

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,
Petitioner
v.
VIDEOLABS, INC.,
Patent Owner.

IPR2023-00628
Patent 7,233,790 B2

Record of Oral Hearing
Held: June 27, 2024

Before JEFFREY S. SMITH, STACEY G. WHITE, and
STEPHEN E. BELISLE, Administrative Patent Judges.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

ALIZA CARRANO, ESQ.
of: Willkie Farr & Gallagher, LLP
1875 K Street, NW
Washington, D.C. 20006
202-303-1106
acarrano@willkie.com

ON BEHALF OF THE PATENT OWNER:

MICHAEL MATULEWICZ-CROWLEY, ESQ.
Reichman, Jorgensen, Lehman & Feldberg, LLP
1909 K Street, NW
Suite 800
Washington, D.C. 20006
352-217-6921
mmatulewicz-crowley@reichmanjorgensen.com

The above-entitled matter came on for hearing Thursday,
June 27, 2024, commencing at 11:00 a.m., at the U.S. Patent and Trademark
Office, 600 Dulany Street, Alexandria, Virginia.

P-R-O-C-E-E-D-I-N-G-S

11:00 a.m.

JUDGE SMITH: Please be seated. Good morning, everybody.
Welcome to the Patent Trial and Appeal Board. My name is Jeffrey Smith.
With me today are Judges Stacey White and Stephen Belisle. Judge White
is with us from Texas. Can you hear us okay, Judge White?

JUDGE WHITE: Yes.

JUDGE SMITH: Okay. So we're here today to hear two cases, IPR
2023-00628 for U.S. Patent number 7,233,790 and IPR 2023-00630
concerning U.S. Patent number 7,440,559. Netflix is the Petitioner and
VideoLabs is the Patent Owner.

The parties will have 45 minutes per side per case. We'll have a five-
minute break between cases. We have a line open to the public. If the
parties wish to discuss anything confidential, please notify us before
discussing anything confidential. When you speak, please step to the
podium and speak into the microphone.

So we can start by getting appearances from the parties. Petitioner,
please step to the podium and state your name as we have with you.

MS. CARRANO: Good morning, Your Honors. This is Aliza George
Carrano on behalf of Petitioner Netflix. Sitting with me at counsel table is
my colleague, Dane Sowers. And on the line is in-house counsel for Netflix,
Asa Wynn-Grant.

JUDGE SMITH: Thank you. Patent Owner, please step to the
podium and state your appearance.

MR. MATULEWICZ-CROWLEY: Your Honors, this is Michael

1 Matulewicz-Crowley on behalf of Patent Owner. With me at counsel table
2 is my colleague, Naveed Hasan. Here as well is my partner, Christine
3 Lehman. And on the line, we have my colleague, Jaime Cardenas-Navia.

4 JUDGE SMITH: Okay. Thank you. And before we get started, I just
5 want to ask the parties, you can reserve time for rebuttal. Petitioner, do you
6 wish to reserve time for rebuttal?

7 MS. CARRANO: I'd like to reserve 15 minutes, please.

8 JUDGE SMITH: Okay.

9 MR. MATULEWICZ-CROWLEY: Patent Owner, we'll reserve 10
10 minutes.

11 JUDGE SMITH: Okay. So, Petitioner, you're going to have 30
12 minutes to present your case-in-chief. Let me see if I can get this thing
13 working. Okay. You may begin when ready.

14 MS. CARRANO: May it please the Court. Your Honors, the '790
15 patent claims the basic concept of packaging and provisioning content for
16 multiple different user devices. But this concept of packaging and
17 provisioning content from content providers was already known, and the
18 patent admits that this technology was already known.

19 And so what the '790 patent inventors aimed to do was to create a
20 centralized system where content providers could submit their applications.
21 That would make it easier for subscribers of different wireless devices to be
22 able to get content from one centralized place.

23 The other aim of the '790 patent was to then have the provisioning and
24 packaging happen at the centralized location instead of having the content
25 providers do it, because, as there was this influx of new devices, keeping up

1 with the different provisioning requirements was becoming burdensome. So
2 the Court has instituted both of Petitioner's grounds. This is found at
3 petition age 22. So, moving on to Slide 3.

4 There are several disputed issues, and I will try to go through all of
5 them today. To the extent I don't, Petitioner rests on its papers. One thing to
6 keep in mind with respect to the '790 patent is that both parties agree that the
7 priority date for this proceeding is June 19th, 2003.

8 So, moving on to Slide 8. So, this concept of a centralized location
9 for providing content was well-known. And what the '790 patent discloses
10 is that it's going to have this download manager that's basically a server
11 system that acts as an intermediary between content suppliers and
12 subscribers.

13 So, content suppliers would provide their applications to the download
14 manager, and then subscribers could then request those applications from the
15 download manager. And how it worked was the download manager has
16 several components to it, one being a product catalog, and that contains all
17 of the published items.

18 And then the other part of what's disclosed in the '790 patent is that, in
19 addition to -- sorry, I lost my slides. In addition to saving multiple items of
20 content, the download manager would also allow content providers to
21 provide multiple or different implementations of each item of content. And
22 the patent tells us that an implementation is just a binary file representing the
23 product.

24 And so we have the representative Claim 2, and we've highlighted on
25 here the disputes at issue with respect to this claim.

1 And so the '790 patent Claim 2 claims a very basic concept here. It's a
2 very basic claim. So you've got a server system that receives and stores a
3 plurality of items of digital content. And it also receives and stores a
4 plurality of different implementations of at least one item of digital content,
5 where each implementation of any given item of digital content corresponds
6 to a different set of device capabilities.

7 The patent then goes on to claim the server system maintains a
8 product catalog that includes descriptions of the digital content and includes
9 an association with each item of content, a reference to each implementation
10 of each item of content. The server then receives a request from the wireless
11 device.

12 And then in response to that request, the server is going to select a
13 portion of the product catalog to be presented to the subscriber based on
14 device capabilities of the wireless device. And then it's going to present that
15 selection of the product catalog to the subscriber and provide only a single
16 description of each item of digital content, regardless of the number of
17 implementations.

18 So the first dispute is whether Mehta, which is one of our prior art
19 references, teaches a plurality of different implementations of at least one of
20 the items of digital content. And Mehta discloses a very similar system
21 where you've got a server system called the Mobile Application System, also
22 referred to as the MOS, or MAS.

23 And the MOS serves as an intermediary between subscriber devices,
24 which is noted in red in Figure 1, and content providers in green, which is
25 the suppliers of content. So how Mehta works, very similar to the '790

1 patent, content providers provide their applications to the Mobile
2 Application System. And the subscriber devices can then obtain those.

3 After some analysis, the Mobile Application System will analyze
4 different profiles, including subscriber profiles, application profiles, device
5 profiles, to determine which specific application can execute properly on the
6 subscriber device. And so how this MOS does that, it determines the typing
7 capabilities of the subscriber device for which the request is made to
8 determine which appropriate application should be then sent to the
9 subscriber device.

10 So moving on to Slide 11. So how Mehta works is that when a
11 content provider wants to provide its applications for subscribers to obtain, it
12 has to fill out an application profile. An application profile collects various
13 information about that application.

14 And so you've got here on Slide 11, Figure 9b, which is an exemplary
15 application profile form that a content provider could fill out. And you'll see
16 the different types of information that's required. What's required is the title.
17 So in this case, the title here is KBrowser. And then you provide the URL,
18 which is the location of, you know, where the title is located. And the URL
19 actually has a file name as the implementation. That's going to indicate what
20 type of file it is.

21 And then it also includes information for what version, a description.
22 And so all this information is saved in an application profile that content
23 providers have to submit when submitting an application.

24 And here's Figure 9d on Slide 12, which just shows more clear what
25 information is included in this application profile. So Figure 9d is an

1 application submission notification, which occurs after a content provider
2 submits an application. They get a notification. So that's what's depicted in
3 9d. And so you'll see you've got an item of digital content, which is
4 KBrowser. And then you've got the specific implementation, which is this
5 JAR file.

6 So Mehta also teaches that because it collects this type of metadata on
7 each application, Mehta allows for the MOS to store and support
8 functionally equivalent programs having the same name that are capable of
9 running on multiple kinds of devices. And so how that works, what might
10 be helpful is to talk about this example that's been in the briefing.

11 And so say if Microsoft was a content provider, and Microsoft has its
12 various Office products. Those various office products would be items of
13 digital content. And so Microsoft could have various items of digital
14 content, such as Microsoft Word, PowerPoint, Excel. Those are all three
15 different items of content.

16 What Mehta would also allow, because it supports functionally
17 equivalent programs, is that it would allow Microsoft to submit different
18 versions of each of these items of content, such as a Microsoft Word for
19 Windows version, or a Microsoft Word for the Mac computers.

20 Because those are functionally equivalent programs, they are both
21 relating to Microsoft Word. They are both having the same name. And each
22 of those implementations are capable of running on different devices.

23 So the Microsoft Word for Windows implementation would run on
24 Windows devices, whereas the version for Mac would run on the Mac
25 computer. So this functionally equivalent program is having the same name

1 that are capable of running on multiple devices, teaches this part of the
2 claim, which is a plurality of different implementations of at least one item
3 of digital content.

4 And so we have from Patent Owner's expert, he agreed that Microsoft
5 Word is another piece of content. A Microsoft Word for Windows and
6 Microsoft Word for Apple Macs are different implementations. And this
7 was from his declaration.

8 Going on to Slide 15, he was asked in his deposition, and he agreed
9 that Microsoft Word for Windows and Mac would be functionally
10 equivalent programs in the context of Mehta.

11 So he was asked, would one of ordinary skill in the art, at the time of
12 the patent, understand Microsoft Word for Windows and Microsoft Word for
13 Mac are functionally equivalent. He said, yes, I'm not disputing that. They
14 would be different implementations of the same product.

