

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,
Petitioner,

v.

GOTV STREAMING, LLC
Patent Owner.

IPR2023-00759
Patent 8,103,865

Record of Oral Hearing
Held: August 6, 2024

Before RICHARD M. LEOVITZ, BRIAN J. McNAMARA, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

APPEARANCES:

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P R O C E E D I N G S

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JUDGE AMUNDSON: Good morning. I'm Administrative Patent Judge Amundson and with me on the panel are Judges Lebovitz and McNamara. Today we have our final hearing in IPR2023-00759 between the Petitioner, Netflix, and the Patent Owner, GoTV Streaming involving U.S. Patent Number 8,103,865.

Let's start by getting the parties' appearances. Who do we have for the Petitioner?

MR. MARSHALL: Good morning, Your Honors. This is Steve Marshall from Willkie Farr & Gallagher on behalf of the Petitioner. With me as well are Indranil Mukerji, Aliza Carrano, and Dane Sowers, also from Willkie Farr. And also on the line, I believe, is Asa Wynn Grant from Netflix.

JUDGE AMUNDSON: All right. Thank you. And who do we have for the Patent Owner?

MR. WYDE: Good morning, Your Honor. My name is Joshua Wyde with Alavi & Anaipakos, and I am for the Patent Owner, GoTV streaming.

JUDGE AMUNDSON: All right. Thank you. And welcome to everyone. The preliminary remarks that I made in the earlier hearing today about muting yourself when not speaking and so on also apply to this hearing. And so, for this hearing, the order that granted the request for oral argument provided that each party will have 45 minutes of total time to present its arguments for IPR2023-00759. And Petitioner bears the ultimate

1 burden of proof and will go first, and Petitioner may reserve time for
2 rebuttal. Patent owner will go next, and Patent Owner may reserve time for
3 sur-rebuttal. But Patent Owner's sur-rebuttal must be limited to Petitioner's
4 rebuttal. And as with the earlier hearing, I will keep time and will try to give
5 you a warning when you're nearing the end of your time. So, with that let
6 me ask Mr. Marshall if he would like to reserve any rebuttal time.

7 MR. MARSHALL: Yes, please, Your Honor. Once again, I'll
8 reserve 10 minutes, please.

9 JUDGE LEBOVITZ: Petitioner, this is Judge Lebovitz. I would
10 like to start with some issue here. And this is the first issue, I think, that you
11 brought up, and that's the 1C and 34A. And I guess I'm having a problem
12 understanding how you want us to understand what specific -- how to
13 construe specific to. We know how Patent Owner construes it, and that is
14 the same that you were discussing in the previous hearing that we had, but
15 I'm having trouble understanding how are you construing it here? You're
16 saying created for or tailored to is too broad or too narrow or either one. But
17 I'm saying, when do you want us to understand it to be? And the reason why
18 I'm asking is that the application in this proceeding, as I understand it, is the
19 web server process. And what we're looking for is how the, if I read 1C it
20 says, sending said custom configuration, which is the UI of Hariki being
21 specific to said application program. And here, Petitioner, you're asserting
22 that the application program is the web server. So, my question is, what is
23 the definition of specific to, and how is the custom configuration, i.e., the
24 user interface package specific to the web server application? If you can be
25 really specific about how you want us to construe specific to. And thank

1 you.

2 MR. MARSHALL: Thank you, Your Honor. Yes, correct. So,
3 with respect to specific to, Petitioner did not present a definite express
4 construction and is taking the position that plain and ordinary would dictate
5 and no construction needed. But I mean, certainly you're asking for a little
6 bit more here today. I don't know that I would limit myself precisely to
7 these words, but -- but we do believe that the claim ultimately dictates the
8 role of the custom configuration here with that term specific to. Specific to,
9 we believe, roughly it means that it supports rendering of the page
10 description based on the wireless device capabilities. And how we arrive at
11 that really comes directly from the claim itself. So, I'm on slide 21 here of
12 Petitioner's demonstratives, that's Exhibit 1034 in this proceeding. So, on
13 slide 21, and we don't have quite the same guidance or at least certainly the
14 limitations in the '865 Claim 1 are different. And yet let me explain a bit.
15 So, starting from the top, right, we know that there's a request that comes in
16 from the client device, and you're right, the application in this for this Patent
17 is solely the web application, web server running on Hariki's Computer 102.
18 Here, starting at the top, the request comes in, and it includes an indication
19 of the type of wireless device. Well, what purpose does that serve? If I
20 might jump to the bottom here, also highlighted in yellow, the wireless
21 device also receives a page description such that the wireless device is
22 capable of presenting at least one content item using both the page
23 description and the custom configuration.

24 So, we would interpret this claim as saying, ultimately, the
25 ultimate goal here is to render some content. And within the bounds of the

1 client's capabilities, it flows, we would argue that, because the request that
2 comes in in the first instance includes the wireless type, well, that's going to
3 facilitate that ultimate rendering of the content. Okay. So, on the one hand,
4 that indication of a type of the wireless device tells us, it sort of informs
5 what content can be displayed. The what is the page description. The page
6 description is the content. Certainly, in the generating limitation, it tells us
7 that some of the commands, at least one of the rendering commands is
8 within the rendering capability. That's fine. That same -- in the same
9 respect, and sort of on the flip side of this with the custom configuration,
10 while it doesn't -- while the claim doesn't expressly indicate in plain words
11 that that, too, has to be -- has to capture or work with within the bounds of
12 the client's limitations, we would argue that that's the logical read here that
13 because ultimately the two components, the page description and the custom
14 configuration have to work together and have to work together within the
15 confines of the ultimate client, that the client that ultimately renders the
16 content. We know specifically the page description gets at the limitations of
17 the client. Why too would the custom configuration not? Well, we find an
18 answer, we would argue in the words specific to, that that's what it means to
19 be specific to. And always in the context of, remember the app, as I said
20 previously in previous hearing, the application has some purpose, they
21 should work together, that it has some intended rendered content on the
22 client. And so, It only makes sense that you'd want the client, the custom
23 configuration to facilitate to support, if you will, the rendering of the
24 application content sort of in the manner intended, if you will, right? Sort
25 of, if it's a sports application that would render in a way that matches the

1 intent of that particular application.

2 So, so we would start with the claim again. We don't believe a
3 formal construction is necessary, but to the extent that it is, as I say, it comes
4 down to supporting rendering of the page description based on the wireless
5 device capabilities.

6 JUDGE LEBOVITZ: Okay. This is Judge Lebovitz again. And
7 just to connect this, I think this is about in your pet reply at about page 10.
8 So, it sounds to me like that's the argument you're making now. That that
9 the UI Skin is using combination with the server produce HTML to
10 customize it. So that that's how you're interpreting it. Okay.

11 MR. MARSHALL: Yeah, yeah, that's a (INDISCERNIBLE).
12 And we would say, too, that the specification gives us some guidance, you
13 know, it's not definitional, right? We're not saying that this is the
14 lexicography or anything, but we do believe that the specification here in
15 column 3 tells us that the custom configuration is specific to the display and
16 audio capabilities of the wireless device in the device itself. And so, you
17 know, that's one of the uses of specific to here in connection with the custom
18 configuration that is very much consistent with our read of the claim.

19 JUDGE LEBOVITZ: If we under, sorry, yeah, if we understand
20 that argument, then that is pretty much would cover Claim 1, Step C, and
21 Claim 12, 34A, because those have the same language in it. Because I think
22 that to me was really the only dispute. And you explained it, and I
23 referenced the pet reply 10, it's probably 9, 10, 11 or somewhere around
24 there. So, if that's it, then I would say any in the panel have questions, we
25 might want to move on panel of questions and after panel ask questions, so,

1 we can keep within our bounds of the time limit we have.

2 MR. MARSHALL: Certainly, Your Honor, we can move on from
3 this topic, or if you'd like to finish there, that's fine as well. I don't know
4 whether the panel has any questions. There's a dispute about elimination of
5 content. I could cover that as well. Okay --

6 JUDGE LEBOVITZ: That would be Claim 2 and also 12[e]. Is
7 that correct? Or at least 12[d]. Yeah, 12[e] of Claim 12. Sorry.

