
IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

GOTV STREAMING, LLC

Plaintiff,

v.

NETFLIX, INC.,

Defendant.

Case No. 2:22-cv-07556-RGK-SHK

CORRECTED DECLARATION OF DR. JOHN VILLASENOR
REGARDING INVALIDITY OF U.S. PATENT NOS. 8,989,715; 8,478,245;

AND 8,103,865

June 23, 2023

I declare under penalty of perjury under the laws of the United States that to the best of my knowledge the below is true and correct.

Date: June 23, 2023



John Villaseñor, Ph.D.

EXHIBIT

2017



VIII. OPINIONS REGARDING CLAIM CONSTRUCTION

A. Summary of Opinions

123. In this section, I give my opinions regarding the view of a POSITA as to the meaning of certain terms in the Asserted Claims of the '865, '245, and '715 patents. I am informed that the Parties have proposed certain claim terms from the

Asserted Claims be construed. I have also been informed of certain agreed-upon terms which appear in the Asserted Claims, and their corresponding agreed constructions, which are listed in the table below:

Claim Term	Agreed Upon Construction ⁴
“content items” (’865 patent claim 1)	plain and ordinary meaning; no construction necessary
“page description” (’865 patent claims 1, 4)	plain and ordinary meaning; no construction necessary
“compiled content” (’245 patent claims 1, 2, 4, 5, 12, 13, 15, 16) (’715 patent claims 1, 3, 4, 12)	plain and ordinary meaning; no construction necessary
“rendering [capability/capabilities] of said wireless device” (’865 patent claims 1, 12) (’245 patent claims 5, 16) (’715 patent claims 4, 12)	plain and ordinary meaning; no construction necessary

124. I also have been informed of the disputed terms which appear in the Asserted Claims, and their corresponding proposed constructions by the parties, which

⁴ I am informed that on June 12, 2023 the parties agreed on the construction of these terms.

are listed in the table below:

Claim Term	Defendant's Proposed Construction ⁵	Plaintiff's Proposed Construction
"discrete low level rendering command" ('865 patent claims 1, 4)	Indefinite	Not indefinite Alternatively, "discrete rendering command that is tailored based on wireless device capability"
"render[ing] command[s]" ⁶ ('865 patent claims 1, 4, 16) ('245 patent claims 1) ('715 patent claims 1)	"instruction[s] to generate graphics on a display"	"a description for rendering a page component, such as the width or the height of the component"

⁵ I am informed that Netflix adopted claim constructions for "render[ing] command[s]," "custom configuration," and "rendering blocks" on June 9, 2023, that it had proposed as compromise constructions to Plaintiff on June 8, 2023. The analysis and conclusions that I have reached regarding prior art invalidity apply Netflix's current proposals for those three terms. I have considered Netflix's former constructions for "render[ing] command[s]," "custom configuration," and "rendering blocks," and the opinions that I offer herein would apply equally under the former constructions.

⁶ Plaintiff has construed only the term "command."

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“custom configuration” ('865 patent claims 1, 10) ('245 patent claim 1) ('715 patent claim 1)	“instructions that determine the look and feel of the application”	Not indefinite “a configuration that determines certain graphical appearances, or the look and feel, of the application”
“wireless device generic template” ('865 patent claim 1)	“a screen description in a high level language”	Plain and ordinary meaning Alternatively, “a template for a wireless device that is independent of a capability of the device”
“rendering blocks” ('865 patent claims 4, 10) ('245 patent claim 1) ('715 patent claims 1)	“graphical user interface items that display application content to a user and enable a user to interact with an application”	“blocks that perform discrete rendering operations”

125. I have applied the constructions in the table above in forming my opinions in Section X below.

126. For claim terms that were not proposed to be construed by the Parties, or agreed upon by the parties, I have applied those terms by giving them the ordinary meaning they would have to one of ordinary skill in the art as of the priority date in light of the specification and the file history of the '865, '715, and '245 patents, respectively. To the extent that the Court may later supply any constructions or orders that affect the meaning of the claims I have considered, I respectfully reserve the right to augment my opinions as appropriate, and/or to submit a supplemental report

addressing the constructions.

