IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VIDEOLABS, INC. and VL COLLECTIVE IP LLC, Plaintiffs, v. NETFLIX INC., Defendant.	)))))))))	C.A. No. 22-229 (CFC)

DEFENDANT NETFLIX INC.'S OPENING BRIEF IN SUPPORT OF ITS PARTIAL MOTION TO DISMISS

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
Jack B. Blumenfeld (#1014)
Jennifer Ying (#5550)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@morrisnichols.com
jying@morrisnichols.com

Attorneys for Defendant Netflix Inc.

OF COUNSEL:

Indranil Mukerji
Stephen A. Marshall
Linda Chang
Christopher Hong
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, DC 20006-1238
(202) 303-1000

Gabrielle K. Antonello
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019-6099
(212) 728-8000

June 10, 2022

TABLE OF CONTENTS

Page

I. NATURE AND STAGE OF PROCEEDINGS 1

II. SUMMARY 1

III. STATEMENT OF FACTS 4

A. The ’790 Patent 4

B. The ’559 Patent 5

C. The ’794 Patent 6

D. VideoLabs’ Indirect and Willful Infringement Allegations 7

IV. LEGAL STANDARD 9

A. Section 101 Patent Ineligibility Standard 9

B. Indirect and Willful Infringement Pleading Requirements 10

V. ARGUMENT 11

A. The Claims of the ’790 Patent Are Invalid 11

1. Claim 2 Is Representative 11

2. *Alice* Step One: The ’790 Patent Is Directed to an Abstract Idea 12

3. *Alice* Step Two: The ’790 Patent Does Not Contain an Inventive Concept 13

B. The Claims of the ’559 Patent Are Invalid 14

1. Claim 1 Is Representative 14

2. *Alice* Step One: The ’559 Patent Is Directed to an Abstract Idea 15

3. *Alice* Step Two: The ’559 Patent Does Not Contain an Inventive Concept 16

C. The Claims of the ’794 Patent Are Invalid 17

1. Claim 1 Is Representative 17

2. *Alice* Step One: The ’794 Patent Is Directed to an Abstract Idea 18

3. *Alice* Step Two: The ’794 Patent Does Not Contain an Inventive Concept 19

D. The Complaint Fails to State a Claim for Indirect and Willful Infringement.....20

VI. CONCLUSION.....22

TABLE OF AUTHORITIES

Cases **Page(s)**

Adaptive Streaming Inc. v. Netflix, Inc.,
836 F. App'x 900 (Fed. Cir. 2020) 15

Affinity Labs of Tex., LLC v. Amazon.com Inc.,
838 F.3d 1266 (Fed. Cir. 2016) 12, 13, 16

Alice Corp. Pty. Ltd. v. CLS Bank International,
573 U.S. 208 (2014).....*passim*

Ashcroft v. Iqbal,
556 U.S. 662 (2009).....9

B# on Demand LLC v. Spotify Tech. S.A.,
484 F. Supp. 3d 188 (D. Del. 2020).....9

Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.),
687 F.3d 1266 (Fed. Cir. 2012) 11, 15

Berkheimer v. HP Inc.,
890 F.3d 1369 (Fed. Cir. 2018) 3

Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.,
776 F.3d 1343 (Fed. Cir. 2014) 15

Dropbox, Inc. v. Synchronoss Techs., Inc.,
815 F. App'x 529 (Fed. Cir. 2020) 18, 19

Elec. Power Grp., LLC v. Alstom S.A.,
830 F.3d 1350 (Fed. Cir. 2016) .....*passim*

Epic IP LLC v. Backblaze, Inc.,
351 F. Supp. 3d 733 (D. Del. 2018).....13

Express Mobile, Inc. v. Squarespace, Inc.,
C.A. No. 20-1163-RGA, 2021 WL 3772040 (D. Del. Aug. 25,
2021) 20

Fast 101 Pty Ltd. v. Citigroup Inc.,
424 F. Supp. 3d 385 (D. Del. 2020), *aff'd*, No. 2020-1458, 2020 WL 6947911 (Fed. Cir. Nov. 25, 2020) 10

