

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

ALMONDNET, INC. and INTENT IQ, LLC,
and DATONICS LLC,

Plaintiffs,

v.

LOTAME SOLUTIONS, INC.,

Defendant.

C.A. No. 24-00376-MN

JURY TRIAL DEMANDED

**OPENING BRIEF IN SUPPORT OF DEFENDANT LOTAME SOLUTION, INC.'S
MOTION TO DISMISS ALMONDNET'S FIRST AMENDED COMPLAINT**

Dated: August 20, 2024

Susan E. Morrison (No. 4690)
Grayson P. Sundermeir (No. 6517)
FISH & RICHARDSON P.C.
222 Delaware Avenue, 17th Floor
Wilmington, DE 19899-1114
(302) 652-5070
morrison@fr.com
sundermeir@fr.com

Aamir A. Kazi
(GA Bar No. 104235)
1180 Peachtree Street, NE, 21st Floor
Atlanta, GA 30309
(404) 892-5005
kazi@fr.com

*Attorneys for Defendant
LOTAME SOLUTIONS, INC.*

TABLE OF CONTENTS

I. INTRODUCTION1

II. NATURE AND STAGE OF THE PROCEEDINGS2

III. SUMMARY OF ARGUMENT3

IV. STATEMENT OF FACTS4

V. ARGUMENT6

 A. Legal Standards.....6

 B. AlmondNet’s Mixed-and-Mashed Infringement Allegations Do Not Identify a Single Accused Instrumentality that Infringes8

 C. AlmondNet’s Indirect Infringement Claims Should Likewise be Dismissed.....11

 1. AlmondNet’s Indirect Infringement Claims Fail Because Direct Infringement Is Improperly Pleaded11

 2. AlmondNet’s Indirect Infringement Claims Fail Because AlmondNet Does Not Allege Pre-Suit Notice12

 3. AlmondNet’s Boilerplate Allegations Do Not State a Claim for Induced or Contributory Infringement13

 D. AlmondNet’s Claim for Past Damages Should be Dismissed.....15

VI. CONCLUSION.....16

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>10x Genomics, Inc. v. Celsee, Inc.</i> , No. 19-0862-CFC-SRF, 2019 WL 5595666 (D. Del. Oct. 30, 2019).....	8
<i>AlmondNet, Inc. v. Freewheel Media, Inc.</i> , No. 23-0220-MN, D.I. 1 (D. Del. Mar. 1, 2023)	4
<i>AlmondNet, Inc. v. LinkedIn Corp.</i> , No. 23-1373-MN, D.I. 1 (D. Del. Dec. 1, 2023).....	4
<i>AlmondNet, Inc. v. Oath Holdings, Inc.</i> , No. 18-943-RGA, D.I. 1 (D. Del. June 26, 2018).....	4
<i>AlmondNet, Inc. v. Oath Holdings, Inc.</i> , No. 19-247-LPS, D.I. 1 (D. Del. Mar. 30, 2016).....	4
<i>AlmondNet, Inc. v. Viant Tech. Inc.</i> , No 23-0174-MN, D.I. 1 (D. Del. Feb. 16, 2023).....	4
<i>Arctic Cat Inc. v. Bombardier Recreational Prod. Inc.</i> , 876 F.3d 1350 (Fed. Cir. 2017).....	15
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	6
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	6
<i>Boston Sci. Corp. v. Nevro Corp.</i> , 415 F. Supp. 3d 482 (D. Del. 2019).....	8
<i>CAP Co. v. McAfee, Inc.</i> , No. 14-5068-JD, 2015 WL 4734951 (N.D. Cal. Aug. 10, 2015)	3, 7
<i>Commil USA, LLC v. Cisco Sys., Inc.</i> , 575 U.S. 632 (2015).....	11
<i>Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc.</i> , 424 F.3d 1293 (Fed. Cir. 2005).....	11
<i>Crown Packaging Tech. v. Rexam Beverage Can</i> , 498 F. Supp. 2d 718 (D. Del. 2007).....	15

CTD Networks, LLC v. Google, LLC,
 No. WA-22-1042-XR, 2023 WL 5417139 (W.D. Tex. Aug. 22, 2023).....1, 3, 7, 10

Dynamic Data Techs., LLC v. Brightcove Inc.,
 No. 19-1190-CFC, 2020 WL 4192613 (D. Del. July 21, 2020).....12

Everlight Elecs. Co., Ltd. v. Bridgelux, Inc.,
 No. 17-03363-JWS, 2018 WL 5606487 (N.D. Cal. Sept. 14, 2018)13

Express Mobile, Inc. v. DreamHost LLC,
 No. 18-1173-RGA, 2019 WL 2514418 (D. Del. June 18, 2019).....16

Free Motion Fitness, Inc. v. Cybex Int'l, Inc.,
 311 F. Supp. 2d 1297 (D. Utah 2003).....7

Geovector Corp. v. Samsung Elecs. Co.,
 No. 16-2463-WHO, 2017 WL 76950 (N.D. Cal. Jan. 9, 2017).....7, 9, 10

Global-Tech Appliances, Inc. v. SEB S.A.,
 563 U.S. 754 (2011).....11

Mallinckrodt Inc. v. E-Z-Em Inc.,
 670 F. Supp. 2d 349 (D. Del. 2009).....11

MONEC Holding AG v. Motorola Mobility, Inc.,
 897 F. Supp. 2d 225 (D. Del. 2012).....14

N. Star Innovations, Inc. v. Micron Tech., Inc.,
 No. 17-0506-LPS-CJB, 2017 WL 5501489 (D. Del. Nov. 16, 2017)7, 8

Pragmatus Telecom, LLC v. Ford Motor Co.,
 No. 12-0092-RGA, 2012 WL 2700495 (D. Del. July 5, 2012)14

SIPCO, LLC v. Streetline, Inc.,
 230 F. Supp. 3d 351 (D. Del. 2017).....8

Uniloc 2017 LLC v. Apple, Inc.,
 No. 19-1904-WHO, 2019 WL 8810168 (N.D. Cal. Dec. 16, 2019).....7

Xpoint Techs., Inc. v. Microsoft Corp.,
 730 F. Supp. 2d 349 (D. Del. 2010).....13

ZapFraud, Inc. v. Barracuda Networks, Inc.,
 528 F. Supp. 3d 247 (D. Del. 2021).....12, 13

ZapFraud, Inc. v. Barracuda Networks, Inc.,
 No. 19-1687-CFC-CJB, 2020 WL 5646375 (D. Del. Sept. 22, 2020).....12

ZitoVault v. IBM,
No. 16-0962-M, 2018 WL 2971179 (N.D. Tex. Mar. 29, 2018).....7

Statutes

35 U.S.C. § 271(b)11, 13

35 U.S.C. § 287.....2

Other Authorities

Federal Rule of Civil Procedure 12(b)(6)1, 3

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.