CARRANO: Objection. Form.

19 A Paragraph 8 isn't constrained as to what
20 it means for content to be published, for
21 example --

22 Q So your position is that the last sentence

1 of paragraph 8, when it says the published
2 content, it's referring to just any content
3 published anywhere on the Internet, not just
4 content published by the MAS?

5 MS. CARRANO: Objection. Form.

6 A I'm not that -- no, it does need to be
7 published by the MAS. But it doesn't -- there's
8 no constraint on what that actually means. It
9 could be published by putting it out somewhere
10 where it is accessed by a URL.

11 Q Right. But if content is published by the
12 MAS, then you use walled garden provisioning,
13 right?

14 MS. CARRANO: Objection. Form.

15 A In -- yes, once it's published, you would
16 use walled garden provisioning as --

17 Q And if it's -- sorry, continue. Was there
18 more? Sorry.

19 A I'm sorry. If it's been published by
20 the -- if it's already been published by the MAS,
21 then it's considered content that is under the
22 walled garden umbrella.

1 Q And if not published by the MAS, then it's
2 considered content that's under the open
3 provisioning umbrella?

4 MS. CARRANO: Objection. Form.

5 A I would say that if it's not been
6 published by the MAS, and I said -- I call that
7 under the MAS umbrella, then open provisioning
8 content would be content that has not yet been
9 published by the MAS.

10 Q Okay.

11 A And that falls under an umbrella that
12 Mehta calls open, content is open provisioning.

13 Q Okay. So looking at these last sentences
14 of paragraph 8 that we've talked about, that if
15 the content has already been provisioned -- I'm
16 sorry. So just to reset here, so now I'm going to
17 talk about static and dynamic provisioning. So
18 with that background, if the content has already
19 been provisioned, Mehta discloses using static
20 provisioning, correct?

21 MS. CARRANO: Objection. Form.

22 A Yes.

1 Q And if the content has not been
2 provisioned, Mehta uses dynamic provisioning,
3 correct?

4 MS. CARRANO: Objection.

5 A If the content has not been
6 pre-provisioned, then -- which is called static,
7 then Mehta provides an alternate processing
8 approach, which he calls dynamic, where the
9 content is provisioned dynamically.

10 Q So in Mehta, whether static provisioning
11 occurs or dynamic provisioning occurs, that just
12 depends on whether the content has already been
13 pre-provisioned or not, correct?

14 A Yes, I would agree with what he says.

15 MR. MATULEWICZ-CROWLEY: Okay. It's been
16 about an hour, do you want to take a break?

17 MS. CARRANO: Sure.

18 (A short break was taken.)

19 Q Mr. Wechselberger, can you please turn to
20 Figure 4 of the '790 patent?

21 A Okay.

22 Q Figure 4 shows what Mehta calls or refers

1 to as application discovery, right?

2 A I'm sorry. Was it the '790 patent or the
3 Mehta patent?

4 Q Oh, that's a great point. I did direct
5 you to the '790 patent, but I meant to direct you
6 to Mehta. Can you look at Figure 4 of Mehta?

7 A Okay.

8 Q Figure 4 in Mehta shows what Mehta refers
9 to as application discovery, right?

10 A Yes.

11 Q Okay. Can you turn to paragraph 40 of
12 your declaration?

13 A Four zero?

14 Q Four zero. And I think we just or I just
15 lost a video feed for you, Mr. Wechselberger. I
16 don't know if others did as well.

17 MS. CARRANO: I did see.

18 A All right.

19 Q Great. Sorry about that.

20 A I wonder how that happened.

21 Okay. Paragraph 40 of my dec, yes.

22 Q So paragraph 40 of your declaration

1 describes how, in Mehta, the MAS makes a list of
2 applications by filtering out applications that
3 are incompatible with the user's device, correct?

4 A I'm going to ask you to hold that
5 question. The gardener is outside my window, so
6 just give me 20 seconds.

7 Q No problem.

8 A In the meantime, I will read paragraph 40
9 so I'm not losing time.

10 Okay. What was the question again?

11 Q Paragraph 40 of your declaration describes
12 Mehta's disclosure that the MAS makes a list of
13 applications by filtering out applications that
14 are incompatible with the user's device, correct?

15 A Were you reading from my declaration?

16 Q No.

17 A Oh. What's the question again?

18 Q Paragraph 40 of your declaration describes
19 how in Mehta, the MAS makes a list of applications
20 by filtering out applications that are
21 incompatible with the user's device, correct?