Free Stream Media Corp. v. Alphonso Inc.,
996 F.3d 1355 (Fed. Cir. 2021) 15, 16

Helios Streaming, LLC v. Vudu, Inc.,
C.A. 19-1792-CFC/SRF, 2020 WL 3167641 (D. Del. June 15, 2020) 21

iLife Techs., Inc. v. Nintendo of Am., Inc.,
839 F. App'x 534 (Fed. Cir. 2021) 12

In re Abel,
838 F. App'x 558 (Fed. Cir. 2021) 12

In re Morsa,
809 F. App'x 913 (Fed. Cir. 2020) 12

In re TLI Commc'ns LLC Patent Litig.,
823 F.3d 607 (Fed. Cir. 2016) 16

Intellectual Ventures I LLC v. Capital One Bank (USA),
792 F.3d 1363 (Fed. Cir. 2015) 12

Intellectual Ventures I LLC v. Erie Indem. Co.,
200 F. Supp. 3d 565 (W.D. Pa. 2016), *aff'd*, 711 F. App'x 1012 (Fed. Cir. 2017).....17

Intellectual Ventures I LLC v. Erie Indem. Co.,
850 F.3d 1315 (Fed. Cir. 2017) 13

Interval Licensing LLC v. AOL, Inc.,
896 F.3d 1335 (Fed. Cir. 2018) 16

Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc.,
566 U.S. 66 (2012).....18

PersonalWeb Techs. LLC v. Google LLC,
8 F.4th 1310 (Fed. Cir. 2021) 13

RecogniCorp v. Nintendo,
855 F.3d 1322 (Fed. Cir. 2017) 10

SAP Am., Inc. v. InvestPic, LLC,
898 F.3d 1161 (Fed. Cir. 2018) 14

Trading Techs. Int'l, Inc. v. IBG LLC,
921 F.3d 1084 (Fed. Cir. 2019) 12

Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC,
874 F.3d 1329 (Fed. Cir. 2017) 15, 16

VideoShare, LLC v. Google, Inc.,
695 F. App'x 577 (Fed. Cir. 2017) 18, 19

VideoShare, LLC v. Google, Inc.,
No. 13-cv-990 (GMS), 2016 WL 4137524 (D. Del. Aug. 2, 2016),
aff'd, 695 F. App'x 577 (Fed. Cir. 2017) 19

Wrinkl, Inc. v. Facebook, Inc.,
C.A. No. 20-1345, 2021 WL 4477022 (D. Del. Sept. 30, 2021).....21

ZapFraud, Inc. v. Barracuda Networks, Inc.,
528 F. Supp. 3d 247 (D. Del. 2021).....11, 20, 21

Statutes

35 U.S.C. § 101 .....*passim*

Rules

Fed. R. Civ. P. 12(b)(6).....1, 9

I. NATURE AND STAGE OF PROCEEDINGS

Plaintiffs ("VideoLabs") sued Netflix on February 23, 2022, asserting direct, indirect, and willful infringement of U.S. Patent Nos. 7,233,790 ("the '790 patent"), 7,440,559 ("the '559 patent"), and 8,139,878 ("the '878 patent"). On May 6, VideoLabs amended its complaint to similarly add a claim for direct, indirect, and willful infringement of U.S. Patent No. 8,605,794 ("the '794 patent"). D.I. 11. Pursuant to Fed. R. Civ. P. 12(b)(6), Netflix moves to dismiss Counts II-IV of the amended complaint for lack of patentable subject matter, and Counts I-IV regarding indirect and willful infringement.

II. SUMMARY

This lawsuit is yet another attempt[1] by VideoLabs to monetize certain video technology patents. VideoLabs itself is a failed patent licensing pool, and has never created or commercialized any patented technology. Accordingly, it takes pains to wrap itself in the reputations of the prior patent owners; but the fact that those companies divested of these patents speaks volumes as to the patents' true merits—or lack thereof.

[1] In the past year, VideoLabs has filed four other cases against Meta (D. Del.), Dell (W.D. Tex.), and Amazon (W.D. Tex.); and asserted infringement counterclaims in a fifth case brought by Starz Entertainment LLC (D. Del.). Four of the cases involves at least one of the patents-in-suit here.

