

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

REALTIME ADAPTIVE STREAMING, LLC

Plaintiff,

v.

SLING TV L.L.C.,

SLING MEDIA L.L.C.,

DISH TECHNOLOGIES L.L.C.,

DISH NETWORK L.L.C., AND

ARRIS SOLUTIONS, INC.,

Defendants.

CIVIL ACTION NO. 1:17-CV-02097-RBJ

PATENT CASE

JURY TRIAL DEMANDED

JOINT STATUS REPORT

As directed by the Court’s minute order (Dkt. No. 171), the Parties¹ submit this joint status report regarding the telephonic status conference scheduled for April 23, 2020. The Parties provide the following summary of IPR proceedings for the five asserted patents:

Patent	Status of IPRs and Appeals
<p>USP 8,867,610</p> <p>Asserted against DISH and ARRIS</p>	<ul style="list-style-type: none"> • Summary – PTAB instituted Defendants’ IPRs on the ’610 Patent finding there is a reasonable likelihood that all claims are unpatentable, but the IPRs have been terminated at the PTAB as time-barred, subject to appeal by DISH and ARRIS. • On 8/8/2019, the PTAB in IPR2019-00746 granted ARRIS’s request to join IPR2018-01331, joined ARRIS as a Petitioner in IPR2018-01331, and then terminated IPR2019-00746. • On 1/31/2020, the PTAB terminated IPR2018-01331 by Petitioner DISH and joinder Petitioner ARRIS on the ’610 patent. • On 2/4/2020, the PTAB denied ARRIS’s request for Rehearing on termination of IPR2019-00746. • On 3/16/2020, Petitioners DISH and ARRIS filed notices of appeal to the Federal Circuit for IPR2018-01331.

¹ “Parties” means Plaintiff Realtime Adaptive Streaming, LLC (“Realtime”) and Defendants Sling TV L.L.C, Sling Media L.L.C, DISH Technologies L.L.C., DISH Network L.L.C., (together, “DISH”) and ARRIS Solutions, Inc. (“ARRIS”).

Patent	Status of IPRs and Appeals
	<ul style="list-style-type: none"> On 3/24/2020, Petitioners DISH and ARRIS filed notices of appeal to the Federal Circuit for IPR2018-01331 and ARRIS filed a notice of appeal to the Federal Circuit for IPR2019-00746. Aside from Defendants' pending appeals, there are currently no pending IPRs (whether instituted or not) at the PTAB on the '610 patent.
USP 8,934,535 Asserted against DISH and ARRIS	<ul style="list-style-type: none"> Summary – All challenged claims of the '535 Patent have been found unpatentable by the PTAB (subject to appeal by Realtime) or disclaimed by Realtime, and Petitioner DISH been terminated at the PTAB as time-barred, subject to appeal by DISH. On 1/18/2019, Realtime disclaimed claims 15-30 of the '535 patent. On 1/10/2020, the PTAB issued a final written decision (“FWD”) in IPR2018-01169 by Petitioners Netflix, ARRIS, and Comcast finding all challenged claims 1–14 of the '535 patent to be unpatentable. On 1/17/2020, the PTAB terminated Petitioner DISH from IPR2018-01342 but continued the proceeding with Petitioners Google and Comcast On 2/27/2020, the PTAB issued a FWD in IPR2018-01342 by Petitioners Google and Comcast finding claims 1–6, 8–12, 14 of the '535 patent to be unpatentable. On 3/10/2020, Patent Owner Realtime filed a notice of appeal to the Federal Circuit for IPR2018-01169.
USP 8,929,442 Asserted against ARRIS only	<ul style="list-style-type: none"> Summary – Claims 1-15 of the '442 Patent are subject to a pending IPR but claims 16–29 are not subject to any pending IPRs. Only Claim 8 is asserted in the Complaint against ARRIS. In IPR2019-00712 by Petitioner Adobe, a FWD concerning claims 1-15 of the '442 patent is expected by Sept. 2020. In IPR2019-01222 by Petitioner ARRIS, a FWD concerning claims 1-15 of the '442 patent is expected by Jan. 2021. On 3/16/2020, the PTAB denied institution of IPR2019-01585 by Petitioner ARRIS concerning claims 16–29 of the '442 patent. On 3/16/2020, the PTAB denied institution of IPR2019-01586 by Petitioner ARRIS concerning claims 16–29 of the '442 patent.

