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., AND DISH NETWORK L.L.C. Defendants.	CIVIL ACTION NO. 1:17-CV-02097-RBJ PATENT CASE JURY TRIAL DEMANDED

DISH DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OF INVALIDITY BASED ON LACK OF SUBJECT MATTER ELIGIBILITY

I. INTRODUCTION

Realtime's '610 patent claims abstract ideas for selecting a compression method. The Supreme Court's *Alice* decision holds that abstract ideas are not patentable under 35 U.S.C. § 101 and renders the asserted '610 claims invalid.

The Court will recall that Defendants sought an early Rule 12 adjudication of unpatentability and the Court ruled that the challenge could be renewed after claim construction. Since that time, the Federal Circuit decided a similar case in *Adaptive Streaming Inc. v. Netflix, Inc.*, 836 F. App'x 900, 901 (Fed. Cir. 2020), Ex. 3, finding that selecting a compression technique and converting data between formats are not eligible concepts for patent protection under *Alice*. Both the ineligible *Adaptive Streaming* patent and Realtime's '610 patent focus on selecting a data compression method and converting uncompressed data into compressed data. Also, two other tribunals held Realtime's nearly identical claims from the '535 patent (which Realtime recently withdrew from this case) ineligible under § 101. The '610 patent's claims are derived from the same specification and figures as the '535 patent, and use almost identical language. With the record now fully developed, the issue of patent eligibility is ripe for decision. Defendants

respectfully request the Court hold that claims 1, 2, 6, 8-14, 16, and 18 of '610 patent are ineligible for patenting under § 101.

II. STATEMENT OF UNDISPUTED FACTS

A. Procedural Background

During the hearing on Defendants' Rule 12 motion on this issue, the Court expressed doubts about the § 101 eligibility of the '610 patent, remarking: "Maybe this is just an abstract concept. This doesn't sound like something you would patent. It doesn't sound like its technology. It just sounds like an idea." (Mar. 7, 2018 Hrg. Tr. at 9:9-14).

The Court nevertheless decided it best to perform claim construction before deciding eligibility. (*Id.* at 14:14-15 ("[W]e need to get these terms defined and then see where we are.")). The Court construed claim terms, including the term "throughput of a communication channel," on January 11, 2019. (Dkt. 151). Shortly thereafter, the case was stayed for inter partes review (which cannot consider § 101). (Dkts. 162; 167.) During the stay, two courts held Realtime's nearly identical claims from the '535 patent are unpatentable under § 101. *See Realtime Adaptive Streaming, LLC ("RAS") v. Google, LLC*, No. 2:18-cv-03629, Dkt. 36 (C.D. Cal. Oct. 25, 2018), Ex. 6; *RAS v. Netflix, Inc.*, No. 17-1692, Dkt. 48 (D. Del. Dec. 12, 2018) ("Netflix") (report & recommendation), Ex. 7.

B. The '610 Patent

The '610 patent is "directed to selecting a compression scheme based on characteristics of the digital data being compressed" for more efficient data storage. (Dkt. 151 (Claim Construction Order) at 2). Compression was a well-known concept long before the '610 patent was filed, as the '610 patent admits. ('610 pat. at 2:44-46 ("Data

compression is ***widely used*** to reduce the amount of data required to process, transmit, or store . . . information."); Ex. 1 (Bovik Decl.) ¶ 6). Realtime also admits that the '610 patent did not invent any of its cited compression standards. (Ex. 2 (2012-02-26 Realtime Resp. to Defs.' Common RFA's 8-12)). The '610 patent also admits that encoding algorithms that perform compression were well-known in the prior art. ('610 pat. at 1:31-35 ("There are a variety of data compression algorithms that are currently available"); Ex. 1 (Bovik Decl.) ¶ 7-8).

III. LEGAL STANDARD

The Rule 56 summary judgment standard applies. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). "[T]he § 101 inquiry may appropriately be resolved on a motion for summary judgment." *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325 (Fed. Cir. 2016).

The Supreme Court's two-step *Alice* test controls the § 101 eligibility analysis. *Alice Corp. Pty. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014). First, the court asks whether the patent claims are directed to an abstract idea. *Id.* at 218. The "directed to" inquiry examines claims to determine whether "their character as a whole is directed to excluded subject matter." *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015). To determine "abstractness," both the Federal Circuit "and the Supreme Court have found it sufficient to compare claims at issue to those already found to be directed to an abstract idea in previous cases." "[I]nformation storage and exchange is an abstract idea even when it uses computers as a tool or is limited to a particular technological environment." *See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l*

Ass'n, 776 F.3d 1343 (Fed. Cir. 2014).

The second *Alice* step is a search for an "'inventive concept'—i.e., an element or combination of elements sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself." *Alice*, 573 U.S. at 217-18. "Simply appending conventional steps, specified at a high level of generality, [is] not *enough* to supply an 'inventive concept.'" *Id.* at 222 (original italicized).

IV. ARGUMENT

The *Alice* test shows that the '610 patent is ineligible for patenting under § 101. Under step 1, the patent claims are directed to an abstract idea—selecting a compression scheme based on a characteristic of the data requiring compression. A multitude of cases hold that data encoding, compression, and selection of a method based on ordinary characteristics are abstract. Under step 2, the '610 patent claims add nothing to render it patent eligible. The claims simply recite the abstract idea untethered to any technological solution. Two courts recently struck down nearly identical claims of the '535 patent as ineligible under § 101, and the same result should apply to the '610 patent.

A. *Alice* Step 1: The '610 Patent Claims the Abstract Idea of Selecting a Compression Algorithm

The '610 patent's claims are basic and functional. They cover the simple act of selecting a compression scheme based on two considerations, and nothing more. Claim 1 of the '610 patent is representative of the asserted patent claims:

> 1. A method, comprising:
>
> determining, a parameter or an attribute of at least a portion of a data block having video or audio data;

> selecting one or more compression algorithms from among a plurality of compression algorithms to apply to the at least the portion of the data block based upon the determined parameter or attribute and a throughput of a communication channel, at least one of the plurality of compression algorithms being asymmetric; and
>
> compressing the at least the portion of the data block with the selected compression algorithm after selecting the one or more, compression algorithms.

The claim recites three vague steps, all performed in the abstract and untethered to a specific device or system – 1) determine a parameter; 2) choose a compression scheme based on the parameter and throughput; and 3) compress data. These claims constitute a basic abstract idea with no concrete application, for which patent protection is unavailable. [1]

Compression is simply making something smaller; or in a technical sense, reducing the amount of space required to store a given piece of information. As the '610 patent puts it, "[d]ata compression is widely used to reduce the amount of data required to process, transmit, or store a given quantity of information." ('610 pat. at 2:44-46; Ex. 1 (Bovik Decl.) ¶ 6). The '610 patent also recognizes: there are many known ways to compress data. (*Id.* at 1:32-33 ("There are a variety of data compression algorithms that are currently available."); Ex. 1 (Bovik Decl.) ¶ 7).

Compression is analogous to stuffing items into a small suitcase. A traveler has many options when faced with the challenge of fitting clothes into a suitcase of fixed size,

[1] Claim 1 is representative because none of the other asserted '610 patent claims present "distinctive significance" as it relates to eligibility. *See Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018). In situations such as these, it is proper to treat a claim as representative for the eligibility analysis. *Id.*

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