

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,
PETITIONER,

v.

GOTV STREAMING, LLC,
PATENT OWNER.

CASE IPR2023-00758
PATENT 8,478,245

PATENT OWNER'S SUR-REPLY
37 C.F.R. §§ 42.23 & 42.24(c)(4)

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CURRENT EXHIBIT LIST¹

No.	Brief Description
1001	U.S. Patent No. 8,478,245
1002	Expert Declaration of Ben Bederson (“Bederson”)
1003	Curriculum Vitae of Benjamin B. Bederson, Ph.D.
1004	File History of U.S. Patent No. 8,478,245 (corrected)
1005	U.S. Patent Application Publication No. 2007/0150617 (“Hariki”)
1006	U.S. Patent Application Publication No. 2003/0023755 (“Harris”)
1007	U.S. Patent No. 7,447,486 (“Tamura”)
1008	U.S. Patent No. 6,996,627 (“Carden”)
1009	U.S. Patent No. 6,669,564 (“Young”)
1010	U.S. Patent No. 6,732,183 (“Graham”)
1011	U.S. Patent No. 6,507,727 (“Henrick”)
1012	Webpage excerpt from Computer History Museum at https://www.computerhistory.org/tdih/april/6/ (last accessed March 29, 2023)
1013	https://www.webdesignerdepot.com/2009/05/the-evolution-of-cell-phone-design-between-1983-2009/
1014	Excerpts from Dan R. Olsen, Jr., Developing user interfaces (1998)
1015	Alok Sinha, Client-server computing, in Communications of the ACM, 35, 7 (1992)
1016	Tim Berners-Lee, Robert Cailliau, Ari Luotonen, Henrik Frystyk Nielsen, and Arthur Secret, The World-Wide Web. Communications of the ACM 37, 8 76-82 (August 1994), available at http://dx.doi.org/10.1145/179606.179671
1017	Eric Kasten, HTML: A Gentle Introduction, Linux Journal (July 1995),
1018	U.S. Patent Application Publication No. 2013/0124961 (“Linburn”)
1019	U.S. Patent No. 8,111,326 (“Talwar”)

See Ex. 2029, 5:21–6:11.¹ Relevant portions of exhibits may be highlighted to help the Panel locate cited sections.

No.	Brief Description
1020	Order re Scheduling Conference, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , 2:22-cv-07556 (C.D. Cal. issued Feb. 13, 2023) (Doc. 61)
1021	Complaint in <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , No. 2:22-cv-07556-RGK-SHK (C.D. Cal. October 17, 2022)
1022	U.S. Patent Application Publication No. 2003/0106022 (“Goodacre”)
1023	https://web.archive.org/web/20070406171650/http://www.zenzui.com/products.html
1024	Memorandum in Opposition to GoTV Streaming, LLC’s Motion for Judgment as a Matter of Law
1025	Declaration of Stephen A. Marshall in support of Petitioner’s unopposed motion for pro hac vice admission.
1026	Excerpts from Trial Transcript Day 2
1027	Associated, Cambridge Learner’s Dictionary (3rd ed. 2007)
1028	From, Merriam-Webster’s Collegiate Dictionary (11th ed. 2007)
1029	Deposition of Mr. Stuart Lipoff (April 2, 2024) (“Lipoff Dep.”)
2001	CAMPBELL-KELLY ET AL., Mainframes to Smartphones: A History of the International Computer Industry, Ch. 11 (Harvard Univ. Press 2015)
2002	GALAZZO, Timeline from 1G to 5G: A Brief History on Cell Phones (Sept. 21, 2020), <i>available at</i> https://www.cengn.ca/information-centre/innovation/timeline-from-1g-to-5g-a-brief-history-on-cell-phones/
2003	Cingular MEdia Mall Games and Motorola Page (March 23, 2006), <i>available at</i> https://web.archive.org/web/20060323054853/http://www-xl.cingularextras.com/fuel/enduser/portal/endUserHTMLDir?c1=3&dc=0 and https://web.archive.org/web/20060323054841/http://www-xl.cingularextras.com/fuel/enduser/portal/endUserHTMLSelectPhone?makeName=motorola&dc=0

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2004	Suite, Definition & Meaning - Merriam-Webster, <i>available at</i> https://www.merriam-webster.com/dictionary/suite
2005	U.S. Patent No. 7,380,205 to Bezrukov et al. (filed Oct. 28, 2003)
2006	Scheduling Order, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , 2:22-cv-07556 (C.D. Cal. issued Feb 14, 2023) (Doc. 62)
2007	Klausner Decisions re Motions to Stay Pending IPR, Docket Navigator (generated June 8, 2023)
2008	Order Granting Stipulated Stay Pending IPR, <i>Flexstent, LLC v. Abbott Labs.</i> , No. 5-18-cv-02479 (C.D. Cal. Oct. 18, 2019) (Doc.77)
2009	Order Denying Renewed Stipulated Stay Pending IPR, <i>Shenzhen Gooloo E-Commerce Co., Ltd. v. Pilot, Inc.</i> , No. 2-22-cv-02219 (C.D. Cal. Jan. 12, 2023) (Doc. 95)
2010	Renewed Joint Stipulation to Stay Case Pending Resolution of <i>Inter Partes</i> Reviews of '653 Patent, <i>Shenzhen Gooloo E-Commerce Co., Ltd. v. Pilot, Inc.</i> , No. 2-22-cv-02219 (C.D. Cal. Jan. 11, 2023) (Doc. 94)
2011	Klausner Time to Trial in Patent Cases, Docket Navigator (generated June 8, 2023)
2012	U.S. District Court—Judicial Caseload Profile for Central California from Federal Court Management Statistics—Profiles (Mar. 31, 2023), <i>available at</i> https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0331.2023.pdf
2013	Order Denying Netflix's Motions, including for Invalidity under § 101, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , 2:22-cv-07556 (C.D. Cal. issued May 24, 2023) (Doc. 109)
2014	Order re Scheduling Conference , <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , 2:22-cv-07556 (C.D. Cal. issued Feb. 13, 2023) (Doc. 61)
2015	Excerpts from Redacted and De-designated Corrected Declaration of Dr. John Villasenor Regarding Invalidity of U.S. Patent Nos. 8,989,715; 8,478,245; and 8,103,865, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , 2:22-cv-07556 (C.D. Cal. served June 23, 2023)

