

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,
Petitioner,

v.

GOTV STREAMING, LLC,
Patent Owner

IPR2023-00757 (Patent 8,989,715 B2)
IPR2023-00758 (Patent 8,478,245 B2)

Record of Oral Hearing
Held: August 6, 2024

BEFORE: RICHARD M. LEBOVITZ, BRIAN J. McNAMARA, and
STEVEN M. AMUNDSON Administrative Patent Judges.

IPR2023-00757 (Patent 8,989,715 B2)

IPR2023-00758 (Patent 8,478,245 B2)

APPEARANCES:

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The above-entitled matter came on for hearing on August 6, 2024,
commencing at 9:00 a.m., via video teleconference.

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

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3 JUDGE AMUNDSON: Good morning. I'm Administrative Patent
4 Judge Amundson, and with me on the panel are Judges Lebovitz and
5 McNamara. Today we have our final hearing in two IPRs between the
6 Petitioner Netflix and the Patent Owner GoTV Streaming. First, IPR2023-
7 00757 involving U.S. Patent Number 8,989,715 and second, IPR2023-00758
8 involving U.S. Patent number 8,478,245. So, let's start by getting the
9 parties' appearances. Who do we have for the Petitioner?

10 MR. MARSHALL: Hi, good morning, Your Honors. This is
11 Steve Marshall from Willkie Farr & Gallagher for the Petitioner. Can you
12 hear me all right?

13 JUDGE AMUNDSON: Yes, yes. And Mr. Marshall, will you be
14 presenting the arguments today?

15 MR. MARSHALL: I will be presenting the arguments, and with
16 me from Willkie Farr & Gallagher, I have together showing up as Dane
17 Sowers. I actually have Mr. Indranil Mukerji and Dane Sowers, and also
18 from Willkie Farr, Aliza Carrano as well. And I believe on the phone is our
19 client from Netflix, Mr. Asa Wynn Grant.

20 JUDGE AMUNDSON: All right, very well. Thank you. And
21 who do we have for the Patent Owner?

22 MR. WYDE: Good morning, Your Honor. My name is Joshua
23 Wyde and I will also be presenting and it's just me.

24 JUDGE AMUNDSON: All right, thank you. So, welcome to
25 everyone. Because we are conducting the hearing by video, we wanted to

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1 start by addressing a few items. First, our main concern is your right to be
2 heard. If at any time during the hearing you encounter technical or other
3 difficulties that you feel undermine your ability to adequately represent your
4 client, please let us know immediately. For example, by contacting the team
5 members who provided you with the connection information. Second, when
6 not speaking, please mute yourself. Third, please identify yourself each time
7 you speak. This will help our court reporter prepare an accurate transcript.
8 Fourth, we have the entire record, including the demonstratives. So, when
9 referring to a demonstrative or an exhibit or a paper, please do so by
10 identifying the slide or page number. And also, please pause a little after
11 identifying the slide or page number to give others time to find it. Fifth, we
12 set forth the procedure for today's hearing in the order granting the requests
13 for oral argument. But just to remind everyone the way this will work, the
14 order granting the requests for oral argument provided that each party will
15 have 45 minutes of total time to present arguments for IPR2023-00757 and
16 IPR2023-00758.

17 Petitioner bears the ultimate burden of proof and will go first, and
18 Petitioner may reserve time for rebuttal. Patent Owner will go next, and
19 Patent Owner may reserve time for surrebuttal. But Patent Owner's
20 surrebuttal must be limited to the issues in Petitioner's rebuttal. Also, please
21 do not interrupt the other party while that party is presenting its argument. If
22 you do have an objection, please raise it during your argument. I will keep
23 time, and I will try to give you a warning when you're nearing the end of
24 your time.

25 So, with all that said, are there any questions before we begin? Mr.
26 Marshall?

1 MR. MARSHALL: No, Your Honor. Thank you.

2 JUDGE AMUNDSON: Mr. Wyde?

3 MR. WYDE: No.

4 JUDGE AMUNDSON: All right. Mr. Marshall, would you like to
5 reserve any time?

6 MR. MARSHALL: Yes, please, Your Honor. I'd like to reserve
7 10 minutes.

8 JUDGE AMUNDSON: All right, 10 minutes. So, you may begin
9 when you're ready.

10 MR. MARSHALL: Very good. Thank you, Your Honor. I'm just
11 going to go ahead and share our demonstratives. Okay. Hopefully, those
12 are showing up for everyone.

13 JUDGE AMUNDSON: Yes, this is Judge Amundson. Yes, I see
14 them on the screen.

15 MR. MARSHALL: Very good. Thank you, Your Honor. So, one
16 initial housekeeping matter. This is the demonstratives for both the '757 and
17 '758 proceedings. We filed this as Exhibit 1029 in the '757 proceeding. We
18 filed an identical copy of these slides with the exception that it is Exhibit
19 1030 in the '758 proceeding. So, only the exhibit number in the lower right-
20 hand corner of the slides is different. Otherwise, it is the same presentation
21 addressing both patents in both proceedings.

22 All right, very good. With that said, Your Honor, I'd like to jump
23 in. Of course, the same references Hariki and Harris are relied upon for both
24 of the proceedings and both in a combination setting. Now, there are a
25 number of disputed items between the parties and/or raised by the Board
26 during the proceedings, and I'd like to address several of them and, of

1 course, take any of the questions you may have during this presentation.

2 So, let me actually jump at this point. The next several slides are
3 included for reference and background, but I'm aware that the Board is up to
4 speed on that. So, if I may just jump to slide 14 in the demonstratives. So
5 first, and this is primarily with reference to the '715 Patent limitation 1B. In
6 general, I think we talk -- the parties have generally looked at Claim 1 as
7 representative for many of the issues, not exclusively. And so, in general, in
8 this presentation, I'll address the '715 Patent and Claim 1, except as
9 otherwise noted. But of course, that should be evident from the slides
10 themselves.

11 So, the issues in limitation 1B, there's really sort of two issues. I
12 would say first is whether or not the custom configuration and the art that we
13 presented is associated with the application, depending upon how the
14 application is cast. And the second, and we would argue related issue, is
15 whether the phrase customized to said application is -- it needs to be
16 construed, and if so, how it should be construed.

17 So, just to level set us here, Petitioner put forward two theories for
18 what constitutes the claimed application. So, in one scenario, we have said
19 that the application, the claimed application, is Hariki's web server. In the
20 other scenario, we have cast the claimed application as the web browser. So,
21 there really are two scenarios. What's in dispute, I think, at this point, at
22 least the Board in the institution decision did not agree that the web server as
23 the claimed application could meet other facets of the claim.

24 JUDGE AMUNDSON: This is Judge Amundson. If we could go
25 back to slide 15, I just had a couple of questions to make sure I'm
26 understanding the way things work. So, correct me if I'm wrong, but if the

1 web browser on a mobile device wants a web page, does the web browser
2 send a request to the web server?

3 MR. MARSHALL: Indeed, yes. So, in the Hariki/Harris system,
4 or even just Hariki standing alone, the web browser, when the user launches
5 the web browser and wants to open a particular web application, a request
6 would be sent from the web browser residing on the mobile phone to the
7 server. So, in all instances, there's a client-server interaction between the
8 two. And so, it's really just an issue of, you know, how we read the claim in
9 one scenario versus the other as to what the claimed application is.

10 JUDGE AMUNDSON: All right. So, in that request from the web
11 browser to the web server, is there a URL that the web browser specifies?

12 MR. MARSHALL: Sure. There would be a URL to access the
13 services and, you know, to request that the page be returned. Maybe it's
14 HTML. Maybe it's WML. It just sort of depends on what specifically that
15 particular client would need.

16 JUDGE AMUNDSON: All right. So, if the page that's returned is
17 HTML and that page has what the petition refers to as an embedded image,
18 is that embedded image another URL that the web browser would ask for in
19 a second request?

20 MR. MARSHALL: Yes, I think that's right, Your Honor. So, and
21 maybe that integrates in a little bit of the Harris disclosure as well, right. We
22 see it a little more evidently in the materials and Harris where there are -- are
23 links, you know, it might say image equals and then a -- some address, some
24 URL where the image could be retrieved.

25 JUDGE AMUNDSON: So, now with regard to Petitioner's theory.
26 What rendering blocks are customized and how are they customized?

1 MR. MARSHAL: So, there's really two ways, right. In the one
2 hand, Hariki teaches us that the custom configuration that the UI skin in
3 Hariki is going to customize things like, you know, alert sounds and borders
4 and things of that nature are very much consistent with the '715 Patent and
5 but also in the same respect, Hariki has the resource API. The resource API
6 of course has got engines for Flash and JPEG and so forth that would also
7 help to render the content on the client device accordingly.

8 JUDGE AMUNDSON: Well, okay, so just as an example for the
9 web browser, could the customization concern the forward and backward
10 buttons and the background?

11 MR. MARSHALL: Yes. So, we would say that Hariki teaches us
12 both device level customization and application level customization. So, in
13 one sense, Hariki discloses that you have something like the forward and
14 back buttons in the application sort of interface itself can be customized, but
15 we also believe that Hariki teaches customization of the content within the
16 browser itself. So, the actual HTML that is presented could also be
17 customized by Hariki. Hariki very much talks about the application program
18 environment, the entirety. There's also a disclosure, and I think Your
19 Honors picked up on this in the institution decision, you know, the notion
20 that the same individuals who provide the content itself, so the web
21 application would have access to the UI authoring tool so that they can
22 submit UI skins to go along with it. And Your Honors sort of posed the
23 question, you know, reflected that Patent Owner does not explain why
24 application writers would develop customized user interfaces that provide
25 only device level customization rather than customizations for their
26 respective applications. So, Hariki very much teaches that the two can go

1 together. That the same individual would want to have both the content and
2 the UI skin.

