

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 17-cv-02097-RBJ

REALTIME ADAPTIVE STREAMING LLC,

Plaintiff,

v.

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

Defendants.

~~PROPOSED~~ SCHEDULING ORDER

1. **DATE OF CONFERENCE AND APPEARANCES
OF COUNSEL AND *PRO SE* PARTIES**

The Scheduling Conference pursuant to Fed. R. Civ. P. 16(b) is scheduled for March 7, 2018 at 8:30 a.m. before the Honorable R. Brooke Jackson, to be conducted telephonically.

The parties are represented by following counsel.

Attorneys for Plaintiff Realtime Adaptive Streaming LLC:

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2. STATEMENT OF JURISDICTION

This is a patent infringement action arising under the Patent Act, which gives rise to this Court's jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a).

3. STATEMENT OF CLAIMS AND DEFENSES

a. **Plaintiff's Statement:** Plaintiff Realtime Adaptive Streaming LLC hereby summarizes its claims, without waiving any rights to add additional claims or pursue additional remedies. This is a patent infringement action involving U.S. Patent Nos. 8,867,610 ("the '610 patent") and 8,934,535 ("the '535 patent"). By way of assignment, Plaintiff is the owner of all right, title and interest in and to the '610 and '535 patents, with all rights to enforce them against infringers and to collect damages for all relevant times, including the right to prosecute this action.

Plaintiff asserts that Defendants have directly and/or indirectly infringed, either literally and/or under the doctrine of equivalents, the '610 patent and the '535 patent,

via, e.g., making, using offering to sell, selling, and/or importing into the United States infringing products (e.g., streaming video products and services of Defendants).

Plaintiff also seeks damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '610 patent and the '535 patent, as provided under 35 U.S.C. § 284, as well as 35 U.S.C. § 285 as appropriate. Plaintiff also seek for Defendants to provide an accounting and to pay supplemental damages to Plaintiff, including without limitation, prejudgment and post-judgment interest. Additional allegations are set forth in Plaintiff's amended complaint (Dkt. No. 32), which are incorporated herein by reference.

b. **Defendants' Statement:** Defendants deny Plaintiff's allegations of infringement. The asserted patents are invalid at least under 35 U.S.C. §§ 101, 102, 103, and 112. Defendants DISH Network L.L.C., DISH Technologies L.L.C., and ARRIS Group, Inc. already filed a motion to dismiss Plaintiff's complaint for a failure to state a claim under Fed. R. Civ. P. 12(b)(6) because the asserted patents claims are not directed to patentable subject matter under Section 101 of the Patent Act. See Dkt. No.47. Similarly, defendants Sling TV, L.L.C. and Sling Media, L.L.C. moved for judgment on the pleadings that the asserted patents are directed to ineligible subject matter under Section 101 of the Patent Act. See Dkt. No. 48. Defendants Sling TV, L.L.C. and Sling Media, L.L.C. also filed counterclaims for declaratory judgement of non-infringement and invalidity of the Asserted Patents.

To the extent the asserted patents' claims are not invalid, Plaintiff's claims are barred, in whole or in part, by the doctrines of equitable estoppel, laches, waiver, and/or implied license and/or by the other affirmative defenses raised in defendants Sling TV, L.L.C. and Sling Media, L.L.C.'s Answer (Dkt. No. 42)

Defendants also assert that Plaintiff's claims constitute an exceptional case under 35 U.S.C. § 285 and accordingly request that the Court award Defendants costs and reasonable attorney's fees.

4. UNDISPUTED FACTS The following facts are undisputed:

1. The Court has subject matter jurisdiction over any civil action arising under any Act of Congress relating to patents.

5. COMPUTATION OF DAMAGES

Plaintiff seeks damages adequate to compensate it for Defendants' infringement, including under 35 U.S.C. § 283, 284 and 285, and at least a reasonable royalty. Discovery has yet to be taken, which would allow additional information regarding computation of damages.

Defendants deny that Realtime is entitled to any damages in this case. Defendants also assert that any damages are limited by 35 U.S. Code § 287. Defendants reserve the right to seek costs and reasonable attorney fees to be determined at a later time as evidence is produced during the discovery process in accordance with the Federal Rules of Civil Procedure and the Local and Patent Rules of the venue where this matter ultimately proceeds.

**6. REPORT OF PRECONFERENCE DISCOVERY
AND MEETING UNDER FED. R. CIV. P. 26(f)**

- a. Date of Rule 26(f) meeting: Feb. 12, 2018.
- b. Names of each participant and party he/she represented.

Attorney for Plaintiff Realtime Adaptive Streaming LLC:

Reza Mirzaie
Jay Chung

Attorney for Defendants:

Ruffin Cordell (RBC@fr.com)
Adam Shartzter (shartzter@fr.com)
Brian Livedalen (Livedalen@fr.com)
Noah Graubart (graubart@fr.com)

- c. Statement as to when Rule 26(a)(1) disclosures were made or will be made.

March 8, 2018

- d. Statement concerning any agreements to conduct informal discovery:

Parties have not agreed to conduct informal discovery, but will remain open to consider that possibility.

- e. Statement concerning any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system:

The parties consent to electronic service pursuant to Fed. R. Civ. P. 5(b)(2)(E).

- f. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

The parties anticipate that their claims or defenses will involve some discovery of electronically stored information "ESI". The parties have discussed details relating to ESI, and reached the following agreements:

1. This order's provisions regarding ESI supplements all other discovery rules and orders. It streamlines ESI production to promote a "just, speedy, and inexpensive determination" of this action, as required by Federal Rule of Civil Procedure 1.
2. This order's provisions regarding ESI may be modified in the court's discretion or by agreement of the parties.
3. A party's meaningful compliance with this Order's provisions regarding ESI and efforts to promote efficiency and reduce costs will be considered in cost-shifting determinations.
4. The following metadata fields shall generally be included in ESI productions if such fields exist: author, custodian, date created, date last modified, date sent, date received, sender, recipient(s), and an MD5 or SHA-256 hash value for each document. The Parties are not obligated to produce metadata for any document that does not contain such metadata in the native version of the document at the time the document is collected.
5. Absent agreement of the parties or further order of this court, the following parameters shall apply to ESI production:
 - A. **General Document Image Format.** Each electronic document shall be produced in single-page Tagged Image File Format ("TIFF") format except where document production in TIFF would be impractical (including, for example, large spreadsheets). TIFF files shall be single page and shall be named with a unique production number followed by the appropriate file extension. Load files shall be provided to indicate the location and unitization of the TIFF files. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document. All documents

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