

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

ANSWERING BRIEF OF NETFLIX, INC. AND NETFLIX STREAMING SERVICES, INC. IN OPPOSITION TO MOTION OF PLAINTIFF REALTIME ADAPTIVE STREAMING LLC FOR LEAVE TO FILE AN AMENDED COMPLAINT

OF COUNSEL:

J. David Hadden
Saina S. Shamilov
Ravi Ranganath
FENWICK & WEST LLP
801 California Street
Mountain View, CA 94041
(650) 988-8500

Todd R. Gregorian
Dargaye Churnet
Earl W. Mah
Sapna S. Mehta
FENWICK & WEST LLP
555 California Street, 12th Floor
San Francisco, CA 94104
(415) 875-2300

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MORRIS, NICHOLS, ARSHT & TUNNELL LLP
Jack B. Blumenfeld (#1014)
Brian P. Egan (#6227)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@mnat.com
began@mnat.com

Attorneys for Defendants

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NATURE AND STAGE OF THE PROCEEDINGS

This patent case has been pending since 2017, for more than a year and a half. Defendants Netflix, Inc. and Netflix Streaming Services, Inc. (collectively, “Netflix”) moved to dismiss plaintiff Realtime Adaptive Streaming LLC’s (“Realtime”) complaint on February 5, 2018 because, among other things, four of the six asserted patents claim ineligible subject matter under § 101. (D.I. 11.) On December 12, 2018, Judge Fallon issued a report concluding that those patents were invalid under § 101 and recommending that the Court grant Netflix’s motion as to those patents. (D.I. 48.) Realtime filed objections on December 26, 2018 (D.I. 49), and Netflix responded to the objections on January 9, 2019 (D.I. 50). The Court has not yet ruled on those objections. Yet now, a year and a half into the case, over a year after filing its opposition to Netflix’s motion to dismiss, and six months after filing objections to Judge Fallon’s Report and Recommendation, Realtime seeks to amend its complaint to “address” its failed claims, challenged by Netflix and rejected by Judge Fallon in the Report and Recommendation.

SUMMARY OF ARGUMENT

Now is not the appropriate time for Realtime to amend its complaint, nor would it do any good. The Court should deny Realtime’s motion for leave to file an amended complaint for at least two reasons. First, Realtime unduly delayed in seeking to amend, waiting until a year and a half after it filed its original complaint and seven months after the recommended dismissal of its claims. It offers no explanation for its belated request, which only serves to burden both the Court and Netflix by unnecessarily relitigating Netflix’s motion to dismiss. Second, Realtime’s proposed amendments cannot change Judge Fallon’s analysis and legal conclusion that the patents are ineligible under § 101. The additional allegations in Realtime’s proposed amended complaint consist of irrelevant statements, conclusory allegations, or legal argument that in many cases contradict the patents themselves. Such allegations cannot change the four corners of the

patents or Judge Fallon’s conclusion that the patents are ineligible. Realtime’s proposed amended complaint is futile and its motion for leave to amend should be denied.

STATEMENT OF FACTS

Realtime filed its complaint (D.I. 1) against Netflix on November 21, 2017 alleging infringement of six patents: four related patents with substantially identical specifications—U.S. Patent Nos. 7,386,046 (the “046 patent”), 8,934,535 (the “535 patent”), 9,762,907 (the “907 patent”), and 9,769,477 (the “477 patent”) (collectively, the “Fallon patents”)—and two others—Nos. 8,634,462 and 9,578,298. Netflix moved to dismiss Realtime’s complaint because, among other things, the Fallon patents claim unpatentable subject matter under § 101. (D.I. 11.) Realtime filed its opposition to the motion on February 20, 2018, after the Federal Circuit’s decisions in *Aatrix* and *Berkheimer*. (D.I. 14.) In its opposition, Realtime did not identify any facts that, if properly alleged in an amended complaint, could remedy the deficiencies raised in Netflix’s motion. Nor did it propose any amendments to its complaint when Judge Fallon heard argument on the motion on October 2, 2018.

On December 12, 2018, Judge Fallon issued a Report and Recommendation concluding that the Fallon patents claim ineligible subject matter and recommending that the Court grant Netflix’s motion to dismiss Realtime’s claims asserting the Fallon patents. (D.I. 48.) At step one of the *Alice* test, Judge Fallon concluded that “the Fallon patents are directed to the abstract idea of encoding and decoding data, and the digital compression of data.” (*Id.* at 10.) At step two of the *Alice* test, Judge Fallon found that Realtime’s claims did not recite an inventive concept sufficient to confer patent eligibility, particularly in light of the patents’ concession that the claimed inventions can be implemented using conventional technologies the patents did not purport to invent. (*Id.* at 23, 25, 27.) In its opposition brief and at argument, Realtime did not “identify any claim construction issues that need resolution or any facts in dispute.” (*Id.* at 11.)

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