

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

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Lead Case No. 2:23-cv-00059-JRG
Member Case No. 2:23-cv-00062-JRG

**DEFENDANTS' OBJECTIONS TO REPORT AND RECOMMENDATION GRANTING
SUMMARY JUDGMENT OF PATENT VALIDITY UNDER 35 USC § 101**

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Pursuant to Federal Rule of Civil Procedure 72(b) and Local Rule CV-72(c), Defendants respectfully object to Magistrate Judge Payne’s report and recommendation (Dkt. 240, hereinafter “R&R”) to grant Touchstream’s motion for summary judgment of validity (Dkt. 88) and deny Defendants’ motion for summary judgment of invalidity (Dkt. 86). This Court “must determine de novo any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3). The R&R erred by concluding that the Asserted Claims are not directed to an abstract idea and ending the patent eligibility analysis at *Alice* Step 1.

I. The Asserted Claims Are Directed To An Abstract Idea At *Alice* Step 1

The Asserted Claims are directed to the abstract idea of controlling content on a display device (e.g., a television) using a mobile device (e.g., a mobile phone). Both of Touchstream’s own experts agree that the Asserted Patents¹ are directed to “methods for controlling, by a personal computing device [e.g., a mobile phone], content on a display device, by way of a server system.” Dkt. 86 at 2. In other words, a phone passes messages to the television—through an intermediary server—to control playback of video on the television. ’934 Patent claim 17 is representative:²

¹ The Asserted Patents are U.S. Patent Nos. 8,356,251 (the “’251 Patent”), 11,048,751 (the “’751 Patent”), and 11,086,934 (the “’934 Patent”). The Asserted Claims are claims 1 and 5 (Comcast) and 1 and 7 (Charter) of the ’251 Patent; claims 12 and 14 (Comcast) and 12 and 13 (Charter) of the ’751 Patent; and claims 17, 18, and 19 (Comcast) and 17, 18, and 20 (Charter) of the ’934 Patent.

² The R&R notes Touchstream’s argument that “Defendants have provided no justification for treating [claim 17 of the ’934 Patent] as representative.” R&R n.1. Defendants did in fact separately explain why all the other Asserted Claims are invalid. Dkt. 86 at 13-22. In any event, the R&R did not find any of the other Asserted Claims to be patentably distinct from claim 17. R&R 7 (finding that the other Asserted Claims “are patent eligible at step one” for “the same reason as” claim 17).

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