

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,
PETITIONER,

v.

GOTV STREAMING, LLC,
PATENT OWNER.

CASE IPR2023-00759
PATENT 8,103,865

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
CURRENT EXHIBIT LIST	iii
CLAIM LISTING	vii
I. INTRODUCTION.....	1
II. CLAIM CONSTRUCTION	2
A. “Said Custom Configuration Being Specific to Said Application Program” Means the Custom Configuration Is “Created For” or “Tailored To” the Application Program	2
B. “Eliminate” Means “Remove”	6
III. HARIKI IN VIEW OF HARRIS FAILS TO RENDER ANY CLAIM OBVIOUS	8
A. Hariki in View of Harris Fails to Disclose Limitation 1[c]/34[a] Requiring the Custom Configuration Be “Specific To” the Application Program.....	8
B. Hariki in View of Harris’s Processing of WAX to HTML for a Particular Device Does Not “Eliminate” a Content Item	13
C. Hariki in View of Harris Fails to Disclose Eliminating a Content Item Unsupported by the Wireless Device	16
IV. HARIKI IN VIEW OF HARRIS FAILS TO RENDER DEPENDENT CLAIMS OBVIOUS FOR ADDITIONAL REASONS.....	17
A. Hariki in View of Harris Fails to Disclose a Generic Template with Relative Screen Location and Display Object Size Information Independent of Screen Dimensions of the Wireless Device	17
B. Hariki in View of Harris Fails to Disclose a Page Description Includes an Audio Rendering Command.....	18
V. CONCLUSION	19

TABLE OF AUTHORITIES

Cases

<i>Acumed LLC v. Stryker Corp.</i> , 483 F.3d 800 (Fed. Cir. 2007)	3
<i>Arendi S.A.R.L. v. Apple Inc.</i> , 832 F.3d 1355 (Fed. Cir. 2016)	12
<i>Ariosa Diagnostics v. Verinata Health, Inc.</i> , 805 F.3d 1359 (Fed. Cir. 2015)	13
<i>B/E Aerospace, Inc. v. C&D Zodiac, Inc.</i> , 962 F.3d 1373 (Fed. Cir. 2020)	10
<i>DSS Tech. Mgmt., Inc. v. Apple Inc.</i> , 885 F.3d 1367 (Fed. Cir. 2018)	12
<i>Graham v. John Deere Co.</i> , 383 U.S. 1, 36 (1966)s.....	10
<i>Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.</i> , 821 F.3d 1359 (Fed. Cir. 2016)	10, 16, 19
<i>KS Himpp v. Head-Wear Tech., LLC</i> , 751 F.3d 1362 (Fed. Cir. 2014)	9, 12
<i>LG Elecs. Inc. v. Immervision, Inc.</i> , 39 F.4th 1364 (Fed. Cir. 2022)	13
<i>Masimo Corp. v. Sotera Wireless, Inc.</i> , No. 2022-cv-01415, 2023 WL 6307959 (Fed. Cir. Sept. 28, 2023)	5
<i>Outside the Box Innovations v. Travel Caddy, Inc.</i> , 695 F.3d 1285 (Fed. Cir. 2012)	9
<i>PAR Pharm., Inc. v. TWI Pharm., Inc.</i> , 773 F.3d 1186 (Fed. Cir. 2014)	11
<i>Skky, Inc. v. Mindgeek, S.A.R.L.</i> , 859 F.3d 1014 (Fed. Cir. 2017)	9
<i>Solvay SA v. Honeywell Intern., Inc.</i> , 622 F.3d 1367 (Fed. Cir. 2010)	4

CURRENT EXHIBIT LIST¹

No.	Brief Description
1001	U.S. Patent No. 8,103,865
1002	Expert Declaration of Ben Bederson (“Bederson”)
1003	Curriculum Vitae of Benjamin B. Bederson, Ph.D.
1004	File History of U.S. Patent No. 8,103,865
1005	U.S. Patent Application Publication No. 2007/0150617 (“Hariki”)
1006	U.S. Patent Application Publication No. 2003/0023755 (“Harris”)
1007	U.S. Patent Application Publication No. 2003/0137539 (“Dees”)
1008	Reserved
1009	U.S. Patent No. 7,447,486 (“Tamura”)
1010	U.S. Patent No. 6,996,627 (“Carden”)
1011	U.S. Patent No. 6,669,564 (“Young”)
1012	U.S. Patent No. 6,732,183 (“Graham”)
1013	U.S. Patent No. 6,507,727 (“Henrick”)
1014	Webpage excerpt from Computer History Museum at https://www.computerhistory.org/tdih/april/6/ (last accessed March 29, 2023)
1015	https://www.webdesignerdepot.com/2009/05/the-evolution-of-cell-phone-design-between-1983-2009/
1016	Excerpts from Dan R. Olsen, Jr., Developing user interfaces (1998)
1017	Alok Sinha, Client-server computing, in Communications of the ACM, 35, 7 (1992)
1018	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
1019	Eric Kasten, HTML: A Gentle Introduction, Linux Journal (July 1995),

¹ Relevant portions of exhibits may be highlighted to help the Panel locate cited sections.

