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

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| REALTIME ADAPTIVE STREAMING, LLC<br>Plaintiff,<br>v.<br>SLING TV L.L.C., et al.,<br>Defendants. | CIVIL ACTION NO. 1:17-CV-02097-RBJ<br><br>PATENT CASE<br>JURY TRIAL DEMANDED |

**DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY
JUDGMENT OF INVALIDITY FOR LACK OF SUBJECT MATTER ELIGIBILITY**

Realtime's Opposition makes clear how little is disputed. Realtime does not dispute that: (1) the '610 patent's claims cover selecting an algorithm based on various factors and compressing data (which is abstract); (2) the law holds that claims covering encoding and compression / format conversion, without more, are ineligible subject matter; (3) the claims are purely functional, result-oriented, and untethered to any structure; and (4) throughput is just another parameter for consideration when choosing an algorithm. Realtime relies heavily on unclaimed aspects of the specification and argues that the Court's claim constructions imbue eligibility, both of which fail. Realtime also cannot distinguish the bevy of Federal Circuit decisions dooming the '610 patent. Ultimately, Realtime is on the wrong side of the law, and there are no factual disputes here. The Court should enter summary judgment finding the '610 patent ineligible under § 101.

## I.   Realtime's Claims Do Not Pass *Alice* Step 1

### A.  The '610 Patent's Claims Cover an Abstract Idea

The § 101 inquiry focuses on the claims, of course, which fail *Alice* step 1 if they cover an abstract idea. *See Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012) (finding abstract claims that did "not specify **how** the computer hardware and database are specially programmed to perform the steps claimed in the patent")

(emphasis throughout brief added). Representative claim 1 cannot escape abstractness, since it merely claims determining a parameter, selecting a compression algorithm based on the parameter and throughput, and compressing data. At bottom, these claims cover the abstract idea of selecting an algorithm based on data characteristics.[1]

To avoid scrutiny of its thin, functional claims, Realtime expends significant ink citing the patent specification without tying it to the patent claim language at issue. *E.g.*, Dkt. 267 ("Opp.") 2-6. While claims are read in light of the specification, "the § 101 inquiry focuses on the Asserted Claims themselves and the specification cannot be used to import details from the specification if those details are not claimed." *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 769-70 (Fed. Cir. 2019) (citation omitted).

Even were Realtime's resort to the specification proper, the specification does not support eligibility. For example, Realtime makes much of how the claims use "throughput of the communication channel" to select a compression algorithm. Opp. 6, 8. This concept, itself abstract, only appears once in the specification, in the summary, casting doubt on the significance of this limitation. '610 pat., 8:24-28. The specification, however, does not explain ***how*** the system tracks the number of pending transmission requests to determine throughput of the communication channel, which the Court's construction requires.[2] The mechanism for determining the number of requests might be less abstract,

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[1] Realtime makes the unfounded argument that DISH's conception of the abstract idea oversimplifies the claim, citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016). In *Enfish*, the court held only that it is improper to define the abstract idea "at such a high level of abstraction" that it is "*untethered from the language of the claim.*" *Id.* at 1337. DISH closely tracks Realtime's claims here, presenting no *Enfish* issue.

[2] Realtime's reliance on the "throughput" limitation for patent eligibility cannot be reconciled with its infringement case. Realtime here asserts that using "the number of pending transmission requests" to choose compression is the key technological

but it is wholly missing. Realtime also relies heavily on the '610 patent's purported ability to handle "bottlenecks." Opp. 2-4. Yet, the claims do not mention bottlenecks, and Realtime's broad claims go far beyond bottlenecks. Even if Realtime had claimed "handling bottlenecks," that would not confer eligibility because the claims still "do no more than describe a desired function or outcome, without providing any limiting detail that confines the claim to a particular solution." *Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1269 (Fed. Cir. 2016).

Finally, Realtime suggests that the Court's claim constructions render the '610 patent eligible. But the Court's constructions do no more than reference routine, generic computer hardware. For example, Realtime's expert acknowledged that asymmetric compression was not inventive and was known in the art. Ex. A at 61:20-62:12. And no party has alleged that throughput or data blocks are anything but conventional, non-inventive computer concepts in existence long before the '610 patent.