The problems with VideoLabs' allegations against Netflix are myriad. Netflix addresses the most glaring deficiencies by moving to dismiss (1) three of the asserted patents for lack of patentable subject matter under 35 U.S.C. § 101; and (2) VideoLabs' allegations of indirect and willful patent infringement.

Section 101. The'790 patent, the '559 patent, and the '794 patent lack any inventive concept,[2] and therefore fail the two-prong eligibility test under *Alice Corp. Pty. Ltd. v. CLS Bank International*, 573 U.S. 208, 217-18 (2014), handed down after the patents issued.

First, the patents are directed to unremarkable abstract ideas of transmission and manipulation of data. The '790 patent claims the idea of cataloging content based on device capabilities, the '559 patent claims controlling content flow based on status information, and the '794 patent claims synchronizing sequential audio and video. *Second*, the patents do not add any inventive concepts to the abstract ideas. *See Alice*, 573 U.S. at 217-18. Instead, the specifications concede that the claimed components and techniques are conventional. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016). Thus, under any plausible reading, the patents fail to recite patent-eligible subject matter.

[2] Starz's § 101 motion to dismiss VideoLabs' infringement counterclaims is pending. *Starz Ent., LLC v. VL Collective IP LLC and VideoLabs Inc.*, No. 21-1448-JLH (D. Del.), D.I. 19, 20.

The § 101 issue is properly resolved on a motion to dismiss here because no discovery or claim construction is required to do so; the express language of the patents confirm that the claims are directed at abstract ideas and contain no inventive concepts. *See Berkheimer v. HP Inc.*, 890 F.3d 1369, 1371 (Fed. Cir. 2018) ("In a situation where the specification admits the additional claim elements are well-understood, routine, and conventional, it will be difficult, if not impossible, for a patentee to show a genuine dispute."). Thus, Counts II-IV should be dismissed.

Indirect and Willful Infringement. The patentability problems may explain why VideoLabs first identified the patents to Netflix at 11:55 PM the night before it sued. VideoLabs never communicated that Netflix infringed any specific patent before then. Nor did it, until that last minute communication, identify a single act by Netflix that allegedly contributed to or induced infringement. Both indirect infringement and willful patent infringement require knowledge of the patents and of the alleged infringement. VideoLabs' notification, at five minutes to midnight, did not provide that required notice,[3] rendering its indirect and willful infringement allegations ripe for dismissal.

[3] For the newly added '794 patent, VideoLabs failed to provide any notice of infringement until it filed its amended complaint.

III. STATEMENT OF FACTS

A. The ’790 Patent

The ’790 patent catalogs content for mobile devices based on the capabilities of a wireless device. *See* ’790 patent, Abstract. The product catalog contains “a description of the items of content” and “a reference to each implementation” corresponding to a different set of device capabilities. *Id*. at Cl. 2. The claims require “selecting a portion of catalog to be presented to the subscriber, based on device capabilities of the wireless device used by the subscriber,” and “presenting the selected portion.”

The patent fails to describe any specific way to maintain a product catalog, or to select a portion of the product catalog based on device capabilities. ’790 patent at 2:14-17. Instead, it describes the supposedly inventive aspects as generically “providing access to content on wireless devices” with content provisioned for a particular wireless service based on the device’s capabilities, *see id*. at 2:49-59, and keeping an associated product catalog, *id*. at 2:60-67. The drawings add little more, largely comprising high-level architectural arrangements reflecting the written description.

The claimed product catalog involves operating a black box “download manager” with a black box “product manager” built on conventional hardware. ’790 patent at 6:46-52. The specification states that the “software architecture (i.e., the

download manager) can be implemented in one or more conventional server-class computer systems." *Id.* at 14:5-8. While "numerous possible specific physical arrangements of hardware components" can be used, "***details of such arrangements are not germane to the present invention*** and are well within the knowledge of those skilled in the art." *Id*. at 14:12-16 (emphasis added). The claims do not recite more than the abstract ideas implemented by off-the-shelf, prior art components invoked by the specification. *Id.* at 14:5-7; *see also* 14:10-16; Fig. 14.