No.	Brief Description
1020	U.S. Patent Application Publication No. 2013/0124961 (“Linburn”)
1021	U.S. Patent No. 8,111,326 (“Talwar”)
1022	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)
1023	Complaint in <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , No. 2:22-cv-07556-RGK-SHK (C.D. Cal. October 17, 2022)
1024	https://web.archive.org/web/20070406171650/http://www.zenzui.com/products.html
1025	Bert Boss, <i>A brief history of CSS until 2016</i> , W3 Blog (Dec. 17, 2016), https://www.w3.org/Style/CSS20/history.html
1026	Eric A. Meyer, <i>Cascading Style Sheets – The Definitive Guide</i> (O’Reilly, 2d ed. 2004)
1027	JavaScript, Wikipedia (Aug. 12, 2004), https://web.archive.org/web/20040812085853/http://en.wikipedia.org/wiki/JavaScript
1028	Document Object Model (DOM) Level 1 Specification Version 1.0, W3C Recommendation (Oct. 1, 1998), https://www.w3.org/TR/1998/REC-DOM-Level-1-19981001/DOM.pdf
1029	ECMAScript: A general purpose, cross-platform programming language, Standard ECMA-262 (June, 1997), https://www.ecma-international.org/wp-content/uploads/ECMA-262_1st_edition_june_1997.pdf
1030	Peter-Paul Koch, <i>The Document Object Model: an Introduction</i> , Digital Web Magazine (May 14, 2001), https://www.digital-web.com/articles/the_document_object_model/
1031	Memorandum in Opposition to GoTV Streaming, LLC’s Motion for Judgment as a Matter of Law
1032	Declaration of Stephen A. Marshall in support of Petitioner’s unopposed motion for pro hac vice admission.
1033	Deposition of Mr. Stuart Lipoff (April 2, 2024) (“Lipoff Dep.”)

No.	Brief Description
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, 2016), <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
2004	Declaration of Joshua S. Wyde regarding authentication of exhibits (Aug. 17, 2023)
2005	Declaration of Mr. Stuart Lipoff
2006	Order on Motions for Summary Judgment, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , 2:22-cv-07556 (C.D. Cal. issued Sept. 11, 2023) (Doc. 249)
2007	Tailored, Cambridge Dictionary, <i>available at</i> https://dictionary.cambridge.org/dictionary/english/tailored?q=tailored_1 (last visited Dec. 18, 2023).
2008	Discrete, Merriam-Webster.com Dictionary, <i>available at</i> https://www.merriam-webster.com/dictionary/discrete (last visited Dec. 13, 2023)
2009	Discrete, American Heritage Dictionary, <i>available at</i> https://www.ahdictionary.com/word/search.html?q=discrete (last visited Dec. 13, 2023)
2010	Discrete, Merriam-Webster's Collegiate Dictionary (1998)

No.	Brief Description
2011	Application-Specific, Wiktionary, <i>available at</i> https://en.wiktionary.org/wiki/application-specific (last visited Dec. 15, 2023)
2012	Eliminate, The American Heritage Dictionary of the English Language, <i>available at</i> https://www.ahdictionary.com/word/search.html?q=eliminate (last visited Dec. 19, 2023)
2013	U.S. Patent Application No. 60/256,589 (“Harris Provisional”)
2014	Deposition of Dr. Benjamin Bederson (Jan. 10, 2024) ²
2015	Petition, Netflix, Inc. v. GoTV Streaming, LLC, IPR2023-00757 (PTAB filed Apr. 7, 2023) (Paper 2) (“’757 Petition”)
2016	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. 2014, 5:21–6:11.