B. Disputed Terms

i. “discrete low level rendering command”

Claim Term	Defendant’s Proposed Construction	Plaintiff’s Proposed Construction
“discrete low level rendering command” (’865 patent claims 1, 4)	Indefinite	Not indefinite Alternatively, “discrete rendering command that is tailored based on wireless device capability”

127. A POSITA would not have had reasonable certainty about the scope of this claim because a POSITA would not know what constitutes a “low level” rendering command, much less what constitutes a “discrete” low level rendering command. Asserted claim 1 of the ’865 patent is independent, which I have excerpted and emphasized below:

1. A server implemented method for processing data for a wireless device, comprising:

...

generating a page description based on said wireless device generic template and a capability of the wireless device, **said page description having at least one discrete low level rendering command** that is within said rendering capability of said wireless device but that is of a syntax that is wireless device generic;

128. Outside of the claims, the specification provides a total of six instances of “discrete low level” when referring to a “command” of any kind: two instances of

“discrete low level rendering command” (’865 patent, Abstract, 13:22-25); one instance of “discrete low level commands” (19:63-64); and three instances of “discrete low level basic command” (*id.*, FIG. 7, 13:34-37, 20:1-2). In none of these instances does the specification explain what differentiates a “discrete” low level rendering command from a non-discrete low level rendering command, or what differentiates a discrete “low level” rendering command from a command at any other “level.” Furthermore, it is not clear if “discrete” is modifying “render command” or if it is modifying “low level.”

129. In my opinion, a POSITA would have understood “discrete” to modify a noun to mean distinct or separate. However, in my opinion, all commands are separate, so a POSITA would not have understood what an indistinct or combined command is. Consequently, a POSITA would not have been able to ascertain what is not covered by the term.

130. Putting “discrete” aside, “low level rendering command” is not a term of art, and the intrinsic record is silent on what differentiates a rendering command to be “low level.” The specification does not disclose, explain, or even give examples describing a spectrum of levels of rendering commands, e.g., from low to high. For example, a POSITA would not have been able to ascertain whether commands in XML (Extensible Markup Language), HTML (Hypertext Markup Language), OpenGL, or any other language contained high or low level rendering commands or

where on the spectrum those languages and commands are. Nor does the intrinsic record disclose how to ascertain the relative relationship between different rendering commands to determine if one is higher level or lower level than another.

131. The specification does disclose that XML is “a high level language” (*Id.*, 3:38-42), but no other languages are discussed. The specification does not, however, explain if a command, or tag, in XML is a high-level command, a low-level command, or something in between. The specification provides no defined hierarchy to determine what is *low*-level and even where *low*-level begins or ends.

132. The specification explains that with respect to page description, “[l]ow level rendering commands include physical screen positions of display elements” (*id.*, Abstract), that “low level basic commands . . . layout content, position, etc.” (*id.*, 2:47-50), that “discrete low level rendering commands [are] tailored based on the rendering capability of the client” (*id.*, 13:22-25), and that “discrete low level commands [are] operable to render content on the wireless device” (*id.*, 19:63-64). The specification further states that “low level instructions”⁷ can preprogram “rendering blocks to operate and look a certain way.” *Id.*, 2:58-60. All of these statements disclose the *function* of the “low level rendering command,” but nowhere does the specification disclose what “low level” means or how low must one go to be a “low level”

⁷ As I explain below, in my opinion, a “command” is an “instruction.”

command.

133. In my opinion, because a POSITA could not ascertain with reasonable certainty the boundaries of what constitutes “low level” with respect to a rendering command, a POSITA would have been unable to ascertain the scope of the claim. Indeed, all commands could be “low level” but also all commands could be at a level higher than “low level.”

134. The specification also discloses that “precompiled basic commands are discrete low level rendering commands tailored based on the rendering capability of the client” (*id.*, 13:22-25) and that “[e]ach basic command may describe a given component on the page of the requested application to be rendered and includes a rendering block to be used” (*id.*, 15:58-62). Furthermore, a basic command “may be a description for rendering an image” or “may be the description for rendering a video clip.” *Id.*, 15:62-64. This disclosure does nothing to elucidate the meaning of “low level”; rather it attempts to explain what a basic command does.

135. I am informed that Plaintiff proposes to construe “discrete low level rendering command” as “discrete rendering command that is tailored based on wireless device capability.” I disagree. Plaintiff appears to only propose a construction for “low level” because “discrete rendering command” remains in its

proposed construction.⁸ Plaintiff proposes that “low level” means “tailored based on wireless device capability.” In my opinion, whether a command is “tailored” to a specific device is irrelevant to where in a hierarchy of command levels the specific command sits. For example, a device may be able to execute only certain OpenGL commands and HTML commands. Thus, either would be “tailored” to the device, but a POSITA would not have been able to ascertain with reasonable certainty whether a particular OpenGL or HTML command was lower level than another OpenGL or HTML command, or even if one, both, or neither was sufficiently “low level” to be a “discrete low level rendering command.”

