

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

DISH TECHNOLOGIES L.L.C. and SLING
TV L.L.C.

Plaintiffs,

v.

ICON HEALTH & FITNESS, INC.

Defendant.

C.A. No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs DISH Technologies L.L.C. and Sling TV L.L.C. (collectively, “DISH”) allege against Defendant ICON Health & Fitness, Inc. as follows:

PARTIES

1. Plaintiff DISH Technologies L.L.C. is a limited liability company organized and existing under the laws of the State of Colorado, with its principal place of business at 9601 South Meridian Boulevard, Englewood, Colorado 80112. It provides innovation and technology services and products to, among others, the DISH Network® satellite pay TV service operated by DISH Network L.L.C. and the Sling TV® streaming pay TV service operated by Sling TV L.L.C.

2. Plaintiff Sling TV L.L.C. is a limited liability company organized and existing under the laws of the State of Colorado, with its principal place of business at 9601 South Meridian Boulevard, Englewood, Colorado 80112. It operates the Sling TV® streaming pay TV service.

3. On information and belief, Defendant ICON Health & Fitness, Inc. (“ICON”) is a corporation existing under the laws of the State of Delaware, with its principal place of business at 1500 S. 1000 W Logan, UT 84321. This Defendant has appointed The Corporation Trust Company at 1209 Orange St., Wilmington DE 19801 as its agent for service of process.

4. On information and belief, ICON operates online streaming services through its iFit® software, which it provides on certain ICON fitness equipment and is made available for download through the Apple iTunes Store and Google Play store.

JURISDICTION AND VENUE

5. DISH asserts a claim for patent infringement against ICON arising under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over ICON for at least the following reasons: (1) ICON Health & Fitness, Inc. is incorporated in Delaware; (2) ICON has committed acts of patent infringement and contributed to and induced acts of patent infringement by others in this District; (3) ICON regularly does business or solicits business in this District; (4) ICON engages in other persistent courses of conduct and derives substantial revenue by its offering of infringing products and services and providing infringing products and services in this District; and (5) ICON has purposefully established substantial, systematic, and continuous contacts with this District and should reasonably expect to be subject to suit here by its offering of infringing products and services and providing infringing products and services in this District.

7. Venue is proper in the District of Delaware under at least 28 U.S.C. §§ 1391(b), (c) and/or 1400(b) at least because ICON Health & Fitness, Inc. is incorporated in Delaware. Additionally, on information and belief, ICON has committed acts of infringement in the State of Delaware, including but not limited to offering products or services that infringe one or more of DISH's asserted patents to customers located in Delaware and/or for use in Delaware.

THE ABR PATENTS

8. On August 2, 2016, the PTO duly and lawfully issued United States Patent No. 9,407,564 (“the ’564 Patent”), entitled “Apparatus, system, and method for adaptive-rate shifting of streaming content.” A true and correct copy of the ’564 Patent is attached as Exhibit A. Subject to the exclusive license referenced below, all rights, title, and interest in and to the ’564 Patent have been assigned to DISH Technologies L.L.C., which is the sole owner of the ’564 Patent.

9. On November 5, 2019, the PTO duly and lawfully issued United States Patent No. 10,469,554 (“the ’554 Patent”), entitled “Apparatus, system, and method for multi-bitrate content streaming.” A true and correct copy of the ’554 Patent is attached as Exhibit B. Subject to the exclusive license referenced below, all rights, title, and interest in and to the ’554 Patent have been assigned to DISH Technologies L.L.C., which is the sole owner of the ’554 Patent.

10. On November 5, 2019, the PTO duly and lawfully issued United States Patent No. 10,469,555 (“the ’555 Patent”), entitled “Apparatus, system, and method for multi-bitrate content streaming.” A true and correct copy of the ’555 Patent is attached as Exhibit C. Subject to the exclusive license referenced below, all rights, title, and interest in and to the ’555 Patent have been assigned to DISH Technologies L.L.C., which is the sole owner of the ’555 Patent.