No.	Brief Description
2016	ZHANG, Systematic Approach to Construct and Assess Power Electronic Conversion Architectures Using Graph Theory and Its Application in a Fuel Cell System, 2019, Vol. 12 Iss. 6, pp. 1499–1509, The Institution of Engineering and Technology (2019), <i>available at</i> https://ietresearch.onlinelibrary.wiley.com/doi/epdf/10.1049/iet-pel.2018.6143
2017	U.S. Patent No. 7,404,032 to Ware et al. filed July 13, 2004 (“Ware”).
2018	Declaration of Joshua S. Wyde regarding authentication of exhibits (Aug. 17, 2023)
2019	Excerpts from Trial Transcript Day 2, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , No. 2:22-cv-07556 (C.D. Cal. Oct. 18, 2023)
2020	Excerpts from Trial Transcript Day 3, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , No. 2:22-cv-07556 (C.D. Cal. Oct. 19, 2023)
2021	Defendant Netflix, Inc.’s Notice of Motion and Rule 50(a) Motion for Judgment as a Matter of Law, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , No. 2:22-cv-07556 (C.D. Cal. Oct. 19, 2023) (Dkt. 389)
2022	Declaration of Mr. Stuart Lipoff
2023	Generate, Free On-Line Dictionary of Computing, <i>available at</i> https://foldoc.org/generate (last updated June 15, 1995).
2024	Output, TechTerms.com; The Computer Dictionary, <i>available at</i> https://techterms.com/definition/output (last updated December 12, 2006)
2025	From, Merriam-Webster.com Dictionary, <i>available at</i> https://www.merriam-webster.com/dictionary/from (last visited December 12, 2023)
2026	Customized, Merriam-Webster.com Dictionary, <i>available at</i> https://www.merriam-webster.com/dictionary/customized (last visited Jan. 05, 2024)
2027	Application-Specific, Wiktionary, <i>available at</i> https://en.wiktionary.org/wiki/application-specific (last visited Dec. 15, 2023)

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2028	Ticker, Merriam-Webster.com Dictionary, <i>available at</i> https://www.merriam-webster.com/dictionary/ticker (last visited Jan. 18, 2024)
2029	Deposition of Dr. Benjamin Bederson (Jan. 10, 2024) ²
2030	Second Declaration of Joshua S. Wyde regarding authentication of exhibits (Jan. 26, 2024)

² Per Party agreement, Dr. Bederson conducted a consolidated deposition regarding U.S. Patent Number 8,989,715 in IPR No. IPR2023-00757; Patent No. 8,478,245 in IPR No. IPR2023-00758; and U.S. Patent No. 8,103,865 in IPR No. IPR2023-00759. *See* Ex. 2029, 5:21–6:11.

CLAIM LISTING³

	Limitation
1pre	1. A method of rendering content on a wireless device, said method comprising:
1a	receiving an identification of a custom configuration of a plurality of rendering blocks of said wireless device,
1b	wherein said custom configuration is associated with an application and configures said plurality of rendering blocks to render content in a manner customized to said application;
1c	receiving compiled content generated in part from execution of said application
1d	wherein said compiled content comprises render commands expressed in a syntax that is generic to said wireless device;
1e	using a graphical user interface comprising said plurality of rendering blocks to generate renderable content based on said compiled content and said custom configuration; and
1f	rendering said renderable content on said wireless device, wherein said receiving compiled content comprises: receiving first compiled content specific to a first page of said application; and receiving second compiled content specific to a second page of said application
1g	wherein said custom configuration is applicable to both said first and second compiled content.
2	2. A method as described in claim 1 wherein said using a graphical user interface comprising said plurality of rendering blocks to generate renderable content comprises: processing said compiled content using a reader of said wireless device; and issuing commands from said reader to individual rendering blocks of said graphical user interface based on said rendering commands of said compiled content.
3	3. A method as described in claim 1 wherein said renderable content comprises audio content and display content.
4	4. A method as described in claim 1 wherein said compiled content is partially resultant from said application operating on a remote server.
5	5. A method as described in claim 1 wherein said compiled content is specific to the rendering capabilities of said wireless device.

³ Patent Owner uses Petitioner's numbering designation for consistency, but designates three sub-limitations for 23h.