22 MS. CARRANO: Objection. Form.

1 A Well, you're directing me to paragraph 40,
2 and then you're reciting back -- I'll quote a
3 citation which is not in paragraph 40. So I'm
4 confused as to exactly what I'm being asked.

5 Q Why do you think I'm reciting a quotation?

6 A Well, if you're not, you're using words
7 that are not in paragraph 40, so that's what's
8 confusing me.

9 Q Okay. Yeah. I mean, to be frank I can
10 read what's in paragraph 40, so I'm trying to ask
11 you questions about paragraph 40 so I'm using
12 different words.

13 So to reask the question, in paragraph 40
14 of your declaration, you're describing how in
15 Mehta, the MAS makes a list of applications by
16 filtering out applications that are incompatible
17 with the user's device, correct?

18 MS. CARRANO: Objection. Form.

19 A I say in paragraph 40 when the MAS
20 receives a request from the subscriber, it
21 determines an initial list and filters this
22 initial list based upon subscriber device and

1 capabilities. So that filtering of the list based
2 upon subscriber and device capabilities would seem
3 to align with what you're calling incompatible
4 with.

5 Q Okay. This process that you're describing
6 in Mehta, that's the application discovery
7 process, right?

8 A So now looking at the text associated with
9 Figure 4, which you directed me to in Mehta, which
10 is paragraph 67 of Mehta, I'm just going to look
11 at that.

12 I would agree with you, yes, I would agree
13 with that.

14 Q Application discovery can only occur with
15 walled garden provisioning, right?

16 MS. CARRANO: Objection. Form.

17 A What's the question again, please?

18 Q Application discovery can only occur with
19 walled garden provisioning, correct?

20 MS. CARRANO: Objection. Form.

21 A Well, I see in Mehta that Figure 3 text
22 description near the opening talks about these

1 steps are applicable to either provisioning
2 scenario using walled garden or open provisioning.

3 As pertains to Figure 4, I see no constraint.

4 Q Okay. In walled garden -- strike that.

5 In application discovery, a list of
6 applications is output at a high level, right?

7 A The list of applications is generated.

8 Q Okay. That's fine. So kind of logically,
9 you can't generate a list of available
10 applications under open provisioning, which by its
11 nature, is requesting an application that has not
12 been published by the MAS, right?

13 MS. CARRANO: Object to form.

14 A Ask the question again.

15 Q So logically, you can't generate a list of
16 available applications in open provisioning
17 because open provisioning by its nature means
18 requesting an application that's not been
19 published by the MAS, right?

20 MS. CARRANO: Objection to form.

21 A Well, the opening of paragraph 67 of Mehta
22 disagrees with that. It says, as mentioned, one

1 of the requests supported by the MAS is to
2 retrieve a list of available applications that can
3 be downloaded to the subscriber device. This
4 process is referred to as application discovery in
5 Figure 4.

6 Like I said, Figure 4 text does not
7 include any constraints, whether it's talking
8 about whether that has to be open or not.

9 Q But how can the MAS retrieve a list of
10 available applications of -- applications that it
11 has no idea exist because it's not been published
12 by the MAS?

13 A Well, I mean, you're asking me -- I
14 could -- I would be speculating because you're
15 asking about a constraint that's not disclosed in
16 Mehta.

17 Q Yeah, I think I am asking about the things
18 disclosed in Mehta. But regardless, you know, go
19 ahead and answer the question to the best of your
20 ability.

21 MS. CARRANO: Objection. Form.

22 Q And I'm happy to repeat the question.

1 A Yes, please. Yeah.

2 Q You can't go through application discovery
3 and thereby generate a list of available
4 applications in opening -- in open provisioning
5 because open provisioning means requesting an
6 application that's not been published by the MAS?

7 MS. CARRANO: Same objection.

8 A Well, I would agree with you that the
9 description of Figure 4 would certainly include
10 walled garden applications that have already been
11 published. But as to whether or not it's
12 exclusively limited to that and doesn't -- would
13 not apply to open, the open technique, I haven't
14 actually thought about that before. It's not in
15 my report. It wasn't material to where I
16 developed my opinions, so I don't know that I
17 would agree that constraint exists here because
18 it's not stated.

19 Q So you don't know?

20 A I would have to think about it and study
21 the Mehta top to bottom before I could come to a
22 conclusion.

1 Q Okay. But sitting here right now in your
2 deposition, this is my time to ask you questions,
3 just to be clear, you don't know?

4 MS. CARRANO: Object to form.

5 A I don't see a constraint voiced in Mehta
6 that would agree with the constraint you're trying
7 to place on it.

8 Q Okay. In application discovery, the MAS
9 returns a list of applications that are available
10 and appropriate based on the subscriber
11 application profiles and device profiles, right?