B. The '559 Patent

The '559 patent controls the flow of multimedia content from a server to a terminal based on the terminal's status information (such as user preferences, capabilities of the terminal, and/or previous content stored by the terminal) and the server's status. '559 patent, Abstract, Cl. 1. Claim 1 is directed to a generic processor that is configured to (1) "receive, from a terminal . . . a content status including terminal status information," (2) "receive server status information," and (3) "send, to the terminal, a response to the content status." In response to the status, the terminal may be instructed to perform one or more actions, such as deleting or downloading content. *Id*. at Cls. 2-6. The content flow manager, which is merely described as "capable of controlling the flow of content," comprises any number of conventional components, such as a generic processor, firmware, or hardware. *Id*.

at 11:31-40; Fig. 3. The specification promises that the invention can be implemented with any "conventional Web browser." *Id*. at 10:33-44.

C. The '794 Patent

The '794 patent sends segments of information in chronological fashion, and synchronizes the segments (*e.g.*, syncing video to audio) according to a predefinable assignment rule—essentially numbers assigned to the various segments.

The "Summary" (of the invention) describes "enabl[ing] content-related first and second data segments to be synchronized in a simple and standard-compliant manner." '794 patent, at 2:22-27. It does so when "first and second data segments [are] output in each case sequentially according to their chronological sequence in such a way that, based on a predefinable assignment rule for the first and second data segments, each second data segment will be output together with an associated first data segment." *Id.* at 2:31-35. There is little concrete beyond this: it describes possible ways of forming the assignment rule, having the first and second data segments be encoded using existing standards, and the possibility of using a "synchronization module" to accomplish these steps (*id.* at 2:36-3:39). *See also, e.g.*, *id*. at Abstract, Cl. 1; *id.* at 3:67-4:14.

The claims reflect this. Claim 1 requires: "sequentially outputting, by a device for synchronizing content-related data, . . . according to their chronological sequence" and (2) "each of the content-related second data segments is output

together with an associated one of the content-related first data segments on the basis of an assignment rule." Thus, for example, where "one data segment contains the word 'Good' and a further data segment the word 'Morning,' [] the data segment containing 'Good' is output first, and then the segment containing 'Morning'" by using a chronological sequence. *Id*. at 4:54-60.

There is no new technical solution to a technical problem in the '794 patent. It posits synchronizing video and audio streams that are compressed using pre-existing standards, *id*. at 3:67-4:8, and then describes standard data encoding/decoding formats for two example data files, *id.* at 4:9-41. *See also id.* at 6:42-7:20. It synchronizes the two data segments, using two possible forms, both of which are merely numbers used to assign a sequence to the data segments. *Id.* at 5:35-6:42. The specification describes that the "predefinable assignment rule can be described ***merely by specification of the number***," *id*. at 2:51-52 (emphasis added), meaning the segments may be numbered in order and referred to by a number. To do so, claim 1 recites a generic "device" that sequentially transmits content-related data using an assignment rule. *See also id.* at Abstract, 2:28-35, 4:42-53.

D. VideoLabs' Indirect and Willful Infringement Allegations

The amended complaint references communications between VideoLabs and Netflix that, according to VideoLabs, support Netflix's knowledge of the patents. D.I. 11, ¶¶ 112-114, 147-149, 175-177, 206-209. This is simply wrong. VideoLabs

and Netflix discussed VideoLabs' patent licensing pool, which ironically, VideoLabs touted as the antidote to patent litigation in this space. D.I. 11, Ex. 47. Despite the lofty rhetoric, VideoLabs rushed to file this action with less than 24-hours of pre-suit notice and after only the barest attempt to resolve its claims. As the parties' correspondence makes clear, Netflix had no knowledge of the originally asserted patents until the night before VideoLabs filed this action.

Beginning in March 2021, Netflix and VideoLabs discussed a confidentiality and standstill agreement to allow the parties to engage in licensing discussions in good faith, without the threat of imminent litigation. D.I. 11, Ex. 50. Those discussions ended on July 27, 2021, without any substantive attempt at negotiating a licensing agreement, when VideoLabs refused to enter into a standstill agreement. *Id*. And, despite Netflix's invitation to VideoLabs to share non-confidential information (such as patent numbers), VideoLabs provided nothing further.

