UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:22-cv-07556-RGK-SHK	Date	September 11, 2023
Title	***GoTV Streaming, LLC v. Netflix, Inc.***		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	
Joseph Remigio	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiff:	Attorneys Present for Defendant:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) Order Re: Motions for Summary Judgment [DEs 125, 134]**

I. INTRODUCTION

On November 10, 2022, GoTV Streaming, LLC ("Plaintiff") filed the operative First Amended Complaint ("FAC") against Netflix, Inc. ("Defendant") alleging claims for direct and induced patent infringement. (ECF No. 44.) On February 16, 2023, the Court dismissed the claims for induced patent infringement, leaving only Plaintiff's claims for direct infringement. (ECF No. 64.)

Presently before the Court are Defendant's Motion for Summary Judgment (ECF No. 125) and Plaintiff's Motion for Partial Summary Judgment (ECF No. 134). For the following reasons, the Court **GRANTS in part** Defendant's Motion and **GRANTS in part** Plaintiff's Motion.

II. FACTUAL BACKGROUND

This case is about digital media technology; specifically, methods of delivering and rendering digital content for wireless devices.

The following facts are uncontroverted unless otherwise stated:

Hands-On Mobile, Inc. ("Hands-On") was a mobile media and network applications developer that developed applications for mobile phones. One such application was "Astrology Zone," first released in or before 2006, which delivered horoscopes and other astrology-related information to mobile phones. (Pl.'s Mot. Summ. J., Chen Decl., Ex. 7, ECF No. 134-9.) Around 2007, Hands-On released the Hands-On Mobile Binary Runtime Environment (HOMBRE), a new mobile development platform. (*Id.*, Ex. 2, ECF No. 134-4.) The exact date of its release is uncertain, but according to a March 2007 press release, HOMBRE had been under development for "[m]ore than two years and was "already in use across the world." (*Id.*, Ex. 4, ECF No. 134-6.) After the release of HOMBRE, Hands-On began migrating its existing mobile applications to the newly developed platform, including

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Astrology Zone. (*See id.*, Ex. 3 at 163:5–11, ECF No. 134-5.) The exact timing of this migration is uncertain. (*See id.*)

Later the same year that Hands-On issued the HOMBRE press release, on August 1, 2007, Hands-On filed a patent application directed to new methods and systems for rendering content on wireless devices. The claims in this application were embodied by the very same HOMBRE platform that Hands-On had recently released. (Def.'s Opp'n Summ. J., Dyer Decl., Ex. B at 139:18–21, ECF No. 171-4.) Ultimately, this application would lead to the issuance of three patents: United States Patent Nos. 8,103,865, 8,478,245, and 8,989,715 (collectively, the "Asserted Patents"). The Asserted Patents, like the initial application, are directed to methods and systems for rendering content on wireless devices. The Asserted Patents also shared a specification and the original application's effective filing date: August 1, 2007.

The Asserted Patents were later assigned to Hands-On's successor, Phunware, Inc., which in 2022, assigned the Asserted Patents to Plaintiff, making it the sole and exclusive owner of the Asserted Patents. (*See* Def.'s Mot. Strike, Marshall Decl., Ex. B, ECF No. 143-4.) Plaintiff does not sell or offer to sell any products that practice the Asserted Patents. (Pl.'s Opp'n Summ. J. at 17, ECF No. 168.)

Defendant operates Netflix, an eponymous streaming media service that delivers digital content to customers' wireless devices. (*See* Def.'s Mot. Summ. J., Dyer Decl., Ex. DD, ECF No. 125-32.) To support the multitude of different devices its customers own, Defendant provides several different user interface platforms, such as Web, TV, iOS, and Android. (*Id.*, Ex. O at 18:6–11, 18:20–23, 21:7–25, ECF No. 140-9.) The Web platform is accessed using a supported web browser. (*Id.*, Ex. R at 20:17–24, 22:25–23:5, ECF No. 140-12.) Other platforms, such as TV, iOS, and Android, may require the user to download and install a device-specific application from Defendant. (Pl.'s Opp'n, Clark Decl., Ex. 4 at 13–24, ECF No. 168-7.) Defendant performs routine internal tests of its different interface platforms. (*Id.*, Ex. 5 at 147:21–150:3, ECF No. 168-8; *id.*, Ex. 6 at 125:10–126:19, ECF No. 168-9.) Some of these tests are performed multiple times daily. (*Id.*, Ex. 6 at 125:10–18.)

Plaintiff alleges that each of Defendant's user interface platforms (collectively, the "Accused Products"), infringe the Asserted Patents either literally or under the doctrine of equivalents.

III. <u>CLAIM CONSTRUCTION</u>

The Parties move for summary judgment on issues of infringement and validity. The disposition of these issues depends, at least in part, on the Court's construction of various disputed claim terms. *See Bayer AG v. Elan Pharm. Rsch. Corp.*, 212 F.3d 1241, 1247 (Fed. Cir. 2000) (explaining that the first step to an infringement inquiry is defining the scope of the asserted claims). Accordingly, before delving into the merits of the summary judgment motions, the Court first engages in claim construction.

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In a patent case, the Court may engage in claim construction as part of its order on a summary judgment motion. *See, e.g.*, *Spigen Korea Co., Ltd. v. Ispeak Co., Ltd.*, 2016 WL 3982307, at *4 n.2 (C.D. Cal. July 22, 2016) (citing *Conoco, Inc. v. Energy & Env't Int'l, L.C.*, 460 F.3d 1349, 1359 (Fed. Cir. 2006)). Claim construction begins with the language of the claims, which are given their "ordinary and customary meaning," or "the meaning that the term would have to a person of ordinary skill in the art." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). In construing claim language, the Court considers intrinsic evidence, such as the claims, specification, and prosecution history, as well as extrinsic evidence, such as treatises and dictionaries. *Id.* at 1312–17. However, extrinsic evidence is "less significant than the intrinsic record in determining the legally operative meaning of claim language." *Id.* at 1317 (internal quotations omitted) (quoting *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 862 (Fed. Cir. 2004)).