12 A Read the question again, please.

13 Q In application discovery, the MAS returns
14 a list of applications that are available and
15 appropriate based on the subscriber application
16 profiles and device profiles, right?

17 A In paragraph 67, MAS discloses in one
18 embodiment the list is formed from a subscriber
19 personalized list if one is available. Otherwise,
20 the MAS supplies a default list. The MAS can
21 filter this initial list based upon subscriber and
22 device capabilities. I think that's what you

1 asked me and that is what is disclosed.

2 Q Okay. So application discovery filters
3 out applications that are incompatible with a
4 user's device, correct?

5 MS. CARRANO: Objection. Form.

6 A I would agree with that.

7 Q Mehta doesn't disclose that application
8 discovery can pick out some subpart of an
9 application, right, slice and dice it?

10 MS. CARRANO: Objection. Form.

11 A I'm not sure I understand the question.

12 Q What about it do you not understand?

13 A I don't know what you mean by "slice and
14 dice."

15 Q Okay. So Mehta doesn't disclose that
16 application discovery can filter out just a
17 portion or a subpart of an application, right?

18 MS. CARRANO: Same objection.

19 A I don't see that disclosed in
20 paragraph 67.

21 Q That's not how application discovery in
22 Mehta works, right?

1 A That's a feature I do not find disclosed
2 as being attached to application discovery.

3 MR. MATULEWICZ-CROWLEY: Aliza, I think we
4 lost an objection. And in general, sometimes I
5 have a hard time hearing you. I don't know where
6 your microphone is. I didn't notice before this
7 one, and maybe it was written down. Just in
8 general, sometimes I kind of lose you. I want to
9 make sure everything gets written down.

10 MS. CARRANO: Okay. I see my objections
11 are coming up on realtime.

12 MR. MATULEWICZ-CROWLEY: Okay.

13 MS. CARRANO: But I'm not sure why it's
14 not working well on your end.

15 MR. MATULEWICZ-CROWLEY: No, it might be
16 there. It wasn't there for a bit when I thought
17 to say it, and I looked back and it is there. I
18 want to make sure. Sometimes when you're looking
19 down I can't hear you.

20 MS. CARRANO: Oh, okay.

21 MR. MATULEWICZ-CROWLEY: I'm really not
22 trying to do anything, just make sure there's not

1 like an audio issue.

2 MS. CARRANO: Okay.

3 Q Okay. Can you go back to paragraph 9 of
4 Mehta?

5 A I'm there.

6 Q So paragraph 9 describes that in open
7 provisioning, the content for the subscriber is
8 verified to make sure that the content is
9 compatible with the user's device, right?

10 MS. CARRANO: Objection. Form.

11 A The question again?

12 Q Paragraph 9 describes that in open
13 provisioning, the content for the subscriber is
14 verified to make sure that the content is
15 compatible with the user's device, right?

16 MS. CARRANO: Same objection.

17 A The last sentence of paragraph 9 says: In
18 some embodiments, the requested content is also
19 verified for the subscriber's device to increase
20 the likelihood the content will execute properly
21 on the device. I would say like your question,
22 you used the word "compatible," so that would

1 affirm your question based on that sentence.

2 Q Okay. So going back to application
3 discovery, as a result of application discovery in
4 Mehta, the user gets a list of applications that
5 are compatible with the user's device, right?

6 MS. CARRANO: Object to form.

7 A The question again, please?

8 Q As a result of application discovery,
9 Mehta discloses the user gets a list of
10 applications that are compatible with the user's
11 device, right?

12 MS. CARRANO: Objection. Form.

13 A As far as I can see what is disclosed
14 about application discovery is the generation and
15 the filtering of a list. It doesn't say anything
16 about what the subscriber actually gets.

17 Q Okay. So in application discovery, a list
18 of applications compatible with the user's device
19 is generated?

20 MS. CARRANO: Same objection.

21 A Well, it's a little bit different than
22 what you asked. It says, for example, the MAS

1 may -- sorry. The list is formed from
2 subscriber's personalized list if one is available
3 or the MAS can supply a default list. In
4 Step 404, the MAS filters this list, initial list,
5 based upon subscriber and device capabilities.
6 For example, the MAS may analyze various profiles,
7 for example, a subscriber profile, a device
8 profile, and an application profile to determine
9 whether the subscriber is authorized. So it's
10 more than just device capabilities.

11 Q Okay. So in application discovery, a list
12 of applications that are compatible with the
13 user's device, as well as -- well, actually,
14 sorry, let me rephrase that.