Netflix heard nothing from VideoLabs until—more than six months later—VideoLabs sent Netflix an e-mail at 11:55 PM on February 22, 2022, accusing Netflix, for the first time, of patent infringement. VideoLabs then commenced this action just hours later. *See* D.I. 1. That late night e-mail could not have plausibly given Netflix any opportunity to investigate VideoLabs' vague infringement allegations prior to being sued hours later.

Tacitly acknowledging the lack of notice, VideoLabs also asserts that Netflix had notice "through filing of the Complaint . . . and the filing of this First Amended Complaint," or that Netflix was willfully blind. D.I. 11, ¶¶ 113-114, 148-149, 176-177, 208-209.

IV. LEGAL STANDARD

A complaint should be dismissed under Rule 12(b)(6) if it does not contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations and citation omitted). The court need not credit "bare assertions," "bald allegations," or other "conclusory statements." *Id.* at 679-81.

A. Section 101 Patent Ineligibility Standard

The Section 101 inquiry is properly resolved at the pleadings stage "if it is apparent from the face of the patent that the asserted claims are not directed to eligible subject matter." *B# on Demand LLC v. Spotify Tech. S.A.*, 484 F. Supp. 3d 188, 192 (D. Del. 2020) (internal citation omitted). In *Alice*, the Supreme Court articulated the two-step test for addressing challenges to claims as "abstract ideas." First, the court determines whether the claims "are directed to a patent-ineligible concept," such as an abstract idea. *Alice*, 573 U.S. at 217-18. "[G]eneralized steps to be performed on a computer using conventional computer activity are abstract."

RecogniCorp v. Nintendo, 855 F.3d 1322, 1326 (Fed. Cir. 2017) (internal citation and quotation omitted).

Second, if the claims are for an abstract idea, courts then examine whether the claims include an "'inventive concept'—*i.e.*, an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself." *Alice*, 573 U.S. at 217-18 (citation omitted). The additional elements required in step two exclude "conventional steps, specified at a high level of generality[.]" *Id.* at 222. Generic computer implementation of an abstract idea is insufficient to provide the requisite "additional elements." *Id.* at 222-24.

Under *Alice*, when multiple claims are substantially similar, it is enough to conduct this two-step analysis on a representative claim. *Id.* at 224-26. Analyzing a representative claim is appropriate when the claims are directed to the "same concept" and the dependent claims "offer only minor, nontechnical variations." *Fast 101 Pty Ltd. v. Citigroup Inc.*, 424 F. Supp. 3d 385, 387-88 (D. Del. 2020), *aff'd*, No. 2020-1458, 2020 WL 6947911 (Fed. Cir. Nov. 25, 2020).

B. Indirect and Willful Infringement Pleading Requirements

To plead indirect infringement, a plaintiff must allege facts plausibly showing that as of the time of the claim's filing, "the defendant (1) knew of the existence of the asserted patent and (2) knew that a third party's acts constituted infringement of

the patent." *ZapFraud, Inc. v. Barracuda Networks, Inc.*, 528 F. Supp. 3d 247, 249 (D. Del. 2021) (citations omitted). "Claims for enhanced damages based on willful infringement similarly require proof that the defendant knew about the asserted patents and knew or should have known that its conduct amounted to infringement of those patents." *Id.* A party's post-suit knowledge of a complaint cannot sustain a claim for indirect or willful infringement. *Id.* at 250-51.

V. ARGUMENT

A. The Claims of the '790 Patent Are Invalid

The '790 patent claims are for the abstract idea of cataloging and presenting a selected portion of the catalog based on device capabilities, which is akin to a library keeping multiple language translations of a book based on languages spoken by its patrons. None of the claims contains an "inventive concept" because, as the '790 patent specification concedes, the purported solution uses generic components and routine steps.