8 MR. MARSHALL: That's right. Yeah. Yeah, 12[e] recites the
9 elimination. And, you know, from our perspective, the Board understood
10 this the way we read this in the institution decision. Nonetheless, following
11 the institution decision, the Patent Owner has raised a couple points of
12 dispute. And I thought I might just briefly take those on.

13 So, one, of course, is what it means to eliminate. There's also
14 some inkling of a dispute about what is or is not content. And then I think
15 most importantly, if I'm choosing here, whether the content that's being
16 eliminated is unsupported. You know, as to this notion of meaning to
17 construe the term eliminate as removed, and I think at the end of the day,
18 you know, certainly Patent Owner points out, you know, we've used the
19 word remove even in our own papers. I don't know that the dispute is what
20 whether eliminate means remove or needs no construction. We don't think it
21 does. But really the question comes down to from our perspective is
22 whether or not the original content remains wholly in place after the step is
23 carried out. And so, you know, we don't believe that it is -- it's correct to say
24 that, you know, Harris, when Harris takes a placeholder and removes it and
25 then inserts it into place some other element that that is no longer

1 elimination. And I would say by definition, in order to substitute, you have
2 to remove first and that's how we read this claim. And that's how we see
3 Harris reading on the claim limitation.

4 JUDGE LEBOVITZ: What -- and you're looking at it right now.
5 This is Judge Lebovitz again. You're looking at it right, okay, you're looking
6 at it right now, and as I understood it, first of all, there is verbiage there that
7 says eliminate tags, right? So, it does teach eliminate tags, but the claim
8 limitation in 12 says a little more than that, right? It has to eliminate using
9 the device profile, and the device profile is, as I understand it, the XML
10 registry, okay? So, that's what we're really looking for here. The eliminate,
11 I understood what you just said, but it's more than that. So, if you could
12 address that, both those issues.

13 MR. MARSHALL: Certainly. So, this actually, this slide 30 here
14 relies on a graphic put together by Patent Owner's expert. And actually, this
15 gives us a good example here, right? Ultimately, in Harris, you start with
16 the WAX, right? That, you know, with the WAX tags. And there's really
17 sort of two steps to what Harris discloses as a translation process. There's
18 some filtering step, and then an ultimate translation into the target language
19 or format, whether that's HTML or WML and so forth. And we would argue
20 that, you know, as it's transitioning, so if you, you know, capture the WAX
21 style sheet as the generic template, the WAX tag here, you can see on the
22 left of slide 30, Example 3, there's a WAX tag here, which is essentially a
23 placeholder. The red arrow that we've inserted sort of spinning, you know,
24 across that MCF step shows that the WAX tag is no longer present, and in its
25 place is inserted this welcome text. There's really, on the one hand, that

1 should be enough, that ultimately, in reference to the device profile,
2 understanding that, okay, perhaps this is a particularly large screen. I've got
3 a PDA with me that the --

4 JUDGE LEBOVITZ: Sorry, this is Judge Lebovitz again. This is
5 pretty significant because the WAX style sheet, and then if you go, we're
6 talking now about Harris, and if you go to Harris saying that the MCF is
7 performing the translation, and now you're talking about the filtered WAX,
8 but what is the filtered -- but you have -- I'd like to see support for, you're
9 adding two steps here, that you go to WAX, then the MCF creates filtered
10 WAX, and then the filtered WAX, goes to HTML translation. Where do
11 you see those two -- where do you see in Harris, the existence of filtered
12 WAX?

13 MR. MARSHALL: Okay. Your Honor, so I think where we see,
14 pardon me, there is a paragraph in Harris that gets at this very process.

15 JUDGE LEBOVITZ: Yeah, I was looking, for example, at
16 paragraph 24, and I don't see it there, so.

17 MR. MARSHALL: I see.

18 JUDGE LEBOVITZ: I don't know if that's where you're looking
19 but go ahead.

20 MR. MARSHALL: I understand. So, the moniker filtered wax, I,
21 yeah, the question is, is there a specific moniker of filtered WAX? No, I
22 don't think there is, right? So, again, I've lifted this graphic from Patent
23 Owner's expert's declaration, as noted here. But no, you're correct that
24 there's no, you know, proper filtered WAX in here. But certainly, you know,
25 whether it's paragraph 24 or also paragraph, let's see, 32 and 34, you know,

1 there's discussion of sort of this notion that it will go through a set of filters.
2 So, for instance, in paragraph 34, once a WAX stream has been generated, it
3 is fed into the translation engine, which we understand to be the MCF. The
4 stream of WAX, first, the stream of WAX enters into a set of filters that alter
5 many of the logical tags into physical tags. Then WAX content is
6 translating using any number of translation sheets. So, then I think that's
7 where this sort of two-step, if you will, comes from in paragraph 34. But
8 agreed that it's not in any place called filtered WAX properly. But so, --

9 JUDGE LEBOVITZ: And just to clarify, one second, we're
10 talking about Harris Exhibit 1006.

11 MR. MARSHALL: Yes, that is correct. That's right. Yeah. So,
12 right. So, in this elimination step, and, you know, in 12[b], right, we're
13 talking about step 12[b] in the '865 Patent, there's a content item removed
14 from the generic template. So, we would say that the generic template is the
15 WAX file sheet. And ultimately, it is translated into a page description that,
16 in this example, is the HTML. In the WAX style sheet, that elimination, we
17 would argue there's sort of two ways to look at it. One is sort of a very
18 simple read, and I think one that the Board picked up on in the institution
19 decision, there's a WAX tag in the first box, and there's not a WAX tag in
20 the second box. Instead, there is the welcome text, welcome to our site, and
21 so forth. Hence, the WAX tag has been removed from the generic template
22 in the process of generating. Yes?

23 JUDGE AMUNDSON: This is Judge Amundson. So, referring to
24 Harris 34 and its reference to logical tags, are you saying that the logical tag
25 has been removed and then replaced with the physical tag?

1 MR. MARSHALL: Yeah, that's my lead of 34 there. Yeah, it's
2 correct.

3 JUDGE AMUNDSON: All right. Thank you.

4 MR. MARSHALL: Yeah. And in a second way to look at it, you
5 know, so and this sort of will set up the notion of what's content is removing
6 that tag is that content. You know, I think the way to look at this is that
7 ultimately we know that there's a text registry, right, there's an -- Harris talks
8 about an image registry, a text registry, you know, there's that location of
9 data. This, you know, set of data from which the physical tag, if you will, is
10 sort of selected and inserted in the translation process. And by nature of
11 Harris's WAX and that it's a generic template, you know, it acts as a
12 placeholder for lack of a better way. It doesn't call it a placeholder. It's an
13 easy way to maybe convey this right. It's acting as a placeholder, but it's a
14 placeholder for what, right? You know, what gets filled in ultimately in the
15 translation process is not created from whole cloth. The Harris system is not
16 teaching that what to insert there is made up. It is selecting from a
17 predefined set of options, presumably. And so, you know, we imagine this
18 is not certainly not suggesting that this is in Harris, but I think one of skill in
19 the art would read this to understand that within that text registry, there's
20 probably some tuple, some identification of potential fill-ins. And so, in that
21 respect, I imagine that WAX placeholder, if it could have been, it could be
22 that the file listed all the actual options in its place. But it doesn't. It uses a
23 placeholder, a very common computer science approach, right? And if you
24 sort of imagine that that, you know, WAX text and provided a tuple of the
25 options, and then during the filtering step, removed all those options that did

1 not fit, you know, were not selected by the filter. There's another way to
2 look at removal. So, there's sort of the very literal read. The WAX tag is
3 removed and replaced with text. Or there's maybe another way to look at it
4 here. And I think we've gotten at this in our papers. Certainly not with this
5 example. But we've gotten at this in our papers that there is a set of items
6 that are not selected. You know, the unselected, you know, the not selected
7 items that could be filled in there. And I think Patent Owner would argue
8 that it's not a removal. You can't remove something that has not existed.
9 But this is me explaining that we do believe it exists. And by virtue of the
10 fact that it's not carried forward into the filtered WAX or through the
11 filtering process into the HTML, that they are removed in that respect. So,
12 just to --

