IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

REALTIME ADAPTIVE STREAMING LLC, Plaintiff, v. SLING TV L.L.C., SLING MEDIA INC., AND SLING MEDIA, L.L.C., ECHOSTAR TECHNOLOGIES L.L.C., DISH NETWORK L.L.C., AND ARRIS GROUP, INC., Defendants.	**Case No. 1:17-cv-02097-RBJ**

PLAINTIFF REALTIME ADAPTIVE STREAMING LLC'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS (D.I. 47) / MOTION FOR JUDGMENT ON THE PLEADINGS (D.I. 48)

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Under *Alice* step 1, the claims at issue here are not abstract, but rather are limited to a particularized subset of the non-abstract realm of digital-data compression. Defendants' arguments rely on gross mischaracterization of the patents. Under any reasonable construction, the claims cannot be performed with "pen and paper," but rather recite specific digital computer systems and components. Indeed, the claims provide technological solutions that improve computer capabilities, e.g., compression. They describe specific ways (e.g., using asymmetric compressors, determining parameter of data block and throughput of a communication channel) to improve the effectiveness of reducing the amount of digital data to be stored or transmitted.

The claims are also patent-eligible under *Alice* step 2. The claim elements require much more than well-understood, routine, conventional activities for solving the then-existing problems in the field of digital-data compression. Defendants' contrary arguments, focusing merely on individual elements separately, are factually and legally incorrect.

I. DEFENDANTS FAIL TO SHOW THAT ANY OF THE SIXTY CLAIMS OF THE TWO PATENTS-IN-SUIT ARE INVALID UNDER §101.

Under 35 U.S.C. §101, patent eligibility is to be construed broadly, and the exceptions are narrow. One exception is the "abstract idea" exception. The Supreme Court has warned against interpreting the exception too broadly, as that could could "swallow all of patent law" because "[a]t some level, 'all inventions ... embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.'" *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014). *Alice*'s two-step analysis is detailed below.

"[T]his court heeds the Federal Circuit's caution that dismissal for lack of patentable subject matter at the pleading stage should be 'the exception, not the rule.'" *Brain Synergy Institute, LLC v. Ultrathera Tech. Inc.*, Case No. 13-cv-01471-CMA-NYW, D.I. 93 (D. Colo. Jan. 28, 2016) ("it may be inappropriate to rule on patent-eligibility on a motion to dismiss … because of unresolved factual issues."; Defendants have the "burden to establish ineligibility … by ***clear and convincing***[1] evidence");[2] *JSDQ Mesh Techs. LLC v. Fluidmesh Networks, LLC*,

[1] All emphasis added, unless otherwise noted.

2016 WL 4639140, *1 (D. Del. Sept. 6, 2016) ("At the motion to dismiss stage, a patent claim can be found directed towards patent-ineligible subject matter if the ***only plausible reading*** of the patent must be that there is ***clear and convincing*** evidence of ineligibility.").[3]

A. Defendants Cannot Establish That The Patent Claims Are Directed To An Abstract Idea Under *Alice* Step 1.

The threshold inquiry of the §101 analysis requires Defendants to demonstrate that the patent claims are directed to an "abstract idea," *i.e.*, an "idea of itself" or "fundamental truths or fundamental principles the patenting of which would pre-empt the use of basic tools of scientific and technological work." *Alice*, 134 S. Ct. at 2355. Defendants fail to do so here. Instead, Defendants apply a sweeping, incorrect reading of the §101 caselaw to an oversimplified mischaracterization of the patented inventions. Under any fair characterization, the claims here are patent-eligible under controlling law because they provide particular, technical solutions to technical problems specific to compression of digital computer data.

1. Examining the patents confirms that they claim technological solutions to technological problems, not abstract subject matter.

Under the Supreme Court's *Alice* framework, claims that "improve[] an existing technological process" or "solve a technological problem in 'conventional industry practice'" are patent eligible. *Alice*, 134 S. Ct. at 2358. The Federal Circuit has applied these standards in several controlling cases to uphold the patentability of claims challenged as abstract.

In *Enfish*, the Federal Circuit reversed a patent-ineligibility ruling on a database patent, which the district court described as being directed to the abstract idea of "storing, organizing, and retrieving memory in a logical table." *Enfish, LLC v. Microsoft Corp*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). The court held that "describing the claims at such a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to §101

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[2] In a Rule 12 motion, facts and inferences are drawn in the light most favorable to the plaintiff. *Dias v. City & County of Denver*, 567 F.3d 1169, 1178 (10th Cir. 2009).

[3] Defendants' assertions that "evidentiary standard of proof does not apply" and that "the presumption of validity … is inapplicable" (Mot. at 5, fn.2) are wrong. 35 U.S.C. §282 ("A patent shall be presumed valid."); *Brain Synergy*, Case No. 13-cv-01471, D.I. 93 ("a challenge to the eligibility of the subject matter must be proven by clear and convincing evidence.").

swallow the rule." *Id.* The Federal Circuit further criticized the district court's analysis because it "downplayed the invention's benefits" disclosed in the specification. *Id.* at 1337–38. Because the claims were "**designed to improve the way a computer stores and retrieves data in memory**," they were "directed to a specific implementation of a solution to a problem in the software arts" and, thus, "not directed to an abstract idea." *Id.* at 1339.[4]

In *Visual Memory*, the claims recited a system with "operational characteristics" which "determines a type of data." *Visual Memory LLC v. NVidia*, 867 F.3d 1253, 1257 (Fed. Cir. 2017). Here, the court rejected defendant's argument that the claims "are directed to no more than a desired result" or that the patent claim "nothing more than a black box." *Id.* at 1260-61. The court cautioned against over-simplifying the claims, and held that they were directed to "improvements to computer functionality" as opposed to "economic or other tasks for which a computer is used in its ordinary capacity." *Id.* at 1258-1261.

As in *Enfish, DDR*, and *Visual Memory*, the claimed inventions here provide particular technological solutions to overcome technological problems specific to the field of digital-data compression. The patents themselves state they are directed to problems unique to the realm of digital data, a form of computer data "**not easily recognizable to humans in native form**." *E.g.,* '535 patent at 2:28-30. In this realm, the patents describe using a combination of particular steps or structural computer components to help improve detection and exploitation of redundancies, for example, in the incoming strings of computer "1s" and "0s."

Like the inventions in *DDR*, *Enfish* and *Visual Memory*, the patents teach specific improvements to the function of the computer parts themselves, such as computer memory and

[4] Similarly, in *DDR*, the claims addressed "the problem of retaining website visitors." *DDR v. Hotels.com LP*, 773 F.3d 1245, 1257 (Fed. Cir. 2014). Despite being directed to e-commerce, the court held that these claims "stand apart" from abstract claims "because they do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet." *Id.* Instead, "the claims recite[d] an invention that is not merely the routine or conventional use of the Internet." *Id.* at 1259. Thus, they were eligible because the patented claims were "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *Id.*

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