CLAIM LISTING³

	Limitation
1pre	1. A server implemented method for processing data for a wireless device, comprising:
1a	receiving from the wireless device a request for an application program, said request including an indication of a type of the wireless device;
1b	executing, in response to receiving said request, said application program to generate a wireless device generic template including a plurality of content items;
1c	sending a custom configuration to the wireless device, said custom configuration being specific to said application program;
1d	generating a page description based on said wireless device generic template and a capability of the wireless device,
1e	said page description having at least one discrete low level rendering command that is within said rendering capability of said wireless device but that is of a syntax that is wireless device generic; and
1f	sending said page description to the wireless device such that the wireless device is capable of presenting at least one content item from said plurality of content items using both said page description and said custom configuration.
2	2. The method of claim 1, wherein said wireless device generic template includes relative screen location and display object size information and is independent of screen dimensions of the wireless device.
3	3. The method of claim 1, wherein said wireless device generic template is substantially compliant with extensible markup language (XML) syntax.
4	4. The method of claim 1, wherein said at least one discrete low level rendering command of said page description is operable to be executed by a plurality of rendering blocks of a graphical user interface of the wireless device.
5	5. The method of claim 4, wherein said at least one discrete low level rendering command includes a physical screen position of a display element of said at least one content item.
6	6. The method of claim 4, wherein said at least one discrete low level rendering command includes: a specification of a location and a size of a screen area; and an identification of a rendering block from said plurality of rendering blocks of said graphical user interface to operate within said screen area.

³ Patent Owner uses Petitioner's numbering designation for consistency.

	Limitation
7	7. The method of claim 6 , wherein said at least one discrete low level rendering command includes parameters associated with said rendering block from said plurality of rendering blocks.
8	8. The method of claim 1 , wherein said page description includes at least one display rendering command and at least one audio rendering command.
9	9. The method of claim 1 , wherein said application program is wireless device generic and said wireless device generic template is a wireless device generic page description template.
10	10. The method of claim 1 , wherein the wireless device is operable to configure a plurality of rendering blocks of a graphical user interface based on said custom configuration.
11	11. The method of claim 1 , wherein said server stores a plurality of device profiles, said method further comprises: identifying a device profile from said plurality of device profiles associated with the wireless device based on said type of said wireless device.
12pre	12. A non-transitory processor-readable medium storing code representing instructions to cause a processor to:
12a	receive a request for an application program from a wireless device, said request including an indication of a type of the wireless device;
12b	execute said application program to generate a wireless device generic template including a plurality of content items;
12c	request, using said indication of said type of the wireless device, a device profile from a library of device profiles,
12d	said device profile providing an indication of a rendering capability of the wireless device;
12e	eliminate, using said device profile, at least one content item from said plurality of content items from said wireless device generic template to define a device specific template associated with the wireless device,
12f	said at least one content item being unsupported by the wireless device;
12g	translate said device specific template into a page description having at least one discrete low level rendering command that is within said rendering capability of the wireless device but that is of a syntax that is wireless device generic; and
12h	send said page description to the wireless device.
13	13. The non-transitory processor-readable medium of claim 12 , wherein said wireless device generic template contains relative screen location and display object size information independent of screen dimensions of the wireless device.

	Limitation
14	14. The non-transitory processor-readable medium of claim 12 , wherein said wireless device generic template is substantially compliant with extensible markup language (XML) syntax.
15	15. The non-transitory processor-readable medium of claim 12 , wherein said at least one discrete low level rendering command of said page description is operable to be executed by a plurality of rendering blocks of a graphical user interface of the wireless device.
16	16. The non-transitory processor-readable medium of claim 15 , wherein said at least one discrete low level rendering command includes a physical screen position of a display element of a content item from the plurality of content items.
17	17. The non-transitory processor-readable medium of claim 15 , wherein said at least one discrete low level rendering command includes: a specification of a location and a size of a screen area; and an identification of a rendering block from said plurality of rendering blocks of said graphical user interface.
18	18. The non-transitory processor-readable medium of claim 17 , wherein said at least one discrete low level rendering command includes at least one parameter associated with said rendering block from said plurality of rendering blocks.
19	19. The non-transitory processor-readable medium of claim 12 , wherein said page description includes at least one display rendering command and at least one audio rendering command.
20a	20. The non-transitory processor-readable medium of claim 12 , further comprising code representing instructions to cause said processor to: send, in response to said request, a custom configuration to said wireless device,
20b	the wireless device is operable to configure a plurality of rendering blocks of graphical user interface based on said custom configuration.
31	31. The method of claim 1 , wherein the sending the custom configuration to the wireless device is in response to receiving an indication from the wireless device that the custom configuration is not stored at the wireless device.
34a	34. The non-transitory processor-readable medium of claim 12 , further comprising code representing instructions to cause the processor to: send a custom configuration to the wireless device, said custom configuration being specific to said application program,
34b	the wireless device operable to present a content item from said plurality of content items using said page description and said custom configuration.

I. INTRODUCTION

Claim 1, and its dependents, captures an embodiment of the invention whereby a server sends a custom configuration to the wireless device, said custom configuration being “specific to said application program.” Yet, the custom configuration that Petitioner identifies, a UI skin, is meant to affect a mobile device and is not “specific to” a particular web server Petitioner identifies as the “application program.”