	Limitation
6	6. A method as described in claim 1 wherein each of said plurality of rendering blocks operates specific to a wireless device type of said wireless device and each is instructed using a syntax that is generic to said wireless device type.
7	7. A method as described in claim 6 wherein said custom configuration comprises a syntax that is generic regarding said wireless device type.
8	8. A method as described in claim 1 wherein said custom configuration comprises configuration information and content specific to said application.
9	9. A method as described in claim 1 wherein said custom configuration is one of a plurality of memory-stored custom configurations stored by said wireless device and wherein further said identifying said custom configuration comprises receiving an identifier that identifies said custom configuration.
10	10. A method as described in claim 1 further comprising receiving and storing said custom configuration.
11	11. A method as described in claim 1 wherein said plurality of rendering blocks of said graphical user interface comprises: a first block that controls the rendering of ticker information across a display screen of said wireless device; a second block that controls the rendering of button images on said display screen; and a third block that controls the rendering of audio on a speaker of said wireless device.
12pre	12. A non-transitory computer usable medium comprising instructions therein that when executed by a processor implement a method of rendering content on a wireless device, said method comprising:
12a	receiving an identification of a custom configuration of a plurality of rendering blocks of said wireless device,
12b	wherein said custom configuration is associated with an application and configures said plurality of rendering blocks to render content in a manner customized to said application;
12c	receiving compiled content generated in part from execution of said application
12d	wherein said compiled content comprises render commands expressed in a syntax that is generic to said wireless device;
12e	using a graphical user interface comprising said plurality of rendering blocks to generate renderable content based on said compiled content and said custom configuration; and
12f	rendering said renderable content on said wireless device, wherein said receiving compiled content comprises: receiving first compiled content specific to a first page of said application; and receiving second compiled content specific to a second page of said application,

	Limitation
12g	wherein said custom configuration is applicable to both said first and second compiled content.
13	13. A non-transitory computer usable medium as described in claim 12 wherein said using a graphical user interface comprising said plurality of rendering blocks to generate renderable content comprises: processing said compiled content using a reader of said wireless device; and issuing commands from said reader to individual rendering blocks of said graphical user interface based on said rendering commands of said compiled content.
14	14. A non-transitory computer usable medium as described in claim 12 wherein said renderable content comprises audio content and display content.
15	15. A non-transitory computer usable medium as described in claim 12 wherein said compiled content is partially resultant from said application operating on a remote server.
16	16. A non-transitory computer usable medium as described in claim 12 wherein said compiled content is specific to the rendering capabilities of said wireless device.
17	17. A non-transitory computer usable medium as described in claim 12 wherein each of said plurality of rendering blocks operates specific to a wireless device type of said wireless device and each is instructed using a syntax that is generic to said wireless device type.
18	18. A non-transitory computer usable medium as described in claim 17 wherein said custom configuration comprises a syntax that is generic regarding said wireless device type.
19	19. A non-transitory computer usable medium as described in claim 12 wherein said custom configuration comprises configuration information and content specific to said application.
20	20. A non-transitory computer usable medium as described in claim 12 wherein said custom configuration is one of a plurality of memory-stored custom configurations stored by said wireless device and wherein further said identifying said custom configuration comprises receiving an identifier that identifies said custom configuration.
21	21. A non-transitory computer usable medium as described in claim 12 wherein said method further comprises receiving and storing said custom configuration.

	Limitation
22	22. A non-transitory computer usable medium as described in claim 12 wherein said plurality of rendering blocks of said graphical user interface comprises: a first block that controls the rendering of ticker information across a display screen of said wireless device; a second block that controls the rendering of button images on said display screen; and a third block that controls the rendering of audio on a speaker of said wireless device.
23pre	23. A wireless device operable to communicate with a remote server, said wireless device comprising:
23a	a transceiver coupled to a bus and operable to receive a custom configuration that is associated with an application,
23b	said transceiver also operable to receive compiled content generated in part from execution of said application and
23c	comprising a plurality of rendering commands expressed in a syntax that is generic to said wireless device;
23d	a memory coupled to said bus and operable to store said compiled content and said custom configuration;
23e	a processor coupled to said bus and operable to implement the following: a graphical user interface comprising a plurality of rendering blocks and operable to generate renderable content based on said compiled content and said custom configuration
23g	an engine for reading said compiled content and responsive thereto for causing said graphical user interface to generate said renderable content based on said render commands;
23f	wherein said custom configuration is operable to configure said plurality of rendering blocks to render content in a manner customized to said application;
23h.1	a display device coupled to said bus and operable to render a portion of said renderable content,
23h.2	wherein said compiled content comprises: a first compiled content specific to a first page of said application; and a second compiled content specific to a second page of said application,
23h.3	wherein said custom configuration is applicable to both said first and second compiled content.
24	24. The wireless device as described in claim 23 wherein said engine is further operable to issue commands to individual rendering blocks of said graphical user interface based on said plurality of rendering commands of said compiled content.
25	25. The wireless device as described in claim 23 further comprising an audio rendering device coupled to said bus and wherein said renderable content comprises audio content and display content.

	Limitation
26	26. The wireless device as described in claim 23 wherein said compiled content is partially resultant from said application operating on a remote server.
27	27. The wireless device as described in claim 23 wherein said compiled content is specific to the rendering capabilities of said wireless device.
28	28. The wireless device as described in claim 23 wherein each of said plurality of rendering blocks operates specific to a wireless device type of said wireless device and each is instructed using a syntax that is generic to said wireless device type.
29	29. The wireless device as described in claim 28 wherein said custom configuration is expressed in a syntax that is generic to said wireless device type.
30	30. The wireless device as described in claim 23 wherein said custom configuration comprises configuration information and content specific to said application.
31	31. The wireless device as described in claim 23 wherein said custom configuration is one of a plurality of memory-stored custom configurations stored in said memory.
32	32. The wireless device as described in claim 23 wherein said plurality of rendering blocks of said graphical user interface comprises: a first block that controls the rendering of ticker information across said display screen of said wireless device; a second block that controls the rendering of button images on said display screen; and a third block that controls the rendering of audio on a speaker of said wireless device.
33	33. The wireless device as described in claim 23 wherein said plurality of rendering blocks of said graphical user interface comprises: a first block that controls the rendering of a scroll bar on said display screen of said wireless device; a second block that controls the rendering of an input box on said display screen of said wireless device; and a third block that control the rendering of a text display region on said display screen of said wireless device.