15 JUDGE BELISLE: Counsel, this is Judge Belisle. Can you remind
16 us, where are we getting this functionally equivalent language from?

17 MS. CARRANO: Certainly, Your Honor. This functionally
18 equivalent language comes from Mehta, which is Exhibit 1003 at paragraph
19 98.

20 JUDGE SMITH: Just as a reminder, when you are speaking about a
21 specific slide on the screen, just make sure you identify the slide number
22 that's on the screen so when we go back and read the transcript, we can
23 follow in the transcript, and also for our colleague in Texas, so I'm not sure
24 if she can see the screen or not, but she can follow along as well.

25 MS. CARRANO: Yes, certainly. Thank you, Your Honor.

1 JUDGE BELISLE: So, counsel, can we go back to Slide 11? I can't
2 see the number on that slide. So on this slide, we're calling the KBrowser
3 the item of digital content. And then above it, the URL being the
4 implementation. In Mehta, what is the different implementation of the
5 KBrowser?

6 MS. CARRANO: So in Mehta, it doesn't expressly say that there's
7 going to be a different file name for a different implementation of
8 KBrowser. But when you read the entire context of Mehta, it shows that it
9 can support these functionally equivalent programs having the same name.

10 So with that disclosure, taking into account this exemplary application
11 profile, what would a person of ordinary skill in the art understand would be
12 that KBrowser could have the implementation at this URL, and maybe that
13 would work on Android devices, or it could have another application profile
14 with KBrowser as the title and the URL would be for maybe the iOS
15 devices.

16 It would have the file name for the KBrowser that would be supported
17 on iOS devices. So we get that from looking at the entire context of Mehta.

18 JUDGE BELISLE: But Mehta itself does not provide disclosure of
19 this different implementation of KBrowser.

20 MS. CARRANO: It does not. For the KBrowser example, it does
21 not, but it has, again, the language of functionally equivalent programs
22 where that explains that you could have another application profile with the
23 same name KBrowser and a different file name for that other
24 implementation.

25 JUDGE SMITH: What other -- just out of curiosity, what other

1 implementation other than the JAR file would there be for this KBrowser?

2 MS. CARRANO: So for this KBrowser, I believe KBrowser was a
3 web browser at the time of Mehta, and so I would suspect that KBrowser
4 would be working for certain types of devices. So if you look here, it says
5 sample on Slide 12, we've got what the actual file name is. So these JAR
6 files would have different Java files in there.

7 So it's hard to say exactly which devices this one would work with. I
8 believe in some of the other figures there are specific Java profiles that are
9 identified. But how this would work would be if -- I think this is why the
10 parties use more simpler example like Microsoft Word.

11 And so if we were to take this in the context of that example, what
12 you would have would be a title Microsoft Word, and the URL would have
13 the location of the Microsoft Word for Windows file, and then the other
14 implementation would be another profile with Microsoft --

15 JUDGE SMITH: Yeah, I guess with, you know, there are a couple of
16 things that concern me about the Microsoft Word for Windows or Word for
17 Mac. I guess reading through the files, it seems like it first came up from
18 Patent Owner's expert. Is he the first person to introduce this?

19 MS. CARRANO: That's correct. He introduced the example of --

20 JUDGE SMITH: Because it's not from Mehta. I mean, the
21 technology in Mehta, this predates smartphones, it predates the iPhone. I
22 mean, I don't think anybody was going to be doing word processing on the
23 cell phone envisioned by Mehta. Is that right?

24 MS. CARRANO: Possibly, but I think even if we look at some of the
25 examples in Mehta, like Doom, for example, I know that's one of the

1 applications that's there, which I think maybe people are more familiar of.
2 You could have Doom running on, you know, a certain device, like an
3 Ericsson device, and that's going to require certain profiles. Or it could run
4 on, you know, a Motorola device.

5 JUDGE SMITH: Okay. So, yeah, so let's just accept -- given that the
6 briefing's already done, let's accept that Word for Windows or Word for Mac
7 could be one of these programs supported by Mehta's disclosure.

8 Well, the thing that concerns me the most is if you look at Slide 13,
9 you're pointing to this disclosure of Mehta where it says functionally
10 equivalent programs have the same name and are capable of running on
11 different devices. You're pointing at that and saying, well, those are
12 different implementations.

13 Patent Owner is pointing to this exact same disclosure and saying,
14 well, that means they're different programs. So what is it? I know you have
15 this declaration from Patent Owner's expert, but he seems to walk that back
16 in his deposition. He seems to be saying, yeah, they are different
17 implementations, and then he turns around and says, oh, no, they're not
18 different implementations, they are different programs.

19 So I mean, in terms of his testimony, given his waffling nature on it, is
20 there something other than his testimony that shows that the scope of
21 different implementations encompasses functionally equivalent programs
22 having the same name?

23 MS. CARRANO: I believe so. I believe if we -- I think what may be
24 helpful to understand is where Patent Owner is now shifting their arguments
25 on this issue. So I think initially, they said that this disclosure means you

1 have functionally equivalent programs --

2 JUDGE SMITH: Before you get to Patent Owner shifting their
3 argument, just start with the claim language. You have this claim language,
4 different implementations, that's in the claim. Now, what's the scope of
5 different implementations? So does the scope of different implementations
6 encompass functionally equivalent applications that have the same name?

7 MS. CARRANO: Right. I believe so, and I'm right now on Slide 19
8 that has the claim language in question. And so if you look at Claim 2,
9 which is a disputed limitation, what we've got here is the disputed limitation.
10 What it requires is receiving and storing in a server system a plurality of
11 items of digital content.

12 And we know from Mehta's disclosure, and this one's gotten disputed,
13 that Mehta does that. Mehta does accept from the content providers items
14 receiving and storing a plurality of items of digital content. And then in the
15 green part, this receiving and storing a plurality of different implementations
16 of at least one of the items is digital content.

17 So if you look at the disclosure of the '790 patent, the '790 patent says
18 that implementations are merely binary files. If we go back --

19 JUDGE BELISLE: Let's stop there counsel. It's Judge Belisle. What
20 does that mean? I mean, what does that mean to you, the idea that these are
21 just binary files? I mean, how is that distinguishing -- how are we getting
22 from binary files to functionally equivalent programs?

23 MS. CARRANO: So a functionally equivalent program is made up of
24 a binary file. So you've got --

25 JUDGE BELISLE: Isn't every file a binary file?

1 MS. CARRANO: That is true, they are. But what we have here from
2 Mehta, we've got this application profile that has the title of content, and
3 then you've got the URL that identifies the file name for that, for what works
4 for those certain types of devices. So you've got the -- what's required from
5 the '790 patent is you have a plurality of different implementations. If you
6 look at the specification, implementations are merely the binary files.

7 JUDGE SMITH: What's the difference between a different
8 implementation and a different program altogether?

9 MS. CARRANO: So how we look at this from the '790 disclosure,
10 the '790 disclosure says that digital content. So we're looking at, you know,
11 what's an item of digital content? At the '790 patent, which is Exhibit 1001,
12 at column 3, lines 48 through 53, it says, digital content is used
13 interchangeably to mean software or other data embodying things such as
14 games, applications, images, screensavers, the like. So that's the actual
15 content.

16 So items of digital content is the content. Implementation is just the
17 implementation of that content. So that's the file representing that content.
18 So when you look at this functionally equivalent programs, you've got -- so
19 with Microsoft Word, for example, you've got the digital content is
20 Microsoft Word, and then the implementations would be the version for
21 Windows and the version for Mac.

22 So those are the different binary files that would represent the item of
23 digital content, which would be Microsoft Word.

24 JUDGE SMITH: And then in addition to paragraph 98, Mehta, in
25 paragraph 64, talks about upgrades or more recent versions of software.

1 Would a more recent version of a program be a different implementation, or
2 would that be the same program?

3 MS. CARRANO: That's an interesting question because Mehta does
4 support different versions. As we saw on Figure 9b, there is a place for
5 adding different versions. I think what Mehta would do, because what it
6 does when it's looking at its repository to determine what to select for a user,
7 it's going to look to see what applications are compatible with that user's
8 device.

9 So what Mehta would do is if you have, just to continue with the
10 Microsoft Word example, if you've got a version for like Windows 98, the
11 Microsoft Word version for that, and then like Word 2000, if both are
12 compatible, both versions would be shown to the user. But those are
13 generally the same items of content. They're just different versions of it.

14 JUDGE SMITH: They're not different implementations?

15 MS. CARRANO: I wouldn't say that those were different
16 implementations, because the different implementations, when you look at
17 what's required in the claim -- so this doesn't have to do with the actual word
18 implementation or claim term. The claim requires where each
19 implementation of any given item of digital content corresponds to a
20 different set of device capabilities.

21 So when you look at the full context of the claim, you've got
22 implementations with their binary files, but the claim requires that an
23 implementation correspond to a different set of device capabilities.

24 So if you have different versions of a piece of content, that may not
25 correspond to a different set of device capabilities. But if you have an

1 implementation for one set of devices and an implementation for another set
2 of devices, then that would meet the claim language.

3 JUDGE SMITH: Okay. If you have anything more to say, we're
4 interested in hearing it. But I do want to discuss other aspects of the claim
5 before you run out of time.

6 MS. CARRANO: Sure. So one thing we do want to point out is what
7 Patent Owner tries to do, and this is where I think some of this confusion
8 comes from, is in the specification, the '790 patent says that the product
9 catalog can include for each product entry a reference to at least one of the
10 implementations. And so there's this concept of a product entry that the
11 Patent Owner conflates with the idea of an item of digital content.

12 So we've already established that an item of digital content is the
13 actual software, it's the actual content, whereas a product entry is something
14 that's used in a database and it's actual metadata for what goes into the
15 database.