3 JUDGE AMUNDSON: Now, when you talk about customizing, I
4 forget your exact words, the content of the browser, what's displayed by the
5 browser. Are you saying, for example, that an HTML file could have a
6 default background of blue, and it could be customized to red?

7 MR. MARSHALL: Yeah, I think that's a fitting example, Your
8 Honor. I mean, I think that, you know, when we think about things like
9 accessibility options, right, and I'm not saying that that's disclosed in the art,
10 but just running with your example, whether it's the color of a background,
11 whether it's the nature of an audio sound played back, or whether it's other
12 features within the HTML itself, those things could be impacted by the UI
13 skin.

14 JUDGE AMUNDSON: All right, very well. Now, so here's
15 another question. What, if anything, is customized on the web server?

16 MR. MARSHALL: Well, if I may advance my slides around, --

17 JUDGE AMUNDSON: Okay.

18 MR. MARSHALL: -- I've actually got a couple of slides that get
19 at just that. Let's see here. If I could jump to slide 17. So, yeah, that's an
20 issue that I saw come up to some degree. And, you know, the way we read
21 the claims is that the custom configuration works on the content, not on the
22 application. If we look at Claim 1, for example, we see that the custom
23 configuration is used to render content, and that's in the green highlighting.
24 And, again, in the yellow, the custom configuration is applicable to the
25 content. So, ultimately, it's not so much that the custom configuration
26 customizes the application, but it customizes the content. It applies to the

1 content. Now, it does that, I'll acknowledge, again, in the green, it does that
2 by configuring the rendering blocks, but the rendering blocks would be at
3 the client regardless. Whether we cast the application as the web browser or
4 the web server, ultimately, the content is displayed at the client. That's
5 where the rendering blocks are in either scenario. And the custom
6 configuration sets, you know, configures those rendering blocks so as to
7 render content in a manner customized to the application, not so much that it
8 customizes the application itself.

9 JUDGE MCNAMARA: Counsel, this is Judge McNamara. I have
10 a much more basic question. Could you go back to slide 15, please?

11 MR. MARSHALL: Certainly.

12 JUDGE MCNAMARA: Okay. So, when I look on the left side, I
13 see Figure 1 application web server, and on the right I see application web
14 browser. I think of a web server as a thing. The application when you're
15 talking about application web server, that's a program, is it not?

16 MR. MARSHALL: Yeah, absolutely. A web server is going to
17 serve the web application. Right.

18 JUDGE MCNAMARA: Okay. And the web browser, that's a
19 program as well, isn't it?

20 MR. MARSHALL: Correct.

21 JUDGE MCNAMARA: So, they're both software programs,
22 right? They're both programs?

23 MR. MARSHALL: Right.

24 JUDGE MCNAMARA: Okay. So, that's the very first thing I
25 wanted to get straight in my head. And so, a web browser is just some
26 particular type of application, is that right?

1 MR. MARSHALL: Yes, that's right. It has a limited function, so
2 to speak, yeah.

3 JUDGE MCNAMARA: Okay. All right. So, I'm not sure I see
4 the point to all of this distinction between the application -- an application
5 program, and a general application program and an application program that
6 means a browser. Are you trying to construe application then to be narrower
7 in the context of web browser? Is that one possibility here? Or do these
8 terms apply to every application?

9 MR. MARSHALL: If I understand your question correctly, Your
10 Honor, no, I don't think we're trying to construe application in any particular
11 way. You know, we presented the two. We feel that the claim is written
12 broadly enough such that, you know, an application of a program running
13 that meets the various limitations within the claims could satisfy this. And
14 it's written probably enough so that, you know, in the Hariki disclosure,
15 given the Hariki disclosure, that application could be the web server serving
16 the web application to a client. It could also be the web browser running on
17 the application, that web browser, that program running on the mobile phone
18 receiving the content and rendering it in accordance with the custom
19 configuration.

20 JUDGE MCNAMARA: So, I guess, so go back to slide 17 now
21 because you're talking about the claim.

22 MR. MARSHALL: Okay.

23 JUDGE MCNAMARA: Okay. And so, you transmit to the
24 wireless device a custom configuration wherein the custom configuration
25 has rendering blocks to render content in the manner customized. So, that
26 rendering is going to take place on the wireless device, right?

1 MR. MARSHALL: In all instances, that's right.

2 JUDGE MCNAMARA: In all instances, okay, that's what I want
3 to know. And then the next part you have highlighted, the custom
4 application is applicable to the first and second compiled content. So, there's
5 compiled content that's being transmitted to the wireless devices as well,
6 right?

7 MR. MARSHALL: Correct.

8 JUDGE MCNAMARA: And that's compiled content that's being
9 transmitted from the server to that device, right?

10 MR. MARSHALL: Yeah. Again, in all instances, we would say
11 that the content is coming from the server side to the client side to be
12 rendered at the client side.

13 JUDGE MCNAMARA: Okay. So, it's content. And that doesn't
14 matter. It doesn't matter whether it's an application that does XYZ or if it's a
15 web browser, right? It's just content. Am I right?

16 MR. MARSHALL: Right. That's right. So, in this particular
17 instance, we would say the HTML pages that are sent. But yes, it could be
18 something else, for example, it could be a streaming audio. It could be some
19 sort of sports scores, feed, something like that.

20 JUDGE MCNAMARA: Okay. And then the compiled content is
21 usable to generate the renderable content. So, that would be used by -- the
22 compiled content would be used by the wireless device to generate the
23 renderable content. Is that right?

24 MR. MARSHALL: Right. So, in either scenario, there's going to
25 be a program on the client side with rendering blocks. Those rendering
26 blocks are going to be configured by the custom configuration to then work

1 on that content that's been sent, transmitted from the server side so that it's
2 presented ultimately in a way that reflects what it is the application's for. So
3 again, if it was a search page or if there's sports scores, what have you, so
4 that ultimately on the client side, what you see, what the user sees is
5 reflective of what the application, the purpose of the application, if you will.

6 JUDGE MCNAMARA: Okay. So, it's any application then,
7 whether it's a web browser that's sending me a web page or it's something
8 that's sending me audio content or something that's sending me video,
9 streaming video, or something like that. But it's any application that we're
10 talking about here, right?

11 MR. MARSHALL: Yes, in the context of Claim 1, you know,
12 without further narrowing of the dependent claims, yes, it could be an
13 application serving any old purpose.

14 JUDGE MCNAMARA: Okay. I appreciate that. I'm sorry if it
15 seemed like I wanted to get real basic there, but I just really wanted to make
16 sure I understood what we were talking about. Thanks so much.

17 MR. MARSHALL: Not at all. All right. So, right. So, in slide
18 18, you just again kind of come back to that point and maybe I've made it by
19 now. But, you know, the custom configuration is going to be sent over to
20 the client device to configure the rendering blocks. Those rendering blocks
21 then act on the compiled content to ultimately render the two, the two are
22 meant to work together at the client device. So, maybe coming back to the
23 earlier question, you know, how does the -- how does the custom
24 configuration configure the application? Well, it's not intended to that.
25 Ultimately, the custom configuration works on the rendering blocks. You
26 know, certainly the rendering blocks are at the client side. But in the same

1 respect, if I might go forward, you know, even the experts would agree, and
2 they're speaking in different contexts here, but I think each of the experts
3 would sort of agree with this read that the customizing configuration arrives
4 at the client side ahead of the content, or at least it needs to have configured
5 the rendering blocks to then act on the content at the client. And we see that
6 again in the specification as well.

7 So, I'm on slide 21 at this point. This is why we come back to, you
8 know, that scenario. Your Honors agreed with the read where the claimed
9 application is the web browser. But, you know, we've also put forward a
10 situation, a read where the claimed application can be the web server. And
11 we would say that there is an association. There's not a need for the custom
12 configuration to act on the application, but they need, certainly, to function
13 together. We know that from the last limitation of the claim. And in Hariki,
14 there's a disclosure that says, you know, ultimately the same application
15 writers, so the people submitting the application to run on server 102, server
16 computer 102, that houses the web browser, excuse me, the web server.
17 Those same application writers can submit UI skins, presumably, and I think
18 Your Honors recognized this in the institution decision, presumably, so that
19 that UI skin will work with the application, the web application that they
20 have submitted. And there's additional disclosure here in Hariki paragraph
21 24 that, you know, in some instances the program will automatically make
22 changes. And that we feel is a read on the claims here at issue.

23 JUDGE AMUNDSON: This is Judge Amundson. I wanted to ask
24 about a point that GoTV raised in its papers. And I think it's something like
25 you've got a mobile device A customized one way, a mobile device B
26 customized another way. Each of those mobile devices requests the same

1 webpage. And then according to GoTV, the web server is going to respond
2 to each of those requests in the same way. Is that right or not?