I. INTRODUCTION

Petitioner now has clarified some of its positions, but it also has inappropriately taken new invalidity positions in its Reply as identified herein. Regardless, Petitioner has not shown any claim is obvious as there is not one application that meets the claim limitations, at least because the UI skin Petitioner identifies as the custom configuration does not customize for Hariki's web server and Hariki's web browser does not generate the HTML, even in part, still less while executing remotely so that the web browser's compiled content can be received by a wireless device. Additionally, Petitioner has not shown Hariki's engines, that process the UI skin, read HTML, the identified compiled content, for claims 23–33, or a that Hariki's "title bars" have scrolling text such that they are rendering blocks for rendering a ticker for claims 11, 22, and 32.

II. CLAIM CONSTRUCTION

A. "Customized to Said Application" Means "Created For" the Application Program

[1b/12b/23f] wherein said custom configuration . . . [configures/is operable to configure] said plurality of rendering blocks to render content in a manner customized to said application
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Petitioner first argues that the Board should define "customized to an application" per a separate limitation "associated with an application," citing *ACTV* for the uncontroversial proposition that the surrounding words of a claim should be

considered when defining a term.⁴ Reply 2–3. Looking at the surrounding words, however, the Board can see that the claim lists the “associated” and “configures” limitations separately, so there is “a presumption that those components are distinct.” *Kyocera Senco Indus. Tools Inc. v. Int’l Trade Comm’n*, 22 F.4th 1369, 1382 (Fed. Cir. 2022) (citation omitted). The claims require the custom configuration be more than “associated” with the application. The custom configuration must *also* configure rendering blocks to “render content *in a manner customized* to said application.” Limitations 1b/12b/23f. It is inappropriate to merge the two requirements to “read out” the narrower requirement. *See AllVoice Computing PLC v. Nuance Communs., Inc.*, 504 F.3d 1236, 1247–48 (Fed. Cir. 2007) (explaining that courts should not merge separate terms because this would make one limitation superfluous).

Second, Petitioner argues that Patent Owner is attempting to vary the plain meaning of the term “customized,” Reply 3–4; however, as set forth in the Response, “created for” *is the plain meaning* of the term customized. Paper 21 (“POR”) 20 (explaining that this is the dictionary meaning and how a POSITA uses the term in the relevant field). Moreover, it is often the case that an applicant has not explicitly

⁴ In *ACTV* the language of the claims defined the term, so the court simply adopted the definition and found there was no reason to look to extrinsic evidence. *ACTV, Inc. v. Walt Disney Co.*, 346 F.3d 1082, 1090 (Fed. Cir. 2003).

defined a term, and in such a case it is proper to use words not found in the specification to capture the meaning in light of the patent’s teachings. *Masimo Corp. v. Sotera Wireless, Inc.*, No. 2022-1415, 2023 WL 6307959, at *3 (Fed. Cir. Sept. 28, 2023) (affirming a term as the definition of a claim limitation even though the “specification does not use the term” because “there is nothing inconsistent between the plain meaning [the PTAB] derived from the intrinsic evidence and the meaning it drew from the dictionary”).

Here, at least because the specification teaches there is a corresponding custom configuration the server chooses based upon the application, a POSITA understood that “customized to” means “created for.” Ex. 2022 ¶91; *see also AstraZeneca AB v. Mylan Pharms. Inc.*, 19 F.4th 1325, 1330 (Fed. Cir. 2021) (“[T]he ordinary meaning of a claim term is not ‘the meaning of the term in the abstract’ . . . Instead, the ‘ordinary meaning’ of a claim term is its meaning to the ordinary artisan after reading the entire patent.”) (quoting *Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1320 (Fed. Cir. 2016)) (second level of internal quotations removed).

Third, Petitioner critiques Patent Owner for putting forth several synonymous definitions all generally meaning “created for” and takes particular issue with Patent Owner’s proposal that a custom configuration must be “designed for” an application. Reply 4. There is nothing controversial in this understanding: it is

straight-forward that to have a *customized* configuration that *customizes* the look and feel of an application, the creator must know *what the application is*, in the same way a tailor cannot make a “custom” suit without knowing who will be wearing the suit. *See* Ex. 2022 ¶¶90–91.

B. The Pages of Compiled Content Must Be in Part Generated by the Executing Application

[1c/12c/23b] [receiving/said transceiver also operable to receive] compiled content generated in part from execution of said application
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In light of Petitioner’s protestation that Patent Owner “offers no coherent construction at any point,” *see* Reply 12, Patent Owner makes clear that Patent Owner’s proposed construction of “compiled content is generated in part from execution of said application” means “said application produces/outputs some part of the compiled content during its execution.” POR 32; Ex. 2022 ¶107.

Petitioner mostly summarizes Patent Owner’s positions correctly, Reply 12–14: (1) the limitation requires the application to generate (i.e., be the “source of”) the compiled content, POR 28–30; (2) “from execution” means the running application is the source of the compiled content, not a “but for” cause or “triggering event,” *id.* 32–33; and, (3) the “in part” of “generated in part” refers to the generation, *id.* 35–36.

However, Petitioner misunderstands Patent Owner’s position in one regard: Patent Owner acknowledges the specification *does* teach the client software is an

initiating cause (i.e., the client's request for the application causes the remote application on the server to execute and generate compiled content). *Cf.* Reply 12–13. Patent Owner's point is that *even though the client's request is an initiating cause*, the Patent-at-Issue still *does not* recognize the execution of the client software “generates” the compiled content. POR 34. The Patent-at-Issue makes clear that it is the remote application on the server that is executed and generates the compiled content sent to the client, *see, e.g.*, Ex. 1001 19:40–42.