16 And what Patent Owner is trying to do is, if you look at Figure 5 on
17 Slide 18, if you look at Figure 5, that's one preferred embodiment. I think
18 Figure 6 also has a very similar embodiment of the '790 patent. There's a
19 specific embodiment where the catalog has a product entry. And then with
20 each product entry, you're going to have an implementation, a reference to
21 each implementation. But this embodiment is not claimed in the patent.

22 So if we go to Slide 19, back to the claim language, there's no
23 requirement of a product entry in the claim language in any of the claims,
24 not even the dependent claims.

25 So this type of two-level data structure that they're trying to say is what the

1 claim is limited to is just not claimed. So we have to look at the plain and
2 ordinary meaning.

3 And both parties have agreed that no express construction for any
4 term is required at this stage. So we're looking at the plain and ordinary
5 meaning. And there's nothing to limit the claim scope to what's depicted in
6 Figures 5 and 6 of the '790 patent.

7 And if you look at the claim language in dispute for this issue, what's
8 talked about here is what's being stored, not how it's being stored. So we're
9 looking at what's being stored as you're receiving and storing in the server
10 system a plurality of items of digital content, which is what MAS does.

11 And then you're receiving and storing a plurality of different
12 implementations of at least one of the items of digital content, where each
13 implementation of any given item of digital content corresponds to a
14 different set of end device capabilities.

15 And Mehta's disclosure of the functionally equivalent programs
16 satisfies this limitation as well, because there is no requirement that there is
17 a product entry. And within that product entry, you have the item of digital
18 content and then references to each implementation for that item of digital
19 content. That's just not claimed.

20 JUDGE SMITH: Can you speak to the -- Claim 2 recites the selected
21 portion provides only a single description of each item of digital content,
22 regardless of the number of implementations. Can you speak to where
23 Mehta discloses that?

24 MS. CARRANO: Yes, so where Mehta discloses this is Mehta
25 teaches that when -- so let me just back up. To orient yourself with the

1 claim, so the claim says that when a user submits a request for applications,
2 the claim requires that the server is going to select the portion that's
3 compatible with the user's device and present that. And so Mehta does the
4 same thing.

5 So it'll search its data repository for published applications for the
6 request, and it'll determine a list. And then at paragraph 67 of Mehta, and
7 I'm on Slide 26, Mehta is going to filter this initial list based on subscriber
8 and device capabilities. So moving on to --

9 JUDGE SMITH: Let me just ask you, does this mean -- yes, Slide 27
10 shows it. Does this mean that there's only going to be -- so when it filters
11 the list, so if you have an iPhone, it's only going to give you Microsoft Word
12 for iPhone?

13 MS. CARRANO: Correct.

14 JUDGE SMITH: Would that be the only implementation available for
15 the iPhone, or would there be multiple implementations of Word available?
16 I mean, you could conceivably have Microsoft Word for iPhone for
17 Windows, Word for iPhone for Mac, but would that be possible?

18 MS. CARRANO: Right. That would not be possible in this
19 disclosure from Mehta, where Mehta at paragraph 117, Mehta only lists
20 those applications that are supported by the subscriber's device.

21 So if the user is a Mac user and requests Microsoft products, what is
22 going to return is a list of only those applications and a single description of
23 those applications, which ones are compatible with that user's device.

24 So continuing with the Microsoft Office example, it would show the
25 Microsoft PowerPoint for Mac, Word, Excel, that's what would be returned.

1 You wouldn't get a list of the Microsoft Word for Windows devices in that
2 list because that would not be compatible with the user's device. So a single
3 description would be what would be returned to the user.

4 JUDGE SMITH: Okay. And then I have a question about claim 4.
5 The implementation of the requested item of digital content based on device
6 capabilities of the wireless device used by the subscriber. Yeah, there it is
7 on Slide 34.

8 So apparently, Patent Owner's arguments, as I understand them,
9 Mehta is either going to give you a filtered list of programs that are
10 compatible with your device, or you can just search directly for whatever
11 program you want. If you want to search for Doom, it'll just return Doom,
12 and it'll just return the version that's compatible with your device.

13 So I guess Patent Owner's point, to the extent I understand it, Mehta is
14 only doing one or the other. I mean, once you get the list, and then you
15 select Doom, it's already filtered Doom to be compatible with your devices.

16 MS. CARRANO: Yeah, so Patent Owner, like many of its arguments,
17 takes that in context and ignores some of the express disclosures of Mehta.
18 And so Mehta allows for two types of requests to come from the subscriber.
19 A list for applications, that's the discovery of applications. And this is in
20 paragraph 70 of Mehta. And downloading requested applications.

21 So Figure 2 shows what would return if a user searched for games.
22 And this would be a list of games. And what would be presented, as we
23 talked in the prior implementation, would be just those implementations that
24 are compatible with the user's device. But then the user can then choose, all
25 right, I'm going to select Doom. And that's expressly what's shown in Figure

1 2. The user selects Doom.

2 And so going on to Slide 35, what MAS does is at the application
3 discovery phase, it searches for compatible devices. But it then does an
4 additional check at the selection of an application to determine that this
5 version is compatible with the user's device. And the argument that Patent
6 Owner has that Mehta can only do one or the other, just it does not make
7 sense. It's contrary to all the express disclosures in Mehta.

8 If you look at paragraph 64, it says, steps 301 to 408 demonstrate how
9 MAS handles an incoming request to download an application from a
10 subscriber device. And what steps 301 and 304 are actually depicted in
11 Figures 3 and 4 of Mehta, which shows both requests. So you've got both
12 the application discovery requests and the steps for that.

13 And then once all those applications are presented to the user, the user
14 can then select which application it wants. So then it goes into the flow
15 chart for the steps for application selection. And so there is this verification
16 process that will also check. And that's what's important for the claim. The
17 selected implementation has to be based on the device capabilities. And so
18 that is expressly disclosed in Mehta.

19 So at paragraph 70, it's going to retrieve the application and verify that
20 it's appropriate or permitted for download to the device and user.

21 JUDGE SMITH: And then I have one last question about the
22 provisioning models corresponding to a different set of device capabilities.
23 It seems like, you know, Patent Owner is saying that the provisioning
24 models in Mehta don't correspond to device capabilities and to the extent
25 that Petitioner in reply is saying, well, one of skill in the art would know

1 provisioning models could do this. It's a new argument. Can you speak to
2 the provisioning?

3 MS. CARRANO: Yeah. This is not a new argument at all. And so
4 we --

5 JUDGE SMITH: We're on Slide 38 now.

6 MS. CARRANO: Yeah, I'm at Slide 38. And so at the petition at
7 page 54, it says that Mehta then discloses at least four different provisioning
8 models, wall guarding provisioning, open provisioning, static provisioning,
9 dynamic provisioning.

10 So what we have in our petition is that this is four -- at least four
11 provisioning models are disclosed. But we also have in the petition our cite
12 to paragraph 64 of Mehta, which says that provisioning includes one or more
13 steps of retrieving, inspecting, optimizing, instrumenting code, and
14 packaging.

15 And so what Mehta discloses is that provisioning is just not directed
16 to just the retrieving of an application, which is what the specific
17 provisioning models that Patent Owner says that is the only thing that we've
18 argued teaches this limitation. There's other parts of provisioning. It's much
19 broader than just the retrieving aspect of an application. It's inspecting,
20 optimizing, instrumenting code, packaging. And so we've disclosed that in
21 our petition, so this is not a new argument.

22 And a person of ordinary skill in the art would have understood that
23 these provisioning models would correspond to a different set of device
24 capabilities. And if you look at the other disclosures in Mehta, in Slide 39, it
25 says during the provisioning process, the inspected, optimized, or

1 instrumented content can be packaged appropriate to the requesting device.
2 So it's necessarily picking up some provisioning model that's being used for
3 that specific device.

4 So when an application is being provisioned, it's going to be packaged
5 appropriate to the requesting device, and that's at Mehta at paragraph 12.
6 And then another disclosure at Mehta says at paragraph 15 that if the
7 deployment manager retrieves a pre-provisioned application, if one exists,
8 that that meets the requirements. Otherwise, it retrieves the designated
9 application code and provisions it for the requested subscriber and device.

10 So it's necessarily, we think a person of ordinary skill in the art would
11 take these disclosures and understand that there's other provisioning models
12 and other steps of the provisioning process that Mehta teaches or suggests.

13 JUDGE SMITH: Okay. Thank you.

14 MS. CARRANO: Can I add one more?

15 JUDGE SMITH: Yeah, go ahead.

16 MS. CARRANO: One more thing I would like to just add to this is
17 that we did -- there is a dispute over the public availability of Schlapfer.
18 And Schlapfer is one of our prior art references. And so we submit that
19 Schlapfer, there was no dispute that the date of Schlapfer is July 1, 2001.
20 But the dispute is over whether it was publicly accessible.

21 And so what we submit to the board is that this European patent
22 application at Exhibit 1017, it's disclosed that this reference was accessed on
23 the internet on November 29, 2002. And so what Patent Owner challenges
24 is that this website may not have been publicly accessible. It may have been
25 behind some sort of special restriction. And we submit that it is not.

1 Because if you actually look at the file history of that EP patent,
2 which is at Exhibit 1017, the original document of that, and if you look at
3 that, you can find that on Espacenet, which is the equivalent of the patent
4 offices, patent center for the EPO, the European Patent Office. We think
5 this is a government document. This is a government document. The board
6 can take judicial notice that it wasn't actually the applicants that found
7 Schlapfer. It was the patent examiner.

8 And so in that document, there's a search report attached to the
9 original publication of this EP patent. And it shows that on November 29,
10 2002, the examiner found this and accessed this at that website and included
11 that in his search report. And that was published. And that was in his report
12 which was December 2, 2002. And it was published in the published
13 application in April 16, 2003, prior to the '790 patent.

