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

Civil Action No. 1:17-cv-02097

REALTIME ADAPTIVE STREAMING, LLC

Plaintiff,

v.

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

Defendants.

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**MOTION TO DISMISS UNDER FED. R. CIV. P. 12(b)(6)**

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Defendants DISH Network L.L.C. ("DISH"), EchoStar Technologies L.L.C. ("EchoStar"), and ARRIS Group, Inc. ("ARRIS") move to dismiss Realtime Adaptive Streaming, L.L.C.'s ("Realtime's") complaint under Federal Rule of Civil Procedure 12(b)(6). Dismissal is appropriate because the asserted patents are directed to ineligible subject matter under Section 101 of the Patent Act. 35 U.S.C. § 101.

## I. INTRODUCTION

The Supreme Court has held that patents directed to abstract concepts, or to the mere implementation of standard techniques using a computer, are not eligible for patent protection. *Alice Corp. Pty. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014). Realtime's asserted patents claim the well-known and abstract concept of selecting a compression scheme based on characteristics of the data being compressed. "Compression" refers to the simple concept of making something smaller. In computing, compression can refer to, for example, reducing the size of a file. Humans, however, have performed compression ever since the advent of the printed word—using abbreviations and single words to communicate large and complex concepts. The bottom line is that compression in and of itself is an abstract idea, and Courts have recognized that such techniques predate computer or software technology.

The notion of using different compression schemes to compress different types of information is no less abstract. Humans—using pen and paper—routinely use different compression schemes to reduce the size of different types of information. Dates like January 1, 2018 become 1/1/2018, large numbers like 1,000,000 become $1x10^6$, and "the geographic area in which I was born and grew up" becomes "hometown." Lawyers certainly are no strangers to compression. In fact, lawyers wrote an entire book, the Bluebook, identifying a compression scheme for every type of information a lawyer could dream of (*e.g.*, "F.3d," "U.S.," "Id.," *etc.*).

While the above examples may appear simple, Realtime's claimed compression functionality is just as simple. The reason for this is straightforward—Realtime did not invent a

new compression algorithm and its asserted patents do not purport to limit themselves to any improvement upon a specific compression algorithm. Further, Realtime's asserted patents do not specify a particular technological way to select from amongst the myriad of different compression algorithms it did not invent. The claims simply speak of the abstract idea of compression, and the only other detail in the claims simply sets forth a desired user environment (*i.e.*, audio and video data over a generic communication channel).

Realtime's asserted patents are ineligible for patent protection because they are directed to an abstract idea and fail to include an inventive concept that would transform them into a patent-eligible invention. The courts recognize that patent eligibility is a threshold matter in any patent case, and Realtime's suit should be dismissed under Rule 12(b)(6).

## II. FACTUAL BACKGROUND

### A. Procedural Background

Realtime Data L.L.C. originally filed this case on August 31, 2017, claiming that Sling Media L.L.C. and Sling T.V. L.L.C. infringed U.S. Patents 8,867,610 ("the '610 Patent") and 8,934,535 ("the '535 Patent") (collectively, "the Asserted Patents"), as well as a third patent. (Dkt. No. 1). In an amended complaint, Realtime substituted itself for Realtime Data L.L.C. and dropped the third patent. (Dkt. No. 12). And finally, in its latest amended complaint, Realtime added DISH, EchoStar and ARRIS. (Dkt. No. 32).

Realtime broadly asserts infringement based on compatibility with the H.264 video compression standard, though its patents do not teach or claim to have invented any particular compression technology or algorithm.

### B. The Asserted Patents

The Asserted Patents share a common specification and are in the same patent family. The Asserted Patents' common specification admits that compression was a well-known concept. Per the Asserted Patents, "[d]ata compression is the process of representing data with a smaller

amount of bits. Data compression is widely used to reduce the amount of data required to process, transmit, or store a given quantity of information." '610 Patent at 2:44-46.

The shared specification also acknowledges that encoding algorithms (which perform the compression) were well-known in the prior art. *Id.*, 1:31-35. It also provides various examples of such algorithms, including "dictionary-based compression," "Lempel-Ziv," and "Huffman" encoding. *Id.*, 10:1-10. Encoding refers to the actual process of turning uncompressed data into compressed data. The Asserted Patents, however, generally use the terms synonymously. *See id.*, 4:29-33 ("Lossy data compression techniques provide for an inexact representation of the original uncompressed data such that the decoded (or reconstructed) data differs from the original unencoded/uncompressed data.")

The '610 Patent, entitled "System and Methods for Video and Audio Data Distribution," discloses a method of using one or more compression algorithms to compress data more efficiently. Claim 1 is the only claim that Realtime calls out in the complaint:

> 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.

'610 Patent at 20:1-13.

The '535 Patent, entitled "Systems and Methods for Video and Audio Data Storage and Distribution" also focuses on using one or more compressors on a given data set. Claim 15 is the only claim specifically asserted in the compliant. As shown below, the '535 Patent adds an

additional storage step that is not present in claim 1 of the '610 Patent:

> 15. A method, comprising:
>
> determining a parameter of at least a portion of a data block;
>
> selecting one or more asymmetric compressors from among a plurality of compressors based upon the determined parameter or attribute;
>
> compressing the at least the portion of the data block with the selected one or more asymmetric compressors to provide one or more compressed data blocks; and
>
> storing at least a portion of the one or more compressed data blocks.

'535 Patent at 20:29-41.

Claim 1 of the '610 Patent and claim 15 of the '535 Patent are representative of the '610 Patent claims and '535 Patent claims, respectively. Each claim of the Asserted Patents selects one or more generic compression algorithms, the way anyone would select a tool to perform a particular task. *See, e.g., Content Extraction and Transmission LLC v. Diebold, Inc. et al.*, 776 F.3d 1343, 1359, (Fed. Cir. 2014) (finding claim representative of all patent claims where all the claims are substantially similar and linked to the same abstract idea). Realtime's complaint itself rests on the premise that these claims are representative for purposes of infringement. (Dkt. No. 32, Realtime's Second Amended Complaint at ¶ 34 ("Defendants also directly infringe … other claims of the '610 Patent, for similar reasons … with respect to Claim 1 of the '610 Patent"); *id.* at ¶ 57 (same with regard to the '535 Patent)). It necessarily follows that these claims should also be representative for purposes of patent eligibility.[1]

[1] To the extent that Realtime alleges that unidentified claims from the Asserted Patents are sufficiently distinct from claim 1 of the '610 Patent and claim 15 of the '535 Patent, then Realtime's complaint does not contain "enough facts to state a claim to relief that is plausible on its face" as to those patent claims. *Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In other words, if Realtime contends that a particular claim includes a feature that sets it apart from the representative claims, Realtime has not pled sufficient facts regarding that feature that "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Simply put, Realtime cannot remedy one

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