Petitioner argues that “‘from’ in the *context of the claim language* is the ‘starting point of an activity’ or ‘upon’” (emphasis in original) and cites a general dictionary. Reply 13 (citing Ex. 1028). First, a dictionary definition is divorced from “the context of the claim language.” Second, “upon” does not appear in the definition. Third, Petitioner omits portions of the definition that actually says “the starting *or focal* point of an activity” (emphasis added) and gives examples of “called me [from] a pay phone” and “ran a business [from] her home.” Ex. 1028 3–4. So, even Petitioner's definition emphasizes that “from” means *where* the generation is occurring and supports that the remote application on the server is generating the compiled content because that is where the generation is coming “from.”

Finally, it is not true that Patent Owner's position “would read out the term ‘execution.’” Reply 13. Patent Owner's definition explicitly provides for the fact that “from execution” means the executing application is the source of the compiled content as taught.

Ex. 1001 19:40–42 (teaching that “the server may *execute* the requested application” and “[t]he server may *then* determine whether the *executed application produces* dynamic or static *content*”) (emphasis added).

C. All Claims Require the Recited “Application” to Run Remotely

[1f/12f] receiving first compiled content specific to a first page of said application; and receiving second compiled content specific to a second page of said application

[23h.2] wherein said compiled content comprises: a first compiled content specific to a first page of said application; and a second compiled content specific to a second page of said application,

[1c/12c/23b] [receiving/said transceiver also operable to receive] compiled content generated in part from execution of said application

Petitioner argues that Patent Owner is merely trying to append limitations, Reply 5–6; however, limitations may be implied as a matter of basic logic. For instance, while the general rule is that steps of a patent are not limited to a specific order, when it only makes sense that one step be done before another, courts will issue a claim construction mandating that the steps must be done in a particular order. *See, e.g., Loral Fairchild Corp. v. Sony Corp.*, 181 F.3d 1313, 1322 (Fed. Cir. 1999). Looking at limitations 1f/12f/23h.2 and 1c/12c/23b shows that the only logical reading of the claims is that the application is remote. POR § V.C.

Petitioner correctly notes that Claims 1, 12, and 23 do not require that a wireless device receive compiled content *directly* from the claimed application, Reply 6; however, *something* must transmit the application’s compiled content to

the mobile device. For instance, Claim 23 specifically requires the wireless device “communicate with a remote server” and the specification shows a server transmitting the applications’ compiled content, *see* Fig. 5 (line between items 580 and 510); Ex. 1029 (“Lipoff Depo.”) 75:5–25. But as Patent Owner’s expert explained, the server could not transmit the application’s pages to the wireless device if the remote application did not provide the layout solver on the server with the application’s compiled content in the first place. Ex. 1029 77:9–78:5.

Petitioner says that Patent Owner is attempting to import an embodiment from the specification. Reply 6–7. To the contrary, Patent Owner is merely using the specification to verify its understanding of the claims. After all, “[w]here, as here, a patent repeatedly and consistently characterizes a claim term in a particular way, it is proper to construe the claim term in accordance with that characterization.” *Wis. Alumni Rsch. Found. v. Apple Inc.*, 905 F.3d 1341, 1351 (Fed. Cir. 2018). Indeed, as set forth in the Response, a wireless device cannot “receive” application content pages—directly or indirectly—from where the application was already located. POR 22 (citing Ex. 2022 ¶92); *see also* Ex. 1029, Lipoff Depo. 48:20–49:4. Petitioner leaves this argument unrebutted. Reply 5–11.

Moreover, it *is* appropriate to limit the claims to the embodiments shown when a patent disparages a contrary reading and there would be no § 112 support for such an understanding. POR § VI(C)(2). Petitioner’s only counter is the

unremarkable statement that a POSITA understood that a web browser may run locally, Reply 9 (citing Ex. 1002, Bederson Dec’1 ¶¶60, 91), but such a generic statement from an expert does not overcome the fact that “it is not reasonable to read the claims more broadly than the description in the specification, thereby broadening the claims to read on the prior art over which the patentee asserts improvement.” *TF3 Ltd. v. Tre Milano, LLC*, 894 F.3d 1366, 1372–73 (Fed. Cir. 2018). Because “while the meaning of terms, phrases, or diagrams in a disclosure is to be explained or interpreted from the vantage point of one skilled in the art, all the limitations ***must appear in the specification*** [and] [t]he question is not whether a claimed invention is an obvious variant of that which is disclosed in the specification; [r]ather, ***[the] application itself*** must describe an invention.” *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997) (dealing with § 112 written description support in a priority application) (emphasis added); *see also PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1310 (Fed. Cir. 2008) (holding knowledge of expert cannot substitute for actual disclosure); *TurboCare Div. of Demag Delaval v. General Elec.*, 264 F.3d 1111, 1119 (Fed. Cir. 2001) (same).

Petitioner reiterates its claim differentiation argument, Reply 8; however, Patent Owner anticipatedly addressed this argument: the remote aspect of the claims is not the “only meaningful difference” between the remote independent and the “server” dependent claims, and the written description issues trump claim

differentiation, POR 25–26. Despite being on notice, Petitioner leaves the specific difference between being remote and on a server unaddressed. Reply 8.