Therefore, Petitioner now starts with its goal, arguing that Hariki has an “objective” to display HTML per the UI skin, but, as set forth herein, there is no support for such a premise. Petitioner also tries to parley this alleged “objective” by putting forth a new obviousness theory in its Reply for the first time, arguing that it would be “common sense” to modify Hariki to have its UI skin be specific to HTML served from a particular web server or that this inherently happens. Ignoring the impropriety of putting forth a new theory in the Reply and that Hariki has no objective to use HTML with the UI skin, Petitioner does not meet inherency’s “high standard,” and “common sense” is no substitute for evidence that the limitation is present.

Claim 12, and its dependents, captures another embodiment of the invention whereby the application generates a wireless device generic template including a plurality of content items and then “eliminate[s], using said device profile, at least

one content item,” where the eliminated content item is “unsupported by the wireless device.” But Harris does not teach eliminating a content element from the WAX stylesheet that Petitioner identifies as the generic template due to the wireless device not supporting the content. Harris teaches to only choose appropriate content that the MCF sends and the wireless device correctly displays.

Petitioner now argues that the processing of an index in a WAX stylesheet “element” that points to content meets this limitation. However, an index is not meant for display on the wireless device, so not a “content item,” and certainly not eliminated as “unsupported by the wireless device.”

Patent Owner addresses these and other issues in this Sur-Reply.

II. CLAIM CONSTRUCTION

A. “Said Custom Configuration Being Specific to Said Application Program” Means the Custom Configuration Is “Created For” or “Tailored To” the Application Program

[1c/34a] . . . said custom configuration being specific to said application program

While purporting not to propose a construction, Petitioner proposes that “being specific to” means “supports rendering of the page description based on the wireless device capabilities.” Reply 3 (“[T]he custom configuration is ‘specific to’ the application by supporting the rendering operations on a wireless device.”); *id.* (“[T]he custom configuration must be specific to the server application in that it supports rendering of the page description based on the wireless device

capabilities.”). Under this non-construction construction, limitation 1b would read “said custom configuration [supports rendering of] said application program [based on the wireless device capabilities].” This unjustifiably broadens and incorporates other limitations into limitations 1c/34a, unlike Patent Owner’s proposed definition of “specific to” as “created for” or “tailored to” that capture the normal meaning of the term as used in the specification and by those in the industry. *See* POR § V(B).

Petitioner argues that because Patent Owner pointed out that the Patent-at-Issue teaches a *generic application* or a *generic device template* are not “specific to” *device* capabilities, POR 23–24, the Panel should also read limitations 1c/34a as requiring a different component, the *custom configuration*, to be *device* specific, Reply 2. But such a reading ignores the unambiguous plain language that the custom configuration must be “specific to said *application*,” not to “said *device*.”

Likewise, Petitioner identifies a teaching in one embodiment where the custom configuration is specific to the wireless device, Reply 2–3 (citing Ex. 1001 3:22–25), but this simply confirms that the applicant knew how to say “specific to the wireless device” and supports that the patentee’s choice not to use these words means “specific to said application program” has a different scope and means what it says. *See Acumed LLC v. Stryker Corp.*, 483 F.3d 800, 807 (Fed. Cir. 2007) (“The intrinsic evidence of the specification therefore suggests that the patentees knew how to restrict their claim coverage to holes passing through at right angles. They could

have used the word ‘perpendicular,’ as they did in discussing their preferred embodiment. Instead, they chose a different term that implies a broader scope.”).

Petitioner then argues that because other limitations “account[] for the device capabilities (limitations 1[d] and 1[e]),” this “informs [Petitioner’s] understanding” of limitations 1c/34a. Reply 3. However, limitation 1d, for example, requires the ***generated page description*** is based on “a capability of the wireless device,” so even if this limitation properly “accounts for the device capabilities” it would be “erroneous” to apply this claim construction to a “fundamentally different limitation.” See *Solvay SA v. Honeywell Intern., Inc.*, 622 F.3d 1367, 1383 (Fed. Cir. 2010).

Petitioner also cites its expert for the proposition that “‘specific to’ needs no construction,” Reply 3 (citing Ex. 2014 84:1–4), but it is more accurate to say that Dr. Bederson had no opinion regarding the construction at all. Ex. 2014 84:2–4 (“I did not offer a specific construction of that term [“specific to”], so I do not have an opinion about its specific limits.”). Additionally, he explicitly said that he had no opinion as to whether “specific to” means “customized for” or “tailored to.” *Id.* 84:9–18.

Similarly, Petitioner misunderstands Patent Owner’s expert’s testimony, saying that Mr. Lipoff offered an opinion regarding whether “it’s possible that two different applications might have the same custom configuration.” Reply 4 (citing

Ex. 1033 13:19–21). Mr. Lipoff answered three times to the same effect: “I hadn’t really thought about whether—it’s possible that two different applications might have the same custom configuration, it’s not something I considered, but at the very least the custom configuration that’s the subject of this claim term has to have been created for the application that’s running.” Ex. 1033 13:15–15:12.

