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

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| ROBOCAST, INC.,<br><br>Plaintiff,<br><br>v.<br><br>NETFLIX, INC.<br><br>Defendant. | Civil Action No. 22-305-RGA |

MEMORANDUM

Before me is Defendant's motion to dismiss for failure to state a claim. (D.I. 11). The motion has been fully briefed and I have considered the parties' briefing. (D.I. 12, 18, 19). For the reasons set forth below, Defendant's motion is GRANTED in part and DENIED in part.

## I. BACKGROUND

This is a patent infringement action. On March 7, 2022, Plaintiff Robocast filed its Complaint against Defendant Netflix, alleging direct, indirect, and willful infringement of U.S. Patent Nos. 7,155,451 ("the '451 patent"), 8,606,819 ("the '819 patent"), and 8,965,932 ("the '932 patent") (collectively, "the asserted patents"). (D.I. 1). The asserted patents relate to methods of automating the presentation of computer content. (*Id.* at 5).

## II. LEGAL STANDARD

When reviewing a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court must accept the complaint's factual allegations as true. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007). Rule 8(a) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." *Id.* at 555. The factual allegations do not have to be detailed,

but they must provide more than labels, conclusions, or a "formulaic recitation" of the claim elements. *Id.* ("Factual allegations must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)."). Moreover, there must be sufficient factual matter to state a facially plausible claim to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The facial plausibility standard is satisfied when the complaint's factual content "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* ("Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." (cleaned up)).

## III. DISCUSSION

### A. Direct Infringement

To satisfy the *Iqbal/Twombly* pleading standard in a patent case, "[s]pecific facts are not necessary." *Disc Disease Solutions Inc. v. VGH Solutions, Inc.*, 888 F.3d 1256, 1260 (Fed. Cir. 2018) (quoting *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)). A complaint need only give the defendant "fair notice of what the [infringement] claim is and the ground upon which it rests." *Id.*

Netflix contends that the Complaint has failed to provide fair notice because Robocast did not show how the accused products and features infringed. (D.I. 12 at 4-5). I agree with Robocast that no such showing is required. *Disc Disease*, the case Robocast relies upon for this point, is instructive. There, the Federal Circuit reversed a district court's dismissal of the complaint on the basis that the plaintiff had failed to "explain how Defendants' products infringe on any of Plaintiff's claims" as the complaint "merely alleges that certain of Defendants' products 'meet each and every element of at least one claim' of Plaintiff's patents." *Disc Disease*, 888 F.3d at 1260. The Federal

Circuit found that the plaintiff's allegations were sufficient under *Iqbal/Twombly*, explaining that the complaint specifically identified the accused products and alleged that those products met each and every element of at least one claim of the patents-in-suit. *Id.* These disclosures and allegations were enough to provide the defendants with "fair notice" of infringement of the asserted patents. *Id.* Just so here. In its Complaint, Robocast identifies the accused products and features—the "Netflix Internet platform" and its "automated video playlists," such as its "Autoplay playlists," "Flixtape playlists," and "all other static or dynamic video playlists provided by Netflix" (D.I. 1 at 14)—and alleges that the platform and its playlists satisfy each limitation of "at least claim 1" of each of the asserted patents. (*Id.* at 17, 19, 21).

Netflix argues that there are important facts in this case which distinguish it from *Disc Disease*. (D.I. 19 at 2-4). It posits that, unlike the plaintiff in *Disc Disease*—which specifically identified the accused products "by name and by attaching photos of the product packaging as exhibits," 888 F.3d at 1260—Robocast offers only "ambiguous" allegations (D.I. 19 at 2). Thus, says Netflix, this case is less like *Disc Disease* and more like *Promos Technologies, Inc. v. Samsung Electronics Co.*, 2018 WL 5630585 (D. Del. Oct 31, 2018). (D.I. 12 at 10). There, I held that allegations directed to unidentified products failed to meet the pleading standard because the plaintiff alleged no facts articulating how those products infringed the patents-in-suit. *Promos*, 2018 WL 5630585 at *4 ("Where an accused infringing product is not identified by name, the plaintiff must allege how the accused infringing class of products infringe the asserted patents."). Netflix urges a similar result here.

