United States District Court
Western District of Texas
Austin Division

Affinity Labs of Texas, LLC, Plaintiff, v. Netflix, Inc. Defendant.	)	Case No. 1:15-cv-00849-RP **Jury Trial Demanded**

First Amended Complaint for Patent Infringement

Plaintiff Affinity Labs of Texas, LLC (Affinity Labs) files this First Amended Complaint against Defendant Netflix, Inc. (Netflix) and alleges as follows:

Parties

1. Plaintiff Affinity Labs is a Texas limited liability company having offices at 31884 RR 12, Dripping Springs, TX 78620.

2. Defendant Netflix, Inc. is a Delaware corporation with a principal office located at 100 Winchester Circle, Los Gatos, CA 95032. Netflix is registered to do business in and actively engages in business within the State of Texas, and maintains an agent for service of process at National Registered Agents, Inc., 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136.

Jurisdiction

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the federal patent statutes, 35 U.S.C. §§ 271 and 281-285.

4. This Court has general and specific personal jurisdiction over Netflix. Netflix has committed and continues to commit acts giving rise to this action within Texas and within this judicial district and Netflix has established minimum contacts within the forum such that the exercise of jurisdiction over Netflix would not offend traditional notions of fair play and substantial justice. For example, Netflix has committed and continues to commit acts of patent infringement in this judicial district, as set forth below. In conducting its business in Texas and this judicial district, Netflix derives substantial revenue from its patent infringement.

Venue

5. Venue in the Western District of Texas is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because Netflix has committed acts within this judicial district giving rise to this action, and Netflix has and continues to conduct business in this judicial district, including one or more acts of using, selling, and offering to sell its Netflix on-demand Internet streaming media service that constitutes patent infringement in this judicial district, and providing service and support to Netflix's customers in this judicial district.

6. On information and belief, Netflix operates distribution and shipping centers within the state of Texas and this judicial district, including in Austin, Houston, San Antonio, and Dallas, TX.

7. Venue in the Western District of Texas is also proper because Affinity Labs is headquartered in this judicial district in Dripping Springs, Texas.

8. Venue in the Western District of Texas is also proper because the majority of Affinity Labs' documents and relevant evidence is located at Affinity Labs' headquarters within this judicial district and numerous witnesses are also located within this judicial district.

9. Venue in the Western District of Texas is also proper because Affinity Labs is organized and governed by the limited liability company laws of Texas and is subject to taxes in Texas. Affinity Labs maintains a registered agent for service of process in Texas.

10. Venue in the Western District of Texas is also proper because of judicial economy. The Honorable Judge Lee Yeakel in this judicial district previously presided over *Affinity Labs of Texas, LLC v. Clear Channel Broadcasting*, C.A. No. A-12-CV-205-LY, involving another Affinity Labs patent, United States Patent No. 7,970,379, which is in the same patent family sharing the same specification as the Asserted Patent in this matter. In the previous case, Judge Yeakel conducted a fully-briefed claim construction hearing and issued a claim construction order on this related technology.

Background

11. Affinity Labs was founded in 2008 by Russell White and Harlie Frost.

12. Russell White is a successful entrepreneur and inventor with over 30 issued patents owned by Affinity Labs, Apple, AT&T, and others. Mr. White grew up in Houston, Texas, and has an undergraduate degree in mechanical engineering from Texas A&M. Mr. White also graduated from the University of Temple Law School, which he attended at night while working full time as an engineer for The Lincoln Electric Company. After

earning his law degree, Mr. White moved to Austin and co-founded SBC Knowledge Ventures, an entity within AT&T.

13. Mr. White is a prolific inventor listed on at least thirty-four separate United States patents.

14. On March 28, 2000, Mr. White and Kevin R. Imes filed a detailed patent application, No. 09/537,812 (the '812 application) with the United States Patent and Trademark Office (PTO).

15. The '812 application broadly addressed the problem of accessing, managing, and delivering digital audio and video content. In doing so, the '812 application disclosed a number of inventions and defined, for the first time, what is now a ubiquitous digital media ecosystem. These inventions laid the foundation for a revolution in streaming technology that is responsible for the current transformation in how individuals consume media.

16. For instance, according to Netflix's Fourth Quarter 2015 Letter to Shareholders regarding its quarterly earnings dated January 19, 2016, Netflix accounted for 37% of North American downstream Internet traffic in 2015 during peak download times, streaming 42.5 billion hours during the year.

17. More particularly, the inventions detailed in the '812 application and claimed in the '802 patent underpin the streaming technology known generally as Hypertext Transfer Protocol adaptive bitrate (HTTP ABR) streaming. HTTP ABR streaming is now ubiquitously utilized among content providers—including Netflix—to stream video to users' electronic devices.

18. HTTP ABR streaming technology dynamically detects local bandwidth and CPU conditions (for example, how fast data in a buffer is being processed) and seamlessly

switches the video quality of media files that a player receives. Users with a fast network connection can experience higher quality videos than users with slower network connections, while both users enjoy a seamless, uninterrupted streaming video experience.

19. Additionally, HTTP ABR streaming technology uses the hypertext transfer protocol (HTTP). Since the Internet was built on HTTP, it is much easier and cheaper to serve streaming data over this protocol as opposed to specialized streaming protocols (i.e., Real Time Streaming Protocol, Microsoft Media Server, and Real Time Messaging Protocol, among others) as was typically the case prior to 2008.

20. In HTTP ABR streaming, the video/audio source is cut into many short segments ("chunks") that are formatted for delivery. The video/audio is received by the user's device as a series of downloads of these segments or chunks. A playlist file that is sent to the user's device at the inception of streaming includes a list of network locations, or URLs, that tell the user's device where and in what order the user's device should request the segments of the video/audio. The "adaptive" part of the technology is achieved by formatting the video/audio source into multiple bitrate files, generating segments of various sizes of the video. The user's device can then choose between the segments of different sizes based upon the device's current network connection or the device's CPU performance.

21. Variable network connection speeds can be illustrated where a mobile user traveling in a car connects to different networks with variable data transmission rates during the same media stream. For example, a child may request delivery of a movie or television show while sitting in the back of the family's car waiting to start a family road trip. The media delivery begins when the requesting device is still connected to a home Wi-Fi network connection. In the middle of the stream, however, the car starts up and backs out of

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