IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

REALTIME ADAPTIVE STREAMING LLC, Plaintiff, v. HAIVISION NETWORK VIDEO INC., Defendant.	)	Civil Action No. 17-cv-1520-CFC-SRF

REPORT AND RECOMMENDATION

I. INTRODUCTION

On October 26, 2017, Realtime Adaptive Streaming LLC ("Realtime") filed a complaint against Haivision Network Video Inc. ("Haivision"), asserting infringement of United States Patent Numbers 8,934,535 ("the '535 patent"), 9,769,477 ("the '477 patent"), 8,929,442 ("the '442 patent"), 9,762,907 ("the '907 patent"), and 7,386,046 ("the '046 patent") (collectively, the "Fallon patents"). (D.I. 1; D.I. 22) Additionally, Realtime asserts infringement of United States Patent Numbers 8,634,462 ("the '462 patent") and 9,578,298 ("the '298 patent") (collectively, the "Non-Fallon patents"). (D.I. 22 at ¶¶ 161-211) Realtime is the owner by assignment of the patents-in-suit, which relate to the concept of encoding and decoding data, and the digital compression of data. (D.I. 22 at ¶¶ 7, 38, 69, 100, 131, 162, 190) Pending before the court is the motion to dismiss the Fallon patent claims for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) and 35 U.S.C. § 101 and the Non-Fallon patent claims pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.I. 23) For the following reasons, I recommend granting-in-part and denying-in-part Haivision's motion to dismiss.

II. BACKGROUND

A. Procedural History

On February 20, 2018, Haivision filed this pending motion to dismiss for failure to state a claim. (D.I. 23) On April 10, 2018, Realtime filed a motion to transfer pursuant to 28 U.S.C. § 1407 with the United States Judicial Panel on Multidistrict Litigation ("the Panel") to consolidate in the District of Colorado actions it originally brought in Delaware, California, Texas, Massachusetts, and Colorado. (D.I. 32) On August 1, 2018, the Panel denied Realtime's motion due to the need for defendant-by-defendant analysis of individual design elements. (D.I. 33) On October 2, 2018, the court heard oral argument on the pending motion to dismiss.[1] (D.I. 38)

B. Related Cases

There is a related Realtime case currently pending before the court, Realtime Adaptive Streaming LLC v. Netflix, Inc., et al., C.A. No. 17-1520-CFC-SRF (the "Netflix Litigation").[2] In the Netflix Litigation, Realtime asserts claims for infringement of all of the Fallon patents, except the '442 patent. (C.A. No. 17-1692-CFC-SRF, D.I. 1) There is a pending motion to

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[1] At oral argument, the court also heard arguments regarding a similar motion to dismiss in a related case, Realtime Adaptive Streaming LLC v. Netflix, Inc., et al., C.A. No. 17-1692-CFC-SRF (the "Netflix Litigation"). (D.I. 38; *see also* C.A. No. 17-1692-CFC-SRF, D.I. 11)

[2] Two other related cases were before this court: (1) Realtime Adaptive Streaming LLC v. Brightcove Inc. et al, C.A. No. 17-1519-CFC-SRF (the "Brightcove Litigation"), and (2) Realtime Adaptive Streaming LLC v. Sony Electronics, Inc., C.A. No. 17-1693-CFC-SRF (the "Sony Litigation"). The parties in the Brightcove Litigation filed a joint motion to dismiss on October 29, 2018. (C.A. No. 17-1519-CFC-SRF, D.I. 40) On October 31, 2018, Judge Connolly dismissed plaintiff's claims with prejudice and defendant's claims without prejudice. (C.A. No. 17-1519-CFC-SRF, D.I. 41) The parties in the Sony Litigation also filed a joint motion to dismiss on November 1, 2018. (C.A. No. 17-1693-CFC-SRF, D.I. 27) On November 5, 2018, Judge Connolly dismissed plaintiff's claims with prejudice and defendant's claims without prejudice. (C.A. No. 17-1693-CFC-SRF, D.I. 28)

dismiss the complaint for failure to state a claim pursuant to Rule 12(b)(6) and 35 U.S.C. § 101 filed by defendant Netflix.[3] (C.A. No. 17-1692-CFC-SRF, D.I. 11)

C. Patents-in-Suit

The '535 patent is titled "Systems and Methods for Video and Audio Data Storage and Distribution." (D.I. 22 at ¶ 7) Representative claim 15 recites:[4]