11. On August 25, 2020, the PTO duly and lawfully issued United States Patent No. 10,757,156 (“the ’156 Patent”), entitled “Apparatus, system, and method for adaptive-rate shifting of streaming content.” A true and correct copy of the ’156 Patent is attached as Exhibit D. Subject to the exclusive license referenced below, all rights, title, and interest in and to the ’156 Patent have been assigned to DISH Technologies L.L.C., which is the sole owner of the ’156 Patent.

12. On March 16, 2021, the PTO duly and lawfully issued United States Patent No. 10,951,680 (“the ’680 Patent”), entitled “Apparatus, system, and method for multi-bitrate content

streaming.” A true and correct copy of the ’680 Patent is attached as Exhibit E. Subject to the exclusive license referenced below, all rights, title, and interest in and to the ’680 Patent have been assigned to DISH Technologies L.L.C., which is the sole owner of the ’680 Patent.

13. DISH Technologies has entered into an exclusive license with Sling TV L.L.C. granting substantial rights in the above-identified patents to Sling TV L.L.C., including the right to sue thereon.

14. Certain of Sling TV L.L.C.’s products and services practice one or more of the Asserted Patents. In compliance with 35 U.S.C. § 287(a), Sling TV L.L.C. marks its practicing products and requires its sublicensees to do the same.

15. Additionally, certain products and services offered by DISH Technologies’ affiliate DISH Network L.L.C. (“DISH Network”) also practice the Asserted Patents. DISH Network marks its practicing products and maintains a webpage identifying a listing of patents applicable to DISH Network’s products. *See Intellectual Property, DISH NETWORK, <https://www.dish.com/ip/>* (last visited Feb. 23, 2021).

16. The claimed inventions in these patents are directed to various novel aspects and improvements to adaptive bitrate streaming (“ABR”) technology. The ’564, ’554, ’555, ’156, and ’680 Patents (collectively, “the ABR Patents”) are currently in full force and effect. The patent applications underlying the ’564 and ’156 Patents are continuations of U.S. Patent Application No. 11/116,783. Each of the ’554, ’555, and ’680 Patents issued from patent applications that are continuations-in-part of U.S. Patent Application No. 11/116,783.

BACKGROUND OF THE DISPUTE

MOVE IS A PIONEER OF ADAPTIVE BITRATE TECHNOLOGY

17. MOVE Networks, Inc. (“MOVE”) was the original owner of the ABR Patents. MOVE invented and patented HTTP-based Adaptive Bitrate Streaming to improve the quality of streamed video content over the Internet. While at MOVE, inventors Drew Major, Mark Hurst, and later, David Brueck, (collectively, “the ABR Inventors”) observed that the Internet was fast becoming a preferred method for distributing live and recorded video to individuals even though content delivery over the Internet at the time was notoriously unreliable, expensive and inferior in quality compared to cable- and satellite-delivered content. To access video content online, users were left with two mediocre choices: (1) waiting for their content to download (which did not support immediate viewing of live content and often required the user to select the quality desired: LOW, MEDIUM, or HIGH, which in turn determined how long the user had to wait before viewing); or (2) streaming live or recorded content, which often was unreliable (pausing to “buffer”) or only worked at low-resolution.

18. The ABR Inventors knew that media streaming had not reached its full potential and that, through research and improvement, it was possible that streaming could rival the quality of cable and satellite delivered content. The state-of-the-art, though was unacceptable prior to the inventions disclosed in the patents-in-suit. Often during playback, the streaming technologies did a poor job selecting the video quality / resolution that the network bandwidth and reliability could support. Most commercial systems, from companies like RealNetworks, Adobe, Microsoft, or Apple, were proprietary implementations based on public Internet standards (RTP/RTSP). Common standards notwithstanding, the proprietary implementations were mutually incompatible. They were expensive to deploy by the Content Delivery Networks (“CDNs”) and required many

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