13 JUDGE LEBOVITZ: Yeah, this is Judge Lebovitz again. Sorry to
14 interrupt, but and I understand your argument here. And I think Judge
15 Amundson said that, you know, you might be removing the abstract tag and
16 replacing, or what is the? Yeah, and replacing it with a physical tag, right?
17 That makes sense to me. But the only problem I'm still having is if you look
18 at claim 12[e], it says, eliminate using device profile. And I can understand
19 how maybe your argument works for the device profile, because now we're
20 talking about changing it to French or another language or making it longer
21 text. But the one thing it does say, it says eliminate the content item from
22 the device generic template. And the device generic template is, to me, this
23 is the only the WAX style sheet. And what I was seeing in the figure that
24 you have up right now is it's not removed. I don't see it being removed from
25 the style sheet. I see it being removed in subsequent processing by the

1 MCF. That's it.

2 MR. MARSHALL: I think I understand. Yeah, so candidly, Your
3 Honor, I read it a little differently. I mean, I appreciate that sort of in
4 isolation, it's that you eliminate the content item from said wireless generic
5 template. But to sort of continue in the claim, it says to define a device
6 specific template. In other words, I don't know that the claim requires
7 simply an edit to the original file, and then move it from there. I think the
8 point is to define a device specific template. That's what we see here in this
9 slide 30 as the filtered WAX, right? That's the device-specific template,
10 whereas the WAX style sheet is the device generic template. So, in the
11 process of defining the specific, you're going to eliminate from the generic,
12 the term. In other words, we would say that it's not so much that you edit
13 the generic and then leave that in place. It's that in order to output or result
14 that the specific template, you would change something as it exists in the
15 generic. So, if I understand your concern correctly, it's that, well, wait a
16 second, the WAX Stylesheet in this slide, it's not being changed. It's
17 actually used to create something else, but we believe that's what the claim is
18 requiring here is that it's actually defining something else. And so, it's
19 defined, the new item, the specific template is defined by starting with the
20 generic and eliminating something. I hope I've answered your question.

21 JUDGE LEBOVITZ: That answered my question. Thank you
22 very much. That was very clear.

23 MR. MARSHALL: Sure. So, with respect to, and we touched
24 upon this, so certainly in 34 and 30 of Harris, the paragraph 30 and 34 of
25 Harris, I'm looking at slide 31 now, there is exactly this discussion of

1 perhaps it's the translation, the language translation, I prefer Bonjour instead
2 of hello if my preference is for foreign language. But beyond that, and
3 really it's in the top of the lefthand box there, the notion that perhaps one
4 device would support a soft key, one would need a link. So, it's not just user
5 preferences, it's very much looking at the actual capability of the device,
6 what type of output language or features I should say in the content are
7 supported by the client device.

8 Now, as to this notion of, well, wait a second, when you remove
9 the WAX, the WAX tag, that's not content. WAX isn't content. Patent
10 Owner in the sur-reply made the point, well, these indices, you know, ID
11 equals welcome, source ID equals logo for the image. Those things are
12 never meant for display on the wireless device, is Patent Owner's argument.
13 These are not actual content items. And we come back and we think that
14 argument is, frankly, undermined by the '865 Patent itself. The '865 Patent
15 tells us that, you know, yeah, when content is returned to the client, you can
16 have IDs for images. Well, I can't imagine that HTML in the '865 Patent or
17 whatever the page description that includes ID references, it's an
18 identification number, a version number. I don't think the intent is to display
19 those things on a client device either, but ultimately to go fetch the items
20 referenced therein and display those on the client device. And so, I think it's
21 a little bit inconsistent for Patent Owner to suggest that the WAX tag cannot
22 be content when it comes to removal, elimination in 12[e], but in the '865,
23 it's certainly acceptable to have these references to images.

24 JUDGE LEBOVITZ: Okay. Judge Lebovitz again. So, you're
25 just saying that the tag is what's used to specify what content to put in the

1 HTML, so therefore, it essentially is content?

2 MR. MARSHALL: Precisely, we think that that's consistent with
3 the '865 Patent's disclosure.

4 JUDGE LEBOVITZ: Okay.

5 MR. MARSHALL: Now, with respect to -- with respect to
6 supported or not, I think that's limitation 12[f], a content item being
7 unsupported. I went by a bit too quickly, perhaps, here, if I may. So, I'm
8 back at slide 31. So, on slide 31, really, as I mentioned, that very top
9 highlight in the lefthand corner, to us, that's an indication that what's being
10 eliminated here is the option. That fill-in option, could I fill in a loop for a
11 device that understands HTML, or do I fill in a soft key for a WAP device?
12 You know, that's something that the Harris system has to determine based on
13 the device profile, what can be supported or not, with the other option being
14 eliminated, right? And that's, again, why we believe that Harris can be
15 looked at in multiple ways. Yes, maybe you have a WAX tag, a text tag,
16 that's removed and replaced with actual text, but in the same respect, you
17 might have tags where the tag is swapped out for a particular HTML or other
18 command. And, again, that also sort of falls within these tags, commands,
19 references, are still themselves content, as the '865 teaches us. But I wanted
20 to complete that thought.

21 So, another issue that has come up here in the papers is with
22 respect to Claim 2. So, you mentioned Claim 2 earlier, Claim 2 and also 13
23 as well, but in context of Claim 2, the notion that the template includes this
24 relative screen location and display object information and critically
25 independent of the screen dimensions. They're sort of without awareness of

1 the screen dimensions, does the Harris WAX Stylesheets, and that's the
2 wireless device generic template in Harris, does it demonstrate that there is a
3 disclosed relative screen location? We would say yes, and the example
4 we've given in our papers is the align tag that ultimately align shows us that
5 this is a relative screen position, it's in the wireless device generic template,
6 the WAX Stylesheet. So, this is what gets fed into the MCF in the first
7 place. So, even at this stage, there are commands that will ultimately tell the
8 device to place a particular item or text or whatnot in the center of the page,
9 being a relative page location.

10 Now, with respect to independent object size, this warrants a bit of
11 explanation. So, we refer to Harris's date chooser. Presumably, this is some
12 type of calendar functionality, calendar related. And what we're arguing
13 here, to be clear, the date chooser itself, Harris says in the, let's see, in the
14 bottom highlight here, it renders on one way, on small size screens, and it
15 renders a different way, right. So, the potential outcomes, if you will, at the
16 client device, once filtering and translation has taken place, is that there
17 could be two different sizes, right. So, two different sizes possible at the
18 client phase. And I want you, this is not quite as clear. But based on the
19 paragraphs we were just looking at 30, 34, and so forth, in the WAX
20 Stylesheet, the device generic template, it couldn't possibly render as two
21 different sizes at the end if it were not screen independent at the generics
22 stage, right? So, the generic stage, and there's no good example provided,
23 like the other WAX examples we saw for the date chooser. But presumably,
24 it is generic at that point, such that it can ultimately be rendered two
25 different ways. So, in that respect, --

1 JUDGE LEBOVITZ: This is Judge Lebovitz again. But I mean,
2 the paragraph that you're pointing to, paragraph 18, says pretty clearly it
3 renders one, it renders differently depending on screen size and the claim
4 requires it to be independent of the screen dimension. And it sounds like
5 you were saying, well, you could assume that there was some intermediate.
6 Is that what you're saying? What would the intermediate be?

7 MR. MARSHALL: Right. So, let me go back to, oops, sorry
8 about that. So, back to slide 35. So, Claim 2 is saying, wherein the device
9 generic template includes, in this instance, display object size, independent
10 of screen dimensions. So, before it's rendered, right? So, the device generic
11 template, because you can see here highlighted in the purple, the page
12 description, which is the thing that is in the last limitation ultimately sent
13 and rendered. That's what's sent and rendered. So, yes, by the time in the
14 page description format, posts Paris translation, it could be rendered in
15 different ways, depends on the device.

16 JUDGE AMUNDSON: I'm sorry, this is Judge Amundson. I just
17 want to interject here. I have you about 32 minutes into your argument.

