IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No 17-cv-02097-RBJ

REALTIME ADAPTIVE STREAMING LLC,

Plaintiff,

v.

SLING TV L.L.C.,
SLING MEDIA, L.L.C.,
ECHOSTAR TECHNOLOGIES L.L.C.,
DISH NETWORK L.L.C., and
ARRIS GROUP, INC.,

Defendants.

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**ORDER GRANTING SUMMARY JUDGMENT**

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Defendants Sling TV L.L.C., Sling Media L.L.C., Dish Technologies L.L.C., and Dish Network L.L.C. (collectively "Dish") move for summary judgment, contending that the subject patent is invalid because it claims what amounts to an abstract idea. The Court agrees and grants summary judgment dismissing the remaining claims in this case.

**BACKGROUND**

Plaintiff Realtime Adaptive Streaming LLC ("Realtime") filed this suit on August 31, 2017, claiming that three Dish-related companies had infringed three patents: U.S. Patent Nos. 8,275.897 ("the '897 patent"); 8,867,610 ("the '610 patent"); and 8,934,535 ("the '535 patent"). By the time of the Markman Order the case had evolved to claims against the present defendants; a related company, EchoStar Technologies, L.L.C.; and the Arris Group, Inc. Only the '610 and

'535 patents were still involved. Since then, the Arris Group settled, and plaintiff dropped its claims under the '535 patent. The remaining claim against the Dish defendants for infringement of Claim 1 and, on information and belief, "other claims" of the '610 patent. ECF No. 32 at 8, ¶25; 14, ¶34. Plaintiff's infringement claims and defendants' counterclaim for invalidity are set for trial beginning August 16, 2021.

The '610 patent is titled "System and Methods for Video and Audio Data Distribution." The '535 patent, although no longer accused in this case but nevertheless relevant as discussed below, is titled "System and Methods for Video and Audio Data Storage and Distribution." The specifications for both patents are virtually identical.

The two patents concern data compression and decompression algorithms. They are directed to selecting a compression scheme based on characteristics of the digital data being compressed. The patents purport to optimize compression time for digital files to prevent problems such as download delay, data buffering, and reduced system speeds. Basically, the two patents first assign a data or access profile to the user based on the frequency that the data is accessed or written. Then they assign a compression algorithm to each profile. A symmetrical compression algorithm is optimal when the profile has a similar read to write ratio (meaning the number of reads and writes is balanced). In contrast, an asymmetrical compression algorithm is preferred when the profile writes often but reads seldom, or vice versa. In the former asymmetrical scenario, the preferred algorithm would compress quickly and decompress slowly. The opposite is true for the latter scenario.

At the claim construction stage, the parties focused on eight terms or groups of related terms, several of which essentially were common to the '610 and '535 patents. The Court construed those terms in its Markman Order. ECF No. 151. I will refer to that order as needed.

**STANDARD OF REVIEW**

The Court may grant summary judgment if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party has the burden to show that there is an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). The nonmoving party must "designate specific facts showing that there is a genuine issue for trial." *Id.* at 324. A fact is material "if under the substantive law it is essential to the proper disposition of the claim." *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A material fact is genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. The Court will examine the factual record and make reasonable inferences therefrom in the light most favorable to the party opposing summary judgment. *Concrete Works of Colo., Inc. v. City and Cty. of Denver*, 36 F.3d 1513, 1517 (10th Cir. 1994).

**ANALYSIS and CONCLUSIONS**

An inventor may obtain a patent for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" under §101 of the Patent Act. 35 U.S.C. § 101. However, that does not permit patenting of "laws of nature, natural phenomena, and abstract ideas." *Alice Corp. Pty. Ltd. v. CLSBank Int'l*, 573 U.S. 208, 216 (2014).

The distinction is made in a two-step process: first, the court must determine "whether the claims at issue are directed to one of those patent-ineligible concepts." *Id.* at 217 (citing *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 77-78 (2012)). If the answer is "yes," then in the second step the court determines whether the claim "contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Id.* at 221 (citing *Mayo* at 72, 79). The court must look at the claims and the specification "to determine whether the claims contain an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the ineligible concept itself." *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016).

Dish contends that the '610 patent is invalid because it claims an abstract idea, i.e., selection of a data compression technique based on characteristics of the data in order more efficiently to transmit or store the data.[1] Claim 1 of the '610 patent claims

> 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

[1] Dish also contends that the asserted claims of the '610 patent are invalid because the Patent & Trademark Office (the "PTO") has rejected them. In a pending *ex parte* reexamination, in a first non-final office action on February 4, 2021 and in a second non-final office action on June 9, 2021, the examiner rejected Claims 1, 2, 6, 9-13 and 16 under 35 U.S.C. § 102(e) as unpatentable over U.S. Patent 6,216,157 ("Vishwanath"); and found that Claim 14 is obvious over Vishwanath in view of U.S. Patent 5,675,789 ("Ishii") and U.S. Patent No. 5,953,506 ("Kalra"); and rejected Claims 1, 2, 6, 9-13 as well as claims 8 and 18 under 35 U.S.C. § 103 as unpatentable over Vishwanath in view of Ishii and Kalra. ECF No. 257-2 and 257-3. However, while these office actions raise questions of validity based on the prior art, they are not final and are not the subject of the pending motion for summary judgment.

channel, at least one of the plurality of compression algorithms being asymmetric; and

compressing at least the portion of the data block with the selected compression algorithm after selecting the one or more, compression algorithms.

ECF No. 2-2 20: 2–13.

Dish argues that Claim 1 "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)." ECF No. 234 at 5. As such, the claim is nothing more than an "abstract idea with no concrete application, for which patent protection is unavailable." *Id.*

ECF No. 234 at 5.

Dish adds that the '610 patent acknowledges that data compression was a widely used means of reducing the amount of data required to process, transmit or store information prior to the '610 patent, citing the patent, ECF No. 2-2, at 2: 44-46 ('610 Specification). Realtime admitted during discovery that the '610 patent did not invent any of its cited compression standards or the algorithms that perform the compression. *See* ECF No. 234 at 5.

Moreover, argues Dish, the '610 patent fails to add a meaningful "inventive concept" to the abstract idea. Although the patent claims "selecting a compression scheme based on characteristics of the digital data being compressed," it provides no technological solution for doing so, that is, no particular encoder structure, no new compression techniques, and no innovative means of storage or transmission. *Id.* at 13. In short, it provides no details as to how to apply the abstract idea in a concrete way. *Id.*

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