Lastly, Petitioner argues that Patent Owner is attempting to vary the plain meaning of the term “specific to,” Reply 4; however, as set forth in the Response, “created for”/“tailored to” *is the plain meaning* of the term customized. POR 25–26 (explaining that this is the dictionary meaning and how a POSITA uses the term—including Petitioner’s expert—in the relevant field). Moreover, the specification uses “tailored to” synonymously with “specific to.” *Compare* Ex. 1001 6:13–14 with *id.* 5:57–58. And while “created for” is not found in *hac verba*, where an applicant has not explicitly defined a term, it is appropriate to use words not found in the specification to capture the meaning considering the patent’s teachings. *Masimo Corp. v. Sotera Wireless, Inc.*, No. 2022-cv-01415, 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”).

In sum, the intrinsic and extrinsic evidence all supports that “said custom

configuration being specific to said application program” means the custom configuration is “created for” or “tailored to” the application program, and there is no justification to broaden the limitation to encompass custom configurations that merely “support[] rendering of the page description” or specify that such support is “based on the wireless device capabilities.”

B. “Eliminate” Means “Remove”

12[e] eliminate, using said device profile, at least one content item from said plurality of content items from said wireless device generic template . . .

Petitioner is incorrect that “there is apparently no dispute over [the claim term ‘eliminate’s] meaning.” Reply 5. While Petitioner uses the word “removed,” supporting Patent Owner’s position that this is what “eliminate” means, Pet. 61–62, Petitioner belies its ostensible agreement by arguing the term encompasses *not creating an item*. Pet. 62; Reply 13–14. Patent Owner’s position is that as the claims use “eliminate” it means *removing an existing item*, specifically at least one existing content item previously generated by the application program. See limitation 1b.

Petitioner is now foisting a construction on Patent Owner that Patent Owner is not putting forth; specifically, “removal – with no replacement” and “content cannot be added in place of the eliminated content.” Reply 6. Patent Owner’s proposal is clear: “eliminate” means “remove.”

Patent Owner does note, however, that Petitioner’s citation does not support that the Patent-at-Issue teaches elimination means choosing appropriate content. See

Reply 8 (citing Ex. 2014 99:17–22). Dr. Bederson explained that elimination of audio meant “the original content might have included the audio” but it is removed before “it’s sent to a device without audio capability.” Ex. 2014 99:1–13. When asked if there was “any trace of the audio content left in the template when it’s sent to the device,” he replied that at best there might be “a space where there might have been audio,” confirming that the audio is “removed.” *Id.* 99:14–100:2. This is in accord with Patent Owner’s expert that explained:

I think the concept of elimination as it exists in the patent is . . . that a content item that the device is incapable of rendering is no longer being sent to the device, it is removed or eliminated before it’s passed to the layout solver, which then provides the compiled content that actually goes to the device.

Ex. 1033 65:15–24.

There is a controversy for the Board to resolve regarding the meaning of “eliminate” and whether Harris “eliminates” a content item. Patent Owner’s position is that “eliminate” means “remove,” and Harris does not remove a WAX element as set forth in Section III.C.

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

A. Hariki in View of Harris Fails to Disclose Limitation 1[c]/34[a] Requiring the Custom Configuration Be “Specific To” the Application Program

1[c]/34[a] [sending/The non-transitory processor-readable medium of claim 12, further comprising code representing instructions to cause the processor to: send] a custom configuration to the wireless device, said custom configuration being specific to said application program;
--

Petitioner begins its Reply with the premise that “*Hariki*’s objective is to display provider-supplied HTML content on a wireless device per the wireless device’s corresponding UI content package.” Reply 7. 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. 1005 at Title, [0003], [0008].

Petitioner asserts the UI authoring tool and “the web server . . . do not just happen to reside on a common server,” and that “UI packages are specific to the content that is served by the web server,” i.e., the identified HTML. Reply 8 (citing Pet. 31 (alleging “that, when the web server process is accessed, the converted resources in the UI content package configure the configurable aspects of the UI, by e.g., changing a display image or color” and in turn citing Ex. 1002 ¶147)). Patent Owner already addressed this argument, noting that it is completely unsupported and even the Petitioner’s expert did not say it was true in his expert report. POR 33–34. Yet, Petitioner only cites its own Petition in the Reply and

Dr. Bederson’s testimony, *id.* 11 (citing Ex. 2014 87:5–17), where Dr. Bederson simply characterized what he wrote in his report without any further explanation. *See* Ex. 2014 87:5–7 (“I explained my opinion about that in the section about limitation 1c in paragraphs 142 through 148 . . .”). “[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 *KS Himpp v. Head-Wear Tech., LLC*, 751 F.3d 1362, 1365 (Fed. Cir. 2014)); *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 contends that there is a “pairing between the UI packages and the application content,” i.e., HTML served by the web server, because of the ’865 Patent’s objective and how an embodiment of the ’865 Patent works. Reply 8–9. 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).