14 So we submit that if the examiner could have found this reference in
15 November of 2002, prior to the '790 patent, that this was publicly available.

16 JUDGE SMITH: Okay. Thank you. I'll leave you about 11 minutes
17 for your rebuttal. Patent Owner, you have -- let me just set this up for you.
18 You have 35 minutes. You may begin when ready.

19 MR. MATULEWICZ-CROWLEY: Thank you, Your Honor. Good
20 morning, Your Honors. Michael Matulewicz-Crowley on behalf of Patent
21 Owner. So we've heard from Petitioner that there's a number of claim
22 elements in dispute here. And that's true. And I'm more than happy to walk
23 through anything that Your Honors would like.

24 But I do want to focus this on what I think are the most important
25 elements in dispute, particularly that first element regarding implementations

1 of an item of content. Because I think it really ends the inquiry here and
2 ends what we have to do in this proceeding.

3 So the claims of the '790 patent require a very specific structure. They
4 require items of content and implementations. And they require that the
5 implementations are of those items of content. There have to be multiple
6 implementations of some single item of content. And that's in every claim
7 of the '790 patent.

8 And I want to nip something in the bud here. This is not a claim
9 construction. This is not anything new that's being added. This is simply
10 reading the words of the claim. Baked into the words are two requirements.
11 One, that there's items of content and implementations, both of those things.
12 And two, that the implementations are of the items of content.

13 And again, this is nothing beyond the plain and ordinary meaning of
14 those words. And it's too late now for Petitioner to propose any sort of
15 construction to broaden that plain and ordinary meaning. And I want to be
16 clear, this doesn't come from any special meaning of the word
17 implementation. It's from that entire phrase. That's the important part.

18 And so what that means is that for any given reference, like Mehta,
19 the question isn't, okay, is this an implementation, or just is it an item of
20 content in a vacuum? What's important, the question is, does the reference
21 disclose multiple implementations of a single item of content? And Mehta
22 doesn't. It doesn't disclose any item of content that has multiple
23 implementations. The issue is cut and dry.

24 JUDGE WHITE: Counselor?

25 MR. MATULEWICZ-CROWLEY: Yes, Your Honor.

1 JUDGE WHITE: Maybe to put a fine point on it, what criteria should
2 we be using to differentiate between an item of content and an
3 implementation of that item of content? Because I think we can all agree
4 that there are a bunch of binary files floating around, but how do we put it
5 into a category of being an item of content or an implementation of an item?

6 MR. MATULEWICZ-CROWLEY: Your Honor, the test to use is
7 that whole phrase. So the phrase requires an item of content with multiple
8 implementations. So when you look at whatever Petitioner is pointing to in
9 Mehta, for example, say, are there any of the thing that they're pointing to as
10 an item of content, here applications, that have multiple implementations,
11 which are the files, right?

12 So the question then, the fine point question, is does Mehta ever
13 disclose an application that has multiple files associated with it? And the
14 answer is no. And in fact, I think I heard counsel for Petitioner concede that,
15 but say, well, functionally equivalent applications are similar. They might
16 be --

17 JUDGE SMITH: So you want us to read multiple files into the claim?
18 Can you repeat the last sentence that you just said about files, that Mehta
19 doesn't have multiple files?

20 MR. MATULEWICZ-CROWLEY: Yes, Your Honor. To be clear,
21 we don't want the board to read files into the claim. Files are what Petitioner
22 is mapping from Mehta into the claim. So when we're talking about, you
23 know, determining what --

24 JUDGE SMITH: Yeah, maybe you could -- before you just criticize
25 too much what Petitioner is doing, maybe, I mean, I think part of the

1 problem is, you know, the spec of this patent kind of leaves a lot to the
2 imagination in terms of implementations. All the examples of
3 implementations from Petitioner and also from Patent Owner and Patent
4 Owner's experts come from not the specification.

5 So, I mean, just start with the specification. There's the disclosure
6 about the, I guess, Figure 5 of the specification has the word implementation
7 with a box around it and then another box with the word implementation
8 inside of it. But I mean, that's the extent of it from the spec that we get for
9 different implementations. We got to use our imagination to kind of fill in
10 what are these different implementations. What is there in the spec that
11 distinguishes different implementations from different programs?

12 MR. MATULEWICZ-CROWLEY: Your Honor, there's -- hold this
13 up. But on Slide 15, we have some discussion of -- this is Figure 6 from the
14 patent, and it talks about the relationship between these items of content,
15 which are also referred to as products.

16 You see that on the top of the quote there, the product catalog contains
17 descriptions of all published items of content, parenthesis, products, right?
18 And so it's disclosing the organization or the relationship that's claimed in
19 the claims between these products or items of content and the
20 implementations.

21 Implementations is left somewhat broad because in terms of the
22 content, it can be many different things. It can be a movie. It can be an
23 application. But the point is that the '790 patent discloses a structure where
24 there has to be something that is the application, some structure of the
25 application. And there has to be a relationship between the item of content

1 and the implementation.

2 And the implementation, I think we'd agree, can be some sort of
3 binary file which, as you all noted before, is broad. And so you can think of
4 them as versions, almost, right? There has to be some disclosure of an item
5 of content and then different files that are, you know, implementations,
6 binary files that are different versions of that item of content.

7 JUDGE BELISLE: Counsel, I understand. This is Judge Belisle.
8 This patent is aged. It's around the early 2000s when it was filed. Can you
9 give us an example, perhaps, of something today that would fit this bill?
10 Something that we're familiar with on our, say, our smartphones? What
11 would be a product and what would be two implementations of that product?

12 MR. MATULEWICZ-CROWLEY: So, yes, Your Honor. And
13 there's one thing I just want to note before, because I think it's really
14 important for how we think about this issue. You cannot look at any
15 program or software on your computer and decide whether it's an item of
16 content or an implementation in a vacuum. It doesn't make any sense. And
17 what I mean by that is it's about how the system treats that software.

18 So the '790 patent talks about if you submit, for example, Microsoft
19 Word, because we've been talking about that example, Microsoft Word into
20 the '790 system, there is going to be an application, which is the Microsoft
21 Word, and then there are going to be implementations, which are the various
22 files for the various versions of Microsoft Word. The Microsoft Word for
23 Mac and for Windows, for example. And so it's going to store that
24 hierarchy. But if you --

25 JUDGE BELISLE: So, counsel, allow me to stop you there. The

1 Word example bugs me a bit, because Word for Mac and Word for
2 Windows, at least my understanding of those two different programs, are not
3 identical. They have different features because of how Mac works and how
4 Windows works.

5 So my understanding is they're not -- if you put those two different --
6 those programs, one up on one screen, one up on the other, you're not going
7 to see identical features. So where it's just simply running on a Mac,
8 running on a Windows. So I'm having trouble getting from that example to
9 a mere implementation, which is not yet defined for us through claim
10 construction, but help me through this Word example. I just, I'm not buying
11 that Microsoft Word for Mac and Microsoft Word for Windows are the same
12 product.

13 MR. MATULEWICZ-CROWLEY: Yes, Your Honor. And I think in
14 the '790 patent, there's no requirement that it's exactly the same, but it's
15 always going to be a little bit different. I think there's an example given, I
16 believe in the '790 patent, of different languages of media. So if you
17 imagine a movie where you select the movie and then the system knows to
18 give you the version of that movie in your language, there's differences in
19 those implementations. One's in Spanish, one's in English.

20 But the point is, there's no platonic ideal of, well, are these similar
21 enough to be one application? The point is whether the system in the
22 backend treats them as one application.

23 So the point is that in a '790 system, it's going to show you one thing.
24 It's going to say The Lion King, or it's going to say Microsoft Word. And
25 then when you click it, you're going to get one of the many specific files

1 underlying that one thing that you clicked that's appropriate for your device.
2 And that's different.

3 Even if you had the same files, that's different than what's in Mehta.
4 Because in Mehta, there's only ever one entry, one application per file.
5 There's no disclosure of multiple -- yes, Your Honor.

6 JUDGE WHITE: Let me see if I'm understanding you. You're saying
7 it's not the binary files themselves. It's that the system has a hierarchical sort
8 of structure in place. And then it uses that hierarchical structure to sort of
9 slot these files as different implementations.

10 So if you were in a different system other than in the system of the
11 patent, that file could be a different implementation. It could be a different
12 program. It doesn't matter. But in this particular -- in the implementation of
13 the patent issue, there's a structure in place that slots these files, a hierarchy.
14 It's not the files.

15 MR. MATULEWICZ-CROWLEY: That's correct, Your Honor. And
16 that hierarchy, if you will, which sounds like a fancy term, but really just
17 comes from the plain meaning of the fact that you have to have
18 implementations that are of an item of content. And there has to be multiple
19 ones there.

20 JUDGE SMITH: Those are like different versions you were saying
21 earlier?

22 MR. MATULEWICZ-CROWLEY: Yes, Your Honor.

23 JUDGE SMITH: So Mehta has different versions of the same
24 program, of like an upgraded version of the program. Would that be
25 different implementation?

1 MR. MATULEWICZ-CROWLEY: Your Honor, it would not. And I
2 agree with counsel for Petitioner here that in the '790 patent, there has to be -
3 - the implementations have to be corresponding to different device
4 necessities and requirements. And so that's just a different sort of thing.

5 And I think that's why that wasn't disclosed in the petition, that
6 particular argument that you could have kind of chronological versions,
7 version one and version two, because it's just a different sort of concept.
8 They're not sitting back there at the same time.

9 JUDGE SMITH: I understand. For this thing about the hierarchy,
10 where is that in the claim? Where does the claim require some type of
11 hierarchy between the content and the implementations of the content?