3 MR. MARSHALL: Well, I think coming -- I think it is and it isn't
4 in the sense that the content, even the '715 Patent would tell you that the
5 compiled content is going to come back. You know, I don't know that
6 there's customization of the compiled content. There is to some degree,
7 right? It's got to be within the confines of what that client device can
8 actually render. That's true. But in the same respect, what would ultimately
9 be displayed, I think the initial phase is what comes up in the specification
10 and the '865 Patent. But there is a generic, you know, there's a step of a
11 generation step where there's sort of a generic generation of content. That
12 then is maybe, depending upon the claim, adapted to meet the limitations,
13 the capabilities of the mobile device. But ultimately, where we see the
14 customization is in the UI skin, whether it's the custom configuration of the
15 '715 Patent, or it's the UI skin in Hariki. So, in a sense, the application
16 should be generating some degree of generic common content, but what is
17 ultimately rendered on any given, whether it's client A or client B, may be a
18 bit different and that's going to be impacted by the custom configuration,
19 you know, slash Hariki's UI skin, depending upon how that is set up for a
20 given phone.

21 JUDGE LEBOVITZ: This is Judge Lebovitz. Can I, oh, am I --
22 go ahead. I want to get to this issue of render content in a manner
23 customized to said application. That's what I'm having trouble
24 understanding that the application is either the browser or it's a server, I
25 guess, and I'm not quite sure how the content is customized to the server or
26 to the browser. So, because those are -- the browser is just receiving the

1 content and the server is just serving it up. So, could you address that?

2 MR. MARSHALL: Certainly, Your Honor. If I may jump to slide
3 24, I think I've got a slide that may be helpful. So, you're right. So, GoTV
4 raises this question of whether or not customized to said application should
5 be construed, but maybe stepping back more broadly and hopefully
6 answering your question. And the custom configuration, again, it
7 configures, and we can see this sort of in the second line of slide 24, it
8 configures the rendering blocks at the client. And again, we know from the
9 claim that the custom configuration works in conjunction with the content to
10 ultimately render what it is the user sees. So, in either case, in either
11 situation. So, maybe taking the web server, for instance, in the web server
12 scenario, it's that the custom configuration is going to be sent from the server
13 to the client, and the custom configuration would be used to configure those
14 rendering blocks at the client and ultimately produce content.

15 Now, even if the claimed application is cast as the web browser,
16 the custom configuration is still sent from the server to the client to still
17 configure the rendering blocks at the client to produce the content, the
18 visual, the display, or audio that the user is going to experience at that end.
19 So, the notion of, you know, in a manner customized to said application to
20 us is not so much dependent upon how you cast the application, but really it
21 comes down to a question of whether this claim needs to be construed or this
22 phrase from the claim. We would say not because ultimately looking at the
23 language of the claim, custom configuration is associated with an
24 application. So, it tells us, the claim tells us what the relationship between
25 the application and the configuration is. We would argue that the second
26 part of this limitation tells us what it does. So, it is associated with the

1 application, and what does it do? It configures rendering blocks in a manner
2 customized to the application. It -- Patent Owner would like to have this
3 effectively read and, you know, the custom configuration is associated with
4 that application and it is customized, is created for said application, but it
5 doesn't, right? The custom configuration is one thing and it serves the, you
6 know, it also serves a purpose. The purpose is to configure rendering
7 blocks. We would, we have argued that ultimately, you know, looking just
8 at customized to said application leaves out an important phrase here in a
9 manner, right? That's telling us how it's doing it. How -- what is the
10 manner? Is the manner?

11 JUDGE LEBOVITZ: This is Judge Lebovitz. Sorry to interrupt.
12 What does customize mean? In a manner customized. What does customize
13 mean?

14 MR. MARSHALL: So, customized, you know, we certainly
15 would acknowledge that the two -- the two are intended to work together,
16 right? So, the custom configuration and the content should work together.
17 There's no doubt to reflect what it is the application is meant to do. So, in
18 that sense --

19 JUDGE LEBOVITZ: But the application is just meant -- if we're
20 talking about the web server, the web server just serves the content. How is
21 that customized to something that's just sending it over? I mean, what's
22 changing it? How is the customization to the server which is sending it
23 through the internet?

24 MR. MARSHALL: Sure. No, that's a good question. So, I think
25 we read this sort of web server not so plainly as like an Apache web server
26 that just delivers files across the internet. This is a web application that's

1 being -- so it is the Yahoo, it is, you know, it's not simply the delivery
2 mechanism, but it is actually serving up an application that it is a live, is a
3 live and interactive website and something the user is going to click a button
4 and get further information or scroll and so forth and there are calls back and
5 forth to the web application. If, again, if it's a search engine, if it's a sports
6 website, for example, that is the application here that is certainly delivered
7 by the web server, but the web server is, as we read it, a complete package of
8 web applications in that instance.

9 So, in that respect, maybe coming back to your question more
10 directly, you know, if it was an Alabama sports, it should show a sort of red
11 background and tell me about football and so forth, right? That is what the
12 purpose of that web application is. And in the same respect, the custom
13 configuration would help to convey that. It would recognize, for example,
14 that my mobile phone only has certain tones of red or it cannot play audio
15 when the team scores or so forth, that those are the customizations that are
16 accomplished by the UI Skin in Hariki.

17 JUDGE MCNAMARA: Counsel, this is Judge McNamara. And
18 so, the rendering that takes place here, I appreciate, by the way, your
19 distinction as to what a web application is or what the application program
20 is, because this term web server, I think, is a real problem, but I understand
21 an application. So, but I'm curious now is about the rendering. So, there is
22 information that's coming back to the client device from the server. And that
23 information is coming back from the client devices. Some customized
24 information that's going to be used, as we just talked about in Claim 1, to
25 render the content. I'm, as a user, I prefer to have my content in Times New
26 Roman with a blue background. Some other user might prefer to have it in

1 Arial with a red background. Where is that rendering done? And where are
2 those, where is the communication, or where is the custom configuration,
3 how is that custom configuration implemented? Where is it coming from, at
4 least in this claim?

5 MR. MARSHALL: Right. So, that, I think at the preference level,
6 and I don't know that this is necessarily disclosed expressly in the '715
7 Patent, but I would say that is more likely to be in the content itself. In other
8 words, if something down to the font, for example, might be in the content
9 itself, because the custom configuration, you know, we will see that our read
10 is that ultimately, that's what helps present the common generic content to
11 the user, and the custom configuration allows a variety of different
12 platforms, you know, mobile platforms. If I had an old Nokia or if I had a
13 PDA in this timeframe, you know, they would maybe display differently,
14 have different limitations, capabilities, and so forth. I don't know that we get
15 that level of granularity for preferences and so forth, but it is certainly
16 possible. And our read of Hariki, for example, is that that's the kind of thing
17 that would be set forth in the custom configuration. So, if you read the
18 Patent as requiring something more granular, Hariki would disclose that and
19 allow the application writer to put that into the custom configuration. Where
20 your individual user preferences come in, that we believe is disclosed in
21 Harris. You know, Harris gives the example of I have a language preference
22 for French as opposed to English. So, in Harris, there's some accounting for
23 individual user preferences.

24 JUDGE MCNAMARA: Okay, so let's go up a level of granularity
25 like you were just talking about. So, two users, let's take the sports
26 application you were talking about before. So, two users are going to get the

1 same information, okay? I don't know if you call it content or what, but
2 they're going to get the same information. You know, here are the scores,
3 here are the college football scores as of 1:00 p.m. or 2:00 p.m. this
4 afternoon. And so, two users, one's using a Samsung device, one's using an
5 Apple device, but two mobile users are going to get the same information.
6 And so, my question then becomes, what is it that is the custom
7 configuration associated with the application? How is it, and I think this
8 goes to Judge Lebovitz's question, how is it that the content is going to then
9 be rendered in a manner customized to the application? Because it's
10 different. It may look different on two different devices.

11 JUDGE AMUNDSON: Well, this is Judge Amundson. I just want
12 to give you a little warning. As I have your time, you're about 32 minutes
13 into your presentation. But sorry to interrupt, but go ahead, please.

14 MR. MARSHALL: Not at all. So, to answer the question on the
15 floor, so for example, if my Samsung device cannot play audio, and my -- or
16 plays audio at a certain pitch, or plays audio with a certain type of audio file,
17 and my Apple device uses a different, you know, audio accepts a different
18 type of audio file or whatnot, the custom configuration would adapt the
19 rendering block on my given phone, right? So, the custom configuration for
20 the Apple phone would tell me use a certain audio format. The custom
21 configuration that's sent to the Samsung phone would tell me to use its
22 particular format. It would direct the content appropriately. So, you know,
23 they might sound similar but not quite the same depending upon the
24 capabilities of the device.

25 JUDGE MCNAMARA: Okay. Thanks a lot. I appreciate that.

26 MR. MARSHALL: Sure. So, I've only got a moment or two

1 remaining here, and I don't want to overrun that time. So, perhaps I could
2 jump to slide 40. This is an open item on Claim 17. Really, you know,
3 some of the issues here come down to through that same, you know,
4 configuration and association and so forth. But the library of applications is
5 one that I would like to address very briefly here. There's some doubt as to,
6 I think, because in the petition there was reference to this suite of programs,
7 sort of, you know, suggesting that the UI authoring tool and the web browser
8 for Claim 17, excuse me, web server in Claim 17, have to sort of work
9 together, right? Or that just because they're resident in the same computer
10 doesn't necessarily make them a suite. So, just set aside the suite of
11 programs. But in this paragraph in Hariki, there's, we would argue that
12 there's disclosure here where they are working together, yes, but they're one
13 of many programs. Server 102 has a variety of different programs. And it's
14 also in paragraph 21 of Hariki that could be sort of various different
15 purposes, you know, to the earlier question, it could be a web application. It
16 could be a streaming application, an audio, what have you, that these are
17 various things, you know, various applications available on server 102, one
18 of which is the web server process is that web application we've been talking
19 about and, you know, if you go back here to the claim there's a library of
20 applications that's the group of applications on server 102. There's I don't
21 think a dispute that the UI authoring tool supports multiple skins, and
22 ultimately the claim says select one of those applications. We would say
23 that the disclosure of selecting the web application, the web server satisfies
24 then the remainder of the claim, much of which tracks Claim 1.