136. I am also informed that Plaintiff points to dictionary definitions for “discrete” from online dictionaries that were not available at the time of the patents. For example, Plaintiff provided online citations from Merriam Webster and the American Heritage Dictionary definitions websites. These definitions do nothing to define the scope of “low level,” and are not contemporaneous to the time of the claimed invention.

137. Furthermore, combining Plaintiff’s proposed constructions for “discrete low level rendering command” and “command” yields a circular and

⁸ I note that, to a POSITA, such a circular definition defining the term using the term would be unhelpful.

disjointed construction of “discrete rendering description for rendering a page component, such as the width or the height of the component that is tailored based on wireless device capability.” The scope of “discrete rendering description for rendering a page component” is wholly unascertainable. A “rendering description for rendering” is nonsensical.

138. Accordingly, in my opinion, a POSITA would not be able to reasonably ascertain the meaning of “discrete low level rendering command” in the context of claim 1.

139. Asserted claim 4 also would not have informed a POSITA as to the scope of claim 1 with respect to “discrete **low level** rendering command.” Claim 4 recites “The method of claim 1, wherein said at least one discrete low level rendering command of said page description is operable to be executed **by a plurality of rendering blocks** of a graphical user interface of the wireless device.” For a POSITA, whether or not a command can be executed by a plurality of rendering blocks does not provide the bounds of what constitutes “low level.”

ii. “render[ing] command[s]”

Claim Term	Defendant’s Proposed Construction	Plaintiff’s Proposed Construction ⁹
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⁹ See Footnote 6.

“render[ing] command[s]” (’865 patent claims 1, 4) (’245 patent claim 1) (’715 patent claim 1)	“instruction[s] to generate graphics on a display”	“a description for rendering a page component, such as the width or the height of the component”
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140. The term (either “rendering command” or “render commands”) is used in claims 1 and 14 of the ’865 patent; claim 1 of the ’245 patent; and claim 1 of the ’715 patent.¹⁰ A POSITA would have understood that “render[ing] command[s],” as recited in the claims, means “instruction[s] to generate graphics on a display.”

141. The term appears in four limitations, including in asserted claim 1 of each of the Asserted Patents, which I have excerpted below:

1. A server implemented method for processing data for a wireless device, comprising:

. . .

generating a page description based on said wireless device generic template and a capability of the wireless device, **said page description having at least one discrete low level rendering command** that is within said rendering capability of said wireless device but that is of a syntax that is wireless device generic;. . .

(’865 patent, claim 1)

1. A server implemented method for processing data for a wireless device, comprising:

¹⁰ The term “render command” is used only in the abstracts of the ’245 and ’715 patents.

...

receiving compiled content generated in part from execution of said application **wherein said compiled content comprises render commands expressed in a syntax that is generic to said wireless device**;...

(’245 patent, claim 1)

1. A method of generating content that is renderable by a wireless device, said method comprising:

...

transmitting, to said wireless device, compiled content comprising (i) first compiled content specific to a first page of said application and (ii) second compiled content specific to a second page of said application, wherein said compiled content is generated in part from execution of said application, **wherein said compiled content comprises render commands expressed in a syntax that is generic to said wireless device**, and wherein said custom configuration is applicable to said first and second compiled content,...

(’715 patent, claim 1)

142. In my opinion, a POSITA would have understood “command” to mean “instruction” because, as I explained above for “discrete low level rendering command,” the specification explains that “commands [are] **operable to render content on the wireless device**” (*id.*, 19:63-64).¹¹ In my opinion, a POSITA would have understood this statement to mean that a command causes a device to do something. In other words, a command “instructs” a device to perform an action, and

¹¹ For simplicity, I have only cited to the ’865 patent, since all three patents have the same disclosure.

defining the term command requires preserving the notion of compulsion.