Petitioner calls *pages* of Petitioner’s expert’s proffered testimony and Petitioner’s attorney’s argument, supplemented with a percipient fact witness subject to cross examination, Ex. 1022 ¶¶100–01, “cherry picking,” and argues that Petitioner may take inconsistent claim construction positions in the Patent Office for invalidity and the District Court for infringement. Reply 9–11. Patent Owner reiterates and preserves its position: this is exceptional behavior not condoned in the District Court, and the PTAB likewise should not tolerate diametrically opposed constructions. *See, e.g., Kilopass Tech. Inc. v. Sidense Corp.*, No. 10-cv-02066, 2014 WL 3956703, at *10 (N.D. Cal. Aug. 12, 2014) (holding case exceptional and awarding attorney’s fees as a sanction due in part to Plaintiff’s arguing one claim construction for infringement and an inconsistent claim construction to the BPAI for validity).

Lastly, Petitioner says that “Dr. Bederson expressly explained in his deposition that the application does not necessarily have to be remote and can reside on the mobile device.” Reply 11 (citing Ex. 2029 60:7–17). Patent Owner does not read the cited lines as supporting this contention. Patent Owner asked Dr. Bederson whether he was saying that if an application had to be remote then was it his position that a web browser did not meet the limitation. Ex. 2031 58:18–60:6. At first

Dr. Bederson vacillated; however, he ultimately said, “I just *didn’t say anything* about the relevance of one [the web browser] to the other [the web server].” *Id.* 60:7–17 (emphasis added). Dr. Bederson took no position regarding whether the claims require a remote application in his deposition, Ex. 2031.

III. HARIKI IN VIEW OF HARRIS FAILS TO RENDER ANY CLAIM OBVIOUS

A. No *Single* Application Petitioner Identifies Renders any Independent Claim Obvious

1. The UI Skin (Identified as the “Custom Configuration”) Does Not Configure a Plurality of Rendering Blocks to Render Content in a Manner Customized to a Web Server (Identified as the “Application”)

[1b/12b/23f] wherein said custom configuration . . . [configures/is operable to configure] said plurality of rendering blocks to render content in a manner customized to said application

As an initial matter, Patent Owner objects to the extent Petitioner is implicitly or explicitly relying upon the Harris reference for these limitations for the first time in its Reply. *See, e.g.*, Reply 16 (“[T]his limitation is obvious in view of Hariki and *Harris*.”) (emphasis added); *id.* (“The *Hariki/Harris* system discloses . . .”) (emphasis added); *id.* (“Consistent with the Petition, the Hariki/*Harris* web server . . .”) (emphasis added). The Petition solely relied upon Hariki for this limitation, Pet. 35–37, and using a combination and disclosure from a new reference is not “simply expand[ing] on previously raised arguments,” Reply 16 n.5 (citing *Rembrandt Diagnostics, LP v. Alere, Inc.*, 76 F.4th 1376, 1384 (Fed. Cir. 2023)), it

is improperly “changing the unpatentability rationale,” *see, e.g., Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369–70 (Fed. Cir. 2016).

Substantively, Petitioner creates strawmen arguments by posing the question of whether the web server on computer 102 is “sufficiently related” to a web browser running on mobile devices, Reply 15, whether there is inherently “an association between the HTML content [from the web server] and the UI content packages” on mobile devices, *id.*, or whether the UI package renders content “consistent with the relationship between the UI package and the application,” *id.* 16. These are not the pertinent questions. The issue for the Panel is whether the UI skins on the wireless devices “configures a plurality of rendering blocks of said wireless device to render content *in a manner customized to*” the web server on computer 102. *See Supra* § II.A.

To knock over these strawmen, Petitioner begins with the premise that “*Hariki’s* objective is to display content-provider-supplied HTML content on a mobile device per the mobile device’s corresponding UI content package so that the content has a certain look.” Reply 15. But Petitioner’s characterization of Hariki’s “objective” is objectively false. If Hariki has an objective, it is to provide a resource application program interface for creating and downloading a UI skin. *See, e.g.,* Ex. 1006 at Title, [0003], [0008]. Indeed, Petitioner contradicts itself and admits that this is true elsewhere, saying “*Hariki’s* objective is to enable the content provider

to offer UI content packages to different types of mobile devices.” Reply 17 (citing Ex. 1006 [0008–09]).

In fact, Hariki only mentions “HTML” once, and it was in the context that server 102, where the resource application program interface is coresident, can have a World-Wide Web server that transmits HTML files *to any client computer on the Internet*, and the phones have a browser *that can access any web server on the Internet*. *Id.* [0021]. Such an aside does not support a position that “Hariki’s objective is to display content-provider-supplied HTML.”

Petitioner asserts “the UI authoring tool, which generates the UI content packages, and the web server do not just happen to reside on a common server,” and implies that HTML content has a “corresponding UI content.” Reply 17 (citing Ex. 1006 [0021, 24]). As just covered, Hariki’s paragraph 21 merely notes that there may be a webserver and web browser connected to the Internet, and paragraph 24 reiterates that the server computer 102 has the authoring tool to make UI skins for “different types of mobile devices,” not HTML content. Ex. 1006 [0024]. There is no disclosure here to connect any HTML sent to a web browser to the UI skins, much less to support that the UI skins configure the devices to render content in a manner customized to HTML from the particular web server on computer 102.

Petitioner continues that “POSITAs would have understood that *Hariki’s* content provider’s intention is to display their [sic] HTML content on a mobile

device per the mobile device’s corresponding UI content package so that the content has a certain look,” because of how the embodiment in the Patent-at-Issue works. Reply 17. But “the [obviousness] determination is made not after observing what the inventor actually did, but in light of the state of the art *before the invention was made.*” *Outside the Box Innovations v. Travel Caddy, Inc.*, 695 F.3d 1285, 1298 (Fed. Cir. 2012) (emphasis added). Indeed, the seminal Supreme Court case on obviousness warned against a “temptation to read into the prior art the teachings of the invention in issue” and instructed courts to “guard against slipping into use of [such] hindsight.” *Graham v. John Deere Co.*, 383 U.S. 1, 36 (1966) (quotation and citation omitted).