Patent	Status of IPRs and Appeals
USP 9,578,298 Asserted against ARRIS only	<ul style="list-style-type: none"> • Summary – Claims 1–4, 7–11, and 13 of the '298 Patent are subject to a pending IPR, but other claims not subject to any pending IPRs. Only Claim 1 is asserted in the Complaint against ARRIS. • On 1/14/2020, the PTAB issued a FWD in IPR2018-01227 by Petitioner Netflix confirming the patentability of all claims 1–19 of the '298 patent. • In IPR2019-01036 by Petitioner Google, a FWD concerning claims 1–4, 7–11, and 13 of the '298 patent is expected by Nov. 2020.
USP RE46,777 Asserted against ARRIS only	<ul style="list-style-type: none"> • Summary – All challenged claims of the '777 Patent have been found unpatentable by the PTAB and/or disclaimed (canceled) by Realtime. Only Claim 1 is asserted in the Complaint against ARRIS. • On 1/15/2020, the PTAB issued a FWD in IPR2018-01189 finding claims 1–12 and 14 of the '777 patent to be unpatentable. • Patent Owner Realtime did not appeal IPR2018-01189. • On 3/5/2020, Realtime disclaimed claims 1, 3-7, 9, and 11 of the '777 patent.

Based on this summary, the Parties submit the following competing proposals in advance of the April 23 telephonic status conference. The Parties believe that the telephonic hearing is not necessary but are happy to attend should the Court have any questions.

Plaintiff Realtime's Position: This consolidated case involves two groups of patents: (1) the '610 and '535 patents asserted against DISH and ARRIS; and (2) the '442, '298, and '777 patents asserted against ARRIS only. Of the five patents, only IPRs on certain claims of the '442 and '298 patents against ARRIS remain. There are no pending IPRs on the '610 and '535 patents against DISH. Therefore, Realtime believes that severing DISH into a separate case and lifting the stay as to DISH is appropriate.

As to severance, the DISH moved to sever on September 26, 2018 (Dkt. 123) and ARRIS

joined that motion (Dkt. 125). The Court did not rule on that motion and deemed it moot when this case was stayed. Dkt. 163. Defendants' current position on severance has not changed. In correspondence leading to this joint submission, ARRIS represented that "it believes severance is appropriate in this matter." And DISH declined to take a position.

Realtime believes that if DISH is to be severed, the appropriate time is now. Because there are no pending IPRs for patents against DISH, severing the DISH case and allowing it to continue would promote the just and speedy resolution of disputes. *See* FRCP 1. Further, the Parties stipulated that for any claims that survive IPR, "the stay should be lifted and the case allowed to proceed while any appeals from the PTAB decisions are pending." Dkt. 161 at 2. That applies to all claims of the '610 patent, which were not invalidated in IPR and are not subject to any additional IPRs. If the DISH case is severed, Realtime will drop other patent claims and proceed on the '610 patent against DISH. *See id.* at 2 (agreeing that Realtime can drop cancelled claims and lift the stay for "the asserted claims [that] survive the IPRs").

In sum, Realtime desires to lift the stay as to DISH, and there is no reason to wait nearly a year for the outcome of IPRs that only implicate ARRIS. Realtime is mindful of the coronavirus epidemic and will work with the Court and DISH to set a reasonable schedule and other accommodations (e.g., depositions by video). Other patent litigations have proceeded in this way, and delaying cases indefinitely will only increase the backlog on the courts.

Should the Court decline to sever and lift the stay as the DISH, Realtime requests that the Court schedule a status conference after January 7, 2021, when all IPR proceedings will be complete. Realtime also reserves the right to seek to lift the stay for DISH and ARRIS before January 2021, for example, if claims are dropped or IPRs are terminated. Finally, if DISH is not

severed now, it should be precluded from seeking severance at a later date. It would be unfair for DISH to oppose severance now and then change positions after the stay is lifted.

Defendants' Position: Any request to lift the stay at this juncture is premature. The parties originally agreed to stay this proceeding in view of co-pending *inter partes* review (IPR) proceedings on the basis that there was a reasonable likelihood that the asserted patent claims were invalid in view of prior art. Those very same issues that justified the stay in 2019 persist today with respect to the four patents that Realtime seeks to assert.² IPR proceedings remain pending for two patents, namely, the '298 and '442 patents. Those decisions will not be complete until January 2021.

As to the two patents for which IPR proceedings have completed at the Patent Trial and Appeal Board (PTAB) level (the '535 and '610 patents), several facts are undisputed. It is undisputed that the PTAB found that both patents were likely invalid in the institution decisions previously reviewed by this Court. It is undisputed that the PTAB found that all asserted claims of the '535 patent are unpatentable in two separate proceedings that have now become final and plaintiff is appealing at least the first decision. *See Netflix, Inc. v. Realtime Adaptive Streaming, LLC*, No. IPR2018-01169, 2020 WL 120083, at *14 (P.T.A.B. Jan. 10, 2020); *Google LLC et al. v. Realtime Adaptive Streaming, LLC*, No. IPR2018-01342, 2020 WL 959190, at *16 (P.T.A.B. Feb. 27, 2020).

It is undisputed that the PTAB originally found that the DISH IPR proceedings were timely despite the fact that a Realtime-associated entity that did not own the patent (and therefore, did not have standing to sue) asserted it against DISH more than a year earlier. *See*

² As noted in the chart above, all asserted claims of the '777 patent were found unpatentable, and Realtime did not appeal that decision.

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