15 In application discovery, a list of
16 applications are generated based on filtering out
17 applications that are incompatible with the user's
18 device, as well as based on other things?

19 A I would agree with that.

20 Q Okay. Do you agree that Mehta discloses
21 returning that list of compatible applications to
22 the user?

1 A So I think a good way to respond to your
2 question would be to look in my report. For
3 example, claim limitation No. 2, which calls for
4 receiving a request from a wireless device used by
5 one of the subscribers, followed by selecting a
6 portion of the product catalog to be presented.

7 So that should get us to an answer to your
8 question.

9 Q Mehta discloses returning the list of
10 compatible applications to the user, correct?

11 MS. CARRANO: Objection. Form.

12 A So in paragraph 74 of my declaration, I
13 believe I have a statement that responds to the
14 question. Top of page 47 has a quote from Mehta:
15 As mentioned, one of the requests supported by the
16 MAS is to retrieve a list of available
17 applications that could be downloaded to the
18 subscriber's device. Upon receiving a request
19 from the subscriber, the MAS determines an initial
20 list, filters this initial list based upon the
21 subscriber and device capabilities to select a
22 portion of the initial list to be presented to the

1 subscriber.

2 So the list, the filtered list is
3 presented to the subscriber.

4 Q Okay. When a user selects one of those
5 applications from the filtered list, the MAS
6 doesn't re-check that that application is
7 compatible, correct?

8 MS. CARRANO: Objection.

9 A I'm thinking about your question. One
10 more time.

11 Q When a user selects one of the
12 applications from the filtered list, the MAS
13 doesn't re-check that that selected application is
14 compatible with the user's device, correct?

15 MS. CARRANO: Objection. Form.

16 A Since the list has been filtered before it
17 was presented and has been confirmed to be
18 compatible, I don't know why it would re-check
19 because I don't think that Mehta discloses any
20 such thing.

21 Q When a user -- different question. When a
22 user selects one of the applications from the

1 filtered list, the user will never get a different
2 application than the one they requested, right?

3 MS. CARRANO: Objection. Form.

4 A Ask the question again.

5 Q When a user selects one of the
6 applications from the filtered list, the user will
7 never get a different application than the one
8 they requested, right?

9 MS. CARRANO: Same objection.

10 A Certainly nothing like that is disclosed
11 by Mehta that I can recall.

12 Q And even if there's -- so putting aside
13 application discovery, in general when a user
14 selects or requests an application in Mehta, Mehta
15 doesn't describe any situation where the user
16 would get a different application than the one
17 they requested, right?

18 A I don't think Mehta describes anything
19 like that. But without reading Mehta cover to
20 cover, there might be a corner case where it talks
21 about that, but that would have been outside my
22 report.

1 Q Okay. Can you turn to your -- back to
2 your declaration.

3 A I have my declaration in front of me, but
4 I don't know where you want me to go.

5 Q Yep. Can you turn to paragraph 66?

6 A I'm there.

7 Q You say that Mehta describes that the
8 device capability is also examined to determine,
9 and then you continue on. But do you see that
10 part of paragraph 66?

11 A Yes, I see it.

12 Q If the MAS determines -- or strike that.
13 Let me start again.

14 If the MAS examines the requested
15 application to determine whether it can run
16 satisfactorily on the subscriber's or the user's
17 device and determines that it can't, then Mehta
18 discloses that the application is just not
19 provided to the user, right?

20 A So I'm going to reference Mehta because
21 that piece, that specific issue is not directly
22 addressed in my dec. So let's see. The question

1 again is what does the MAS do if the application
2 requested is found not to be compatible?

3 Q Yes.

4 A So at the end of paragraph 64, MAS [sic]
5 talks about Figure 3 and discloses that in
6 Step 307 of Figure 3, the MAS determines whether
7 the subscriber's request has been successfully
8 verified and, if so, continues in Step 308, else
9 it declines the request and turns to Step 302 to
10 await another request.

11 Q So really fast, you said at the end of
12 paragraph 64, MAS talks about Figure 3. You meant
13 Mehta, correct?

14 A Yes, I meant Mehta. Mehta talks about the
15 MAS.

16 Q Right. Just wanted to -- for the record.
17 Thank you for that.

18 Right. So in Mehta, if the MAS determines
19 that the rest of the application can't run on the
20 subscriber device, then Mehta describes that the
21 MAS does not return the application to the user,
22 right?

1 MS. CARRANO: Objection. Form.

2 A MAS -- what is disclosed, that the MAS
3 declines the request.

4 Q So in general when a user requests an
5 application, if that application isn't compatible
6 with the user's device, then in Mehta, the
7 application isn't provided to the user, right?