Lastly, Petitioner says that “to achieve Hariki’s objective, it would have been a matter of common sense for the UI content package to be applicable to and customized for the web-server-generated content because only then can the content be displayed in a certain way on a mobile device.” Pet. 18 (citing *B/E Aerospace, Inc. v. C&D Zodiac, Inc.*, 962 F.3d 1373, 1379–80 (Fed. Cir. 2020) (regarding modification of prior art)). First, Patent Owner objects to Petitioner’s suggestion to modify Hariki as a departure in a Reply from the Petition, where Petitioner asserted this limitation is present and met by Hariki’s web server without alteration. Pet. 35–37; *see also Intelligent Bio-Sys.*, 821 F.3d at 1369–70 (forbidding “changing the unpatentability rationale” in a Reply).

Second, as already noted, Hariki's objective is *not* to display HTML web-server-generated content "per the mobile device's corresponding UI content package," Reply 15, so Petitioner is mistaken regarding their motivation to modify Hariki.

Third, this is circular logic, essentially saying the UI content package must be customized for HTML because only in this way would the UI content package be customized for HTML.

Fourth, "common sense" is no substitute for a missing limitation. *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1361–62 (Fed. Cir. 2016) ("[C]ommon sense is typically invoked to provide a known motivation to combine, not to supply a missing claim limitation."); *accord DSS Tech. Mgmt., Inc. v. Apple Inc.*, 885 F.3d 1367, 1374 (Fed. Cir. 2018); *see also KS Himpp v. Head-Wear Tech., LLC*, 751 F.3d 1362, 1366 (Fed. Cir. 2014) ("The Board's decision was correct because an assessment of basic knowledge and common sense as a replacement for documentary evidence for core factual findings lacks substantial evidence support.").

Hariki's web server cannot be the claimed application because the UI skin Petitioner identifies as the "custom configuration" does not configure a plurality of rendering blocks to render content in a manner customized to a web server.

2. The HTML Files (Identified as the “Compiled Content”) Sent to the Mobile Device Are Not Generated in Part from the Execution of the Web Browser (Identified as the “Application”)

[1c/12c/23b] [receiving/said transceiver also operable to receive] compiled content generated in part from execution of said application

[1f/12f] receiving first compiled content specific to a first page of said application; and receiving second compiled content specific to a second page of said application

[23h.2] wherein said compiled content comprises: a first compiled content specific to a first page of said application; and a second compiled content specific to a second page of said application,

As explained in the claim construction section, that “compiled content is generated in part from execution of said application” per limitations 1c/12c/23b means that “said application produces/outputs some part of the compiled content during its execution.” *See Supra* § II.B. The web browser does not produce or output any portion of the compiled content during its execution, but as Petitioner admits merely “triggers content generation at the server.” Reply 20.

In another argument, Petitioner says that whether a “web browser transmits HTML files is irrelevant to the claim limitation at issue.” Reply 19. But Patent Owner has not argued that the web browser needs to transmit HTML files, just that, per the claim limitations, the web browser must generate during its execution the files that are received at the mobile device. POR § 6(A)(2).

That is, Patent Owner disagrees these limitations “do not require that the mobile device receive compiled content from the ‘application.’” Reply 20. *See*

Supra § II.C. Per the claims, what is received is “compiled content generated in part from execution of said application,” i.e., compiled content “from ‘the application.’”

Id.

Indeed, assuming a locally running web browser did produce HTML files for argument’s sake—it does not—the web browser would not receive the HTML files it produces where it already resides. Ex. 2022 ¶98. Petitioner explains this well for claims 4, 15, and 26: for a wireless device to “receive” HTML files generated by the application, the application must be “separated” and “not part of the mobile device” (i.e., “remote”). Reply 24. A web browser is neither and does not provide HTML to the web server to give back to itself.

In sum, Hariki’s web browser does not generate any part of the identified compiled content, HTML files, much less doing so remotely such that HTML files can be received by a wireless device.

B. Hariki’s UI Skin Is Not “Applicable” to the Received HTML Files

[1g/12g/23h.3] wherein said custom configuration is applicable to both said first and second compiled content

Petitioner says that Patent Owner has not proven “that *Hariki*’s resource files are ***not*** applicable to HTML files within the browser.” Reply 21 (emphasis added).

First, ***it is Petitioner*** who bears the burden to show the UI skins ***are*** applicable to HTML files by a preponderance of the evidence. 35 U.S.C. § 316(e). Yet, Petitioner only makes an inherency argument that “the mobile device in *Hariki* uses

UI content packages to customize its web browser to look a certain way . . . [therefore] [t]his customization ***requires*** that the UI content package be applicable to the HTML files that are received from the web server and displayed in the web browser.” Reply 21 (emphasis added). However, Petitioner must “meet a high standard in order to rely on inherency to establish the existence of a claim limitation in the prior art in an obviousness analysis—the limitation at issue necessarily must be present, or the natural result of the combination of elements explicitly disclosed by the prior art.” *PAR Pharm., Inc. v. TWI Pharm., Inc.*, 773 F.3d 1186, 1196 (Fed. Cir. 2014).