12 MR. MATULEWICZ-CROWLEY: Your Honor, and now I'm on
13 Slide 5. It requires it in the requirement of having not only items of content,
14 but a plurality of different implementations of one item of content. So if you
15 think about it, the words have to have some meaning. We have to give
16 meanings to every word in the claim. And if you could just have
17 applications flat out there, then it would claim a plurality of items of digital
18 content. And it would leave it at that. But it doesn't.

19 It also requires that at least one of those items of content have
20 multiple implementations. There have to be different implementations of
21 one item of content. And that's where the hierarchy is inherently baked in.
22 And I haven't heard any other meaning of what it could mean to have
23 different implementations of a single item of content.

24 JUDGE SMITH: It means hierarchy.

25 MR. MATULEWICZ-CROWLEY: It means that there has to be

1 some hierarchical -- there has to be some structures.

2 JUDGE SMITH: Did you make this argument in the briefs about the
3 hierarchy?

4 MR. MATULEWICZ-CROWLEY: Yes, Your Honor. This
5 argument that there has to be some structure between the -- yes, there has to
6 be a hierarchical relationship between the items of content and the
7 implementations. I'm happy to point you to that.

8 JUDGE SMITH: So let me just look at the claim language. So you
9 have a plurality of items of digital content. And then you have at least one
10 of the items of digital content has a plurality of different implementations.
11 And you're saying from that, we take Figure 5 and read that into the claim?

12 MR. MATULEWICZ-CROWLEY: No, Your Honor, I would not
13 quite put it like that. We're not reading Figure 5 into the claim. I understood
14 Judge White and myself in agreement to be using the word hierarchy just to
15 refer to the fact that there were both items of content, and then those items of
16 content have implementations.

17 Even in the structure of that description, there's an element of
18 hierarchy. We're not claiming this specific embodiment. We're not claiming
19 that Figure 5 has to be read in. All we are saying is that there has to be items
20 of content, and those items of content have to have something different,
21 implementations.

22 JUDGE SMITH: So if the reference had different implementations,
23 but it didn't have this hierarchy. So if it had the content, and it had the
24 different implementations, but it didn't have this hierarchy, it wouldn't meet
25 the claim?

1 MR. MATULEWICZ-CROWLEY: Your Honor, I'm not sure even
2 what that would look like, because if --

3 JUDGE SMITH: Well, what it would look like, I mean, well, that's
4 part of the problem. None of us understands what it would look like,
5 because we just have Figure 5. And we're kind of filling in the gaps with
6 our imagination. But from what Mehta has, Mehta has functionally
7 equivalent programs having the same name. That can be implemented on
8 different devices. That's what Mehta has.

9 So you have these functionally equivalent programs having the same
10 name. And both parties are using Microsoft Word that works on either Mac
11 or Windows as the different device part of that disclosure. So we have that.
12 And you're telling us that's not different implementations?

13 MR. MATULEWICZ-CROWLEY: Yes, Your Honor. Because in
14 that instance, even in how we're talking about it, you have to remember the
15 Petitioner is mapping items of content to those applications. So, in each
16 instance, each of those programs or applications in Mehta is its own item of
17 content. And so each of those only has a single one of what Petitioner maps
18 to the petition.

19 JUDGE SMITH: Well, there's no item of content, Microsoft Word in
20 the abstract. I mean, there's no content, Microsoft Word. There's either
21 Word for Windows or Word for Mac. I mean, so you have this content,
22 Word, and then you have the implementations, Mac or Windows. But the
23 content, Word by itself, I mean, you're right. That content doesn't exist in
24 the abstract. But this is what your expert brought up as an example to
25 describe.

1 I mean, your expert brought this up. Your expert gave this to us. And
2 now you're telling us it's not content? So let me ask you this. Is Microsoft
3 Word content, or is it not content?

4 MR. MATULEWICZ-CROWLEY: Your Honor, so I think you're
5 exactly right on the point, is that Microsoft Word is an item of content in the
6 '790 patent. In a system that's doing what the '790 patent does, then it would
7 have an item of content called Microsoft Word. And underneath that, it
8 would have the specific implementations of these two different versions.
9 And the reason why we're not thinking of it with Mehta is because Mehta
10 doesn't have that. And there's just one thing I want to point out --

11 JUDGE SMITH: Let me just follow up real quick. There would be
12 no content, Microsoft Word. There would just be an entry in a database
13 Word. But the actual substantive programs would be either Word for
14 Windows or Word for Mac. There would be no Word in the abstract that
15 doesn't work with any device.

16 MR. MATULEWICZ-CROWLEY: So I think that's an
17 implementation detail of the '790 patent of what exactly Microsoft Word
18 would be in a '790 system.

19 JUDGE SMITH: I mean, in the '790 system, the product Word would
20 just be the name Word. There wouldn't be any content beyond the name
21 Word.

22 MR. MATULEWICZ-CROWLEY: There would have to be a
23 concept of the Microsoft Word. And when you go through the rest of the
24 claims, that becomes clear. There has to be something that the user can
25 select, for example. Because remember, the claims require selecting the

1 portion of the catalog with items of content. So it has to be able to select an
2 entry for Microsoft Word.

3 So I don't think it's quite right to say that it means nothing. There is,
4 in a '790-enabled system, the concept, the implementation that supports the
5 application of Microsoft Word. And --

6 JUDGE WHITE: And sir, I think I'm understanding your point.
7 You're saying let's just use the Doom examples. That seems to be germane
8 to that particular type. You would have Doom, and you might have Doom
9 for your Nokia phone, and Doom for your Motorola phone. But there is
10 some -- the of in the claim language requires there to be some structure,
11 something that has a linkage between the Doom for your Ericsson phone and
12 the Doom for your Motorola phone.

13 And you're saying that's an explicit, and Mehta is -- that there isn't
14 anything showing that Doom for your Nokia phone and Doom for your
15 Motorola phone have some sort of relationship.

16 MR. MATULEWICZ-CROWLEY: That's exactly right, Your Honor.

17 JUDGE WHITE: Am I understanding that in your argument?

18 MR. MATULEWICZ-CROWLEY: Yes, Your Honor. That's exactly
19 right.

20 JUDGE BELISLE: Counsel, Judge Belisle. So if that's correct, then
21 why doesn't a system that stores and supports, stores and supports,
22 functionally equivalent programs, having the same name, that are capable of
23 running on multiple kinds of devices, not fall into that category?

24 MR. MATULEWICZ-CROWLEY: Your Honor, because the claim
25 requires that relationship from the word of, that linkage, and that's exactly

1 what's missing. There's no relationship. Mehta doesn't disclose any
2 relationship.

3 JUDGE SMITH: It does disclose a relationship. Go ahead.

4 JUDGE WHITE: Is the fact that they have the same name giving the
5 relationship, since they're all named Doom, I know that there's a relationship
6 between these various binary implementations. Wouldn't that be the thing
7 that leaves the same name?

8 MR. MATULEWICZ-CROWLEY: No, Your Honor, because there
9 has to be some actual formal relation -- it's not formal, but a relationship
10 disclosed besides sharing something. I mean, you could as well say, well,
11 the fact that they're both written in C Sharp is some sort of relationship. But
12 that's not what's required. What's required is that there's an item of content.
13 There's one entry, and then there are multiple implementations behind it.

14 And so if we think of a Doom example, and we can even think to
15 make it simpler, Doom written in C Sharp and Doom written in Java. So
16 they're just written in two different source code languages, let's say. The
17 system treats those -- sorry. The system in Mehta treats those as two
18 different applications. They're two different programs.

19 Nothing in Mehta discloses that they're linked in the database such
20 that when somebody requests one, if the other one is the more appropriate
21 one, then that's given. There's no disclosure of that. They're just two wholly
22 separate applications that happen to be functionally equivalent and have the
23 same name.

24 JUDGE SMITH: So I guess in the -- I'm looking at Claim 2 right
25 now. I'm trying to see where all that language is in Claim 2. I mean, all

1 you're doing in Claim 2 is you have this content. You have these different
2 implementations of the content. And then you present a single description of
3 the content to the describer. I mean, the whole thing about is it compatible
4 with the subscriber's device or not, I'm not seeing any of that.

5 MR. MATULEWICZ-CROWLEY: So you want to think of it like
6 this. In this example where there are two different versions of -- so there's
7 two applications in Mehta of Doom, Doom A and Doom B, we can say. In
8 that world, there is no item of content disclosed by Mehta. There has to be
9 some single thing that is disclosed by Mehta that those two files are
10 associated with.

11 The language requires the implementations be associated with an item
12 of content, right? In Mehta, all you have are two different applications,
13 which Petitioner has said, those are the items of content. You have two
14 different items of content there, Doom A and Doom B. And they both have
15 one file, one implementation. There's no disclosure of a singular item of
16 content that they're both associated with in the Mehta version. And if we
17 think, well, sure, but they could have been --

18 JUDGE SMITH: Well, I mean, in Mehta, you have this application
19 profile. And within the application profile, you would have the description
20 of the different implementations.

21 MR. MATULEWICZ-CROWLEY: You are right. I don't think
22 Mehta discloses that. In fact, I know Mehta discloses one implementation
23 for each file. But nothing in Mehta discloses that in the application profile,
24 it says, well, hey, there's another version of Doom over here. Make sure you
25 tag these together or anything. There's no relationship there. And actually,

1 that in fact shows there's one application profile per --

2 JUDGE SMITH: But in Mehta, when you request Doom, let's say
3 there are two different versions of Doom A and B. You have a device that
4 would work with version A of Doom. And you say, I want Doom. It's
5 going to present you a list that includes the word Doom, and it's going to
6 filter it for your device. And it's going to give you the version that works on
7 your device.

8 So, I mean, in terms of the linkages or the relationships, that's the
9 relationship between the different implementations and in selecting one for
10 your device.