8 MS. CARRANO: Objection. Form.

9 A In general, I would agree with that.

10 Q Okay. So the claims of the '790 patent
11 require a product catalog, right?

12 A Yes. I was just confirming all the
13 independent claims had that.

14 Q And so what you map in Mehta to the
15 product catalog is the data repository, right?

16 A Yes.

17 Q Okay. Can you turn to paragraph 68 of
18 your declaration?

19 A Yes, I'm looking at that.

20 Q Okay. The URL or other location reference
21 of the application is what you say discloses the
22 claim element a reference to each implementation

1 said item of content, right?

2 A That's one example that reads on the
3 required reference.

4 Q Do you identify any other examples in
5 Mehta that read on the reference, the claimed
6 reference, besides the URL or other location
7 reference of the application?

8 A Yeah, I finish paragraph 68 with my
9 conclusion that a POSITA would have understood
10 that Mehta's use of a URL or other location
11 reference corresponds to the claim reference to
12 each implementation of said item of content.

13 I would add that another -- when I said
14 that was an example, another example would be
15 found in paragraph 67 where I state that Mehta
16 discloses that the content provider may include a
17 name and a short description of the application.
18 A name of an application would also be a reference
19 to that application.

20 Q Okay. Okay. Can you turn to the
21 paragraph 51 of your declaration?

22 A I'm there.

1 Q You say: Each independent claim of the
2 '790 patent requires maintaining a product catalog
3 that includes a description of multiple items of
4 content and references two different versions of
5 each item of content, where each version
6 corresponds to a different set of device
7 capabilities.

8 Do you see that?

9 A I see that.

10 Q Okay. So the claims of the '790 patent
11 require, one, multiple items of content and, two,
12 that the items of content have multiple different
13 versions, right?

14 A What's the question again, please?

15 Q The claims of the '790 patent require,
16 one, multiple items of content and, two, that the
17 items of content have multiple different versions,
18 right?

19 MS. CARRANO: Objection to form.

20 A So looking at claim 1, for example,
21 receiving and storing a plurality of items of
22 content, so there's multiple items of content.

1 That also requires receiving a plurality of
2 different implementations of at least one of the
3 items of content. And Item 1[b] says maintaining
4 a product catalog containing a description of the
5 items of content.

6 Q Okay. So the claims of the '790 patent
7 require, one, multiple items of content and, two,
8 that at least one item of content has multiple
9 different versions?

10 MS. CARRANO: Objection. Form.

11 A Yes.

12 Q Okay. Can you turn to the '790 patent and
13 look at column 9? Line 40 is where we're going to
14 start.

15 A 940? I'm sorry.

16 Q Yeah. Column 9, line 40.

17 A Sorry. I'm there.

18 Q Okay. So it says that an implementation
19 57 can simply be a binary file, a binary,
20 representing the product. And then the next
21 sentence says: In some cases, however, an
22 implementation may represent two or more binaries,

1 61, as shown in Figure 6.

2 Do you see that?

3 A I do.

4 Q So in the '790 patent, an implementation
5 corresponds to one or more files, right?

6 MS. CARRANO: Objection. Form.

7 A Question again, please.

8 Q In the '790 patent, an implementation
9 corresponds to one or more files, right?

10 MS. CARRANO: Objection.

11 A Well, it describes the files. Here you're
12 using the word "file." It describes -- it calls
13 it binaries, if one could assume that's as a file
14 representative of a particular implementation.

15 Q Okay. So in the '790 patent, an
16 implementation corresponds to one or more files or
17 binaries, right?

18 MS. CARRANO: Same objection.

19 A Agreed.

20 Q Okay. So we talked a little bit before
21 about the data repository. You're familiar with
22 the concept of data repository in Mehta?

1 A Yes.

2 Q Applications -- or content is only stored
3 in data repository in walled garden provisioning,
4 correct?

5 A Let's take a look at Figure 5 of Mehta,
6 which introduces, I believe, the data repository.
7 The question one more time?

8 Q Applications are only stored in the data
9 repository in walled garden provisioning, correct?

10 MS. CARRANO: Objection. Form.

11 A No. If I look at paragraph 64, the
12 disclosure about Figure 3 says the steps are
13 applicable to either provisioning scenario using
14 walled garden or open provisioning.

15 Further down in that paragraph, 6 lines
16 from the bottom, it says: The applications are
17 stored locally in a carrier's application data
18 repository, which may be located in the MAS or at
19 a carrier's premises or optionally stored in a
20 trusted third-party's servers. So the answer to
21 your question is no.

