

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

_____)	
REALTIME ADAPTIVE STREAMING LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 17-1520-JFB-SRF
)	
HAIVISION NETWORK VIDEO INC.,)	
)	
Defendant.)	
_____)	

**DEFENDANT HAIVISION’S RESPONSE TO PLAINTIFF’S OBJECTION
TO REPORT AND RECOMMENDATION REGARDING
DEFENDANTS’ MOTION TO DISMISS (D.I. 42)**

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I. INTRODUCTION

Magistrate Judge Fallon issued a detailed Report and Recommendation (“R&R,” D. I. 41)¹ wherein she recommends dismissal of Realtime’s allegations against Haivision regarding the five “Fallon Patents.”² The R&R found that “the Fallon [P]atents are directed to the abstract idea of encoding and decoding data, and the digital compression of data.” (D.I. 41 at 9.) As explained below, Magistrate Judge Fallon’s findings are sound and Realtime’s Objections to the R&R (D.I. 42) should be overruled.

II. ARGUMENT

a. Realtime fails to Comply with the Court’s Standing Order

The Court’s Standing Order requires that all objections “**must** include... a written statement either certifying that the objections do not raise new legal/factual arguments, or identifying the new arguments and describing the good cause for failing to previously raise the new legal/factual arguments before the Magistrate Judge.” (Standing Order at ¶5 (emphasis in original).) Realtime’s Objection does neither. Arguments raised for the first time are deemed waived. *Bukovinsky v. Pennsylvania*, 455 F. App’x 163, 166 (3d Cir. 2011); *U.S. Bank Nat’l Ass’n v. Nat’l Collegiate Student Loan Tr. 2003-1*, No. 1:16CV341, 2018 WL 4462369, at *12 (D. Del. Sep. 17, 2018).

Realtime has failed to provide any statement, let alone provide a Certification, that no new issues have been raised. Nor can it -- as Realtime has raised at least three new issues not previously

¹ Magistrate Judge Fallon also issued an R&R in the co-pending case against Netflix, where she similarly recommended a finding that four of the five Fallon Patents (the only ones asserted in that case) were also invalid under §101. (*Realtime v. Netflix*, 1-17-cv-01692, D.I. 48.) Despite the Court issuing two different R&Rs, Realtime filed a single Objection. (Compare, D.I. 41 and D.I. 49 in the Netflix case.) The arguments made by Netflix in response to Realtime’s Objection equally apply here. Haivision does not intend to unnecessarily reiterate all of those arguments and provides this Answer given the differing R&Rs.

² The five Fallon Patents asserted against Haivision are U.S. Patent Nos. 7,386,046 (“the ’046 patent”), 8,934,535 (“the ’535 patent”), 8,929,442 (“the ’442 patent”), 9,762,907 (“the ’907 patent”) and 9,769,477 (“the ’477 patent”).

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