11 MR. MATULEWICZ-CROWLEY: But, Your Honor, in that
12 example, Doom 2 or Doom B could also be compatible with your device.
13 Say your device can read both C Sharp code and Java.

14 JUDGE SMITH: Is there testimony in the record that shows that there
15 are different implementations that work with this? I mean, this is part of the
16 problem. The only example we have is this Microsoft Word that either
17 works with Windows or it works with Mac. There's no Microsoft Word that
18 works with both. Is there any testimony from anybody or any evidence from
19 anywhere that shows that there are different implementations of content that
20 work on the same device?

21 MR. MATULEWICZ-CROWLEY: Yes, Your Honor, there is. And
22 it might take me one moment to find it, but Dr. Goodrich, our expert,
23 testified about this very example. Well, not of Doom, but of Program A and
24 Program B that is compatible with both -- where both programs are
25 compatible with the user's device. And in that context, both would be shown

1 in the Mehta system.

2 JUDGE SMITH: Okay. Where did he disclose that?

3 MR. MATULEWICZ-CROWLEY: I can point you to that in one
4 moment. So in paragraph 88 of Exhibit 2020, which is Dr. Goodrich's
5 declaration, he says, Mehta explains that the functionally equivalent
6 applications can have the same name, but can, for example, be written using
7 different languages. From this, a person of ordinary skill in the art would
8 understand that for some users, there might be multiple different functionally
9 equivalent applications.

10 For example, there might be a program, Program A, which is written
11 in C++, and another program, Program B, which is written in C. Both
12 programs could be compatible with a single user's computer. In that case, a
13 POSITA would understand that Mehta discloses the mask which show both
14 applications to a user, leaving the user to choose between the two.

15 And this gets to the point for a later element that even if we accept
16 that functionally equivalent applications are multiple implementations,
17 which we disagree with, but even if you do, Mehta doesn't disclose showing
18 only a single description of each item of digital content, regardless of the
19 number of implementations because in that time, it would show two
20 different descriptions, because there are two implementations in each.

21 JUDGE SMITH: So in your device, if there are two different
22 implementations that work on the same device, you would just pick one for
23 the user? Is that how your device would do it?

24 MR. MATULEWICZ-CROWLEY: In the '790?

25 JUDGE SMITH: Yes.

1 MR. MATULEWICZ-CROWLEY: Well, the point is that it would
2 only show one description, regardless of the number of implementations.

3 JUDGE SMITH: So the user wouldn't be able to pick what
4 implementation he wants.

5 MR. MATULEWICZ-CROWLEY: The user would not see multiple
6 descriptions.

7 JUDGE SMITH: How would the user pick one of the several
8 implementations in the '790 patent?

9 MR. MATULEWICZ-CROWLEY: The system in the '790 patent, I
10 don't know if the '790 patent contemplates the user being able to dig into the
11 implementations in that way. It's a little outside of the scope of the patent.

12 JUDGE SMITH: Okay. So where is any of that in the claim? About
13 --

14 MR. MATULEWICZ-CROWLEY: So it's in Claim 2. Claim 2, this
15 is on Slide 43, requires that the selected portion, as presented to the
16 subscriber, provides only a single description of each item of digital content
17 in said portion, regardless of the number of implementations of each set
18 item.

19 JUDGE SMITH: So in Figure 2 of Mehta, when you have that list
20 that includes Doom, and if Mehta says that there could be functionally
21 equivalent programs having the same name Doom, for example, that are
22 capable of running on multiple kinds of devices. So if there are functionally
23 equivalent programs having the name Doom, and Doom is shown in Figure
24 2 of Mehta, and there's, for example, Doom for iPhone or Doom for
25 Android, and it just shows Doom, would that meet the claim?

1 MR. MATULEWICZ-CROWLEY: No, Your Honor, because it can't
2 be that the system discloses, or that the reference discloses something that
3 happens to -- if there's only one implementation, show one description,
4 which I believe is the situation you just described. The issue is --

5 JUDGE SMITH: No, there are two implementations. But it's only
6 showing the word Doom.

7 MR. MATULEWICZ-CROWLEY: Okay. Well then, even then, if a
8 reference describes that sometimes when there's two implementations, it
9 shows one description and sometimes when there's two implementations, it
10 shows two descriptions, that would not disclose the claim language, because
11 the claim language is that you show a single description, regardless of the
12 number of implementations.

13 JUDGE SMITH: So I guess, from what I understand, Patent Owner's
14 point and from what I understand, Mehta is disclosing, it's just going to
15 show Doom. It's not going to show five listings of the word Doom. It's just
16 going to show Doom once.

17 MR. MATULEWICZ-CROWLEY: Well, that's in a situation -- that's
18 in a kind of manufactured world in which there's only one Doom application
19 that's compatible with your device. We can't say, well, if we cabin the world
20 to -- if there's only one version that's compatible with your device, then
21 voila, there's only one description. Because in reality, there can be
22 situations, as we just saw from Dr. Goodrich's testimony, where there are
23 multiple versions of Doom that are compatible with your device.

24 And so the point is, is that it has to disclose a system, where
25 regardless of if there's multiple implementations, and if they're all

1 compatible, or only one's compatible, you only show one description.

2 JUDGE SMITH: Okay.

3 MR. MATULEWICZ-CROWLEY: And I just want to note for this
4 requirement that there's multiple implementations for a single item of
5 content. There's no obviousness arguments here. It's only an anticipation
6 argument. So the question is nothing beyond, does Mehta disclose ever one
7 of what they point to as the item of content, the application, ever disclose an
8 application with multiple implementations? So they point to the -- here we
9 see on Slide 40, this is talking about a different one, but it shows you Figure
10 9d, which is the point.

11 They say the KBrowser is the application, and they say the file, that
12 JAR file in Figure 9d, is the implementation. And we have to take them at
13 their assertion, and nothing in Mehta ever discloses any single application
14 that has multiple of what they call the implementations, these files
15 associated with it. And that's what's required by the claims.

16 JUDGE BELISLE: Counsel, this is Judge Belisle. Why doesn't
17 what's shown on Petitioner's Slide 13 which says, again, that the MAS stores
18 and supports functionally equivalent programs, functionally equivalent
19 programs having the same name that are capable of running on multiple
20 kinds of devices.

21 So I have the same name, Doom. I have functionally equivalent
22 programs of Doom. Those functionally equivalent programs are capable of
23 running on multiple kinds of devices. Seemingly, at least my understanding
24 of reading these words, is that they're talking about the functionally
25 equivalent programs exist so that they can each run on a different kind of

1 device. How is that not multiple implementations of an item of content?

2 MR. MATULEWICZ-CROWLEY: Because there's multiple items of
3 content. There's multiple programs.

4 JUDGE BELISLE: You're saying each of those functionally
5 equivalent programs is a different item of content?

6 MR. MATULEWICZ-CROWLEY: Yes. And in fact, that's what
7 Petitioner says when they say the applications are what we're mounting to
8 the items of content.

9 JUDGE BELISLE: I guess we'll hear from Petitioner if that's what --
10 JUDGE SMITH: I'm just curious, why did your expert change his
11 view on this from his declaration to his deposition?

12 MR. MATULEWICZ-CROWLEY: Your Honor, and I think this is
13 an important point that I wanted to bring it up before. Our expert did not.
14 Right here, I show you Slide 14. This is what we were talking about before,
15 about Microsoft Word being a piece of content and the versions of Microsoft
16 Word for Windows and Microsoft Word for Mac.

17 Here's the important part that Petitioner left out. He's talking about
18 the '790 patent. He's talking about how things work in the '790 patent. He's
19 saying that if you submit Microsoft Word, the cool thing about the '790
20 patent is it's going to split up into a piece of content and it's going to split up
21 into items of implementations associated with that item of content and it's
22 going to store all of that.

23 JUDGE BELISLE: Okay. So let me stop you there, counsel. Judge
24 Belisle. I submit -- Microsoft submits Word to the '790 patent. Are you
25 telling me that your application is going to take Word and create different

1 implementations of it?

2 MR. MATULEWICZ-CROWLEY: Your Honor, you would submit
3 Microsoft Word and there would be boxes or however you want to
4 implement the '790 patent where you could have multiple little boxes to
5 submit all the different implementations, all the files with it.

6 JUDGE BELISLE: Well, so Microsoft is submitting the different
7 versions to the invention of your patent.

8 MR. MATULEWICZ-CROWLEY: Yes, because the invention can
9 handle that. The invention can have multiple implementations associated.
10 And actually, if you look at Figure 9a from Mehta, this was something I
11 noticed and was interesting. We talked about this in the briefing. There's
12 only one box for one file. Mehta can't even handle the concept of having
13 multiple files for one application.

14 If Mehta did disclose a '790-enabled system, among other things, we'd
15 have multiple boxes because it can handle the relational information that
16 there's multiple implementations for one application. Mehta can't do that.
17 That's the fundamental point. Mehta, you have one file for one application.

18 JUDGE BELISLE: So to go back to Word, the item of content, even
19 in the '790 patent, really is just the Word. The word Word.

20 MR. MATULEWICZ-CROWLEY: Microsoft Word, but yes.

21 JUDGE BELISLE: All right. But it's those functionally equivalent
22 versions of Word that are your different implementations. Is that not
23 correct?

24 MR. MATULEWICZ-CROWLEY: Well, the point in a '790-enabled
25 system is that you would have to store, and this is required in the claims,

1 store both Microsoft Word and that you have files of Microsoft Word. So
2 you have implementations of the items of content. So you store the item of
3 content, Microsoft Word, the Word, the concept of Microsoft Word, and
4 then you store the implementations that are associated or of that item of
5 content, Microsoft Word.

6 JUDGE BELISLE: Right. So let's get back to this item of content.
7 The item of content really is just a Word. Well, let's get off Word for Word.
8 I mean, it's just a name. There's no million lines of code associated with the
9 item of content because the item of content is just a designator, correct?