18 MR. MARSHALL: Very good. All right. I will wrap this up.
19 Thank you, Your Honor. So, right, so claim, basically what I'm saying is,
20 Claim 2, because it's referring to the generic template, and we would say the
21 generic template in Harris is the WAX Stylesheet. The WAX Stylesheet
22 hasn't been translated yet. It doesn't -- that device profile has not been
23 consulted yet in the translation process. So, whatever is in the WAX
24 Stylesheet, we would say is by definition in Harris, device not, excuse me,
25 independent of screen dimensions, right? So, at that stage, it is generic.

1 What is ultimately rendered, so coming back to slide 37, paragraph 18 of
2 Harris, yes, it's true. It can render two different ways at the device,
3 depending upon how the device translates or renders the page description,
4 but that's at the sort of end of the sequence of processing, whereas the WAX
5 Stylesheet itself has got to be generic. So, by virtue, what I'm driving at
6 ultimately is that by virtue of being able to be rendered in two different sizes
7 at the specific end of this process, it is generic, it is device independent, and
8 unknowing at the generic stage. So, it does require a little bit of leap, a little
9 bit of explanation.

10 JUDGE LEOVITZ: Judge Lebovitz. So, you're arguing that the
11 WAX might say, render it according to the size of the screen, but it doesn't
12 tell you something about how to render it, but it doesn't tell you the
13 dimensions to use until you translate it?

14 MR. MARSHALL: Yeah, I think that's right. I think it's a bit like
15 that previous paragraph we were looking at with the link versus the soft key.
16 I think it probably has a date chooser placeholder. And during the
17 (INDISCERNIBLE), just like that soft key link example, it would be then be
18 further translated, ultimately due to what they call here as a series of WML
19 effects or --

20 COURT REPORTER: I'm sorry. I'm hearing a lot of bad audio
21 coming from you, counselor Marshall.

22 MR. MARSHALL: Oh, I'm sorry. I'll stop waving my arms
23 around. Perhaps that's interfering. So, yeah. So, ultimately, it flows, the
24 logic there flows from that paragraph, I believe (INDISCERNIBLE).

25 JUDGE MCNAMARA: So, this is Judge McNamara. I'm also

1 hearing an awful lot of static, which is making it difficult to hear you. I
2 actually have a question in a minute, but could you try speaking again,
3 seeing if we can sort of resolve this issue?

4 MR. MARSHALL: Yes. Is it clear --

5 JUDGE MCNAMARA: No, it's definitely when you speak. We
6 may need some technical assistance here at this point. Does anyone else -- is
7 everyone else getting the same effect?

8 COURT REPORTER: Yes, this is the court reporter.

9 JUDGE AMUNDSON: Yes, it looks like we're all getting that
10 effect.

11 SPEAKER: This is Charlie from the VTC team, just a quick
12 check. Right next to the mute button, there's a drop-down arrow. If you
13 click on that, click on switch audio, disconnect, and reconnect the audio.
14 Next to the mute button, there's a drop-down arrow. Do you see it says
15 where to switch audio?

16 MR. MARSHALL: Yes, I see switch audio, and the call me and
17 call in.

18 MR. TOROSSIAN: And up on the top, you should see disconnect.
19 And then when you click disconnect, try to reconnect.

20 MR. MARSHALL: Okay, I reconnected. Is that any better,
21 Charlie?

22 JUDGE MCNAMARA: Much better.

23 MR. TOROSSIAN: Thank you.

24 MR. MARSHALL: Minor technology. But thank you.

25 JUDGE MCNAMARA: All right. Counsel, this is Judge

1 McNamara. That'll give me a chance to ask this question then. And that has
2 to do with this distinction between the generic template and the custom
3 configuration in Claim 1 and Claim 2 and all that sort of stuff. When we
4 talk about the generic template here in Claim 2 as including relative screen
5 location and display object size information, are we really there sort of
6 saying that the generic template is such that a particular display, maybe it's,
7 we were talking in another case about sports scores or something. The
8 scores will be ready. You know, some particular display will be rendered on
9 the left side of the screen, you know, maybe 20 percent of the screen. And
10 then that's the -- so, it's a relative location, a relative size, and the actual size
11 will be determined subsequent to that as part of the, as part of something
12 else.

13 MR. MARSHALL: Correct. Yeah, that's exactly how we read
14 that.

15 JUDGE MCNAMARA: Okay. All right. That's kind of what I
16 was thinking. Okay, great. Thank you.

17 MR. MARSHALL: All right. Well, with that, I believe I'm out of
18 time. Stop sharing.

19 JUDGE AMUNDSON: All right. Well, then we'll go to Patent
20 Owner. Mr. Wyde, would you like to reserve any sur-rebuttal time?

21 MR. WYDE: Yes, please, Your Honor. Five minutes.

22 JUDGE AMUNDSON: All right. Very well. You can begin
23 whenever you're ready.

24 JUDGE LEBOVITZ: Mr. Wyde, this is Judge Lebovitz. I might
25 suggest, since we just got off the -- that you do the object display and the

1 eliminate, because both those, I think we had a lot of questions on.

2 MR. WYDE: That's perfectly fine. All right. So, at the Court's
3 direction, let's start on page 17 of the demonstrative. This limitation is
4 found in Claim 12 in its dependents, and it reads, illuminate using said
5 device profile, at least one content item, said plurality of content items from
6 said wireless generic device to define a device specific template associated
7 with the wireless device.

8 Turning to page 18. Patent Owner's proposal is that eliminate
9 means remove. Now, Petitioner ostensibly is arguing for a plain and
10 ordinary meaning. However, Petitioner, through its arguments, has at least
11 implicitly proposed that eliminate encompasses not creating an item. Now,
12 we're talking about limitation 12[e], but I put 1[b] up here as well to point
13 out that the elimination of the content item is elimination from the generic
14 template that was generated by the executing application. So, taken
15 together, it is clear from the claims that eliminate means remove a
16 previously generated, hence, existing item.

17 So, turning to page 19. To understand this limitation better, we
18 can look at an example from the Patent illustrated here. As shown, a device
19 template engine takes as its input a wireless device generic template
20 containing items. Again, these items were generated by the application. The
21 template engine also takes in the second input a device profile of a wireless
22 device. The device profile includes information about the specific wireless
23 device capabilities. And then the template engine then eliminates
24 unsupported items. So, shown here, item B is removed. For instance, item
25 B might be audio content, an audio content item, and the device profile may

1 have indicated that the device doesn't support audio, so it's removed. And
2 Dr. Bederson, I asked him about it and he agreed. He said the original
3 content might have included audio, but it is removed before it is sent to the
4 device without audio capability. The resulting modified template is now a
5 device specific template and only contains items A and C. So, with that
6 background about how it works, let's turn to what Petitioner has identified as
7 the generic template and the items that are allegedly removed. So, I'm on
8 page 20. Petitioner identifies the wireless abstract XML, also known as
9 WAX, in the area that says the generic template. And Petitioner identified a
10 content item as the WAX text element, for example, item three here. So,
11 this text block is an alleged element that's supposedly going to be removed.
12 And the Board, in its institution decision, also identified the WAX image
13 element from example two as a content item. But as we will see, neither
14 identified element is eliminated.

15 So, turning to page 21, we see the first step in Harris's WAX
16 processing of the text element. Now, the panel asked where in Harris is this
17 taught? I'd point the panel to paragraph 26, the portion that spans the bottom
18 of the page to the top of the next page. Harris teaches that the data source
19 can be a website, a static file, a servlet, or a Java server page. And once the
20 data is attained, it is processed through a variety of filters and translation
21 rules to receive the end result content. See also step 72 in the images where
22 there's image text processing first in step 72. And then step 74 does the XSL
23 step, which converts to the final language like HTML. So, first of all, the
24 attribute ID is set to welcome here in the text address, in the text example
25 that Petitioner points to. It's a pointer that references an external content

1 item. And it is that external content item that is meant for a display. So, this
2 is a text tag. This is text that is going to be displayed. The ID points to
3 something. And it's going to then -- so, the logical text WAX element will
4 get sent through the NCF, dynamic text selection presumably here, and it
5 will create a corresponding filtered WAX item. In this example, welcome to
6 our site, please take a look around, string was chosen. The logical WAX
7 item, the text item, became a filtered WAX item, but the text item is not
8 removed. Likewise, Bonjour was never eliminated. It was just not selected.
9 So, text item to filtered text item, but nothing is eliminated.

