

**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

REPLY BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

Dated: October 1, 2024

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I. INTRODUCTION

AlmondNet’s Answering Brief (D.I. 23) recharacterizes its infringement allegations by arguing, contrary to the allegations in its First Amended Complaint, that multiple different accused Lotame products are in fact one product. Its insistence that it identified a single infringing product, the Spherical Platform, is at odds with both the language of the First Amended Complaint, which defines the accused products as including Lotame’s Spherical Platform “without limitation,” and with the claim charts accompanying the First Amended Complaint, which cite to a scattershot combination of Lotame and non-Lotame products. Additionally, AlmondNet’s assertion of apparatus claims in its original Complaint are fatal to its ability to recover past damages. Finally, by dismissing its indirect infringement claims, AlmondNet is without an infringement theory for at least the ’445 Patent, and its allegations as to that patent should be dismissed for that reason as well.

II. ARGUMENT

A. AlmondNet’s Mixed-and-Matched Infringement Allegations Do Not Satisfy the Pleading Requirements

1. AlmondNet Failed to Identify An Accused Instrumentality that Meets All Claim Limitations of the Asserted Patents

AlmondNet now attempts to sweep a suite of software and products offered by Lotame into one accused instrumentality: Lotame’s Spherical Platform. (D.I. 16 at ¶¶ 10–16.) AlmondNet argues that its First Amended Complaint “expressly accused a single overall product: ‘Lotame’s Spherical Platform product and services.’” (D.I. 23 at 9.)¹ But the language of the First Amended Complaint and the accompanying claim charts belie AlmondNet’s arguments.

¹ This is an assertion notably absent from either of its Complaints, and inappropriate at this stage. *See Com. of Pa. ex rel. Zimmerman v. PepsiCo, Inc.*, 836 F.2d 173, 181 (3d Cir. 1988) (“[I]t is axiomatic that the complaint may not be amended by the briefs in opposition to a motion to dismiss.”)

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