Penultimately, Petitioner argues it is obvious to modify Hariki or that Hariki inherently meets this limitation, saying that “[i]t is also a matter of common sense that the UI packages **would have to be** specific to the application content [the identified web server HTML] because only then can the content [HTML] be displayed in a certain way on a wireless device, as intended by *Hariki*.” Pet. 10 (emphasis added) (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 shift in invalidity position as a departure in a Reply from the Petition, where Petitioner asserted this limitation is explicitly disclosed and met by the web server without alteration. Pet. 31; *see also Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369–70 (Fed. Cir. 2016) (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 UI content package, so Petitioner is mistaken regarding its motivation to modify Hariki. Indeed, this is circular logic starting with the conclusion, essentially saying the UI content package must be specific to a particular webserver serving HTML because only in this way would the UI content package be specific to a particular webserver serving HTML.

Third, 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 relies upon its expert’s opinion that the UI skin would somehow only be used with HTML “when it is used with a particular server.” Reply 10 (citing Ex. 2014 62:6–21); *see also* Ex. 2014 62:17–18. Yet when asked to explain if a UI skin customizes any other web server’s HTML—i.e., how the UI skin can differentiate between HTML from, for example, yahoo.com and Hariki’s web server 120—Dr. Bederson variously said he did not “recall Hariki giving a lot of detail about the specific server configurations,” that “there’s a content server and a web server, and they might be separate,” and if “a mobile device visits some other server that is not part of the [Hariki-Harris] system, then . . . they’re just using a browser and a server.” Ex. 2014 62:22–65:5. Dr. Bederson’s conclusory and unexplained assertion does not meet the standard for inherency.

In truth, 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. Ex. 1005 [0021]. Indeed, Hariki merely says 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 Hariki indicates could simply be “backgrounds, title bars, buttons, alert sounds, and so on,” not necessarily or naturally the HTML inside the application, *id.* [0024]. Such an aside does not support a position that Hariki’s UI skin “would ***have to be*** specific to” a particular web server’s HTML or that Hariki’s users are doing anything other than “just using a browser and a server.”

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*, 751 F.3d at 1366 (“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.”).

Finally, Petitioner argues that “the actual claim limitation . . . requires only that a UI package specific to the web server be transmitted to a wireless device based on the device’s capability.” Reply 10–11. As addressed in the claim construction section, Patent Owner accurately captures what it means to be “specific to said

application program” and there is no valid reason to conflate being specific to the identified application with being “based on the device’s capability.” *See supra* § II.A.

In sum, Hariki’s UI Skin (identified as the custom configuration) is not “specific to” web server 120 (identified as “said application program”).

B. Hariki in View of Harris’s Processing of WAX to HTML for a Particular Device Does Not “Eliminate” a Content Item

12[e] eliminate, using said device profile, at least one content item from said plurality of content items from said wireless device generic template to define a device specific template associated with the wireless device
--

Petitioner critiques Patent Owner’s expert’s examination of Harris’ priority document as “non-relied-upon,” “speculat[ion],” and “inexplicabl[e].” Reply 11–12 & 14. However, Petitioner cites no authority for the proposition that such examination is improper. In truth, non-relied upon references may be relevant evidence. *See, e.g., Ariosa Diagnostics v. Verinata Health, Inc.*, 805 F.3d 1359, 1365 (Fed. Cir. 2015) (explaining the Board should consider “evidence of the background understanding of skilled artisans” even if the evidence “had not been identified at the petition stage as one of the pieces of prior art defining a combination for obviousness.”). What Harris’ provisional said is highly relevant to how a POSITA would understand Harris. *See, e.g., LG Elecs. Inc. v. Immervision, Inc.*, 39 F.4th 1364, 1372 (Fed. Cir. 2022) (discerning an error in the prior art by

comparing the prior art with disclosure of the prior art’s priority document).

Additionally, the “non-relied-upon provisional application” does not have “a different method of converting tags and filtering content from the ’865 *Patent*.” Reply 12. Indeed, Petitioner does not put forth a single alleged difference. *Id.* Patent Owner’s expert simply uses the prior art, the prior art’s provisional, and his expertise to give an example of how a POSITA would understand Harris’ MCF processing. Ex. 2005 ¶¶136–42.