25 Then with that I think I may be at time, Your Honor.

26 JUDGE AMUNDSON: All right. Very well. All right. Thank

1 you. All right. Let's hear from GoTV. Mr. Wyde, would you like to reserve
2 any sur-rebuttal time?

3 MR. WYDE: Yes, Your Honor. I would like to reserve five
4 minutes.

5 JUDGE AMUNDSON: Five minutes. All right. So, you can
6 begin whenever you're ready.

7 MR. WYDE: Okay. I am ready. All right. So, I will -- this is
8 obviously a hot panel, so I'm not sure how far I'll get before I have questions
9 come in. But I will start with page three of the presentation. I'll try to give
10 the page numbers I'm on. And the first limitation I'd like to address is
11 wherein said custom configuration is applicable to said first and second
12 compiled content. This limitation is found in all independent claims, and
13 hence all claims. And neither party has proposed any claim construction
14 regarding terms in this limitation. So, I'm starting here because I think this
15 might be the simplest and most direct path to deciding this case.

16 Turning to page 4. I'm not going to belabor this because I heard
17 Petitioner say that the compiled content -- or, sorry, the custom
18 configuration acts on the compiled content. And this the parties agree. The
19 compiled content is sent with a red arrow, and the custom configuration
20 shown here in gray is sent separately. The custom configuration configures
21 the blocks that then is applied to the compiled content sent separately. And
22 Figure 4 shows a, I'm on now on page 5. Figure 4 of the Patent at issue
23 shows in more detail the compiled content. Here are the '715 Patent shows
24 that the compiled content has IDs of the rendering blocks that were
25 previously configured by the custom configuration. It's in this way that the
26 custom, the compiled content is tied to the custom configuration. This is

1 how the custom configuration is applicable applied to the compiled content.
2 Now, the panel asked about font color, for example. And if you, in the
3 Patent on column 8, lines 4 through 12, it talks about how you can set a font
4 size and font color. That might have been configured with a custom
5 configuration. And then when the compiled content comes in, the ID
6 references that previously configured rendering block, and you get, it
7 becomes applicable, and you get the right font and color. That's how the
8 Patent works.

9 Now, Petitioner has -- I'm on my page 6 now. The Petitioner
10 identifies HTML from the worldwide web server running on 102 as the
11 compiled content, and it identifies the UI content package, also known as the
12 device skin, as the claimed custom configuration, which is sitting over here
13 on the phone. And as we will see, Petitioner provides no explanation for
14 how the HTML from server 102 would or could reference the resources in
15 the UI Skin over here on the device.

16 Turning to page 7. So, here on the left, we see from Figure 5 of
17 Hariki more detail with respect to the mobile device. For example, phone
18 109 shown from Figure 1 in the upper left. What Hariki teaches is that the
19 UI Skin converted resources found in data storage 522 down here operates
20 on items like the phone's background, the phone's alert sounds, and the
21 phone's soft buttons. In the upper righthand corner, we see an image from a
22 phone available from around 2008. And it's when this Patent was being
23 prosecuted that illustrates some of those items that Hariki says the skin can
24 operate on.

25 Now turning to page 8.

26 JUDGE AMUNDSON: This is Judge Amundson. If we could go

1 back to GoTV slide 7. And so, as I understand Netflix's theory, at least in
2 part, it's that if you focus on user interface content package A 524 and
3 resource A and resource B, for example, resource A could customize a
4 forward button on a web browser and resource B could customize a
5 backward button on a web browser. I mean, what's wrong with that theory?

6 MR. WYDE: So, that's on the next page, we'll address that at a
7 very point.

8 JUDGE AMUNDSON: Okay.

9 MR. WYDE: So, the HTML comes into the device, and Hariki
10 indicates that there's a browser on the device that can render this HTML.
11 Now, and again, here's the, here's another picture of the same phone with,
12 for example, Google search results in here. The HTML is shown inside the
13 browser. It's the HTML that the Petitioner identifies as the compiled
14 content. So, the back button and the forward button are not rendered by the
15 HTML. That's part of the application. There's a distinction between --

16 JUDGE LEBOVITZ: This is Judge Lebovitz.

17 MR. WYDE: Yes.

18 JUDGE LEBOVITZ: Can I interrupt? So, are you saying that the
19 custom configuration is, which is the UI, is not applicable to the content, but
20 it's applicable to the device?

21 MR. WYDE: It's -- I'll even concede the Petitioner more than that.
22 It is the -- Hariki says the applications can use the UI skin and that would
23 include the browser. But for example, for instance, here we see that the title
24 bar of the browser, well, Petitioner points to parts of Hariki that say the UI
25 skin can be written by an application writer and that's true. But neither
26 makes the UI skin applicable to the HTML inside the browser. For instance,

1 this image shows a title bar of the browser, which Hariki says may be set by
2 the UI skin. So, the UI skin is accessed by the application and is used by the
3 application. But the title bar of the browser is not part of the HTML inside
4 the browser, which Petitioner identifies as the compiled content.

5 JUDGE LEBOVITZ: This is Judge Lebovitz. Isn't that what I said
6 that the UI is not acting on the content? Right?

7 MR. WYDE: That's correct.

8 JUDGE LEBOVITZ: The UI is you're saying is more or less
9 independent. It's the skin of how the content gets fit into the wireless device.
10 That's how I understood it.

11 MR. WYDE: Yes, it certainly talks about device level
12 customization. When it says background it's talking about the background
13 of the phone, alert sounds are a phone level. Soft buttons are, in this case,
14 this phone happens to have hard buttons, but lots of phones back then had
15 soft buttons as well. And title bars, this is very high level device level
16 customization. Nothing about Hariki says that the UI skin is applicable to
17 the content, which Petitioner identified as the HTML specifically.

18 Turning to page 9. Now, it's not Patent Owner's burden to show
19 that the UI skin is not applied to the HTML. Nonetheless, Mr. Lipoff
20 explained that it is the HTML that sets how the page is displayed and not the
21 UI skin resources. Mr. Lipoff explained that HTML content follows
22 standards, and those standards have no provision for interfacing with the UI
23 skin. In short, Mr. Lipoff explained that browsers, unlike other applications,
24 that have total control over their entire interface, an HTML browser is
25 designed to be standard compliant and to render HTML in accord with that
26 standard. Petitioner left these arguments un rebutted.

1 Turning to page 10. Additionally, as explained in Patent Owner's
2 response, Harris teaches that the generated HTML may be rendered in an
3 automatic testing environment that will make sure the content is displayed
4 correctly before it is deployed to the wireless device where the UI Skin is
5 located. If the HTML can be displayed correctly without the UI Skin, then
6 the UI Skin does not play a part in its configuration. This, again, illustrates
7 the very purpose of the HTML standard. By everyone agreeing to abide by
8 the standard, the party producing the HTML can have confidence that what
9 will be rendered will be the same as the local rendering. And again,
10 Petitioner left this argument completely un rebutted.

11 Turning to page 11. Now, Petitioner, for the first time in its sur-
12 reply argued that Hariki's customization requires the UI skin content
13 package to be applicable to HTML files. Citing paragraphs 19, 41, and 42.
14 That's an inherency argument. But as this Board is aware, a party must meet
15 a high standard in order to rely on inherency to establish the existence of a
16 claim limitation. Yet, looking at the cited paragraphs, Hariki doesn't
17 mention HTML once. Hariki merely says that the UI skin allows an
18 application to access resources. Now, if that's the UI skin --

19 JUDGE LEBOVITZ: This is Judge Lebovitz.

20 MR. WYDE: Yes.

21 JUDGE LEBOVITZ: Is there any testimony that because I did
22 notice that sometimes the testimony was just conclusory, is there any
23 testimony on this by any of the parties and the depositions and the
24 declarations, or is it just like Bederson making a statement?

25 MR. WYDE: So, paragraph 148 is what they cite, and it's
26 Bederson. He, it's a summarily -- he summarily and conclusory just made

1 the statement without any explanation. And this is unlike Mr. Lipoff who
2 explained the reasoning regarding why the UI skin is not applicable to
3 HTML files, as we already went through. So, no, I don't have any
4 explanation from Mr. Bederson about why the UI skin would or could or
5 must be applicable to the HTML files being received at the mobile device.

6 All right. So, I'm going to switch topics now, so I'll stop here and
7 see if there's any questions regarding why the custom configuration, the UI
8 skin, is not applicable to the identified HTML content.

9 JUDGE AMUNDSON: Yes, this is Judge Amundson. And so, I
10 raised this with Mr. Marshall. But why couldn't the customization be such
11 that it customizes the webpage background? So, for example, the HTML
12 file would produce a webpage with a red default background, but then the
13 customization turns that red into blue. Why isn't that in the cards?