10 Turning to page 22, we show the same operation with the image
11 logical WAX item. The WAX image has a corresponding source ID,
12 attributes set to logo. Just like the text ID attribute was set to welcome. The
13 specification and both experts agree that the source ID attribute is not meant
14 for display. It is a pointer that will be used by the MCF's dynamic image
15 selector to choose the appropriate item to substitute. Here we see that the
16 logo source ID could either be replaced by logo .gif or Logo-
17 nok7100.wbmp, presumably for the Nokia 7100 phone. But importantly,
18 after going through the dynamic image selection module, the image is not
19 eliminated. The correct image is chosen and the content item to display is
20 now in the filtered WAX item, but nothing is eliminated.

21 Turning to page 23. So, the next step in the Harris WAX
22 translation --

23 JUDGE LEBOVITZ: This is Judge Lebovitz. Can you go back a
24 slide for a moment?

25 MR. WYDE: Sure, Your Honor.

1 JUDGE LEBOVITZ: Okay. So, I think -- so, you're also saying
2 the attribute not meant for display. I think you're almost saying it's not
3 content. I'm not sure if you want to go that far. But anyway, that part
4 doesn't matter. So, then we have this dynamic image selection 32, which I
5 believe is done by the MCF, right? The framework. Is that correct?

6 MR. WYDE: That's correct.

7 JUDGE LEBOVITZ: Okay. And then what kind of bothers me is
8 that your expert is using this filtered WAX item and I think the Petitioner
9 was pointing to, was it paragraph 34? First the stream of WAX enters a set
10 of filters that alters the logical tags into physical tags and then it's translated.
11 So, basically this filtered WAX I think is what you're talking about
12 paragraph 34. Is that right?

13 MR. WYDE: So, I saw on paragraph 26.

14 JUDGE LEBOVITZ: Okay.

15 MR. WYDE: But it could be the same. It's not discussed in only
16 one place. Let me look at -- 34 --

17 JUDGE LEBOVITZ: Well, 26 is how content. But --

18 MR. WYDE: It is fed into the translation engine. First, the stream
19 WAX enters into a set of filters that alter many of the logical tags into
20 physical tags, then the WAX content is translated into a number of
21 translation sheets. I think that's all consistent.

22 JUDGE LEBOVITZ: Okay. It is consistent but let me go ahead
23 one moment.

24 MR. WYDE: Okay.

25 JUDGE LEBOVITZ: But Petitioner is saying that is the removal.

1 And yours, I believe, but what is your response to that? Because Petitioner
2 says that -- that's what the Petitioner seemed to be saying about that the
3 WAX tag is -- that there's something -- the tag is actually being eliminated
4 because it's replaced with a physical tag in the filtered WAX. I think that --
5 did you understand him to be saying that? But can you kind of respond to
6 how that doesn't show elimination?

7 MR. WYDE: Yes, absolutely. So, we're going, by way of
8 preview, this has to be eliminated also because it's unsupported. But let's go
9 back to the example in the Patent. Item B is eliminated because the audio is
10 unsupported. It's taken out. It's removed. It's not sent to the device. So,
11 audio is the item. It could be a sound. Sound is removed, not sent to the
12 device. Here, what are the items? We've got an image and we've got text.
13 Those are the items. They're -- now, they are going to ultimately, there's
14 going to be an item and there's going to be an image sent to the device. And,
15 again, preview. So, the ID here, this is the item, it's a text item. The ID is
16 just a pointer to something that will be selected. So, text is not removed,
17 text is selected and sent. This welcome was never meant for display. These
18 are the two items in this demonstrative meant for display. And it's
19 equivalent in the image. Logo is obviously just a text string, it's clearer.
20 Logo is not an image. This whole tag represents the image, that's the
21 content. This tag points to one specific image that will be selected by the
22 MCF. And then that image will be ultimately sent to the device. The image
23 is not eliminated.

24 JUDGE LEBOVITZ: Well, wait a minute. The image is not, but
25 in the WAX Stylesheet all the way on the left, that's not an image. That's an

1 attribute that's saying use -- that's telling you what you need to grab. So, I'm
2 not sure I understood what you were saying. You know, that the -- aren't we
3 talking about whether the ID tag can be eliminated?

4 MR. WYDE: So --

5 JUDGE LEBOVITZ: I mean it does say, actually, in the paragraph
6 above 29, it does say tags can be added or removed. It says it explicitly. So,
7 where's the issue here? Tags can be added or removed in paragraph 28.

8 MR. WYDE: I'm not sure. Let me -- I'll take a look. I'm not sure
9 the Petitioner made this argument, so I'm --

10 JUDGE LEBOVITZ: I think petition. Maybe not now, but I think
11 in the in the brief, it was there.

12 MR. WYDE: Okay. So, it says tags can be added or removed
13 from the WAX language. Okay. Yes, that argument was there. That is
14 from the language writ large the XML. So, here, if you look, if you look in
15 paragraph 29, we see examples of WAX tag types. We have P, which is a
16 paragraph. We have text, which is text. We have buttons. Those are those
17 are tag types for the entire language. So, new tags, when it says new tags
18 can be added or removed, we're talking about the WAX language can have
19 added or removed tags. This is not elimination from a generic template that
20 was generated by an executing application. This is speaking about -- this is
21 equivalent to saying words can be added to the English language. That is
22 not a removal from a specific generic template, a WAX XML that has been
23 generated by an application.

24 JUDGE LEBOVITZ: Okay.

25 MR. WYDE: Okay. Now, so I think I'm going to skip 23, but I'll

1 just say that the next step then is to take the WAX, and you've got the image
2 tag and the text. The text goes through unfiltered or, you know, as is, and
3 then the WAX becomes an HTML tag, but the image and the text, that
4 content is sent to the device. Nothing has been eliminated. The image and
5 the text are still there and still sent. Oops. Sorry, Your Honors. Let me get
6 back to where it was. Okay.

7 So, I've also been alluding to 12[f]. I'm on page 24. And we see
8 it's closely related to limitation 12[e]. 12[f] requires that said one content
9 item being unsupported by the wireless device. So, I apologize, Your
10 Honor. I keep getting something that is the beginning of the slide deck. But
11 my point is, it makes no sense to ask whether this ID welcome is
12 unsupported by a device, because this ID welcome is never sent to a device,
13 never processed by a device, never meant for display. In the same way, the
14 source ID logo, it doesn't make any sense to ask if source ID logo is
15 unsupported by a device. This is an index that will pick an image that is
16 supported by the device. It is not meant for display. So, 12[f], if they say
17 that this is content and this is what is being eliminated, well, then even under
18 12[f], it's not being eliminated as unsupported by the wireless device. It was
19 never meant to display. It's a non-sequitur. It makes no sense.

20 Turning to page 25. So, we've seen that nothing is identified as
21 removed for any reason, but moreover, what is chosen by Harris was chosen
22 exactly because it is supported, not unsupported. From the very beginning,
23 Harris teaches that the WAX is created was the most suitable for the
24 requesting device. And we've already seen that the most appropriate and
25 best images and text are chosen and then sent to the device. As such, not

1 only is nothing removed, everything is chosen and modified as suitable and
2 not unsupported.

3 So, that is the end of this section. So, I'll stop again and see if our
4 position is at least clear.

5 JUDGE LEBOVITZ: This is Judge Lebovitz again. I just have a
6 question. I'm just trying to find, you said repeatedly that the tag in the
7 WAX Stylesheet is not for display, right? I was just trying to find that
8 argument in your Patent Owner response.

9 MR. WYDE: Sure. So, this may have been in the sur-reply in
10 response to the Petitioner's reply. And for the first time, they're arguing that
11 it's that source ID that's being eliminated. Prior to that, the argument was,
12 and I'll find it exactly if it's necessary, but prior to that, their argument was
13 that -- and it's easier for text. For example, Bonjour is eliminated because it
14 wasn't selected. That was their argument in the petition. And then I believe
15 in their reply, they pointed to actually this ID welcome was the thing that's
16 eliminated. And then in the sur-reply, I believe Patent Owner addressed that
17 that makes no sense. But let me verify. I'm opening the formal response
18 now, and we'll see.