Petitioner’s evidence does not meet such a high standard. Petitioner cites paragraphs 19, 40, and 41 of Hariki, Reply 21; however, “HTML” is not mentioned once. Ex.1006 [0019, 0040–41]. Indeed, the paragraphs merely say the skin “allows” an application program to access the resources, *id.* [0019], and that “the mobile device is able to change the UI skin of the application,” *id.* [0041], which elsewhere Hariki indicates could simply be “backgrounds, title bars, buttons, alert sounds, and so on,” not necessarily or naturally the HTML inside a web browser, *id.* [0024].

Petitioner also cites their expert’s report, Reply 21–22 (citing Ex. 1002 ¶¶158–59), but Dr. Bederson simply makes a conclusory statement that Petitioner’s contention is true. Ex. 1002 ¶159. “[I]n an obviousness analysis, conclusory

assertions from a third party about general knowledge in the art cannot, without supporting evidence of record, supply a limitation that is not evidently and indisputably within the common knowledge of those skilled in the art.” PTAB Consolidated Trial Practice Guide (Nov. 2019) (citing *K/S Himpp*, 751 F.3d at 1365); *see also Skky, Inc. v. Mindgeek, S.A.R.L.*, 859 F.3d 1014, 1022 (Fed. Cir. 2017) (“[T]he Board was not required to credit [party’s] expert evidence simply because [party] offered it.”).

Petitioner also cites four lines from Dr. Bederson’s deposition, Reply 22 (citing Ex. 2031 70:11–15), but Dr. Bederson was merely discussing the fact that items of the Resource Profiles in Figure 3 of Hariki had images in different formats, not their applicability to HTML inside a browser, Ex. 2031 70:8–15.

Second, Patent Owner did in fact explain how (1) there is no provision in the HTML standard to interface with a UI skin, POR 49 (citing Ex. 2022 ¶¶139–40); (2) the HTML determines the visual presentation, *id.* 50–51 (citing Ex. 2022 ¶¶139); and Harris’ teaching that the HTML may optionally be tested before deployment to the device (where the UI skin resides) means that the UI skin is definitively not applicable to the HTML, POR 49–50. Petitioner leaves these arguments entirely un rebutted. Reply 21–22.

In sum, Petitioner has not met its burden to prove by a preponderance of the evidence that Hariki’s UI skin is inherently “applicable” to the received HTML files.

C. Petitioner Has Failed to Show Independent Claim 23 and Its Dependents, Claims 24–33, Are Obvious Because Hariki’s Engines Do Not Read HTML Files Sent to the Wireless Device

[23g] an engine for reading said compiled content and responsive thereto for causing said graphical user interface to generate said renderable content based on said render commands

Petitioner clarifies that it is indeed relying upon Hariki’s “engines” as the engine in limitation 23, and relies upon Dr. Bederson’s testimony for the proposition that “Hariki’s engines read the [compiled] content, as claimed,” i.e., the HTML. Reply 23 (citing Ex. 2029, 75:1–6). But Dr. Bederson admitted that “the engines don’t need to parse HTML” and it is the “application [that] processes HTML,” i.e., the web browser. Ex. 2029 76:2–7. This is correct. Hariki’s engines are not the claimed “engine for reading said compiled content,” that Petitioner identifies as HTML.

D. Hariki Does Not Disclose a GUI Rendering Block that controls the Rendering of a Ticker

[11/22/32] . . . wherein said plurality of rendering blocks of said graphical user interface comprises: a first block that controls the rendering of ticker information across [a/said] display screen of said wireless device . . .

Petitioner admits that Hariki’s title bars do not scroll, but argues a ticker does not require scrolling and could also be a “check box/radio button to enable selection/de-selection of items, [and] rating control for rating content (e.g., movies).” Reply 24–45 (citing Ex. 1001 8:35–37 and 9:44–45). However, “check

box/radio buttons” and “rating control” are separate items in the list of possible rendering blocks.⁵ Ex. 1001 8:27–43. And the Patent-at-issue teaches that a “ticker [is] to display horizontal scrolling text.” *Id.* 8:35. There is no teaching that Hariki’s “title bars” are ticker rendering blocks.

IV. CONCLUSION

As the Panel noted, the institution decision was not “a final determination about the patentability of any challenged claim, the construction of any claim term, phrase, or limitation, or any other legal or factual issue.” Paper 11 at 106. With all briefing done, and all evidence put forth, Patent Owner submits that the Board should find that Petitioner has not carried its burden to prove by a preponderance of the evidence that any claim is obvious, at least because: (1) Hariki’s device skin is not customized for a web server; (2) Hariki’s web browser does not generate *any* of the identified compiled content, to say nothing of doing so while executing remotely so that a wireless device can receive web browser generated content; and (3) the UI skin is not applicable to HTML within a browser application. Additionally, Petitioner has not shown Hariki’s engines “read[] said compiled content,” identified as HTML, for claims 23–33 or that Hariki’s title bars have scrolling text such that

⁵ Petitioner only identified “title bars” as “ticker information” in the Petition, Pet. 66, and Patent Owner also objects to any new Reply theory that “buttons, and other elements” meet this limitation, Reply 25.

they are a rendering blocks that control the rendering of a ticker for claims 11, 22, and 32.

Dated: June 4, 2024

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Per § 42.24(a)–(b) the undersigned certifies that the number of words in the paper, PATENT OWNER’S SUR-REPLY, is:

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Dated: June 4, 2024

/Joshua S. Wyde/
Joshua S. Wyde (Reg. No. 57,698)

CERTIFICATE OF SERVICE

The undersigned certifies that on the fourth day of June, 2024, a complete and entire copy of the foregoing “PATENT OWNER’S SUR-REPLY,” including exhibits, if any, was served on the date below on the following counsel of record shown below via email per Petitioner’s consent to electronic service, see Paper 2 at 88:

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