

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

<p>AFFINITY LABS OF TEXAS, LLC, Plaintiff, v. NETFLIX, INC., Defendant.</p>	<p>Case No. 1:15-cv-00849-RP</p>
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DEFENDANT NETFLIX, INC.'S OPENING
CLAIM CONSTRUCTION BRIEF RE U.S. PATENT NOS. 9,094,802 AND 9,444,868

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I. INTRODUCTION

In this lawsuit, Affinity asserts that U.S. Patent Nos. 9,094,802 (“the ’802 patent”) and 9,444,868 (“the ’868 patent”), covers Hypertext Transfer Protocol adaptive bitrate (HTTP ABR) streaming – technology that dynamically adjusts the quality (or bitrate) of a video stream based on real-time detection of a user’s bandwidth and processing capacity. First Amended Complaint ¶¶ 17-22; *see also* Amended Declaration of Nader Mir (“Amd Mir Decl.”) ¶ 33. The ’802 and ’868 patents, however, rely exclusively upon the specification of an earlier patent application with no mention of “HTTP ABR” anywhere that dates back to 2000, when HTTP ABR was nascent technology and not in wide use. ’802 patent at 1:4-21; Amd Mir Decl. ¶ 33.

It is therefore not surprising that the ’802 and ’868 patent disclosures do not support a construction of the asserted claims that would cover HTTP ABR streaming. The ’802 patent Abstract describes the invention as a “method for targeted advertising.” ’802 patent at Abstract. Indeed, much of the patents’ shared specification discusses use in an Internet radio context, with the specification disclosing only a high-level generalized concept of selecting digitally stored media (*e.g.*, audio or video) files for transmission to and playback on an electronic device. *E.g.* ’802 patent at 2:56-67. It does not include any mention of the terms “bitrate,” “adaptive bitrate,” “ABR,” “Hypertext Transfer Protocol,” or “HTTP.” It does not explain how to format media or adjust the quality of a video stream in real-time. Amd Mir Decl. ¶¶ 32, 47. It does not explain how to configure a computer to transmit a video stream in a manner to ensure uninterrupted playback. *Id.* ¶ 68. Nor does it disclose any specific programming, system logic, or algorithms used to accomplish these feats. *Id.* ¶¶ 72.

But these are all elements specifically required by the asserted claims of the ’802 and ’868 patents. More than a decade after filing its specification, and after HTTP ABR was widely

adopted, Affinity drafted the asserted claims to try to cover a technology it did not invent, leaving the asserted claims divorced from the teachings in the specification. As a result, the disputed terms of the '802 and '868 patent claims fall into one of three claim construction categories. The first category covers three terms that must be construed consistent with how they are used in the '802 and '868 patent disclosures, not based on what Affinity now seeks to cover in this litigation. The second includes the three terms that fail to give clear notice of what is being claimed, using ambiguous language that the specification fails to shed light on. The third category encompasses five terms that recite requirements based on the function they perform. Yet, the specification fails to disclose any structures or algorithms for performing such functions.

Therefore, in light of the teachings in the specification (or lack thereof), the disputed terms of the '802 and '868 patents are limited to basic transmission of audio and video files that either have nothing to do with HTTP ABR streaming or are indefinite. Accordingly, Netflix respectfully requests the Court to adopt its proposed constructions as set forth below in this brief.

II. BACKGROUND

A. The Specification of the '802 and '868 Patents

The '802 patent, entitled “System and Method to Communicate Targeted Information,” was filed in January 2014 and claims priority to an application filed in March 2000. *See* '802 patent. The Abstract states that the '802 patent is directed to a method for sending targeted advertising to a portable device. *Id.* at Abstract. The '868 patent is entitled “System to Communicate Media.” It was filed June 23, 2015 and claims priority to the same application from March 2000. *See* '868 patent.

Other than the Abstract, the '802 and '868 patents share the same specification, which starts with a description of an Internet radio system that can be associated with an automobile audio system. '802 patent at 2:56-3:17. At a high level, the specification describes a system and

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