19 JUDGE LEBOVITZ: We can check that. I don't want to waste a
20 whole lot of time.

21 MR. WYDE: Okay.

22 JUDGE LEBOVITZ: We did have another question about a new
23 argument. Judge Amundson, you remember we were discussing that?
24 There was a -- I have to look at my notes. There was some argument that --
25 there was some statement by Petitioner that you were making a new

1 argument. Now, I can't remember what it is. Let me see if I can find it. It
2 was in -- yeah, go ahead.

3 MR. WYDE: I'm sorry. When you're looking for that in our
4 formal response on page 42, we talk about unlike the text -- text element,
5 Petitioner's expert was certain that the content of the image element was not
6 the text itself, but what the element was referencing. And so, we at least
7 alluded to the fact that that is not elimination of a content item. That is an
8 index into the content item. So, I -- Judge Amundson, do you remember the
9 other question the Board had?

10 JUDGE AMUNDSON: Not right -- not on this particular topic if I
11 remember correctly.

12 MR. WYDE: Well, if it comes to you, feel free to just interrupt
13 me, and I'll -- maybe something I say will jog your memory.

14 JUDGE AMUNDSON: All right. Thank you.

15 MR. WYDE: Okay. Would you prefer I go back to the specific to,
16 or go on to the dependent claims? I think you're muted, Judge Lebovitz.

17 JUDGE LEBOVITZ: Maybe go to the dependent claim.

18 MR. WYDE: Okay.

19 JUDGE LEBOVITZ: And I'll find what the issue is. I'm sorry.

20 MR. WYDE: Okay. No worries. All right. So --

21 JUDGE LEBOVITZ: Oh, I know what the issue was. I'm sorry.
22 And it is in the dependent claim. It has to do with the obviousness of the
23 audio command. Okay? Because if I remember correctly, the audio
24 command has to be in the HTML, but in Hariki, it is taught in the user
25 interface. And I think that Petitioner said, well, Patent Owner ignored the

1 obviousness standard in putting those two things together. And then I think
2 Patent Owner, I think you responded in your sur-reply that's a new
3 argument. Does that -- is that ringing a bell with you?

4 MR. WYDE: Yes, Your Honor. I think you characterized that
5 correctly. So, yeah, so let me, on page 29, we're seeing the limitation that
6 you're talking about, that the page description has to include at least an audio
7 rendering command. Now, so this is from the petition. And here, the
8 Petitioner is identifying the UI content package as containing sound files.
9 And Petitioner argued that that's the audio rendering command. The
10 problem is that the UI content package is what Petitioner identified as the
11 custom configuration, not the page description, which, as Your Honor
12 pointed out, is the Petitioner identified as the HTML. And Petitioner has
13 failed to show that there's any audio rendering command in the HTML or
14 that HTML would have contained such a command. Now, I'm sympathetic
15 because custom configuration and compile content, they're both Cs and you
16 start talking about it enough, it gets confusing. But I think if the panel reads
17 the petition, I think it's clear that they're just talking about the UI content
18 package and that's the custom configuration. And I think in the reply, they
19 point to some language in the expert report that it would have been obvious
20 than to have this -- the HTML referenced the UI content package audio.
21 And I do think that is a new tact or basis. But even if not, the UI content
22 package is available to any application. So, the sound files, if used at all in
23 the UI content package, might be used by an application other than a
24 browser. And it doesn't have to be used with HTML. So, even if the
25 panel -- counsel misses the argument, I don't think Petitioner has shown or

1 met its burden of proof that it's obvious that the HTML would have to have
2 referenced the audio in the UI content package. It's not inherent and there's
3 nothing explicit. So, I hope I addressed your question point on.

4 JUDGE LEBOVITZ: Even if it's not a new argument, you're
5 saying, why would you put it into HTML when the UI is the one that's doing
6 all the sound? Is that what you're saying?

7 MR. WYDE: The only disclosure is that the UI has sound files,
8 but there's nothing tying HTML, which the claim description requires the
9 page description to include an audio sound. And there's no explicit
10 description. So yeah, there's a missing step.

11 JUDGE LEBOVITZ: So, in other words, you could have different,
12 you're saying you can have different HTML content, and that would be
13 played by the sound files on the UI. So, there's no -- so, you -- so, there's no
14 teaching that that command would have to be in the HTML. That's sort of
15 what you're saying, right?

16 MR. WYDE: There's no teaching that the HTML has sound files
17 at all. If it did have sound files, there's no teaching that it would or could
18 reference the UI content package. It could use a different mechanism. And
19 the fact that there is sound files in the UI content package conversely doesn't
20 mean, doesn't lead to the conclusion that anybody would use them. But if
21 something did use it, it didn't have to be the HTML. It could be another
22 application. So, yes, there's an end. The Petitioner's expert has not
23 explained, or given any basis why he did, and I think the Petitioner pointed
24 to it in their reply, say that the HTML would access this sound file, but it's
25 just a summarily given conclusion. There's no explanation or underlying

1 analysis that would give any reason why it's inherent or obvious that that
2 would be true.

3 JUDGE LEBOVITZ: I might be a little confused here, but --

4 MR. WYDE: Okay. Well, let's stick with it because -- so, the UI
5 content package has the audio file, right. Nobody disagrees. That's the
6 custom configuration. And then the HTML comes in. That's the page
7 description that the Petitioner has identified. There's no link. There's
8 nothing that says the HTML has any sound. And there certainly doesn't say
9 that the HTML has any sound that references or sound command that
10 references the UI content sound files.

11 JUDGE LEBOVITZ: Yes. But let me interrupt here.

12 MR. WYDE: Sure.

13 JUDGE LEBOVITZ: Because I think did not Petitioner respond
14 and say, wait a minute, we're not --- you're talking about -- we're talking
15 about obviousness here. And it would be obvious to place audio commands
16 in HTML when you have to play audio files. And I believe, and I might
17 have this backwards, I believe you came back and said, that's an
18 impermissible argument.

19 MR. WYDE: Yes.

20 JUDGE LEBOVITZ: And I guess our question to you is, this was
21 a response to your argument, so why is it impermissible?

22 MR. WYDE: So, I believe that they, Petitioner, and their petition,
23 pointed to the sound file and said that was explicitly disclosed. The entire
24 petition isn't obviousness, we're talking about a dependent claim. But I think
25 if I, as I read their petition, they said there's absolutely, this limitation is not

1 obvious, it's there, and here it is, it's the sound files in the UI content
2 package. And then after we pointed out that the content package is not the
3 page description, it's the custom configuration, they said, oh yes, but we're
4 talking about obviousness here, and our expert in this paragraph said that it
5 would have been obvious. So, I believe that that was not in their original
6 petition, that wasn't their argument that it would have been obvious to put
7 (INDISCERNIBLE) in HTML. The way I read the petition is that their
8 argument is it is explicitly disclosed, but they pointed to the wrong item.
9 And then in our sur-reply, we pointed out that even if you say that this is
10 their argument, the burden of proof is on Petitioner, and all they have is an
11 expert's because I said so, or to sound erudite, ipso-dixit argument, that's
12 true.

13 All right, I think I still have some time, so I'm going to go back to
14 the other dependent claim if that's okay. So, I'm on page 26. So, this claim
15 is found in Claims 2 and 13 and it requires said wireless device generic
16 template to contain relative screen...display object size information that is
17 independent of screen dimensions of the wireless device. And the ellipsis is
18 there because we're only arguing here about the fact that there's no size
19 information. Petitioner pointed to center and we think that is a relative
20 screen location but it's the display object size that's missing.