22 Q Well, but then it says in the case of open

1 provisioning, the third-party servers are not
2 necessarily trusted, right?

3 A It says that, yes.

4 Q Okay. And logically, the applications
5 can't be stored anywhere in the MAS, including in
6 the data repository, in the open provisioning
7 model, correct?

8 MS. CARRANO: Objection. Form.

9 A Well, I mean, that sounds like the same
10 question that I answered no to couched in
11 different words because Figure 3 disclosure says
12 just the opposite.

13 Q How would that work? How can applications
14 that have not been submitted to the MAS or
15 published by the MAS and the MAS is not aware of,
16 how can those be stored in the MAS?

17 A I'm just seeing if paragraph 64 says
18 anything more that would enlighten your question.
19 It does say in paragraph 64 that in Step 305,
20 talking about Figure 3, the MAS determines whether
21 the designated URL specifies the published
22 application, thereby indicating that walled garden

1 provisioning is to be performed and, if so,
2 continues to Step 306, else continues to Step 308.
3 But it's actually silent on the specific answer to
4 your question, which was what again?

5 Q Okay. So Mehta doesn't disclose or
6 describe how applications could be stored in the
7 data repository in the MAS in open provisioning?

8 MS. CARRANO: Objection. Form.

9 A It discloses that the data repository
10 would be -- would hold pre-provisioned or walled
11 gardened content. Like I say, it's silent on the
12 open provisioning embodiment.

13 Q Okay.

14 MS. CARRANO: We've been going for over an
15 hour. Is now a good time to take a break?

16 MR. MATULEWICZ-CROWLEY: Sure. Yeah.

17 (A short break was taken.)

18 Q Mr. Wechselberger, can you turn to
19 paragraph 98 of Mehta?

20 A I'm there.

21 Q So if you look on the right-hand column,
22 about 4 lines down, it's the sentence that begins:

1 For example, the content provider may include.

2 Do you see that?

3 A Yes.

4 Q Okay. So then a bit below that, I don't
5 know, 8 lines down or so, there's a sentence that
6 begins: Specifying this information, including
7 the application store's language allows the MAS to
8 store and support functionally equivalent programs
9 having the same name that are capable of running
10 on multiple kinds of devices that even may be
11 written using different languages.

12 Do you see that?

13 A I do.

14 Q When Mehta says "functionally equivalent
15 programs," it's referring to functionally
16 equivalent applications, right?

17 A Yes.

18 Q And paragraph 98 in general is talking
19 about how content providers can submit
20 applications to the MAS, correct?

21 A The question one more time?

22 Q Paragraph 98 is talking about how content

1 providers can submit applications to the MAS,
2 correct?

3 A I would say that paragraphs 97, 98, and
4 99, at least are also addressing the overall flow
5 of that process. 97 begins with content providers
6 submitting downloadable applications to the MAS.
7 You see that at the opening there. And there's a
8 reference to the location.

9 It goes on to say that in some systems,
10 the administrator, the provisioning manager and
11 the deployment manager may be completely or
12 particularly combined. In one embodiment, the
13 administrator checks that -- the submitted URL to
14 make sure it is valid and not used by another
15 application profile, so there's no collision going
16 on there but that it indicates that the URLs are
17 used by the application profile.

18 Going on to 98.

19 Q Just to confirm, when you said the
20 paragraphs 97, 98, and 99 address the overall flow
21 of that process, that process you're referring to
22 is how content providers can submit applications

1 to the MAS?

2 A I meant how they end up in the MAS. I
3 mean, if your question was very narrow, then I'm
4 just saying from A, B -- you know, A to Z, how do
5 they end up in the MAS, and I was saying those
6 three paragraphs collectively, well, talk about
7 the overall process.

8 Q Okay. And paragraph 98 in particular,
9 though, talks about how content providers can
10 submit applications to the MAS through the content
11 provider website, 801, that's what paragraph 98 is
12 about, right?

13 A The question one more time?

14 Q Paragraph 98 in particular talks about how
15 content providers submit applications to the MAS
16 through the content provider website 801, correct?

17 A So does paragraph 97, which is where I
18 started it off, it starts off by saying the
19 administrator provides content provider website
20 for content providers to use to submit
21 downloadable applications.

22 Q But 98 is as well, correct? That's what

1 I'm asking about.

2 A Yes. 97 and moves to 98 where the process
3 is further explained.

4 Q Okay. So just to be clear, paragraph 98
5 is about how content providers can submit
6 applications to the MAS, correct?

7 A Okay. Well, I guess we're in violent
8 agreement in that paragraph 98 is about the
9 content provider website 801 but so is
10 paragraph 97.