14 MR. WYDE: Because the background of an HTML file is set in
15 the HTML, or it could be the CSS, the cascading style sheets. This is all part
16 of what's coming to the device. That's what sets the HTML. The UI skin on
17 the device doesn't set the content within the browser. We concede that the
18 UI skin could set the background of the phone. That's what Hariki says. But
19 HTML, including the background color, is set in the HTML, not the UI skin.

20 JUDGE AMUNDSON: All right. Thank you. I think I
21 understand your position.

22 MR. WYDE: Okay. Are there any other questions before I move
23 on to the next?

24 JUDGE LEBOVITZ: Well, okay, you're getting -- the second
25 issue that we were discussing, I think the panel was thinking about, in a
26 manner customized to set applications and the custom configuration

1 associated. But I think you're going to get to that, right?

2 MR. WYDE: Yes, that's a good transition point, because that's the
3 next topic.

4 JUDGE LEBOVITZ: Okay.

5 MR. WYDE: So, in that last point, the applied to limitation, that
6 applies regardless of whether we're talking about a web server or web
7 browser. But now, when we get to customize to, we're talking about the web
8 server. And unlike the last limitation we were talking about, this does have
9 a claim construction component, and I'm on page 14 now. So, Patent Owner
10 proposed that the definition of customize to is "created for." And
11 Petitioner's position is that the term doesn't require a definition. However, in
12 its reply, Petitioner argued that customize to means associated with or
13 related to. And I just heard Petitioner in its presentation also just talk about
14 how things are associated, how this custom configuration only has to be
15 associated with an application. But that's not what the claim limitation says.
16 It also says that it has to render content in a manner customized to an
17 application. And here's a good point to note that last Friday, the examiner in
18 the '245 Patent's ex parte re-examination, adopted Patent Owner's
19 construction of "customized to the application," and under the broadest
20 reasonable interpretation agreed that that means "created or written for a
21 specific application." That's at Exhibit 2032 at 3 and 5.

22 JUDGE AMUNDSON: Oh, this is Judge Amundson. Okay, I
23 think, pretty sure actually, that you're just making a new argument on that
24 point about -- about your new exhibit, the July 31st Office Action. Did you
25 apprise Netflix's counsel that you're going to go into this topic?

26 MR. WYDE: The answer is no, Your Honor. So, earlier in this

1 case, Petitioner filed an update regarding the District Court litigation, and it
2 included argument and an exhibit. And we complained and the Board said
3 that that was okay. So, we also just wanted to apprise the Board. It's no
4 more, I'm not going to make any more argument regarding this, but I did
5 want the Board to be on notice so that there wasn't an inconsistent decision
6 or just that you're on notice that this decision is out there. That's all I'm
7 going to say about it.

8 JUDGE AMUNDSON: All right. And I -- I have a wholly
9 different question on this "created for" issue. And so, the '715 and the '245
10 Patents, they have an example of an icon that's customized, a submit icon
11 that can be customized for an airplane flying away. All right. So, you've got
12 that customization for a submit icon. Why couldn't that customization apply
13 to all sorts of applications that have a submit icon without being necessarily
14 "created for" all those other applications?

15 MR. WYDE: Kind of hello. I don't think that follows the -- I don't
16 think that follows the specification that you could read, well, a person of
17 ordinary skill in the art would read this specification and come to that
18 conclusion. The Patent says, and here I'm on page 17, that each application
19 has a corresponding custom configuration. And Mr. Lipoff explained that a
20 person of ordinary skill in the art would understand that that customization
21 for an airplane would make sense if you're talking about an aviation
22 application, of course. And there's other examples of poker. And Mr.
23 Lipoff explained that there you would have spades and hearts in the suits of
24 cards or a table Las Vegas theme. Having that Las Vegas theme for an
25 airplane application or an airplane flying away on a poker application just
26 doesn't make sense. It's not in the spirit of the Patent, which talks about how

1 there's a corresponding custom configuration that works to set the look and
2 feel of the application.

3 JUDGE AMUNDSON: All right. Thank you. I think I
4 understand your position.

5 MR. WYDE: All right. So, and indeed, Mr. Lipoff, I'm on page
6 15 now, explained that when discussing software, which is the focus of the
7 Patent at issue, "customized to said application" is another way of saying
8 "application specific." And when Dr. Bederson was asked if that was true,
9 he said he couldn't think of any distinction. So, both experts agree
10 "customized to said application" is the same thing as "application specific."

11 Turning to page 16. And Mr. Lipoff then explained that
12 "application specific" means created or written for a specific application,
13 i.e., built, fit, or altered according to the individual application
14 specifications. And then turning to page 18. Now, Petitioner says that
15 "created for" cannot be correct because the specification doesn't use that
16 phrase. However, the Federal Circuit has made it clear that it is fine to
17 define terms and phrases not specifically found in the specification as long
18 as the definition is not inconsistent with the intrinsic evidence. And as we've
19 just talked about, "created for" is in line with the specification's teachings.
20 Now this is, as we spoke earlier, the Petitioner is just talking about the
21 associated part of this limitation, but from limitations 1B and 9B, we can see
22 that the limitation has two separate clauses regarding the custom
23 configuration. The custom configuration, yes, must be associated with an
24 application, but it also must configure a plurality of rendering blocks to
25 render content in a manner customized to said application. When there are
26 separately recited limitations like this, there's a presumption that they are of

1 different scope, and Petitioner's proposal to make customized to equivalent
2 with associated with would read out the second limitation. And I also note
3 that this is not the first time, oh, let me go to the next slide. I'm on slide 20
4 now. So, I've been talking about claim construction, but I'd like to talk about
5 the substance of Petitioner's arguments, or Petitioner's arguments. For the
6 first time in the reply, the Petitioner says that even under Patent Owner's
7 view, this limitation is met because Hariki's objective is to display HTML
8 per the UI skin. So, this is not true. Hariki only mentions HTML once, and
9 it is in the context that the system can have a worldwide web server that
10 serves any client computer, and conversely, the devices can have a web
11 browser that can access web pages from any content provider on the
12 Internet. If Hariki's objective was really to have the UI skin applicable to
13 HTML content, surely the reference would have delved into how HTML
14 works in concert with the UI skin, and Hariki does not do this.

15 Turning to page 21. In truth, as Mr. Lipoff explained, Hariki does
16 not teach the UI skin is influenced in any way by a particular web server, or
17 that the web content from a particular web server is influenced by UI skin,
18 much less that the UI skin configures rendering blocks specifically
19 customized to, redesigned for, any particular web server.

20 All right. So, I'm going to move on to the next claim limitation if
21 there aren't any final questions on us to that limitation.

22 Okay. Turning to page 22. Next, I want to discuss two limitations
23 together, the c and d limitations. As seen, d requires compiled content is
24 generated in part from execution of said application. And c requires that
25 said compiled content, the content generated by the application's execution,
26 is then transmitted to a wireless device. I'm going to address claim

1 construction in depth because it appears the parties agree on the functionality
2 of the Harris-Hariki system, and the issue entirely turns on claim
3 construction.

4 So, turning to page 23. Patent Owner's view is that compiled
5 content is generated in part from execution of said application, means said
6 application produces slash outputs some part of the compiled content during
7 its execution. In contrast, Petitioner proposes that from execution means
8 upon, and that an application may be a triggering event causing another
9 application to generate the compiled content.

10 Turning to page 24. To understand this limitation, it's first
11 important to note that the Patent at issue differentiates between the
12 application and the client. An application is on the server, the client is on
13 the wireless device. The blue line is where the client is requesting the
14 application content, and the red line is where the generated application
15 content is returned to the client. With this understanding, let's see what the
16 specification says about what generates content during execution. Turning
17 to page 25. The specification says the server may execute the requested
18 application, the server may then determine whether the executed application
19 produces dynamic or static content. And again, during execution of an
20 application, the executed application produces dynamic or static pages. The
21 resultant output is a high level generic template or a page description. And
22 again, the output is generated from a generic application. During application
23 execution, pages are generated. The server may execute the requested
24 application. The server may then determine whether the executed
25 application produces dynamic or static content. I submit that nobody
26 reading these many references can have any doubt that generated during

1 execution means output produced during the application's execution.

2 Turning to page 26. Here we see Figure 6 that is a flowchart of the
3 disclosed invention process. As seen, the client identifies the application
4 and receives the compiled content. But it is only the application that
5 generates the compiled content, and not just that, it generates it from the
6 application's execution. That is, while the client does trigger the application
7 to generate the content, the specification does not consider the client as the
8 generator.

9 Turning to page 27. Now, Petitioner says that the "in part"
10 language means that the client's execution that sent a request for the
11 application falls within the claim scope. However, the "in part" language is
12 referring to the generation not the execution. Specifically, the Patent at issue
13 teaches that when there's a static content the application generates all the
14 compiled content which is shown here with a pink line going directly from
15 the library of applications to the layout solver. However, when the content
16 is that dynamic content the application works in concert with the template
17 engine to output content during execution. This is shown in purple. In this
18 way the application only generates content "in part." This is what generated
19 "in part" means. To say "in part" has anything to do with the client is not to
20 stay true to the Patent's teachings.

21 Turning to page 28. Additionally, Mr. Lipoff testified that a
22 POSITA would understand that "generated from execution" to mean what is
23 produced or output when an application is running. This is not the first time
24 the Board has looked at this issue. In Lyft, the panel found that the plain and
25 ordinary meaning of generated was originated or produced citing Merriam
26 Webster's.

1 Turning to page 29. So, in sum the limitation requires the
2 application to generate, be the source of, the compiled content. And "from
3 execution" means the running application is the source of the compiled
4 content, not a but for cause or triggering event, and the "in part" refers to the
5 generation.

