

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

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

Plaintiffs,

v.

LIVEINTENT, INC.,

Defendant.

C.A. No. 24-00831-MN

JURY TRIAL DEMANDED

OPENING BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

Dated: December 17, 2024

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I. INTRODUCTION

AlmondNet's Amended Complaint fails to fix the defects in its Original Complaint. AlmondNet originally asserted method claims from four patents against LiveIntent. To satisfy its pleading requirement, AlmondNet was required to plead facts demonstrating LiveIntent performed all steps of the asserted claims. Although AlmondNet's allegations for each of the four patents lack merit, its allegations for two of the four ('146 and '445 patents) were particularly deficient because they did not identify a specific LiveIntent accused product or actor. AlmondNet's allegations in its Original Complaint for the '146 patent identified third parties DV360, Media Math, The Trade Desk, Verizon Media, and Xandr as performing certain functionality. And AlmondNet's allegations for the '445 patent referred to acts performed by "advertisers" and separate acts performed by Oracle. In addition, AlmondNet's broadly worded indirect infringement allegations did not disclose any viable theory.

LiveIntent moved to dismiss AlmondNet's claims of indirect infringement and direct infringement as to the '146 and '445 patents in the Original Complaint. AlmondNet did not respond LiveIntent's motion, but instead filed an Amended Complaint. With respect to the '146 patent, AlmondNet did not change its allegations, and the Amended Complaint accused the same third-party functionality. AlmondNet merely removed the express reference to DV360, Media Math, The Trade Desk, Verizon Media, and Xandr. AlmondNet similarly modified its claim chart for the '445 Patent so that it no longer expressly refers to actions by "advertisers," but its infringement theory for that patent also did not change. And AlmondNet continues to rely upon actions by "Oracle."

Finally, in an attempt to sustain a claim of indirect infringement, AlmondNet claims the filing of the Original Complaint establishes LiveIntent's pre-suit knowledge of the Asserted Patents. But the filing of the Original Complaint does not create knowledge where none existed

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