1. Claim 2 Is Representative

Claim 2 is representative because it, like all of the claims, is directed to the same abstract idea of cataloging, only describes the end-result, and fails to provide any details as to how to implement it. Further, all of the claims describe the same invention and only change the ***form*** of the claim language. *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.)*, 687 F.3d 1266, 1277 (Fed. Cir. 2012) (holding when the only difference between claims is the form in which they are

drafted, it is appropriate to treat them "as equivalent for purposes of patent eligibility under § 101"). None of the dependent claims adds any technological improvements that would affect the *Alice* analysis.

2. *Alice* Step One: The '790 Patent Is Directed to an Abstract Idea

Considered as a whole, the claims of the '790 patent merely recite the abstract idea of cataloging content and tailoring content based on device capabilities. The language of representative claim 2 amounts to transmitting and manipulating information, which is the sort of activity that has repeatedly been held to be an abstract idea. *See, e.g.*, *Elec. Power Grp.*, 830 F.3d at 1353-54; *In re Abel*, 838 F. App'x 558, 560 (Fed. Cir. 2021); *In re Morsa*, 809 F. App'x 913, 915, 917 (Fed. Cir. 2020); *iLife Techs., Inc. v. Nintendo of Am., Inc.*, 839 F. App'x 534, 536 (Fed. Cir. 2021); *Trading Techs. Int'l, Inc. v. IBG LLC*, 921 F.3d 1084, 1093 (Fed. Cir. 2019).

"[T]ailoring of content based on information about the user . . . is an abstract idea that is as old as providing different newspaper inserts for different neighborhoods." *Affinity Labs of Tex., LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1271 (Fed. Cir. 2016); *see also Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369 (Fed. Cir. 2015) ("customizing information based on . . . information known about the user" is abstract). Claim 2 is analogous to the *Affinity Labs* claim, which recited "a network based media managing system that maintains a library of content that a given user has a right to access and a customized

user interface page for the given user." 838 F.3d at 1267. There, the court explained that tailoring content based on the capabilities of a user's device is abstract; that is precisely what the '790 patent claims. *Id*. at 1271.

The recitation of a catalog that contains descriptions of content items and associated references is also abstract. For example, the claims relating to searching a "database using an index," in which "every record in the database is associated with one or more descriptive terms" organized using category tags for "grouping of similar terms" and "domain tags" for "grouping of similar categories," are directed to an abstract idea. *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1326-27 (Fed. Cir. 2017); *see also PersonalWeb Techs. LLC v. Google LLC*, 8 F.4th 1310, 1313 (Fed. Cir. 2021) (holding ineligible claims that recited "content-based identifiers to control access to data").

Thus, representative claim 2 is directed to a patent-ineligible abstract idea.

3. *Alice* Step Two: The '790 Patent Does Not Contain an Inventive Concept

Claim 2 also fails to recite how the desired result of presenting a selected portion of the product catalog to the subscriber is achieved. *See Epic IP LLC v. Backblaze, Inc.*, 351 F. Supp. 3d 733, 740 (D. Del. 2018) (claims that "recite the concept, but not the way to implement it," are ineligible for patenting). The claims do not recite significantly more than the abstract idea of cataloging content because they merely use what the specification admits are generic components. '790 patent

at 14:5-8; 7:7-9; *see Alice*, 573 U.S. at 222; *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1170 (Fed. Cir. 2018) (carrying out improved mathematical operations on a generic computer is not inventive); *Elec. Power Grp.*, 830 F.3d at 1355 (holding the claims at issue did not contain an inventive step because they did "not require any nonconventional computer, network, or display components").

B. The Claims of the '559 Patent Are Invalid

The '559 patent describes the abstract idea of controlling the flow of content based on information about the device and the user. *See* '559 patent at 2:40-53, 3:1-4. In other words, the patentee is attempting to remove from the public domain the abstract (and utterly unremarkable) idea of controlling content on a device based on the device's capabilities and the device user's preferences. *See, e.g.*, *id*. at 2:57-4:2. This idea, sending content that a device can handle and that a user of the device wants, is implicit in the most basic of client-server architectures, and as old as the existence of reference librarians who provide books requested by a patron in a language preferred by the patron. The abstract idea is carried out by routine steps and conventional components, which do not transform the claims into a patent eligible application.