6 JUDGE LEBOVITZ: This is Judge Lebovitz. So, is your
7 argument going to be here that the web server or the web browser are not
8 performing those functions? Is that your argument?

9 MR. WYDE: Just the web browser. Obviously, Harris generates
10 its WAX, et cetera. This only applies to the browser. Browsers don't
11 generate HTML at all in any way.

12 JUDGE LEBOVITZ: Okay. But if you take the interpretation of it
13 being the web server, then your argument goes away, right? Is that --

14 MR. WYDE: That's correct, Your Honor.

15 JUDGE LEBOVITZ: Okay. So, you're only arguing one
16 interpretation.

17 MR. WYDE: No. This is the interpretation of the claim
18 instruction.

19 JUDGE LEBOVITZ: Oh, I meant you're only arguing that this is
20 applicable to one of the applications, to the --

21 MR. WYDE: Yes, to the web server.

22 JUDGE LEBOVITZ: Yeah, okay.

23 MR. WYDE: That's correct.

24 JUDGE LEBOVITZ: But not to the server.

25 MR. WYDE: That's correct. So, it's the first argument was
26 applicable to both. This only applies to the web -- if Petitioner's theory that

1 their web server is the application. So, turning to page 30, the third and last
2 claim construction issue is whether limitations c and d mean the application
3 must be remote. The limitations require that the application generates the
4 compiled content and then the content is transmitted to the wireless device.
5 This implicitly requires that the application generating the compiled content
6 must have been remote so that the generated content is then transmitted to
7 the wireless device. So, as for the petition, the Petitioner took a quite clear
8 position that the application could be local. Petitioner took a position in
9 District Court that the application must be remote and the reply says the
10 Petitioner can take inconsistent positions across the two fora. So, I note that
11 Petitioner's presentation is talking about dependent claims and how they
12 undercut Patent Owner's position and is no longer talking about Petitioner's
13 position. So, I would appreciate it if the Board would get a simple answer as
14 to what Petitioner's position is in this regard before the end of this
15 proceeding.

16 JUDGE AMUNDSON: This is Judge Amundson. On that issue
17 about whether Netflix has taken inconsistent claim construction positions in
18 the District Court and before the Board, as I understand from looking at
19 some of the papers in the District Court case, in seeking attorney's fees,
20 GoTV made the same argument to the District Judge that Netflix was taking
21 inconsistent positions in two different proceedings. Do I have that right?

22 MR. WYDE: That's correct. And the District Court awarded our
23 fees in part based on that.

24 JUDGE AMUNDSON: Yes, and we can look at the order, but as I
25 understand that order the District Court did not accept GoTV's argument that
26 Netflix made inconsistent -- took inconsistent positions in two proceedings.

1 Do I have that correct?

2 MR. WYDE: That's not how I read the order, Your Honor. He,
3 the Judge listed four factors that the Patent Owner put forth, and he did not,
4 and this is how I read the order, he did not specifically give any preference
5 to one or the other. He just said that there were multiple factors, and if there
6 was only one, he might not have found the way he did, but the
7 overwhelming fact that there were four factors, he found that where there's
8 smoke, there's fire, but he did not reject the position. And you can read the
9 order again for yourself and see if you agree.

10 JUDGE AMUNDSON: Well, okay. I mean, I don't know if it's
11 going to take a long time, but could you get the order? It's -- is it going to
12 take you a while to get the order or could you, with a couple of mouse
13 clicks, get that?

14 MR. WYDE: I think I can get it quickly. Let's see here.

15 JUDGE AMUNDSON: It's document 457 in the California case.

16 MR. WYDE: Oh, is it an exhibit here? I think we --

17 JUDGE AMUNDSON: No, no, it's not an exhibit. If you can't get
18 it, that's okay.

19 MR. WYDE: I think that would take more time, Your Honor.

20 JUDGE AMUNDSON: All right. Well, I just want to, on page 11
21 of that order, document 457, after the District Court summarized GoTV's
22 arguments and Netflix's arguments, the Court says, "to be sure, the Court
23 does not find that defendants' explanations are uncredible or that plaintiffs'
24 theory is foolproof. " So, to me, that seems as if the District Court did not
25 accept GoTV's position that Netflix took inconsistent positions in the two
26 proceedings.

1 MR. WYDE: If I heard you correctly, you said that our positions
2 were not incredible?

3 JUDGE AMUNDSON: No, that's the defendants' explanations are
4 -- the Court does not -- here, let me start over. This is the part I was trying
5 to get at. "The Court does not find defendants' explanations are incredible."

6 MR. WYDE: Sure.

7 JUDGE AMUNDSON: He didn't agree with them but said not
8 incredible.

9 MR. WYDE: That's right. He did not specifically adopt or reject.
10 He said that they're, as I read that statement, that their explanation is not
11 particularly incredible. Yes.

12 JUDGE AMUNDSON: All right. All right. All right. Very well.
13 I'm sorry. So, all right. Please proceed with your presentation.

14 MR. WYDE: No, no worries. Turning to page 31. So, support for
15 the position that the application must be remote starts with the fact that the
16 invention is characterized in the abstract as remote, and the Federal Circuit
17 has said when a Patent talks about a restriction from the outset of the
18 specification, this supports that there is a limitation.

19 Turning to page 32. And additionally, the Patent at issue
20 differentiated its invention from the prior art and disparaged locally running
21 applications. The Federal Circuit has made it clear that criticism of a feature
22 also supports that the claims do not contain this feature, and it is not
23 reasonable to read a claim more broadly than the prior art over which the
24 Patentee asserts improvement.

25 Turning to page 33. Moreover, the Patent exclusively notes that
26 the application is executed on the server. All relevant figures and flowcharts

1 show the applications executing on the server and transmitting compiled
2 content to a remote client. There simply isn't any 112 support for a contrary
3 reading. And the Federal Circuit has said that the claims should not be
4 construed to have a meaning that would lead to their invalidity for failure to
5 satisfy written description requirements of patentability.

6 Turning to page 34. Now, Petitioner argues that because
7 Dependent Claim 3, for example, requires an application operating on a
8 remote server, the independent claim must not be remote. But Mr. Lipoff
9 explained that operating on a server is narrower than remote operation. And
10 the Federal Circuit said, when a dependent claim is narrower, in scope, the
11 claims are not rendered identical and present no claim differentiation
12 problem. In short, the claim differentiation argument simply doesn't hold
13 water, and Petitioner left this argument unrebutted.

14 Turning to page 35. What is more, the Federal Circuit has said
15 claim differentiation is not a hard and fast rule. Any presumption created by
16 claim differentiation is overcome by a contrary construction dictated by the
17 written description. And this is the situation we have here. There's no
18 written description support for a locally running application. That is, even if
19 there was claim differentiation, it is trumped by written description
20 concerns.

21 Now, turning to page 36. That was a lot of claim construction.

22 JUDGE LEBOVITZ: This is Judge Lebovitz. Can I interrupt a
23 minute?

24 MR. WYDE: Absolutely.

25 JUDGE LEBOVITZ: In Claim 3, it says, "wherein said compiled
26 content." So, you could say this is an explanation where the content is

1 partially resulting from said application operating on a remote server. So,
2 it's not necessarily any narrower. I mean, in terms of where the application
3 is operating that's giving you an explanation. So, it could be, you could say
4 said application operating on a remote server is actually, is what Claim 1 is
5 limited to. I think I'm making your argument, but I'm just reading the claim.

6 MR. WYDE: Yes. That's true, especially because, yes, the
7 content is partially resultant. The independent claim already talked about,
8 generated in part, so.

9 JUDGE LEBOVITZ: Okay. Anyway, sorry about that. Go ahead.

10 MR. WYDE: No worries.

11 JUDGE AMUNDSON: This is Judge Amundson. I just, I have
12 you about 34 minutes into your argument.

13 MR. WYDE: Right, so five minutes warning. Gotcha.

14 JUDGE AMUNDSON: Okay.

15 MR. WYDE: All right. So, the parties agree that the browser
16 merely triggers the web server to generate HTML and the parties also agree
17 that the browser is not remote. Given there's no disagreement on how the
18 prior art references function, whether the prior art renders the Patents at
19 issue obvious collapses to one of claim construction. If Patent Owner is
20 correct that the application must output some part of the compiled content
21 during its execution, then the browser does not meet the claim limitation. Or
22 if the Patentee is correct that the wireless device -- or that you have to
23 transmit the same generated content to the wireless device, then that
24 generation had to have been done remotely, then the browser does not meet
25 the claim limitation.

26 So, I'll just note here because of time that the parties asked the

1 Board to address the '715 and '245 Patents together because all of the
2 arguments that have been made to the '715 are equally applicable to the '245.
3 But I will note that the '245 contains a limitation requiring receiving the
4 compiled generated content from the application's execution, while the '715
5 has a corresponding limitation requiring transmitting the same compiled
6 content. While one is transmitting and the other is receiving, the logic is the
7 same for the '245. In order for the wireless device to receive the compiled
8 content generated by an executing application, that application had to have
9 been remote in the first place.

10 So, I have to pick and choose what I'd like to address here. I think
11 because Petitioner talked about Claim 17, I will as well. Turning to slide 38,
12 we reached the first Patent unique claim, specifically Claims 17A and B.
13 These limitations require that the library be -- that there be a library of
14 applications and that the identified application be part of that library.