Petitioner now relies upon a single example of how a content item is supposedly eliminated in the Reply, saying that “Harris discloses ‘[t]he id ‘welcome’ may be replaced by ‘Bonjour’ for users who specify French as their preferred language.” Reply 13. But as explained, the “id ‘welcome’” is not text that was ever for display. The “id=‘welcome’” is part of the welcome “element” shown below delimited with angle brackets (< >):

<pre><! --EXAMPLE 3 --> <wax: text id="welcome" /></pre>
--

See Ex. 1006 [0029]. The word “welcome” is an index like the id “logo,” where the word in quotes is simply “used to index into a set of rules to determine the best image to display for the specific device.” *Id.* [0030] (speaking of the “logo” index, but later saying “Example 3 illustrates the same principal, but with text”); *see also* POR 38–39 (citing Ex. 2005 ¶138). This index may be pointing to “Welcome,” “Bonjour,” “Welcome to our site, please take a look around,”

depending upon what device the WAX is being translated for, but the welcome element containing the index is not eliminated. POR 41.

Petitioner again makes the argument that “based on device capability such as a screen size, portions of content are eliminated so that reduced content that properly fits the smaller screen is displayed.” Reply 14 (citing Ex. 1006 ¶30). This is untrue. If the MCF chooses the longer phrase, “Welcome to our site, please take a look around,” in lieu of “Bonjour,” the latter was never created, so never eliminated. These are simply mutually exclusive ways to filter the welcome element. *See* POR § VII.B.5.

Finally, Petitioner says that the ’865 Patent’s “limited details” regarding “even what qualifies as content” means the claim “do[es] not preclude eliminating a placeholder in a WAX stylesheet.” Reply 14. But the ’865 Patent gives two examples of content items in a template: an “audio component” and “big images.” Ex. 1001 17:38–48. And the specification and both experts understand that the content items are eliminated when the content item is not supported by the device per limitation 12f. *Id.*; *see also supra* § II(B) (citing Ex. 2014 99:1–100:2; Ex. 1033 65:15–24). The indexes “id=‘welcome’” and “srcid=‘logo’” are not meant for display on the wireless device and asking whether a device “supports” the indexes makes no sense. It only makes sense to ask if the wireless device supports the actual “content items,” the image and text that the indexes reference. *See* Ex. 1006 [0030].

And Harris does not “eliminate” the images and text referenced by the indexes in the elements; Harris chooses the image and text *to include* because the device *supports them*. *Accord* Reply 12–13 (citing Ex. 1006 [0032]).

In sum, Patent Owner is not arguing Harris does not meet the claim limitation due to the “method by which the undesired content is eliminated from a template.” Reply 11–12. Harris does not meet the claim limitation because it does not eliminate a content item by any method. Harris processes the WAX to generate content items that the wireless device supports and displays correctly. Therefore, Harris does not “eliminate . . . at least one content item from said plurality of content items from said wireless device generic template.”

C. Hariki in View of Harris Fails to Disclose Eliminating a Content Item Unsupported by the Wireless Device

12[f] said at least one content item being unsupported by the wireless device

The Petition argued “Hariki in combination with Harris *discloses this feature*,” not that the feature would be obvious. Pet. 63 (emphasis added). Therefore, Patent Owner objects to Petitioner now arguing for the first time in the Reply that “it would be *obvious* that content can be reduced for display on a smaller screen.” Reply 15 (emphasis added); *see also id.* (“[C]ontent *can be* removed.”) (emphasis added); *see also, Intelligent Bio-Sys.*, 821 F.3d at 1369–70 (explaining a reply cannot shift the petition’s obviousness rationale).

Regardless, Petitioner’s new position that “POSITAs would have understood

that content values on WAX stylesheets (i.e., ‘Welcome to our site, please take a look around’) can be replaced with less content (i.e., ‘Welcome’), when a small screen size is not capable of displaying the entire content,” Reply 15, does not make sense in light of Harris’ teaching. Harris filters and translates the welcome element to generate HTML that the wireless device supports, so, in Petitioner’s example, Harris would simply generate “Welcome” in the first instance. *See supra* § III.C; POR § VII(B)(5). Harris does not, and would not, generate the longer phrase just to replace it.

IV. HARIKI IN VIEW OF HARRIS FAILS TO RENDER DEPENDENT CLAIMS OBVIOUS FOR ADDITIONAL REASONS

A. Hariki in View of Harris Fails to Disclose a Generic Template with Relative Screen Location and Display Object Size Information Independent of Screen Dimensions of the Wireless Device

<p>[2/13]. [The method of claim 1/The non-transitory processor-readable medium of claim 12], wherein said wireless device generic template [contains/includes] relative screen location and display object size information [and is] independent of screen dimensions of the wireless device.</p>

Petitioner now identifies Hariki’s teaching that it will choose a “length of text” as an example of a display object size. Reply 17 (citing Ex. 1006 [0007] (referring to the “length of text [i.e., display object size]”). However, the length of the text is part of the “content” based upon “device attributes.” Ex. 1006 [0007]. Specifically, the MCF chooses longer text for “wireless devices, having a larger display.” *Id.* [0030]. Therefore, the text length is *dependent* on the screen dimensions of the

wireless device, the opposite of size “independent of screen dimensions of the wireless device” per claims 2 and 13.