1. Claim 1 Is Representative

Claim 1 is representative of the other claims of the '559 patent because those claims all describe the same invention and are merely drafted in apparatus, method,

and computer-readable program form. These formalistic differences are immaterial. *Bancorp Servs., L.L.C.*, 687 F.3d at 1277. The dependent claims merely add generic options to delete or download content, and are "substantially similar and linked to the same abstract idea." *See Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1348 (Fed. Cir. 2014).

2. *Alice* Step One: The '559 Patent Is Directed to an Abstract Idea

Claim 1 recites a generic apparatus which receives information regarding server and terminal status, and then instructs the terminal to perform unspecified "actions" to control the flow of multimedia content to the terminal. '559 patent, Cl. 1. Courts have found claims directed to controlling flow of data abstract. *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1334-35 (Fed. Cir. 2017) (finding that claims reciting routing "streams of audio and/or visual information" to a user and "controlling the routing of the stream of packets in response to selection signals received from the users" abstract). As in *Two-Way*, claim 1 of the '559 patent is directed to multimedia content flows based on information it receives from the terminal. *See also Free Stream Media Corp. v. Alphonso Inc.*, 996 F.3d 1355, 1358 (Fed. Cir. 2021) (holding ineligible claims to "a system providing a mobile phone user with targeted information (i.e., advertisements) that is deemed relevant to the user based on data gathered from the user's television"); *Adaptive Streaming Inc. v. Netflix, Inc.*, 836 F. App'x 900, 902-

04 (Fed. Cir. 2020) (finding ineligible a claim specifying that "a different compressed output video signal can be dynamically selected to be presented at the at least one client device . . . in response to a change in a bandwidth condition").

Claim limitations such as "receiv[ing], from a terminal located remote from the apparatus," and "send[ing], to the terminal" have also been held to be abstract ideas. *E.g.*, *Elec. Power Grp.*, 830 F.3d at 1353 ("collecting information, analyzing it, and displaying certain results of the collection and analysis"); *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1344-45 (Fed. Cir. 2018); *Two-Way Media*, 874 F.3d at 1337-38 (claims focused on sending and monitoring information are directed to an abstract idea); *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 612 (Fed. Cir. 2016). Without any technical detail or advancement underlying it, the idea of the '559 patent cannot be described as anything but abstract.

3. *Alice* Step Two: The '559 Patent Does Not Contain an Inventive Concept

Claim 1 recites a generic processor and server as performing the claimed functions, without claiming any improvements to those known components or any ways to achieve the result. *See Affinity Labs*, 838 F.3d at 1269. It does not specify the "response to the content status" and the "actions" to control the flow of content to the terminal. *Free Stream*, 996 F.3d at 1363-64 (finding claim directed to gathering, matching, and sending information ineligible because "the asserted claims do not at all describe how [the claimed] result is achieved"). The specification

acknowledges that the generic processor and terminal elements do nothing more than to implement the abstract idea. *See Elec. Power Grp.*, 830 F.3d at 1355 ("off-the-shelf" technology does not confer eligibility).

C. The Claims of the '794 Patent Are Invalid

The claims of the '794 patent describe the abstract idea of transmitting data in a synchronized fashion. Sending segments of information in a chronological fashion, so that the images show up in chronological order and with synchronized video and audio, was an abstract idea even in the earliest days of broadcast television, and VideoLabs cannot render it new or non-abstract simply by invoking a mobile context, or by numbering the video and audio segments. Further, none of the claims contains an "inventive concept" because they specify only conventional steps at a high level of generality. *See Alice*, 573 U.S. at 221.

1. Claim 1 Is Representative

Claim 1 is representative, because all of the claims contain nothing material to subject matter eligibility beyond the abstract idea of claim 1. For example, claims 7, 8, and 22 recite content-related "markers," and claims 20 and 21 recite that the assignment rule is not based on a timestamp. *Intellectual Ventures I LLC v. Erie Indem. Co.*, 200 F. Supp. 3d 565, 576 (W.D. Pa. 2016) ("Selecting files based on identifiers and matching different files/identifiers is just what computers do. There is nothing inventive about it."), *aff'd*, 711 F. App'x 1012, 1018-19 (Fed. Cir. 2017).