15 Turning to slide 39. Petitioner identifies the web server as the
16 application for this claim and latches on to the fact that Hariki says the
17 authoring tool can be part of a suite. Specifically, Petitioner says that a suite
18 is the same thing as a library and argues that the web server is in the suite
19 with the authoring tool because the authoring tool and the web server might
20 be co-resident on a single computer. Or the authoring tool can generate the
21 UI skin for a mobile device, and then that mobile device can turn around and
22 access the website. But a suite is a set of computer programs that are
23 designed to work together and usually sold as a unit, and neither being
24 installed on the same computer nor having some sort of enunciated
25 relationship rises to the level of being designed to work together. In short,
26 there's no evidence that the authoring tool and the web server are part of a

1 library of applications.

2 Turning to slide 41, the first '245 unique Claim 23G requires an
3 engine for reading the identified compiled content. Turning to slide 42, in
4 the upper lefthand corner, we see that the Patent identifies the engine or the
5 reader as reading the compiled content coming in. Now, the corresponding
6 compiled content under Petitioner's theory is the HTML. If there's anything
7 that reads the HTML, it's the local browser application, not the API engines
8 below. Indeed, Petitioner described how it's the web browser application
9 that opens, interprets, and renders HTML, see petition pages 10 through 11,
10 and Dr. Bederson admitted that the engines don't need to parse HTML and
11 that it's the browser application that processes HTML. See Exhibit 2029,
12 page 76, 2 through 7. In short, well, Hariki uses the same word engine.
13 Hariki's engines do not read the HTML.

14 And lastly, turning to page 43, we have requirements in the
15 Dependent Claims 11, 22, and 32 that require that there be a ticker rendering
16 block. Turning to page 44, the Patent defines ticker as a rendering block to
17 display horizontally scrolling text. Petitioner has only identified the title
18 bars as the alleged ticker. Title bars are referenced in paragraph 24 of
19 Hariki, and there's no indication that the title bar is anything other than the
20 static text shown in the demonstrative image, so not a ticker.

21 All right. I think I'm just under the wire. That's the end of Patent
22 Owner's presentation.

23 JUDGE AMUNDSON: Yeah, this is Judge Amundson. I think
24 you're just under the wire. You referred to in your last argument, Exhibit
25 2029. I think it's pages 7 and 8.

26 MR. WYDE: Seventy-six, lines, 2 through 7.

1 JUDGE AMUNDSON: Oh, okay, 76. So, that must be in the '758
2 IPR. Or else it's Exhibit 231. Is that Dr. Bederson's deposition transcript?

3 MR. WYDE: Oh, I believe that's, yes, that must be Dr. Bederson's
4 deposition transcript. It's different exhibits throughout the three IPRs, but
5 it's all the same. So, 2029 is going to be in the, let's see here.

6 JUDGE AMUNDSON: It's Exhibit 2029, that would be Dr.
7 Bederson's deposition transcript in the '758 IPR.

8 MR. WYDE: Yes, the '758, the '245 Patent, that's correct.

9 JUDGE AMUNDSON: All right. Okay. I think I got that cleared
10 up. All right. Thank you. Let's see. Unless any of my colleagues have
11 questions, then we'll go back to Netflix. All right. Mr. Marshall, you can
12 begin when you're ready, and I think you have about 10 minutes here for
13 your rebuttal.

14 MR. MARSHALL: Thank you, Your Honor. Yes, and a lot to
15 cover. So, I'll try to do this efficiently. So, I would like to respond to Patent
16 Owner's discussion of the applicable, that would be limitation 1F, that the
17 custom configuration is applicable to the HTML, that there's no disclosure
18 anywhere in Hariki. I would give as an example, and unfortunately I don't
19 have this in the demonstratives, but Figure 3 of Hariki talks about the
20 resource profiles. That's part of the recipe of the UI skin in Hariki. And in
21 Figure 3, in item 302, they give a resource profile for device A, for example,
22 and it provides how to address Flash files, PNG files, and JPEG files. So,
23 for me, that's an example of where these sort of correspond to the engines
24 that have been discussed throughout the papers. Flash, JPEGs, and PNGs
25 certainly would be present in an HTML file, right. And so, if you had an
26 embedded, for example, some sort of streaming, or if you were going to

1 have an animation, things of that nature, that would be within the HTML.
2 What would be the purpose of Hariki disposing how to customize such files
3 simply outside of an application? So, again, maybe further indication in
4 Hariki that there is an application level customization.

5 I also wanted to address that there's a testing, the notion of Hariki's
6 or Harris's files being tested on the server side that can be shown and
7 displayed correctly. Certainly, the notion of having a centralized server
8 application with a desired sort of output, you know, what does this do, right,
9 coming back to the sports application analogy, right. The -- our example,
10 you know, the notion that we, you know, you would want it to look a certain
11 way at the generic level, yes, you would want it to look a certain way, and
12 you could test that on the server side, understanding that it's going to be
13 limited by the capabilities of a given client. And so, the mere fact that there
14 is some testing done is not to say that the custom configuration is not
15 intended to still apply at the client side to the content that is transmitted to
16 that side.

17 JUDGE LEBOVITZ: This is Judge Lebovitz. How does the
18 client, you're referring to the client. So, I'm reading, understanding that to
19 be the web server, right, or no, no, the client would be the wireless device,
20 but I thought we're talking about the web server process, how it's customized
21 to the web server process. I mean, we understand that's customized to the
22 wireless device. That's the whole point of Harris's WAX going into HTML,
23 and Hariki using the UI skin. So, I don't think there's any question about
24 that. I'm not quite sure what limitation you're addressing now.

25 MR. MARSHALL: I'm addressing -- this is 1F, Your Honor. So,
26 Patent Owner indicated that perhaps there's no applicability of the custom

1 configuration to the compiled content because, for example, there's
2 disclosure of being able to test the web server output on the server side and
3 have it, you know, look as expected. And I'm saying that that's not an
4 indication that the custom configuration of Hariki/Harris does not, you
5 know, is unrelated to or inapplicable to the compiled content because, A,
6 you could test certainly on the server side, you also have the custom
7 configuration files. They come from the server side in the first place. The
8 files would be available for testing. It's not expressly disclosed that if it's
9 used, but there's very little disclosure about the tests that's done. And, B, at
10 the very least, there's a common expectation of the generic output that could
11 be tested with the understanding that an application developer or writer
12 would then expect perhaps some variations on the client side depending
13 upon the capabilities of the device.

14 If I might move on. So, I did want to address the in a manner
15 "customized to said application," at least with respect to Patent Owner's late
16 exhibit that was discussed. You know, it was effectively slid under the door
17 at the 11th hour. And of course this came up not -- not by Patent Owner's
18 doing, but it arose after our demonstratives were together and, you know,
19 sort of reflects an exchange that Patent Owner had with the CRU then
20 putting in a petition we had no involvement in of course. So, it's ex parte in
21 that respect. And certainly, you know, if the Board is interested we could
22 submit a counter exhibit demonstrating, for example, that, you know, Patent
23 Owner took a very different position in District Court on this identifying a
24 background image, a marketing image that shows up in the background of
25 your Netflix app as constituting the custom configuration. An image that it's
26 certainly not created for that purpose, right. So, we'd be happy to submit

1 that if the Board would like.

2 Let me move on here to slide 24. So, again, speaking to the Patent
3 Owner's proposed construction "created for," if one were to insert "created
4 for" into the claim language, it would not make much sense. It configures
5 said plurality of rendering blocks to render content in a manner "created for"
6 said application. The rendering blocks are not "created for" the application.
7 So, I would say, just as a plain read inserting "created for," it does not help
8 the reader examining this claim limitation as much as the plain language of
9 the claim does so.

10 Understanding that I'm limited on time here. Generated in part,
11 Patent Owner addressed "generated in part." You know, in this instance, we
12 would say this is basically a result driven construction to attack the scenario
13 where the web browser is the claimed application. Because, you know, the
14 way we read the claimed "in part from execution," it's a little bit -- it's a little
15 bit one of those situations where a simple word "from" can make a
16 difference. You know, if I gave you the example that, you know, the
17 package, the package was sent from Boston, well, yes, Boston there is the
18 physical location. It is the origin itself, a physical thing. If I said, you know,
19 her eyes were red from crying, now I have an action word that you could
20 read or should read, I think, as a cause and effect. Essentially, here the claim
21 language says, you know, content is generated "from," so as a result of
22 execution of the application. Now, the "in part" modifies, you know, sort of
23 indicates that execution of the application is only partially responsible for
24 generation of content. Patent Owner's read of this really wants to just say
25 that, you know, compiled content is produced by the application. Oh, and of
26 course that happens during execution, but when else would it occur if it's an

1 application? Of course, it will do its job when executing. So, we believe
2 that Patent Owner's proposed construction here effectively reads out
3 execution and tries to impart a physical source read of the claim, as opposed
4 to the cause and effect that is evident from the plain words of the claim
5 itself.

6 All right, let me, if I may jump to slide 27 in our demonstratives.
7 So, this is the notion that the application should be construed as a remote
8 application. Despite the Dependent Claim 3, narrowing that down and
9 saying this is just remote. But there's nothing in the plain language here that
10 says the application transmits. Now, granted, Claim 17 of the '715 is a little
11 bit different. But for all the other independent claims here, the claims are
12 silent as to what it is. It doesn't say the application transmits to the wireless
13 device, or in the '245 that the client receives from the application. It is
14 conspicuously open-ended. And even the Patent Owner's expert would
15 recognize the source just needs to be external. And certainly, in the
16 Hariki/Harris system, even when the web browser is the claimed application,
17 there's still a web server running. That web application on server 102 is still
18 executing and is going to transmit or the MCF in Harris will transmit files,
19 right? So, that is still external and still satisfies the limitations of the claim.