Netflix's reliance on *Promos* is inapposite. I held that the plaintiff's allegations failed to provide fair notice because they were directed to a "broad class" of unnamed products. *Id.* By

contrast, as explained above, Robocast specifically directed its allegations to the products and features it alleges have infringed (the "Netflix Internet platform" and its associated "automated playlists"). This is enough for identification purposes; Robocast need not provide, as Netflix incorrectly insists that it must, "websites, images, or other support." (D.I. 19 at 2). Because Robocast sufficiently identifies the accused products and features, it is not required to demonstrate how those products and features infringe. Even if it were so required, however, Robocast's Complaint would pass muster, as Robocast alleges facts articulating the ways in which Netflix's technology infringes the asserted patents.[1] (*See, e.g.*, D.I. 1 at 14-15).

Netflix also argues that in contrast to the "simple" mechanical device technology involved in the asserted patents in *Disc Disease*, 888 F.3d at 1260, the complex software-based technology at issue here suggests a higher threshold for providing fair notice. (D.I. 19 at 2). Netflix points to *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342 (Fed. Cir. 2021), in which the Federal Circuit recognized that "the complexity of the technology" is a factor in assessing the sufficiency of allegations. *Id.* at 1352-53. Whether the technology in this case can be classified as simple or complex is immaterial here, as I find that other aspects of Robocast's Complaint—such as the identifications and factual allegations described above—provide the "fair notice" that lies at the heart of the Rule 12(b)(6) inquiry.

[1] Robocast has not specified in its Complaint that Netflix's allegedly infringing activity occurred during the enforceable term of each of the asserted patents. Contrary to Netflix's assertions (*e.g.*, D.I. 12 at 11), this omission is not fatal to Robocast. Viewing the factual allegations in the Complaint in the "light most favorable to the plaintiff," *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 791 (3d Cir. 2016), I can reasonably infer that the allegedly infringing acts occurred during the relevant damages period of each of the asserted patents (between March 7, 2016 and August 9, 2020 for the '451 patent, and between March 7, 2016 and September 2, 2017 for the '819 and '932 patents). (*See* D.I. 18 at 10).

For these reasons, I conclude that Robocast has sufficiently stated a claim for direct infringement. I therefore DENY Netflix's motion to dismiss with respect to Robocast's claims of direct infringement, with the exception of Robocast's vicarious liability claims, which I discuss below.

**B. Vicarious Liability for Direct Infringement**

All that Robocast alleges with respect to these claims is that Netflix is "vicariously liable for … direct infringement by exercising control or direction over the practicing … of at least claim 1 of the '451 patent … conducted by an as yet unknown third party pursuant to a principal-agent relationship, a contractual relationship, a joint enterprise, or other like arrangement." (D.I. 1 at 17).

As a threshold matter, contrary to Robocast's assertions (D.I. 18 at 11), it is not "premature" to decide issues of vicarious liability for infringement under Rule 12(b)(6). Courts routinely decide the sufficiency of these sorts of claims at the motion to dismiss stage. *See, e.g.*, *Lyda v. CBS Corp.*, 838 F.3d 1331, 1339 (Fed. Cir. 2016) (joint infringement). Robocast's argument—that such decisions are generally premature "because they raise questions regarding claim construction and the infringement analysis necessarily based thereon" (D.I. 18 at 11)—is based on a misreading of *Nalco v. Chem–Mod, LLC*, 883 F.3d 1337 (Fed. Cir. 2018). The *Nalco* court declined to resolve the plaintiff's claims at the Rule 12(b)(6) stage in part because the defendant's objections to those claims "boil[ed] down to objections to [Plaintiff's] proposed claim construction." *Id.* at 1349. Here, the parties have neither identified any claim construction issues nor advanced arguments dependent on such issues. I will therefore proceed to consider the sufficiency of Robocast's vicarious liability claims.

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