10 MR. MATULEWICZ-CROWLEY: It's a concept, Your Honor.

11 JUDGE BELISLE: Well, concept, designator. It's not a runnable
12 program in and of itself.

13 MR. MATULEWICZ-CROWLEY: Your Honor, I --

14 JUDGE BELISLE: There's no binary files or code that would allow it
15 to run.

16 MR. MATULEWICZ-CROWLEY: I think that's fair that it's not a
17 binary, yes.

18 JUDGE BELISLE: So I have the concept of Microsoft Word, but
19 then I have different implementations of that. The different implementations
20 of the concept of Microsoft Word are Word running on a Macintosh system,
21 Word running on a Windows-based system. Is that correct?

22 MR. MATULEWICZ-CROWLEY: Can you repeat that question
23 again? I apologize.

24 JUDGE BELISLE: So in the '790 patent, the different
25 implementations of the concept of Microsoft Word would be the program

1 that runs on Macintosh, Microsoft Word for Macintosh, and then a program,
2 the files, that run on Microsoft Windows. Those would be my two
3 implementations in that example, is that correct?

4 MR. MATULEWICZ-CROWLEY: Yes, Your Honor.

5 JUDGE BELISLE: So those two implementations of the concept of
6 Microsoft Word, are those not functionally equivalent programs?

7 MR. MATULEWICZ-CROWLEY: You know, they may or may not
8 be functionally equivalent. They probably are if the system is choosing to
9 store them under one application. But that doesn't mean just because
10 someone says, look, the concept of functionally equivalent applications
11 exists, that that discloses this cool structure of associating applications and
12 the items of content.

13 And what you have to realize is that we say, okay, well, it's just
14 inputting a concept, just the term Microsoft Word or Doom or whatever into
15 a system. But that's what lets the patent function.

16 When you look at the rest of Claim 2, the whole point is that you're
17 storing some concept, this item of content, Microsoft Word, and you're
18 relating it, you're storing that relation of the items of content to -- sorry, the
19 implementations to the item of content. And that's what lets you later only
20 show one description. And that's why the read on Mehta falls apart more
21 and more as you go down the claims.

22 Sometimes Mehta will show multiple descriptions of an item of
23 content under their reading because it doesn't have this -- because it doesn't
24 store that there were implementations associated with items of content. That
25 relationship is key.

1 JUDGE BELISLE: Judge Belisle again. What is Patent Owner's
2 view of Mehta with respect to the disclosure of the word Doom? Is that a
3 concept or an item of content or is that an implementation?

4 MR. MATULEWICZ-CROWLEY: Honestly, Your Honor, I think
5 you could read it either way because it's not -- but the way that they map it is
6 that Doom is the item of content. That's the application. The concept of
7 Doom is the item of content. And then the file, doom.jar or whatever it is,
8 that single file is the implementation.

9 And that's the issue at the end of the day is that even with a
10 functionally equivalent application, you're going to have in the structure of
11 Mehta, you're going to have another application with another application
12 profile and another metadata and another entry into the database of some
13 other Doom.

14 It's going to have the same name, but it can be disambiguated by the
15 metadata. That's the whole point of this discussion. But it's going to be a
16 whole other entry in the database with one file again. And in no instance
17 does Mehta disclose having one application with one name where there are
18 multiple files.

19 JUDGE SMITH: Thank you, counsel. You're into your rebuttal time.
20 Do you want to keep going or do you want to reserve the rest for your
21 rebuttal?

22 MR. MATULEWICZ-CROWLEY: I'm going to reserve the rest. I
23 just have one statement for just probably 10 seconds.

24 JUDGE SMITH: Okay.

25 MR. MATULEWICZ-CROWLEY: We just heard at the end here

1 something about Schlapfer's availability. I think it had to be added at the
2 end because it has nothing to do with anything in the record here or any
3 argument that's ever been raised about what was in the details of the
4 European patent there. We've certainly never heard the argument. And so I
5 think it's fair to say our position is that that's waived.

6 JUDGE SMITH: Okay. Thank you. Petitioner, you have 11 minutes
7 for rebuttal. You may begin when ready.

8 MS. CARRANO: Your Honors, so what you heard from Patent
9 Owner was what we said they were doing, which is they are trying to read
10 this hierarchical structure depicted in Figure 5 into the claims, and the claim
11 language just does not support it. We're trying to read the claims according
12 to the plain and ordinary meaning.

13 And what Patent Owner is trying to do by using this of language is
14 trying to import this preferred embodiment depicted in Figures 5 and 6 of the
15 '790 patent into the claims. And what they're doing is conflating two things.
16 They're conflating the how and what of how things are treated in the '790
17 patent.

18 This limitation pertains to what is being stored, not how it's being
19 stored. The what is that it's receiving and storing in a server system a
20 plurality of items of digital content.

21 JUDGE SMITH: You're on Slide 19?

22 MS. CARRANO: Yes, Your Honor, I'm on Slide 19.

23 JUDGE SMITH: Okay.

24 JUDGE WHITE: Well, can I just ask you a clarifying question?
25 What in Mehta would indicate that something is an implementation of a

1 particular piece of content? Even if we put aside the whole Figure 5
2 drawing, and I may have just introduced something and I used the word
3 hierarchical, but if we just look at the claim language, the implementation of
4 that content, what indicates that relationship?

5 Because I see that we can have two functionally equivalent files in
6 there. But what indicates that they are items of the same digital content?
7 What is the linkage?

8 MS. CARRANO: So the linkage would be in the application profiles,
9 you would have the same title. If we go back to that Microsoft Word
10 example, you would have an application profile with the title Microsoft
11 Word. I think we all established that an item of digital content is just that
12 concept of what the content is.

13 So you've got the title, Microsoft Word, and then you're going to have
14 the URL that identifies the specific implementation. And that's going to
15 have the file name for the Mac version. And then another application file
16 would have the same title, Microsoft Word, and then it would have a
17 reference to the URL for the implementation for the Windows version of
18 Microsoft Word.

19 And so that's how Mehta discloses and teaches this concept of a
20 plurality of items of digital content and a plurality of different
21 implementations, because that's all that's required of the claims. It's not this
22 hierarchical system which Patent Owner introduced into this discussion here.
23 That's in their briefing, that this hierarchical two-level structure is claimed,
24 but it's not claimed.

25 The other thing that they're complaining is this concept of an item of

1 digital content with a product entry. Those are two different things. An
2 item of content is like the what, whereas a product entry, which is going to
3 Slide 18 of Petitioner's Demonstratives, product entry is how things are
4 stored in the database.

5 There's this concept of a product entry, and they're conflating an item
6 of digital content, that product, with a product entry, where you have a
7 product entry disclosed in this preferred embodiment at Figure 5 that has the
8 references to the implementations. This is all part of how things are stored,
9 but that's not required in the claim language.

10 And so one thing I want to clear up from, you know, there was
11 discussion earlier about, well, is there a disclosure in Mehta about, you
12 know, are there different implementations? And there is actually a
13 disclosure in Mehta if you go to paragraph 64. Paragraph 64 of Mehta talks
14 about these different versions of content that can be stored.

15 So it says at paragraph 64, the downloaded application may be, for
16 example, a new and popular application, or an upgrade, or a more recent
17 version of software that will run in the subscriber's device.

18 So we know that Mehta allows for different versions, and so that
19 could also, if you have different versions, a newer version versus an older
20 version, that could be filtered out based on a subscriber's device.

21 If a subscriber's device is an older device that doesn't support the
22 newer version of the application, what would be returned if both of these
23 versions were stored in Mehta would be the older implementation, the older
24 version of that application. And so there is this concept of different
25 implementations that is disclosed in Mehta.

1 JUDGE SMITH: You mean the newer version?

2 MS. CARRANO: If it was an older device, it may only support the
3 older version.

4 JUDGE SMITH: Oh, I see. I understand. Okay, its fine.

5 MS. CARRANO: Right. Whereas the newer device might support
6 both the older and newer version. But those are different implementations.

7 JUDGE SMITH: So these different versions are different
8 implementations?

9 MS. CARRANO: Those would be different implementations when
10 you have a user device that may only be able to support one of those.
11 Because what's being returned, if you looked at the claim, going to Slide 19
12 that has the claim language, where each implementation of any given item of
13 digital content corresponds to a different set of device capabilities. Well,
14 when you have an older version or a newer version of an item of content, not
15 all the devices will support each version.

16 JUDGE SMITH: Maybe I misunderstood you earlier. I thought you
17 said that these different versions are not different implementations, in your
18 opening statements.

19 MS. CARRANO: It depends, again, on the context in which it is. So
20 if you have implementations that -- for example, the newer phone might be
21 able to support both of those versions. Because it might be able to support
22 the old version and the new version. So what may return, if both are
23 compatible, it may return the one that's best suited for the phone. So it may
24 support just returning the newer version, or it may support both.

25 There's actually two embodiments in Mehta which discloses being

1 able to show all the applications, or just the ones that are best suited and
2 most compatible with the user's device.

3 JUDGE SMITH: So to Patent Owner's point that Mehta is going to
4 list to the user all available implementations, that's just one embodiment?

5 MS. CARRANO: That's just one embodiment, correct. There's the
6 other embodiment that I showed you. I believe that was -- let me see.

7 JUDGE SMITH: Was that Figure 11?

8 MS. CARRANO: Yeah, I believe. So where it says it's going to
9 filter, going to Slide 26 -- actually Slide 27, where it says MAS only list
10 those applications that are supported by the subscriber's device. So that's --

11 JUDGE SMITH: But what if there are multiple applications
12 supported by the device, would it list all of them?

13 MS. CARRANO: Well, it depends on what we're talking about here,
14 because are we talking about the Microsoft example where we've got the
15 Microsoft PowerPoint, Excel, Word, it's going to then return all of those
16 versions that are compatible with the device.