21
22 All right. So, turning to page 27. The items Petitioner identifies
23 does not show object size information independent of screen dimensions.
24 Petitioner identified the WAX date chooser but there's -- they haven't
25 pointed to anything saying that there's any screen size information. To the

1 contrary, Harris teaches that the date chooser renders one way unlimited
2 screen sizes and another way on PDAs. That is the WAX date chooser is
3 screen dependent. Now, they're speculating that it was independent in the
4 generic template, but there's no reason that that should be so, especially
5 because we have, for example, the text is also which Petitioner in its reply
6 points to as being screen independent. But Harris again shows that the text
7 length is chosen based on the display size. So, the longer phrase, welcome
8 to our site, please take a look around, will be chosen for devices having a
9 larger display. And so, this is the opposite of independent. This is screen
10 dependent. And it's just speculation that there's some sizing prior to the
11 translation. And I believe it was Judge McNamara who talked about a
12 percentage. I think that's right. That something that would be screen
13 independent would be -- take up 33 percent of the screen in the upper left.
14 There's no teaching that that's true. All we know is that the WAX date
15 chooser is screen dependent and it displays one size on one PDA and another
16 way on a different screen.

17 I think the only thing I have left is the original independent claim.
18 And the Board seems less interested, but I will still go through it if you want.
19 All right. So, turning to page 3, the independent claim is sending a custom
20 configuration to the wireless device and custom configuration being specific
21 to set application program. So, Petitioner, this is what we believe
22 Petitioner's view of the claim limitation was, and it's been confirmed now.
23 Petitioner wants the definition to be, and maybe not explicitly, but at least
24 the plain and ordinary meaning is, supports rendering of the page description
25 based on device, on the wireless device capabilities. Whereas, Patent

1 Owner's position is specific to means created for, slash, tailored to. So,
2 we're going to talk about, I'm on page 5 now, why we're correct and then
3 later we'll look at why Petitioner is incorrect. So, the specification supports
4 Patent Owner's position. Looking at claim 12[e], we see that elimination of a
5 content item using a device profile, which is information about the specific
6 wireless device defines device specific template. That is, the Patent is
7 teaching that the definition of specific is customizing or tailoring to using
8 information about the device. Similarly, the specification talks about how
9 the server is going to produce output from an application to create device
10 specific set of commands. And describing the same functionality, the
11 specification says the application is going to tailor the output based on
12 behavior. So, we can see that the specification is equating specific to with
13 tailored to. Now, these examples are describing the output of an application
14 and a generic template, respectively, not the custom configuration of Claims
15 1 and 34, but the Federal Circuit notes that claim terms are normally used
16 consistently throughout the Patent. Therefore, this is evidence that specific
17 to also means customized or tailored when speaking about custom
18 configuration as well.

19 Turning to page 6, Patent Owner's definition is also the normal
20 meaning in the field. Mr. Lipoff explained that specific to an application
21 means application specific. We've seen this with respect to the other
22 Patents. Dr. Bederson couldn't think of any distinction between those two
23 terms. So, both experts agree that specific to an application means
24 application-specific. And Mr. Lipoff explained that application-specific
25 means written for a specific application, another way of saying tailored to an

1 application. In contrast, Dr. Bederson offered no opinion regarding specific
2 to or whether it meant customized for or tailored to.

3 Turning to page 7. So, here I note that Petitioner also argued that
4 specific to means tailored to in the related '715 IPR, and the '715 being the
5 Patent in at issue. When discussing Dependent Claim 4, requiring the
6 compiled content be specific to the rendering capabilities of the wireless
7 device, Petitioner said the limitation was met because the Hariki/Harris
8 system tailors the HTML to the specific attributes of the mobile device.
9 Again, Petitioner argued specific to means tailored to in a similar context. In
10 the same vein, Petitioner's expert said that Hariki's skin was OS specific
11 because it was designed for the OS. So, in a very similar context,
12 Petitioner's expert has again conceded specific to means designed for.

13 JUDGE LEBOVITZ: Yeah, this is Judge Lebovitz. Are the
14 specification in the '715 Patent the same as a specification here?

15 MR. WYDE: Yes.

16 JUDGE LEBOVITZ: It is the same?

17 MR. WYDE: Yes.

18 JUDGE LEBOVITZ: For sure?

19 MR. WYDE: Yes.

20 JUDGE AMUNDSON: This is Judge Amundson. I just want to
21 advise you, I have you at about 35 minutes into your argument.

22 MR. WYDE: No worries. Thank you very much. All right. So,
23 that's why we're correct. Let's just look at what Petitioner would like to do
24 and why their proposal is incorrect. So, inserting Petitioner's proposal into
25 the limitation, the limitation would read, said custom configuration supports

1 rendering of said application program based on the wireless device
2 capabilities. As seen, the limitation originally defined the relationship
3 between the custom configuration and the application program. The former
4 is specific to the latter. However, with Petitioner's definition, the claim is
5 broadened because the claim merely states the function of the custom
6 configuration and makes the custom configuration related to the
7 application's wireless device capabilities where it was not before. Indeed,
8 it's the page description that is based on the wireless device capabilities per
9 limitations 1[d] and [e], not the custom configuration. So, that's the claim
10 construction, but turning to Petitioner's argument, I'm on page 10. So, we've
11 seen this with the '245 and the '715 Patents. Petitioner is again identifying
12 the UI Skin as the custom configuration and the application program as the
13 web server running on computer 102.

14 Turning to page 11. So, Petitioner argued that Hariki meets the
15 claim limitation even under Patent Owner's proposed definition because the
16 UI Skin is allegedly specific to the HTML coming from 102. Now, it's true
17 that the authoring tool may generate or send custom configuration upon a
18 user request from the same computer as the web server. However, just being
19 on the same computer does not make the UI Skin sent to a specific device
20 specific to HTML from that sending computer.

21 I'm on page 12. Indeed, Hariki is clear that the UI Skin is for a
22 device is used, not a web servers. And as Mr. Lipoff explained, the UI Skin
23 does not take into account any web server during its construction and
24 ultimately is not used or usable by a web server as it is written and created
25 for applications running on the mobile device.

1 Turning to page 13. In the reply, for the first time, Petitioner says
2 that it's Hariki's very objective to have the UI Skin be specific to and applied
3 to the HTML from computer 102 differently from any other source. So,
4 we've already covered this at least twice, but to recapitulate, Hariki only
5 mentions it once and is only talking about generic, there can be a generic
6 server and a generic web browser in the application. If Hariki's goal is truly
7 to show that HTML from a particular server was customized by a UI Skin,
8 surely, Hariki would have delved into this matter further than this aside. So,
9 I'm going to skip slide 14 and go to slide 15.

10 Turning to page 15, when I asked Dr. Bederson if a UI Skin
11 customizes HTML from any other web server other than computer 102, he
12 variously responded, I don't recall Hariki giving a lot of detail about the
13 specific server configurations. I think there's a content server and a web
14 server, and they may be separate. And if a person is using a mobile device
15 and visits some other server that's not part of the system, then they're just
16 using a web browser and a web server. This lack of explanation of how the
17 UI Skin is specific to computer 102's web server and differentiates all other
18 web servers in the world does not show any specific -- I'm going to some
19 other word, specific, that the HTML is specific to a particular server. In
20 truth, the browser on the web server does nothing specific to HTML coming
21 from 102 different than any other computer, and this limitation is not met.

22 Lastly, they say, okay, if it's not met under Patent Owner's
23 definition, it's met under Petitioner's proposal, but this collapses again to
24 claim construction, and I won't belabor the point. If the Board doesn't
25 believe the claim construction is proper, then the argument ends there, and

1 there's no reason, no valid reason to change specific to, to support the
2 rendering of or conflate UI Skin being specific to the identified application
3 but being based on the wireless device capabilities.

4 So, with that, I'll end.

5 JUDGE AMUNDSON: All right. Thank you. Right on time. All
6 right. So, with that, let's go back to Petitioner. And so, at the end of the
7 initial presentation, we had some technical difficulties. So, Mr. Marshall,
8 you think you can finish in 10 minutes here? And I think Mr. Marshall, may
9 be muted. I think you're still muted.