11 Q Okay. Are you familiar with Microsoft
12 WordPad? It's often just called WordPad. It's
13 the program WordPad, just on a computer?

14 A I don't use it. I've heard of it.

15 Q Okay. And you're familiar with Microsoft
16 Word?

17 A Yes.

18 Q Okay. Are Microsoft Word and WordPad
19 functionally equivalent applications?

20 MS. CARRANO: Objection. Scope.

21 A I don't use WordPad, so I don't know.

22 Q Okay. Do you use Notepad?

1 A No.

2 Q Apple Pages?

3 A No.

4 Q Google Docs?

5 A Nope.

6 Q Okay. Is Microsoft Word functionally
7 equivalent to any other writing application?

8 MS. CARRANO: Objection. Outside the
9 scope.

10 Q Did you say sure?

11 A I agreed, yes. I said sure.

12 Q Okay. So in Mehta, let's imagine there
13 are two functionally equivalent applications,
14 Application A and Application B, okay?

15 A Okay.

16 Q So a user can specifically request
17 Application A, right?

18 A Do you want to point me to something in
19 Mehta? I mean, that's a hypothetical. I'm not
20 quite sure what you're asking.

21 Q So in the system and what's disclosed by
22 Mehta.

1 MS. CARRANO: Objection. Form.

2 A Your hypothetical has Application A and B
3 being functionally equivalent, so the user would
4 ask for the function.

5 Q Let me ask this -- actually, I want to hit
6 that a little bit.

7 So I want to ask what was your involvement
8 in the ISO MPEG 2 digital television standards
9 initiative?

10 A In the early '90s, the ISO standards
11 development committees were formed to develop the
12 foundational standards for what became digital
13 television. There were three initial committees:
14 IO committee, audio compression committee, video
15 compression committee, and the systems committee.
16 As CTO at TV/COM at that time, I attended the
17 systems -- I was a member of the systems
18 committee. I had other folks in the company that
19 were attending the video compression committee,
20 for example. I was a participating and
21 contributing member to what became known as, I
22 forgot the number, but the official systems

1 standard that was adopted for -- by the ISO and
2 published for local applications.

3 Q Okay. The claims in the '790 patent
4 require a plurality of items of content, right?

5 A Yes.

6 Q You map the '790 patent's plurality of
7 items of content to applications in Mehta, right?

8 A Yes, that's what I'm mapping.

9 MR. MATULEWICZ-CROWLEY: Okay. Can we
10 take a break? I might be wrapping up. I just
11 need to take a quick break, and we can come back
12 on the record.

13 (A short break was taken.)

14 MR. MATULEWICZ-CROWLEY: Okay. I pass the
15 witness.

16 MS. CARRANO: Can we go off the record for
17 just a few minutes? I may have some redirect.

18 (A short break was taken.)

19 MS. CARRANO: Yeah, let's just go on the
20 record.

21

22

1 REDIRECT EXAMINATION

2 BY MS. CARRANO:

3 Q I have just a couple questions on redirect
4 for Mr. Wechselberger.

5 Mr. Wechselberger, do you recall providing
6 testimony with respect to paragraph 68 of your
7 declaration?

8 A Yes.

9 Q Do you recall being asked questions
10 relating to what you were pointing to as the
11 claimed reference to each implementation of said
12 item of content?

13 A Yes.

14 Q Do you recall testifying that the URL or
15 other location reference toward the end of
16 paragraph 68 is part of your opinion on that claim
17 term?

18 A Yes.

19 Q Can you further expound on your opinion as
20 to what is disclosed in the Mehta reference as the
21 claimed or reference to each implementation of
22 said item of content?

1 MR. MATULEWICZ-CROWLEY: Objection.

2 Outside the scope of the cross-examination and of
3 the declaration.

4 Q You can answer the question.

5 A Repeat the question, please.

6 Q Just to back up, Mr. Wechselberger, you
7 recall testifying that the URL or other reference
8 towards the end of paragraph 68 of your
9 declaration as part of your opinion of the claim
10 term relating to a reference to each
11 implementation of said item of content?

12 A Do I recall testifying about the end of
13 paragraph 68, yes, I recall that.

14 Q My question to you is: Can you further
15 expound on the testimony that you provided today
16 with respect to your opinion as to the URL or
17 other location points to each application to be
18 downloaded from MAS or other designated location
19 as to how that's described in Mehta?