## B. The Federal Circuit's Caselaw Firmly Establishes Ineligibility

### 1. Realtime Cannot Distinguish *Adaptive Streaming*

Realtime—on page 12 of its brief—fails to distinguish *Adaptive Streaming Inc. v. Netflix, Inc.* (Dkt. 234-3). *Adaptive Streaming* controls because it considered the same abstract ideas as the '610 patent's claims, *i.e.*, selecting a compression technique and

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contribution of the '610 patent. Opp. 11, 17-18. But in its infringement case, Realtime vitiates this "pending requests" limitation by asserting that everything from "expected" transmission requests to bandwidth is sufficient. *See* Dkt. No. 242 at 5-7. Realtime's reliance on "expected" requests shows that the '610 patent covers mental processes. While computers are intelligent, computers do not "expect" future events. Realtime's case is based on human engineers' mental expectations that they build into the system. These are the exact types of mental exercises that are not eligible for patenting.

converting data. *See* Dkt. 234-3 at 7-8. Moreover, the *Adaptive Streaming* claims selected a compression signal based on bandwidth, which Realtime's expert, Dr. Mitzenmacher, equates to the throughput claimed in the '610 patent. Ex. B at 193:17-25.[3]

Realtime argues, without explanation, that *Adaptive Streaming* is inapplicable because it involves "the abstract idea of format conversion." Opp. 12. But Realtime's own expert, Dr. Rhyne, disagrees. He testified that a compression algorithm is applied "to uncompressed video data **to convert it to compressed video data.**" Ex. A at 34:19-23. There is no dispute that compression converts data from one format (uncompressed) to another (compressed). At bottom, Realtime's claims suffer from the same problems that troubled the *Adaptive Streaming* court: "[t]he focus is not any specific advance in coding or other techniques for implementing that idea; no such specific technique is required" by Realtime's claims. *Adaptive Streaming*, 836 F. App'x at 903.

### 2.   Realtime's Other Cases Are Inapposite

Realtime overstates the Federal Circuit's *Enfish* holding in suggesting that all patent claims that purport to improve computing functions are per se eligible. Opp. 6-8. *Enfish* is much narrower, recognizing only that "**some** improvements in computer-related technology **when appropriately claimed**" are not abstract. *Id.* at 1335; *see also id.* at 1339 (deeming claims to "**specific** implementation[s] of a solution to a problem in the software arts" as potentially eligible). The *Enfish* claims—directed to a specific computer memory configuration—required incredible detail and precision. As construed, they

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[3] Realtime emphasizes that *Adaptive Streaming* issued as a nonprecedential decision. Opp. 12. This is of no moment. *Adaptive Streaming* would appear to be designated nonprecedential simply because the claims at issue were so clearly ineligible under binding precedent, that there was no need to issue it as precedential.

required, among other things, "a plurality of logical rows, each said logical row including an object identification number (OID)" that "can act as a pointer to the associated row or column," and "a plurality of logical columns intersecting said plurality of logical rows to define a plurality of logical cells" in a configuration that "render[s] the table self-referential." *Enfish*, 822 F.3d at 1336. The high-level and broad '610 patent claims directed to selecting a compression method are unlike the narrow, detailed claims at issue in *Enfish*.[4]

## C. The Asserted Claims Mirror the Ineligible '535 Patent Claims

Realtime is incorrect that the two tribunal decisions finding claims of the '535 patent ineligible are "inapposite." Opp. 13-14. These decisions strongly support a finding that the '610 patent's claims are ineligible because their logic and reasoning apply equally here.

Realtime argues that in *Google*, the claims the court declined to find invalid are "more like the '610 [patent's] claims than claim 15 of the '535 patent . . . ." Opp. 13. Realtime's wholly conclusory statement does not create a material dispute of fact. It is also incorrect, as the *Google* court explained that "there is evidence to suggest that the claimed steps for [representative] Claim 40 of the '046 Patent and [representative] Claim 1 of the '477 Patent are tied to specific computer systems that 'improve[ ] computer functionality in some way,' rather than being drawn to purely abstract concepts." Dkt. 234-6 at 6. This is unlike the claims of the '610 patent and claim 15 of the '535 patent as they

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[4] The other cases Realtime cites along with *Enfish* are similarly inapplicable because they considered highly detailed and specific claims addressing particular problems with computer functionality. *See Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 53-58 (Fed. Cir. 2017) (applying the rule that the court "articulate with specificity what the claims are directed to" in deciding whether "the claims are directed to an improvement to computer functionality versus being directed to an abstract idea"); *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014) (considering claims that "recite[d] a specific way . . . for resolving [a] particular Internet-centric problem").

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