Furthermore, technical dictionaries at the relevant time define “command” as an “instruction” or a word that “execute[s]” a program. *See, e.g.*, NTFLX_GTS-00034490 (“[a] signal that initiates a predetermined type of computer operation that is defined by an instruction.”); NTFLX_GTS-00034486 (“2. A word or phrase that is recognised by a computer system and starts or terminates an action *o an interrupt command o The command to execute the program is RUN.*”) Indeed, claim 4 of the ’865 patent makes clear that a command is “operable to be executed” to cause something to happen. [REDACTED]

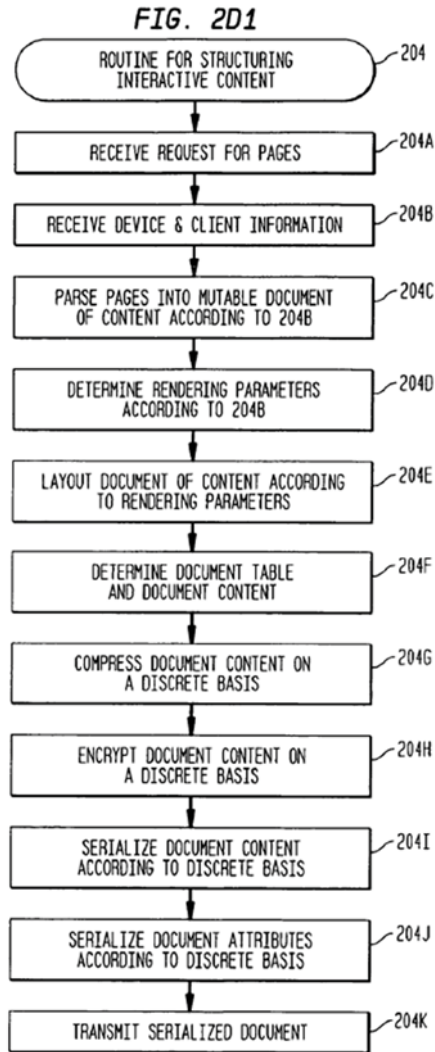
[REDACTED]

[REDACTED]

[REDACTED]

143. In my opinion, a POSITA would have understood “render[ing]” to mean “generate graphics on a display.” For example, the specifications explain that “pages are generated for display on the wireless device.” ’865 patent, 16:62-63. The wireless device is described as having “a display 350, such as liquid crystal display (LCD), for displaying information.” *Id.*, 15:28-30. Thus, a POSITA would have understood that to render is to “generate graphics on a display.”

144. I am informed that Plaintiff proposes to construe “command” as “a description for rendering a page component, such as the width or the height of the



X. PRIOR ART INVALIDITY OPINIONS

A. Summary of Opinions

185. The chart below summarizes the asserted prior art grounds against each of the asserted patents.

Patent	Claims	Basis ¹²	References
'865 Patent	1, 4, 10 and 11	§ 102, Anticipation	Astrology Zone
	1, 4, 10 and 11	§ 103, Obviousness	Stirbu

¹² Subject to the claim constructions as discussed below

	1, 4, 10 and 11	§ 103, Obviousness	Stirbu and Volkov
	1, 4, 10 and 11	§ 103, Obviousness	Stirbu and Harris
'715 Patent	1, 3, 4 and 12	§ 102, Anticipation	Astrology Zone
	1, 3, 4 and 12	§ 103, Obviousness	Stirbu
	1, 3, 4 and 12	§ 103, Obviousness	Stirbu and Hariki
	1, 3, 4 and 12	§ 103, Obviousness	Stirbu and Kloba
	1, 3, 4 and 12	§ 103, Obviousness	Hariki and Harris
'245 Patent	1, 4, 5 and 16	§ 102, Anticipation	Astrology Zone
	1, 4, 5 and 16	§ 103, Obviousness	Stirbu
	1, 4, 5 and 16	§ 103, Obviousness	Stirbu and Hariki
	1, 4, 5 and 16	§ 103, Obviousness	Stirbu and Kloba
	1, 4, 5 and 16	§ 103, Obviousness	Hariki and Harris

186. In my opinion, all of the Asserted Claims of each Asserted Patent are invalid as being anticipated or obvious over the prior art.

B. The Astrology Zone Application Anticipates the Asserted Claims

187. I am informed that Plaintiff on June 12, 2023, produced evidence and supplemented its interrogatory response regarding invalidity, specifically addressing Astrology Zone. Because this supplement was made the day before this declaration is to be served, I have not been able to fully review and form opinions regarding the newly produced material. I reserve the right to submit a supplemental report directed to invalidity addressing the newly produced information on the Astrology Zone application. I further reserve the right to augment, modify, or supplement this declaration on any position or argument made by Plaintiff and/or its expert(s) concerning invalidity.

188. In my opinion, the Astrology Zone application (“Astrology Zone”) as