> 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, col. 22:1-12) The '046 patent is titled "Bandwidth Sensitive Data Compression and Decompression." (D.I. 22 at ¶ 131) Representative claim 40 recites:[5]

> 40. A system comprising:
>
> A data compression system for compressing and decompressing data input;
>
> A plurality of compression routines selectively utilized by the data compression system, wherein a first one of the plurality of compression routines includes a first compression

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[3] The court analyzed the Fallon patents in a Report and Recommendation in the related Netflix Litigation. (C.A. No. 17-1692-CFC-SRF) At oral argument, Haivision noted that arguments made by Netflix's counsel equally apply to Haivision, but did not indicate that the related matters should be consolidated. (D.I. 38 at 22:1-3) For the purposes of this Report and Recommendation, the court will only address the patents identified in defendant Haivision's motion to dismiss.

[4] Here, claim 15 of the '535 patent and claim 40 of the '046 patent are the representative claims. (*See* D.I. 24 at 8, 13) In the related Netflix Litigation, the representative claims are: claim 15 of the '535 patent, claim 1 of the '477 patent, claim 1 of the '907 patent, and claim 1 of the '046 patent. (*See* C.A. No. 17-1692-CFC-SRF, D.I. 13 at 8, 11, 13, 14)

[5] This representative claim differs from that in the related Netflix Litigation, where claim 1 of the '046 patent was, instead, the representative claim for the '046 patent.

algorithm and a second one of the plurality of compression routines includes a second compression algorithm; and

A controller for tracking throughput and generating a control signal to select a compression routine based on the throughput, wherein said tracking throughput comprises tracking a number of pending access requests to a storage device; and

Wherein when the controller determines that the throughput falls below a predetermined throughput threshold, the controller commands the data compression engine to use one of the plurality of compression routines to provide a faster rate of compression so as to increase the throughput.

('046 patent, col. 27:25-28:10)

III. LEGAL STANDARD

A. Federal Pleading Standard under Rule 12(b)(6)

Rule 12(b)(6) permits a party to move to dismiss a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). When considering a Rule 12(b)(6) motion to dismiss, the court must accept as true all factual allegations in the complaint and view them in the light most favorable to the plaintiff. *Umland v. PLANCO Fin. Servs. Inc.*, 542 F.3d 59, 64 (3d Cir. 2008).

To state a claim upon which relief can be granted pursuant to Rule 12(b)(6), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Although detailed factual allegations are not required, the complaint must set forth sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); s*ee also Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). A claim is facially plausible when the factual allegations allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 663; *Twombly*, 550 U.S. at 555-56.

When determining whether dismissal is appropriate, the court must take three steps.[6] *See Santiago v. Warminster Twp.*, 629 F.3d 121, 130 (3d Cir. 2010). First, the court must identify the elements of the claim. *Iqbal*, 556 U.S. at 675. Second, the court must identify and reject conclusory allegations. *Id.* at 678. Third, the court should assume the veracity of the well-pleaded factual allegations identified under the first prong of the analysis, and determine whether they are sufficiently alleged to state a claim for relief. *Id.*; *see also Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011). The third prong presents a context-specific inquiry that "draw[s] on [the court's] experience and common sense." *Iqbal*, 556 U.S. at 663-64; *see also Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). As the Supreme Court instructed in *Iqbal*, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.'" *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

B. Patent Eligibility under 35 U.S.C. § 101

Section 101 provides that patentable subject matter extends to four broad categories, including "new and useful process[es], machine[s], manufacture, or composition[s] of matter." 35 U.S.C. § 101; *see also Bilski v. Kappos*, 561 U.S. 593, 601 (2010) ("*Bilski II*"); *Diamond v. Chakrabarty*, 447 U.S. 303, 308 (1980). The Supreme Court recognizes three exceptions to the statutory subject matter eligibility requirements: "laws of nature, physical phenomena, and abstract ideas." *Bilski II*, 561 U.S. at 601 (internal quotations omitted). In this regard, the Supreme Court has held that "[t]he concepts covered by these exceptions are 'part of the

[6] Although *Iqbal* describes the analysis as a "two-pronged approach," the Supreme Court observed that it is often necessary to "begin by taking note of the elements a plaintiff must plead to state a claim." 556 U.S. at 675, 679. For this reason, the Third Circuit has adopted a three-pronged approach. *See Santiago v. Warminster Twp.*, 629 F.3d 121, 130 n.7 (3d Cir. 2010); *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011).

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