20 JUDGE AMUNDSON: This is Judge Amundson. I think you're
21 getting near the end of your time. So, if you could wrap up.

22 MR. MARSHALL: Certainly, Your Honor. So, one last point, I
23 guess, on the dependency, the claim differentiation argument that we've
24 made, we see no meaningful difference between operating on a server and
25 remote operation, especially where they want to construe operating on a
26 server as operating on a remote server. So, operating on a remote server,

1 remote operation, we would say does not honor the distinction that's set up
2 by the independent-dependent construct.

3 With that, I will end my share.

4 JUDGE AMUNDSON: This is Judge Amundson. One thing I did
5 want to inquire about, it concerns the issue whether Netflix took inconsistent
6 claim construction positions in the District Court and before the Board.
7 What's Netflix's side of the story?

8 MR. MARSHALL: I'm glad that you asked that question, Your
9 Honor. So, in the District Court, you know, I would say this, is that at the
10 end of the day, as a defendant in the District Court, before a jury, we had
11 very limited time. I think it was 12 hours or something. It was quite limited
12 for the entire trial. Both sides had just like three and a half days of trial time.
13 It's paired down. We, as defendants, are responding to the theory put
14 forward by the plaintiff. And in the plaintiff's case, they said, okay, on the
15 Netflix server side, such and such program is, you know, satisfies the
16 claimed application. On the client side, you have the custom configuration
17 that is supposed to, by the District Court's Construction Act, show the look
18 and feel of the application. And yet, we, Netflix, felt that the theory put
19 forward by the plaintiff, by GoTV, was maybe trying to mix and match.
20 Was it the look and feel of what was on the client, the local Netflix mobile
21 app? Or was it the program that they'd identified as the claimed application
22 on the server? And so, I think what you have is some degree of testimony
23 and argument in the District Court where Netflix is trying to hold GoTV to
24 its infringement theory. In its infringement theory, it said, the application's
25 on the server. And yet, for a different portion of their case, it seemed to us
26 that GoTV was trying to say, well, the application, the look and feel of the

1 application could be, you know, the look and feel on the client device could
2 be defined by the app on the --

3 JUDGE AMUNDSON: The mobile app? The Netflix mobile app?

4 MR. MARSHALL: Right, right. There was a little bit of line
5 crossing from our perspective. I don't want to put words in Patent Owner's
6 mouth, but from our perspective, there was a little bit of mix and match.
7 And so, I think what you see is a lot of testimony and argument trying to
8 hold GoTV to the argument that the application is on the server. It has to be
9 on the server, meaning jury. Be consistent here. If the theory is that the
10 application's on the server, hold them to that, that this claimed application
11 must be on the server for all purposes in this case, right. In other words, the
12 expert, for example, Netflix's expert, perhaps he's not thinking about
13 proceedings here before the Board. He's trying to make it clear and simple
14 for the jury. And he doesn't qualify his statements to say, under GoTV's
15 theory, the claim requires the application to be on the server, right? He just
16 says the application must be, you know, the claim requires the application to
17 be on the server. But it's all in the context. Everything that's happening in
18 that courtroom is in the context of plaintiff's infringement theory, and that's
19 where we have it. I don't think you would find any effort to construe the
20 claim. Frankly, the District Judge would have put a stop to that if our expert
21 was trying to construe any portion of the claim before the jury. That's just
22 improper, and the Judge did not raise such objections, GoTV did not raise
23 such an objection, this was not put forth as a claim construction position, it
24 was put forth as responding to and trying to couch the infringement theory
25 put forward by GoTV throughout. So, I think it's one of those things we
26 don't want to submit to you, Your Honor, you know, thousands of pages of

1 trial transcripts, right, that would not be helpful. But certainly, in the context
2 of the whole proceeding, I think you would see that these statements are
3 made always, always, you know, where GoTV has said, okay, the
4 application is on the server. And that's where you see some of those
5 unqualified statements.

6 JUDGE AMUNDSON: All right. Thank you. And then one other
7 thing. With regard to the July 31, 2024, Office action for the '245 re-
8 examination, I know, and I'm just sort of thinking out loud here. I have to
9 definitely consult with my colleagues. But if we were to allow some limited
10 additional briefing, what exhibits would you cite or what materials would
11 you cite or potentially submit in this proceeding as exhibits?

12 MR. MARSHALL: I think the exhibit that comes to mind, and
13 again, you know, this is maybe also in the out loud here, you know, I think it
14 would be instructive for the Board to see very much, how has GoTV read
15 this limitation customized for you? What is the custom configuration and
16 what does it do? How have they treated that in the District Court, right? So,
17 if we're going to look at how it was treated or what meaning was ascribed to
18 these terms in the CRU, you know, it might also be useful for the Board to
19 see how GoTV has treated and applied the terms in the District Court. And
20 again, we acknowledge it, just like for us, it's in the context of District Court
21 litigation. But, you know, we would probably attach an exhibit along those
22 lines.

23 JUDGE AMUNDSON: Well, what I'm -- okay, so I got that. But
24 what I'm trying to understand, what is that exhibit or what are those two or
25 three exhibits?

26 MR. MARSHALL: I would think trial transcripts, you know, an

1 excerpt, so probably an excerpt of a trial transcript. And to the extent that it
2 was filed with the District Court, I believe we have GoTV's experts' slides,
3 slide presentation from the direct testimony in court that looks at how the
4 plaintiff, GoTV, applied those terms to the facts in that case.

5 JUDGE AMUNDSON: All right. I think I understand. So, okay.
6 Unless my colleagues have any further questions, we'll go back to the Patent
7 Owner. So, Mr. Wyde, you can -- well, let me ask you, if the panel were to
8 allow some additional limited briefing on the import of the July 31, 2024,
9 Office action, would GoTV submit -- want to submit additional materials,
10 maybe other things from the re-examination?

11 MR. WYDE: No, Your Honor. I think it's -- our argument is the
12 same there as it was here. It's the same term. Our argument is one sentence,
13 in that if this is the construction under the broadest reasonable interpretation,
14 it can't be broader under Phillips. And we just want -- all we wanted to do
15 was make the PTAB aware that this decision was out there. I don't want to
16 have a trial about another administrative proceeding about a District Court
17 and how that District Court should have affected the ex parte re-examination
18 and how that all ties back to here. I think it's -- I don't know what the term
19 is, but it's a trial within a trial within a trial, and I don't think there's much to
20 be gained by them.

21 JUDGE AMUNDSON: All right. All right. Thank you. So, now,
22 with regard to the sur-rebuttal, you can begin whenever you're ready.

23 MR. WYDE: Sure. So, I will try to follow the same outline. Mr.
24 Marshall talked about the types of files and how that that supports the fact
25 that HTML is tied together with the UI skin, but those files are -- those types
26 are down here in the resource content packages. And if you look at page 54

1 of Petitioner's presentation, Petitioner added red and blue lines that are not in
2 the figure to make it look like the application interfaces with these engine
3 selectors. But as noted in Patent Owner's response, the engine selector is
4 determined by the type of file in the UI skin being accessed coming up from
5 below. And there's no teaching that any HTML link or image is sent from
6 the browser down to HTML's engine. So, I would have -- whoops, excuse
7 me. And again, I forgot to tell you what page it was on. I'm talking about
8 page 42.

9 JUDGE AMUNDSON: Of Patent Owner slides?

10 MR. WYDE: Of Patent Owner slides. So, I'll just point you there
11 to take another look at that. Then Mr. Marshall discussed how the testing
12 doesn't preclude -- the testing in Harris doesn't preclude that the UI Skin
13 isn't being used. And he made an argument that the custom configuration
14 would quote, would be there, unquote. But if you, or I'd ask the panel to
15 look at the reply, that argument isn't there. This seems to be a new
16 explanation that isn't in the papers.

17 And then I listened to Mr. Marshall's argument regarding from
18 execution and how there's a web server that's executing. And I'm going to
19 go to page 25 of Patent Owner's slides. Sorry. So, one, we acknowledge
20 that the web server is executing. But when we're talking about generation
21 from execution, this argument is limited to the web browser. We made that
22 clear in our opening -- or responsive argument. So, we're talking about the
23 browser. And I would urge the panel again to look at all these cites from
24 page 25. I'm not sure we even captured all of them in the Patents. They all
25 share the same specification. But this is not outcome-driven as charged.
26 You can read this Patent, and it says over and over again, it's not elegant

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1 language that generated from execution or generated in part from execution.
2 But this is the same inelegant language they used throughout the Patent, and
3 it all points to the same thing. The application on the server is generating
4 the output during its execution, not the client. And we think the claims, as
5 Phillips said, should be read in light of the specification, and when you do
6 that, I think you'll come to the conclusion that the generation in part is
7 discussing the execution.

8 And that's all I have.

9 JUDGE AMUNDSON: All right. Unless my colleagues have any
10 questions, it looks like not, that concludes our hearing. And so, we want to
11 thank both parties for your time and helpful presentations. The case is
12 submitted, and the hearing is adjourned.

13 (Whereupon the above-entitled matter went off the record at 10:47
14 a.m.)

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