

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

<p>REALTIME ADAPTIVE STREAMING LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>HAIVISION NETWORK VIDEO INC.,</p> <p style="text-align: center;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>C.A. No. 17-1520-CFC-SRF</p>
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**DEFENDANT HAIVISION’S RESPONSE TO PLAINTIFF’S MOTION
FOR LEAVE TO FILE AMENDED COMPLAINT**

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I. INTRODUCTION

Over six months ago, the Court correctly recommended that the Fallon Patents¹ be found to be invalid pursuant to 35 U.S.C. § 101, because 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, “R&R.”) At that time, this Court similarly recommended denying Realtime an opportunity to amend its complaint further². (D.I. 41 at 12.)

Realtime objected to the R&R arguing that dismissal of the case as to the Fallon Patents was improper. (D.I. 42.) Notably, Realtime failed to object to this Court’s recommendation denying it leave to amend the complaint. Having failed to timely object to the recommendation, Realtime’s present Motion for Leave to File Amended Complaint (D.I. 45) belatedly attempts to skirt the Court’s recommendations and as such is procedurally improper.³

Indeed, Realtime’s Motion for Leave is nothing more than the same arguments it already made to, and were rejected by, this Court. Realizing that it failed to address, let alone object to, the entirety of the Court’s recommendation, Realtime now files what is effectively a motion for reconsideration of the Court’s recommendation. Ignoring the procedural impropriety, “a motion for reconsideration should be granted sparingly... and should only be granted if the Court has patently misunderstood a party, made a decision outside the adversarial issues presented by the parties, or made an error not of reasoning but of apprehension.” *TriPlay, Inc. v. Whatsapp Inc.*,

¹ The five Fallon Patents originally 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”). In its proposed Third Amended Complaint (“TAC”), Realtime also seeks amendment to “swap out” U.S. Patent No. 8,634,462 (“the ’462 patent”) and replace it with RE46,777 (“the ’777 patent”).

² Realtime sought leave to amend the then operative complaint in footnote 21 of its Answering Brief in Opposition to Defendant’s Motion to Dismiss under FRCP 12(b)(6). (D.I. 28, p. 18.)

³ Realtime has filed a similar motion to amend in its case against Netflix. (*Realtime v. Netflix*, 1-17-cv-01692, D.I. 51.) Haivision does not intend to reiterate Netflix’s arguments and provides this Response given the differing R&Rs, motions and complaints.

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