In their dueling Motions for Summary Judgment, the Parties dispute the proper construction of the following terms:

"rendering command"
"discrete low level rendering command"
"wireless device generic template"
"custom configuration"
"rendering blocks"

The Court analyzes each term in turn.

A. <u>"rendering command"</u>

The Parties dispute the proper construction of the term "rendering command," which is used in various claims across each of the Asserted Patents. For instance, claim 1 of the '865 Patent recites:

> 1. A server implemented method for processing data for a wireless device, comprising:
> . . .
> generating a page description based on said wireless device generic template, and a capability of the wireless device, said page description having at least one discrete low level *rendering command* that is within said rendering capability of said wireless device but that is of a syntax that is wireless device generic . . . .

('865 Patent at 20:41–63 (emphasis added).) The Parties' positions are summarized in the table below:

Plaintiff's Proposed Construction	**Defendant's Proposed Construction**

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A description for rendering a page component, such as the width or the height of the component.	An instruction to generate graphics on a display or generate audio content.[1]

The Parties appear to dispute two aspects of the term's construction: the proper scope of "rendering" and the proper scope of "command." The Court begins with "rendering."

1. *"rendering"*

Plaintiff argues that "rendering" should be construed broadly to simply refer to page components. In contrast, Defendant argues that "rendering" should be construed narrowly to refer to only graphics and audio.

On balance, the Court finds that Plaintiff's construction is appropriate. While graphics and audio are the only two types of renderable components referred to by name in the specification, there is no indication that these are the only types of components that may be rendered. (*See, e.g.*, *id.* at 21:21–24 ("said description includes at least one display rendering command and at least one audio rendering command.").) For this reason, Plaintiff's broader construction is more appropriate.

2. *"command"*

Plaintiff argues that "command" should be construed broadly to include descriptions of page components, such as the desired width or the height of components. In contrast, Defendant argues that "command" should be construed narrowly to refer only to instructions, which go a step beyond descriptions by being executable and triggering various actions. Plaintiff supports its construction with intrinsic evidence via excerpts of the specification explaining that "basic commands" "may be a description for rendering." (*Id.* at 13:22–25, 15:62–64.) Defendant also supports its construction with intrinsic evidence via another excerpt explaining that a "client command" "triggers an action," as well as dependent claim 4 of the '865 Patent, which states that "at least one discrete low level rendering command is operable to be executed." (*Id.* at 14:18–21, 21:4–7.) Further, Defendant argues that its construction is consistent with extrinsic evidence from various dictionaries that define computer commands as instructions that start or execute actions. (Def.'s Mot. Summ. J, Dyer Decl., Exs. E–F, ECF No. 125-7–8.)

On balance, the Court finds that Plaintiff's construction is appropriate. The excerpts that both Parties rely on demonstrate that commands can differ in functionality—just as mere descriptions are commands, so too are instructions that trigger and execute actions. Presumably, an instruction is a more

[1] Defendant originally argued a proposed construction that included only graphics, not audio. Defendant concedes that this construction was lacking, as the Asserted Patents contain several references to audio rendering, and accordingly revised their construction to include audio content.

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complicated type of description, as it not only describes a desired outcome, but is also capable of bringing about that outcome itself.

This conclusion is further supported by the dependent claim that Defendant relies on, which shows that "operable to be executed" is simply an optional characteristic of commands. Dependent claims refer back to and further limit another claim, thereby covering a narrower but overlapping scope. 37 C.F.R. 1.75(c). Because the dependent claim has a narrower but overlapping scope, it follows that a device that infringes the dependent claim must also infringe the independent claim. However, a device that infringes the independent claim might not infringe the dependent claim. Or in simpler terms, an apple is a fruit, but not all fruits are apples.

Returning to the claims at hand, independent claim 1 includes "at least one discrete low level rendering command." ('865 Patent at 20:41–63.) Dependent claim 4, which depends on claim 1, adds the further limitation that the "discrete low level rendering command . . . is operable to be executed." (*Id.* at 21:4–7.) The fact that this "operable to be executed" limitation is in a dependent claim implies that not all commands are operable to be executable. Simpler commands, like descriptions, may read on claim 1 without reading on claim 4. Thus, "operable to be executed" is an optional characteristic of commands, not a necessary one. And although mere descriptions would conflict with Defendant's proffered dictionary definitions, given the specification and claims' greater significance as intrinsic evidence, the Court concludes that the proper construction includes descriptions. *See Phillips*, 415 F.3d at 1317.

Accordingly, the Court adopts Plaintiff's proposed construction for "rendering command" in its entirety: "a description for rendering a page component, such as the width or the height of the component."[2]

B. "discrete low level rendering command"

The Parties also dispute the proper construction of the term "discrete low level rendering command," which although used in the specification of each of the Asserted Patents, is only used in the claims of the '865 Patent. Claim 1 of the '865 Patent recites:

> 1. A server implemented method for processing data for a wireless device, comprising:
> . . .
> generating a page description based on said wireless device generic template, and a capability of the wireless device, said page description having at least one *discrete*

[2] Defendant also argues that including the phrase "such as the width or the height of the component" is improper because not all page components use width or height. Width or height are clearly used as examples, as they were introduced with the phrase "such as." And examples need not be applicable to every renderable component.

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