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NETFLIX, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

GOTV STREAMING, LLC,

Plaintiff,

v.

NETFLIX, INC.,

Defendant.

Case No. 2:22-cv-07556-RGK-SHK

Hon. R. Gary Klausner
Courtroom 850 – Roybal

MEMORANDUM IN SUPPORT OF NETFLIX'S RULE 50(a) MOTION FOR JUDGMENT AS A MATTER OF LAW

Date: October 19, 2023
Time: 8:30 am
Crtrm: 850

FAC Filed: November 10, 2022
Trial Date: October 17, 2023

EXHIBIT

F.3d 1351, 1359 (Fed. Cir. 2012). Moreover, even as to his own testing, Dr. Malek failed to establish that the rendering functionality came from Netflix's software, rather than third-party software.

Finally, GoTV failed to show a Netflix-owned wireless device used for internal testing with a "custom configuration" (i.e., "a configuration that determines the look and feel of the application") that is "associated with an application," and also "receiv[ed] compiled content"—all within the meaning of the '245 patent.

C. No Literal Infringement of Claim 4 of the '715 Patent

GoTV failed to prove that Netflix literally infringes method claim 4 of the '715 patent, which recites a "method of generating content that is renderable by a wireless device." (Tx. 16). GoTV needed to show that "each and every step of the method or process was performed" by Netflix. *Aristocrat Techs. Australia Pty Ltd. v. Int'l Game Tech.*, 709 F.3d 1348, 1362 (Fed. Cir. 2013). GoTV fell short on its burden in at least four ways.

First, GoTV failed to show actual performance of every element of the claim in connection with a "wireless device." It also failed to show transmission of both "compiled content specific to a first page" and "compiled content specific to a second page." GoTV's evidence on both points related to the activities of its own expert, not the real-world actions of Netflix in connection with its customers. That was legally insufficient to establish direct infringement. *See Acco Brands*, 501 F.3d at 1313. Subscriber numbers are not proof of what devices the customers own and whether content for a second page was transmitted.

Second, GoTV failed to show "identification of a custom configuration of a plurality of rendering blocks." The elements GoTV pointed to are not "a configuration that determines the look and feel of the application" as required by the Court's construction.

Third, GoTV failed to show that the "custom configuration is associated with an application." (Tx 16). The "application" required by the claims is on the server. (Day 2 Tr. 209:12-14, 216:8-9, 222:7-16.) Thus, when Dr. Malek was asked what is "the application" his infringement opinion was formed upon, Dr. Malek confirmed it was "the Netflix application that is running on th[e] servers," and not "the Netflix App" on a phone. (Day 2 Tr. 70:16-20.) But there was no proof that the alleged custom configuration identified by GoTV determined the look and feel associated with the *backend* on Netflix's servers. (Day 2 Tr. 225:9-21.)

Fourth, Dr. Malek never demonstrated that Netflix transmitted "compiled content" within the meaning of the patent, as opposed to sending information piecemeal in a series of transmissions. (Day 2 Tr. 79:6-17.) Thus, judgment of no literal infringement is also proper as to claim 4 of the '715 patent.

D. No Infringement Under the Doctrine of Equivalents

GoTV presented no evidence of infringement under the Doctrine of Equivalents (DOE) for either the '245 or '715 patents, meriting judgment of non-infringement under an equivalence theory. GoTV was required to "provide particularized testimony and linking argument as to the 'insubstantiality of the differences' between the claimed invention and the accused device or process, or with respect to the function, way, result test … to support a finding of infringement under the doctrine of equivalents." *AquaTex Indus., Inc. v. Techniche Sols*., 479 F.3d 1320, 1328 (Fed. Cir. 2007) (citation omitted). Absent any testimony or evidence on DOE, judgment of no infringement under DOE should be granted.

E. No Substantial Evidence of Entitlement to Damages.

GoTV failed to present competent evidence based on which a reasonable jury could award damages. GoTV bore the burden of proving damages. *Lucent Techs., Inc. v. Gateway, Inc*., 580 F.3d 1301, 1324 (Fed. Cir. 2009). "To properly carry this burden, the patentee must 'sufficiently [tie the expert testimony on damages] to the facts of the case.'" *Uniloc USA, Inc. v. Microsoft Corp*., 632 F.3d 1292, 1315 (Fed.