20 MR. MATULEWICZ-CROWLEY: Same objection.
21 Outside the scope.

22 A Sure. Well, one thing I also added was

1 during my testimony is I pointed to paragraph 67
2 and highlighted the fact that Mehta discloses that
3 a content provider may include a name and a short
4 description of the application, and I pointed to
5 that name as being another example of a reference.

6 Further, with respect to the URLs
7 themselves, in paragraph 67 and 68, I do make
8 reference to paragraphs 98, 99 -- 97, 98, and 99.
9 And I can enhance or elaborate or add color, if
10 you will, to the URL specifically. It states, for
11 example, in paragraph 97, in the middle that --
12 and I read this into the record earlier, the
13 administrator checks as part of the content
14 provider getting applications into the MAS, that
15 the administrator checks the submitted URL to make
16 sure it is valid and not used by another
17 application profile.

18 And so the takeaway there is that the URL
19 is used by the application profile, otherwise it
20 wouldn't have to be checked, that it isn't already
21 being used by another application profile, and
22 that in paragraph 99, it says -- and I do include

1 the reference in paragraph 98, just keeping these
2 in order that, for example, the content provider
3 may include a name and short description of the
4 application. So that's in paragraph 67 of my
5 report.

6 And finally, in paragraph 99, we read that
7 the administrator uses the information submitted
8 by the content provider, which includes the
9 submitted application, and the data generated
10 during the inspection process to create an
11 application profile, which is stored and
12 maintained in data repository, i.e., data
13 repository file 11.

14 So that disclosure in conjunction with,
15 for example, the disclosure in 97 that the
16 administrator checks the submitted URL to make
17 sure it is not used by another application
18 profile, collectively inform that the URL is part
19 of the data repository. And as I say in my
20 declaration, then, that the URL represents a
21 reference.

22 Q Do you recall being asked questions

1 relating to what's functionally equivalent during
2 your deposition?

3 A I do.

4 Q If you go to paragraph 98 of Mehta, Mehta
5 states, quote: Specifying this information,
6 including the application source language, allows
7 the MAS to store and support functionally
8 equivalent programs having the same name that are
9 capable of running on multiple kinds of devices
10 that even may be written using different
11 languages.

12 Do you see that?

13 A Yes.

14 Q So Mehta uses the terms "functionally
15 equivalent" as well; is that fair to say?

16 A Yes.

17 Q And how does Mehta use the terms
18 "functionally equivalent" as described in
19 paragraph 98?

20 MR. MATULEWICZ-CROWLEY: Objection.
21 Scope.

22 A Well, Mehta says that there are

1 functionally equivalent programs, that's plural,
2 that can share the same name. So in other words,
3 the same name can be attached to different
4 programs that are functionally equivalent. And it
5 goes on to then say that they're capable of
6 running on multiple kinds of devices that may even
7 be written using different languages.

8 So one understands from that, the person
9 of ordinary skill in the art would understand from
10 that, that a functionally equivalent program can
11 share a name but have different implementations,
12 such as be written in different languages that may
13 run on different kinds of devices.

14 MS. CARRANO: No further questions.

15 MR. MATULEWICZ-CROWLEY: Okay. I have no
16 further questions.

17 (Witness excused, 11:21 a.m. Pacific.)

18

19

20

21

22

1 C E R T I F I C A T E

2 I, RACHEL F. GARD, RPR, CCR, CRR, CSR No.
3 084-3324 and No. 9315, a Certified Shorthand
4 Reporter in and for the States of Illinois and
5 Michigan, and CCR No. 1010 in and for the State of
6 Nevada, at large, do hereby certify that
7 ANTHONY WECHSELBERGER, the deponent herein, was
8 previously duly sworn to tell the truth, the whole
9 truth, and nothing but the truth in the
10 aforementioned matter;

11 That the foregoing deposition was taken on the
12 7th day of December, 2023, at 8:00 a.m. Pacific,
13 pursuant to the applicable rules;

14 That said deposition was taken down in
15 stenograph notes and afterwards reduced to
16 typewriting under my direction, and that the
17 typewritten transcript is a true record of the
18 testimony given by the said deponent; and that
19 signature was requested by the deponent and all
20 parties present;

21 That the parties were represented by their
22 counsel as aforementioned.

23 I do further certify that I am a disinterested
24 person in this cause of action, that I am not a
25 relative or attorney of either party or otherwise
26 interested in the event of this action, and that I
27 am not in the employ of the attorneys for any
28 party.

29 IN WITNESS WHEREOF, I have hereunto set my
30 hand and affixed my seal on this 7th day of
31 December, 2023.

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Rachel F. Gard

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1 Anthony Wechselberger, c/o
WILLKIE FARR & GALLAGHER LLP
2 787 7th Avenue
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