Additionally, the text and other such content is in the post-filtered/translated HTML, so these items are not in the pre-processed stylesheet Petitioner identified as the “wireless device generic template,” Pet. 28–29, and do not meet the claim limitation for this additional reason.

Petitioner has not shown Harris teaches or renders obvious Claims 2 and 13 at least because Harris does not disclose “display object size information . . . independent of screen dimensions of the wireless device.”

B. Hariki in View of Harris Fails to Disclose a Page Description Includes an Audio Rendering Command

[8/19]. [The method of claim 1/The non-transitory processor-readable medium of claim 12], wherein said page description includes at least one display rendering command and at least one audio rendering command.

Petitioner changed its invalidity position in its Reply. Petitioner went from arguing that “Hariki in combination with Harris *discloses this feature*,” Pet. 50 (emphasis added) to “*Hariki in view of Harris . . . makes this limitation obvious*,” Reply 18 (emphasis added). Additionally, in the Petition, Petitioner and its expert merely pointed to the disclosure that the UI skin is able to alter “sound output aspects of the device,” Pet. 50, and that “to render audio content, an audio rendering command is required,” *but not that this “required” “audio rendering command”*

was in the HTML. Pet. 51 (citing Ex. 1002 ¶199 (same)). Now Petitioner for the first time in the Reply is arguing “POSITAs would have understood that *the HTML files would include embedded audio rendering commands*,” similar to the audio rendering commands in the UI skin upon which Petitioner previously relied. Reply 18 (emphasis added). Such a departure is improper. *Intelligent Bio-Sys.*, 821 F.3d at 1369–70.

Nonetheless, Petitioner marshals no evidence that a POSITA understands “the HTML files would include embedded audio rendering commands.” Pet. 18 (citing Ex. 1005 [0021], [0024]; Ex. 1002 ¶199. Hariki’s paragraph 21 merely describes web servers and browsers, Hariki’s paragraph 24 discusses sound vis-à-vis the UI skin, not HTML, and Dr. Bederson’s paragraph 199, likewise, does not discuss HTML embedded audio rendering commands.

In short, ignoring the impropriety of making a new invalidity argument in the Reply, Petitioner has not shown Harris/Hariki’s “page description” (identified as HTML) “includes at least one . . . audio rendering command,” that it would be inherent, or that it would be obvious to modify the references to include one.

V. CONCLUSION

As shown, Petitioner proposed concrete definitions for “specific to said application program” and “eliminate”—while protesting that no construction is necessary—to broaden the terms in an attempt to bring Hariki/Harris into the ambit

of the claim scope. However, Hariki/Harris do not meet any claim limitation using the straight-forward and supported explicit definitions that Patent Owner puts forth.

Hariki's UI skin is not "specific to" one web server that may run on the same server as the UI Authoring Tool. And Harris does not "eliminate" a content item from its WAX Stylesheets that is unsupported by a wireless device.

Therefore, Petitioner is now trying to change its invalidity theories in the Reply as Patent Owner identified. While Patent Owner believes the Board should procedurally exclude new Reply theories, Patent Owner has nonetheless also substantively refuted the belated positions.

Patent Owner respectfully submits that Petitioner has not met its burden to show any of the challenged claims are unpatentable by a preponderance of the evidence.

Dated: June 4, 2024

Respectfully submitted,

/Joshua S. Wyde/

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

ALAVI & ANAIPAKOS PLLC
609 Main Street, Suite 3200
Houston, TX 77027
Tel: (713) 751-2365
Fax: (713) 751-2341
jwyde@aatriallaw.com

Counsel for Patent Owner,
GOTV STREAMING, LLC

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:

4,550

The word count does not include the table of contents, table of authorities, certificate of service, word count, exhibits list, or claim listings.

To arrive at this count, the undersigned has relied upon the word count feature of the word-processing system used to prepare the paper.

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:

Petitioner’s distribution list
Aliza George Carrano
Indranil Mukerji
J. Christopher Moulder

Netflix-GTS-WFG@willkie.com
acarrano@willkie.com
imukerji@willkie.com
cmoulder@willkie.com

Dated: June 4, 2024

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

Counsel for Patent Owner,
GOTV STREAMING, LLC