10 MR. MARSHALL: All right. Can you hear me now?

11 JUDGE AMUNDSON: Yes.

12 MR. MARSHALL: All right. Very good. Thank you. So, just a
13 couple of quick points to make as we've really covered most of the issues.
14 Coming back to elimination of unsupported content. You know, Patent
15 Owner made the point, or argued, I should say, that there's a difference
16 between including supported content. That's distinct and does not meet not
17 including or removing in Patent Owner's terms, the unsupported content.
18 But I believe here in our slides, coming back to this slide 30 of Petitioner's
19 deck, it's really two sides of the same coin to include something that's
20 supported and not include something that's unsupported. You know, I'll
21 acknowledge that you could entirely eliminate something and not replace it,
22 that's fair. But the claim is not so limited. There's an underlying
23 elimination and then to the extent that Harris wants to add back in something
24 that does not negate the elimination that's done in the first instance. And so,
25 taking, for example, on slide 30, let's say for some reason, we've got Bonjour

1 here as a potential, is one of the place holding texts results, or one of the
2 physical tags, if you will. Let's say this was German language and my phone
3 did not support a character set that accounted for the Umlaut, for example,
4 right? I think that the same logic applies that, well, it would be, yes, it
5 would not be selected because if I don't have a phone that supports German,
6 I wouldn't set my preference as German perhaps. But in the same respect, it
7 is eliminated from contention. It is eliminated from the list of potential fill-
8 ins that the logical tag ID equals welcome stands in place of. And so, I
9 really do think it's sort of arguing two sides of the same coin.

10 But let me, if I might turn to the audio command issue, I've now
11 moved to slide 39. So, Your Honors were correct indeed in the petition at
12 page 50, there's discussion of both, it actually says Hariki in combination
13 with Harris disposes its feature. There's discussion of both Hariki and Harris
14 and Dr. Bederson had some opinions as well that were cited in this section.
15 It is a relatively short section, but perhaps a little bit of explanation might
16 help. So, the way I think what we're getting at here is that, yes, Hariki
17 disposes that the UI skin can alter, can have configuration settings for sound.
18 So, for example, in the highlight on the left and from paragraph 24 of Hariki,
19 the UI Skin allows customization by, and, for example, alert sounds. And
20 then in paragraph 31 of Hariki on my cut out here on the right side, within
21 the resource file, there can be elements, various types of data elements, such
22 as sound files. So, granted, this is the custom configuration. And Claim 8
23 here gets at commands in the page description accounting for audio. At least
24 that's the portion, I think, that we're discussing.

25 And so, the reasoning goes, if Hariki's custom configuration allows

1 customization of audio, and we know that Harris allows for translation into
2 device-specific things, it accounts for lots of different types of potential
3 content in the final translated file, based on those rendering capabilities.
4 And as mentioned earlier today, Hariki discloses that the same individual
5 who's putting the application on the server can provide a UI Skin. I think
6 what this gets at, the obviousness, if you will, and certainly what Dr.
7 Bederson is getting at, is if you have a customization for audio, that indicates
8 to Dr. Bederson that there would be a rendering command. I think he
9 doesn't say in the page description, but I believe that's what he's getting at
10 here. It's my opinion that to render the content, an audio rendering
11 command is required. Well, the rendering commands are in the context of
12 '865 are in the page description. So, I think effectively what he's saying is if
13 I can customize it and would customize it and there's a disclosure of
14 customization of audio, then the obvious read for a person of skill in the art
15 is that you would include in the page description audio commands to take
16 advantage of that customization. Perhaps that was just not clearly conveyed
17 enough but, in the petition, but I believe that that's what the record is
18 intending to get across. Any questions on the audio? I know you had a lot
19 of questions for Patent Owner. Okay.

20 And then one last point. Patent Owner -- when, you know, when
21 Patent Owner came back to the claim construction of customization,
22 customizing is to create and presented a series of cutouts where Petitioner or
23 Petitioner's expert used the word tailored or design and things like that. I
24 mean, I think these are, you know, certainly tailored is a term that is used in
25 the Patents in various places, in these Patents and the specifications, but

1 these are not, you know, Petitioner is, you know, advocating for a claim
2 construction or Petitioner's expert, I don't think, in those snippets advocating
3 for a claim instruction or even talking specifically about the claims here in
4 the context of contributing. So, we would tend to approach the claim
5 instruction as look to the claims, look to the specification, and then, you
6 know, perhaps as needed, you know, look to extrinsic evidence. And to the
7 extent that some of those citations that seem to be supportive of Patent
8 Owner are from unrelated discussions or even if they're discussions about
9 the Patent but not about the claim, we would say they would hold a bit less
10 weight in that analysis.

11 So, with that, I guess I'll ask the panel again, any questions?

12 JUDGE AMUNDSON: None. This is Judge Amundson, none
13 from me. But based on my interface, I don't seem to see Judge Lebovitz
14 online. But maybe it's just my interface. I don't know if there's a technical
15 difficulty that --

16 MR. WYDE: I don't see him either.

17 MR. MARSHALL: Yeah, you're right.

18 JUDGE MCNAMARA: Yeah, this is Judge McNamara, I don't
19 see him either.

20 MR. WYDE: Oh, look, Patent Owners -- let's just pause, put a
21 timer on the clock and see if we can get him back on.

22 JUDGE AMUNDSON: Yeah.

23 COURT REPORTER: Should I go off record, Judges? Should I
24 go off record, judges?

25 JUDGE AMUNDSON: Yes, let's do that. Let's go off the record.

1 COURT REPORTER: We're going off record, and the time it's
2 12:33 p.m. Eastern.

3 JUDGE AMUNDSON: So, let's --

4 JUDGE LEBOVITZ: Judge, --

5 COURT REPORTER: Going back on record.

6 JUDGE AMUNDSON: I'm sorry?

7 MR. MARSHALL: If it's on the record I mean I'm happy to --
8 certainly happy to recover those same points. But in the same respect --

9 JUDGE LEBOVITZ: Oh, it is on the record, so I can just read
10 through the transcript.

11 JUDGE AMUNDSON: Well, it's up to you Judge Lebovitz. Well,
12 what would benefit you most.

13 MR. MARSHALL: Exactly.

14 JUDGE LEBOVITZ: I can read it on the record if we're going
15 to -- that should be okay.

16 JUDGE AMUNDSON: All right. Then when we go back on the
17 record then we'll hear the sur-rebuttal from Mr. Wyde. Okay?

18 JUDGE LEBOVITZ: Okay.

19 JUDGE AMUNDSON: All right. So, then let's go back on the
20 record.

21 MR. WYDE: Okay. Is everybody ready? Okay. So, I think
22 there's just two points that I'd like to address. So, Mr. Marshall used an
23 example of a German umlauts lots as presumably guten tag, if that was one
24 of the translation possibilities. But sticking with this example, guten tag is
25 not in the WAX XML, the WAX Stylesheet that's been pointed to as the

1 generic template. There's an index that points to something and one of those
2 possibilities might be the German guten tag or it could be French Bonjour or
3 the longer phrase, welcome to our site, please take a look around. But guten
4 tag is there, it's not in the generic style sheet and it's never eliminated. It
5 remains where it was, it was just not selected. Not selecting something is
6 not the same thing as eliminating something that's in the WAX, generic
7 WAX Stylesheet.

8 And then as for point number two, the audio rendering command.
9 So, Petitioner pointed to page 41 and they put up paragraph 199 from Dr.
10 Bederson's expert report. And all he said was a rendering command is
11 required, passive tense. Yes, Patent Owner concedes that to invoke a sound
12 file in the UI Skin, a rendering command is required. Something has to
13 reference it. But that is not a disclosure or any reason to leap to the
14 conclusion that the HTML, which has been identified as the page
15 description, is the one who will or could reference that. There's no further
16 explanation other than a rendering command is required and Patent Owner
17 submits that that doesn't rise to a preponderance of the evidence. So, with
18 that, I'll conclude.

19 JUDGE AMUNDSON: All right. So, unless there are any further
20 questions from my colleagues.

21 JUDGE MCNAMARA: None from Judge McNamara.

22 JUDGE AMUNDSON: All right. Then that concludes our
23 hearing. Again, we want to thank both parties for your time and your
24 helpful presentations. The case is submitted and the hearing is adjourned.
25 (Whereupon the above-entitled matter went off the record at 12:39 p.m.)

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