17 JUDGE SMITH: What if it's like Word 95 or Word 2000, and they're
18 both supported by the device, would it list Word 95 or Word 2000?

19 MS. CARRANO: So if the device supports both of them, then I
20 believe that it would under that embodiment.

21 JUDGE SMITH: Okay. And is that enough to defeat an anticipation
22 challenge?

23 MS. CARRANO: That is. That is enough, because what the claim
24 requires again, going back to the claim language, which looking at Slide 9,
25 what's required is you have a plethora of different implementations of at

1 least one of the items of digital content, where each implementation of any
2 given item of digital content corresponds to a different set of device
3 capabilities.

4 JUDGE SMITH: But then you have the last clause that says you just
5 present a single description, in that last clause.

6 MS. CARRANO: Right. So you're going to have these different
7 types of scenarios where you might have different versions or you might
8 have different implementations. Different implementations can mean
9 different versions or the different types of, you know, you've got the Apple
10 version and the Word version.

11 JUDGE SMITH: All right.

12 MS. CARRANO: So if you have those two different types of versions
13 that are compatible with different devices, which is that language of
14 functionally equivalent programs running on different devices, that is going
15 to teach that part of Claim 2 that requires that.

16 JUDGE SMITH: That's just going to return 1.

17 MS. CARRANO: It's going to return 1.

18 JUDGE SMITH: But for the scenario where it's Microsoft Word for
19 Windows, but it's Word 95 versus Word 2000. And it's not clear from
20 Mehta what it would do, but let's say Mehta returns both. The scenario
21 where it's functionally equivalent applications running on different devices
22 is enough to meet the claim under 102, the fact that there may be other
23 embodiments that display descriptions of multiple implementations.

24 MS. CARRANO: Yeah, I think that's where we get into this concept
25 of what is the item of digital content. Is the item of digital content that

1 specific version of Word, like the Windows 2000 version? And so it gets a
2 little bit more into the weeds.

3 But I think what we have to just remember here is that the disclosures
4 in Mehta demonstrate that it has, where you have functionally equivalent
5 programs having the same name that operate on different types of devices,
6 that's teaching the different implementations that's required in the claims.
7 There's no hierarchical structure that is claimed.

8 And so I want to point out, you know, one more thing that came up in
9 Patent Owner's discussion here is that what they're really trying to do, and I
10 hope you see this, is that they really are trying to read in this embodiment of
11 this notion of a product entry where the product entry is going to identify
12 each reference of the implementation.

13 Each of the implementations will be referenced in that product entry.
14 But that's not the product itself. That's not the item of digital content. That's
15 the metadata associated with the hierarchical database that they're trying to
16 import into the language of Claim 2.

17 And so, even their expert at page 26, line 5 through 6, recognized that
18 the product entry is not identical to the product. Instead, it's a reference in
19 the data structure that's describing the product and the metadata. And that's
20 what Mehta does too with its application profiles.

21 Its application profiles allow for an item of content to have a title,
22 Microsoft Word, and then its reference is going to identify the specific
23 implementation. These are functionally equivalent programs that have the
24 same name, and they operate on different devices. You've got the reference
25 to the Mac version and the reference to the Windows version.

1 JUDGE SMITH: Okay. Thank you.

2 JUDGE BELISLE: Counsel, I have just a couple of questions just
3 because of something Patent Owner said about how Petitioner is allocating
4 the disclosure of Mehta. So to try to be as clear as we can, what in Mehta
5 does Petitioner argue explicitly discloses the item of content claimed in
6 Claim 2?

7 MS. CARRANO: That would be the title in the application. The title
8 indicates that concept of an item of digital content.

9 JUDGE BELISLE: And then what is the explicit disclosure in Mehta
10 that discloses more two implementations, a plurality of different
11 implementations of that content?

12 MS. CARRANO: So you would have how Mehta works. We've got
13 the application profiles. So you'll have for each application profile the title,
14 Microsoft Word, and then you're going to have the reference. And so that's
15 in Figure 9b of Mehta. So you're going to have this reference that's going to
16 have the location of the file and the end of the URL is going to have the file
17 name. That's going to identify the implementation. That's going to say this
18 one is the Microsoft Word version for Apple.

19 And then below in Figure 9 it shows the different Java profiles
20 because this is for the KBrowser example. It's going to have which Java
21 profiles are compatible with it.

22 So you have in Mehta the disclosure of an application profile that's
23 going to identify the item of content, which going to the Word example,
24 you've got Microsoft Word. And then you've got the reference, which is
25 going to identify which version are you talking about. Are you talking about

1 the Apple version or are you talking about the Windows version? So you're
2 going to have two application profiles, but they're connected through the
3 same title.

4 JUDGE BELISLE: Thank you.

5 JUDGE SMITH: Patent Owner, you have 5 minutes for rebuttal. You
6 may begin when ready.

7 MR. MATULEWICZ-CROWLEY: Good afternoon now, I think,
8 Your Honors. I just want to start off where Counselor for Petitioner left off.
9 She said, well, yes, there's different applications and there's different
10 application profiles, but they're connected through the same title. But
11 remember, we're just talking about anticipation here. And Mehta doesn't
12 disclose that.

13 This whole concept that, well, there could be a superstructure where
14 Mehta knows that even though structurally these are different application
15 profiles, they have the same name, and so it treats them as one item of
16 content because they have the same name, none of that's in Mehta.

17 These are computers. These aren't people that are going to look and
18 say, oh, these are both Doom. Maybe they're the same thing. These are
19 computers. They're different products. They're different application
20 profiles. These are different applications. And this is the issue. Because I
21 hear all this gap-filling.

22 So first, that the name is the item of content. I mean, as an initial
23 matter, I don't think I've ever heard that sentence in any of the briefing, and
24 there's been a lot of briefing on this issue. That was never it. It was that the
25 applications themselves. That was the item of content.

1 Well, now when pushed, because these are different applications, so it
2 can't be one item of content with multiple implementations, they say, okay,
3 well, it's just actually the name and the fact that the name. But, again, Mehta
4 doesn't disclose that.

5 What Mehta discloses, and I'm on Slide 47 here, is that even if you
6 have functionally equivalent applications with the same name, this is an
7 example, application 1, application 2, let's say they're both called Doom. If
8 they're both compatible with your device, you're going to see both of them.

9 JUDGE SMITH: Right. So I think Petitioner wasn't talking about the
10 scenario where they're both compatible with your device. She was talking
11 about the scenario where only one is compatible with your device.

12 MR. MATULEWICZ-CROWLEY: But the issue, Your Honor, is that
13 because Mehta actually doesn't disclose any knowledge or concept of a
14 relationship between those two different applications, this idea that they
15 really are, it does treat them as one item of content because they have the
16 same name, Mehta doesn't disclose that. Mehta doesn't know. And that's
17 the issue, is that --

18 JUDGE SMITH: Sure. I mean, the issue is, does it meet the claim
19 language if you have these two different implementations that run on
20 different devices, and when you're using an Android, you're only going to
21 see on your screen one name. And when you click on it, it's only going to
22 give you the one program for your device, which according to the Petitioner,
23 meets the claim language.

24 MR. MATULEWICZ-CROWLEY: And here's the issue with that.
25 You know, Petitioner before was talking about, well, this is just one

1 embodiment. That's not really exactly true the way we're thinking about it,
2 right? So to be clear, Mehta is not talking about different embodiments, and
3 in one of their structures, one of the systems, it will only ever show one
4 description, regardless of the number of implementations.

5 Instead, what Petitioner is talking about is that if they carefully craft
6 the scenario, that there is at least one scenario where Mehta would only
7 show one description, even when there's multiple implementations. But
8 that's not the requirement. The claims don't say showing sometimes one
9 description, even when there are multiple, or regardless of the number of
10 implementations. It says always showing a single description, regardless of
11 the number of implementations.

12 So you can't just take this one disclosure in Mehta, which is this MAS
13 system, and say, well, if you plug in this scenario, it'll only show one
14 description. The issue is, when you plug in a different scenario, it shows
15 multiple descriptions.

16 And so what that shows is that fundamentally, Mehta doesn't disclose
17 a system in which it only shows a single description, regardless of the
18 number of implementations. It is with regard to the number of
19 implementations. If there's multiple, and sometimes, it'll show multiple
20 descriptions. And that's what we're showing here. And that's why
21 fundamentally, Mehta doesn't meet this claim language.

22 So then we also -- I heard a complete reversal on this versions thing.
23 And I have to say, again, none of this was in the papers beforehand. But
24 regardless, Mehta never discloses having multiple versions at the same time.

25 It talks about, sure, if you have KBrowser, or Doom, or whatever you

1 want to say, you have your one file for that and maybe that file for
2 KBrowser is kbrowserv1.jar, and then there's a new one and they call that
3 kbrowserv2.jar. Sure, Mehta can replace and exist in that file. But there's
4 no disclosure that you would ever have multiple versions of any application
5 in Mehta. And that's the fundamental issue.

6 JUDGE SMITH: Okay. Thank you. The case is submitted. We're
7 off the record.

8 (Whereupon, the above-entitled matter went off the record at 12:41
9 p.m.)

PETITIONER:

Aliza Carrano
acarrano@willkie.com
Indranil Mukerji
imukerji@willkie.com
Heather Schneider
hschneider@willkie.com

PATENT OWNER:

Christine Lehman
clehman@reichmanjorgensen.com
Michael Matulewicz-Crowley
Mmatulewicz-crowley@reichmanjorgensen.com
Jamie Cardenas-Navia
Jcardenas-navia@reichmanjorgensen.com
Naveed Hasan
nhasan@reichmanjorgensen.com