IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

REALTIME ADAPTIVE STREAMING LLC,	)	
Plaintiff,	)	
	)	
	)	
v.	)	Civil Action No. 17-1692-CFC-SRF
	)	
NETFLIX, INC., and NETFLIX STREAMING SERVICES, INC.,	)	
	)	
	)	
Defendants.	)	

REPORT AND RECOMMENDATION

I.   INTRODUCTION

On November 21, 2017, Realtime Adaptive Streaming LLC ("Realtime") originally filed
this patent infringement action against Netflix, Inc. and Netflix Streaming Services, Inc.
(collectively, "Netflix"), asserting infringement of United States Patent Numbers 8,934,535 ("the
'535 patent"), 9,769,477 ("the '477 patent"), 9,762,907 ("the '907 patent"), and 7,386,046 ("the
'046 patent") (collectively, the "Fallon patents").[1] (D.I. 1 at ¶ 8) Additionally, Realtime asserts
Netflix's infringement of United States Patent Numbers 8,634,462 ("the '462 patent") and
9,578,298 ("the '298 patent") (collectively, the "Non-Fallon patents"). (Id.) 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. (Id. at ¶¶ 9-14) 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

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[1] The Complaint's paragraphs are numbered incorrectly. On pages 45 to 46, ¶ 95 is followed by
¶ 77 and, as a result, ¶¶ 77-95 are duplicated. (See D.I. 1 at 45-46) Citations to D.I. 1 at ¶¶ 77-
95 shall be followed by a page number or series of pages numbers in parentheses for clarity (i.e.,
See D.I. 1 at ¶ 77-95 (pg. 38-45)).

Procedure 12(b)(6) and 35 U.S.C. §101, the Non-Fallon patent claims pursuant to Federal Rule of Civil Procedure 12(b)(6), and the indirect infringement claims pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.I. 11) For the following reasons, I recommend granting-in-part and denying-in-part Netflix's motion to dismiss.

II.   BACKGROUND

A. Procedural History

On February 5, 2018, Netflix filed this pending motion to dismiss for failure to state a claim. (D.I. 11) 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. 19) On May 1, 2018, Netflix also filed a motion to transfer the present case to the Northern District of California. (D.I. 20) 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. 37)

On October 2, 2018, the court heard oral argument on the pending motion to dismiss.[2] (D.I. 42) On October 12, 2018, this court issued a Report and Recommendation denying Netflix's motion to transfer. (D.I. 44) District Judge Colm F. Connolly adopted the Report and Recommendation on November 9, 2018. (D.I. 46)

B. Related Cases

There is a related Realtime case currently pending before the court, Realtime Adaptive Streaming LLC v. Haivision Network Video Inc., C.A. No. 17-1520-CFC-SRF (the "Haivision

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[2] At oral argument, the court also heard arguments regarding a similar motion to dismiss in a related case, Realtime Adaptive Streaming LLC v. Haivision Network Video Inc., C.A. No. 17-1520-CFC-SRF. (D.I. 42; *see also* C.A. No. 17-1520-CFC-SRF, D.I. 23)

Litigation").[3] In the Haivision Litigation, Realtime asserts claims for infringement of the Fallon patents, as well as U.S. patent No. 8,929,442 ("the '442 patent"). (C.A. No. 17-1520-CFC-SRF, D.I. 1) There is a pending motion to dismiss the complaint for failure to state a claim pursuant to Rule 12(b)(6) and 35 U.S.C. § 101 filed by Haivision. (C.A. No. 17-1520-CFC-SRF, D.I. 23)

C. Patents-in-Suit

The '535 patent is titled "Systems and Methods for Video and Audio Data Storage and Distribution." (D.I. 1 at ¶ 11) Representative claim 15 recites:

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 '477 patent is titled "Video Data Compression Systems." (D.I. 1 at ¶ 14) Representative claim 1 recites:

1. A system, comprising:

A plurality of different asymmetric data compression encoders,

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[3] 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)

Wherein each asymmetric data compression encoder of the plurality of different asymmetric data compression encoders is configured to utilize one or more data compression algorithms, and

Wherein a first asymmetric data compression encoder of the plurality of different asymmetric data compression encoders is configured to compress data blocks containing video or image data at a higher data compression rate than a second asymmetric data compression encoder of the plurality of different asymmetric data compression encoders; and

One or more compressors configured to:

Determine one or more data parameters, at least one of the determined one or more data parameters relating to a throughput of a communications channel measured in bits per second; and

Select one or more asymmetric data compression encoders from among the plurality of different asymmetric data compression encoders based upon, at least in part, the determined one or more data parameters.

('477 patent, col. 20:57-21:13) The '907 patent is titled "System and Methods for Video and Audio Data Distribution." (D.I. 1 at ¶ 13) Representative claim 1 recites:

1. A system comprising:

One or more different asymmetric data compression algorithms, wherein each algorithm of the one or more different asymmetric data compression algorithms utilizes one or more asymmetric data compression routines of a plurality of different asymmetric data compression routines, wherein a first asymmetric data compression routine of the plurality of different asymmetric data compression routines is configured to produce compressed data with a higher data rate for a given data throughput than a second asymmetric data compression routine of the plurality of different asymmetric data compression routines; and

A processor configured:

To analyze one or more data parameters from one or more data blocks containing video data, wherein at least one data parameter relates to an expected or anticipated throughput of a communications channel; and

To select two or more different data compression routines from among a plurality of different data compression routines based upon, at least in part, the one or more data parameters relating to the expected or anticipated throughput of the communications channel.

('907 patent, col. 20:49-21:6) The '046 patent is titled "Bandwidth Sensitive Data Compression

and Decompression." (D.I. 1 at ¶ 9) Representative claim 1 recites:

> 1. A method comprising:
>
> Compressing data using a first compression routine providing a first compression rate, wherein the first compression routine comprises a first compression algorithm;
>
> Tracking the throughput of a data processing system to determine if the first compression rate provides a throughput that meets a predetermined throughput threshold, wherein said tracking throughput comprises tracking a number of pending requests for data transmission; and
>
> When the tracked throughput does not meet the predetermined throughput threshold, compressing data using a second compression routine providing a second compression rate that is greater than the first compression rate, to increase the throughput of the data processing system to at least the predetermined throughput level, wherein the second compression routine comprises a second compression algorithm.

('046 patent, col. 20:14-32)

III.   LEGAL STANDARD

A. Federal Pleading Standards 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); *see also Ashcroft*

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