2. *Alice* Step One: The ’794 Patent Is Directed to an Abstract Idea

Claim 1 merely recites the abstract idea of synchronizing and transmitting data of two different data files, such as an audio file and a video file. Any other mode of transmission would of course be nonsensical, and would appear as a series of non-sequitur images on a user’s device with the sound disjointed from the picture. The patent also states that segments can be numbered using some form of assignment rule. Numbering segments in order to create associations again is abstract, and akin to trying to remove the idea of sequential data segments from the public domain. Where the idea is merely the abstract notion of sending synced videos and sound, in segments that dictate the order they are played back, patent protection is inappropriate. *Mayo Collaborative Servs. v. Prometheus Lab’ys, Inc.*, 566 U.S. 66, 70 (2012) (“abstract intellectual concepts are not patentable”).

Courts have found similar transmitting data claims abstract. *See VideoShare, LLC v. Google, Inc.*, 695 F. App’x 577, 577 (Fed. Cir. 2017) (affirming the district court’s decision finding abstract the claim directed to a “method of sharing a streaming video and associated advertisement over a network”); *Dropbox, Inc. v. Synchronoss Techs., Inc.*, 815 F. App’x 529, 537 (Fed. Cir. 2020) (finding abstract the claim directed to “‘a unified tag and data structure,’ including transmitting data with an accompanying user ID and ‘remote server synchronization for wirelessly backing up data’”). The ’794 patent does nothing more than send data, supposedly

with some ordering and syncing information. Under *VideoShare* and *Dropbox*, these are precisely the types of activities the Federal Circuit has proscribed as being abstract.

3. *Alice* Step Two: The ’794 Patent Does Not Contain an Inventive Concept

The recitation of a generic “device” in the claims of the ’794 patent does not provide significantly more to transform the abstract idea into a patent eligible application. Nor does recitation of “sequentially outputting” data segments based on an unspecified “assignment rule” yield an inventive step. ’794 patent, Cl. 1. For example, in *VideoShare, LLC v. Google, Inc.*, No. 13-cv-990 (GMS), 2016 WL 4137524 (D. Del. Aug. 2, 2016), *aff’d*, 695 F. App’x 577 (Fed. Cir. 2017), the court found that the use of a tag to store and transmit the video file and associated advertisement in VideoShare’s patent was not sufficient to provide an inventive concept. *Id.* at *9; *see also Dropbox, Inc.*, 815 F. App’x at 537 (“Nor do these data tagging and remote synchronization steps yield an inventive concept.”).

Thus, each of the three patents is directed to an abstract idea, and does not meet *Alice* step one. Each patent also fails *Alice* step two. VideoLabs’ counts on those patents should be dismissed.

D. The Complaint Fails to State a Claim for Indirect and Willful Infringement

VideoLabs' correspondence at five minutes to midnight prior to commencing this action cannot legally provide the required notice to Netflix to sustain claims for indirect and willful infringement. *See, e.g.*, D.I. 11, ¶¶ 112-114, 147-149, 175-177, 206-209. In *Express Mobile, Inc. v. Squarespace, Inc.*, C.A. No. 20-1163-RGA, 2021 WL 3772040 (D. Del. Aug. 25, 2021), Judge Andrews held that plaintiff's alleged notice "[one] day before the Complaint was filed" could not plausibly support indirect infringement claims. *Id*. at *4. That is precisely the situation that VideoLabs concocted here. Its indirect and willful infringement allegations fail for the same reason as in *Express Mobile*.

Claims of willful infringement require that the defendant knew about the asserted patent ***and*** knew or should have known that its conduct amounted to infringement of the patent. *ZapFraud*, 528 F. Supp. 3d at 251-52. Neither requirement is met here by the uncontroverted history. Dismissing willfulness also makes sense from a policy perspective, as sustaining it based solely on an e-mail mere hours before suing, would encourage patentees to avoid negotiating in good faith by being able to invoke willfulness on the slenderest reed of "knowledge." *Id*.

VideoLabs also argues that Netflix is "willfully blind to its [alleged] infringement—including by [allegedly] ignoring VideoLabs' communications and/or using a disagreement over a standstill in an NDA as a pretext to avoid having

discussions with VideoLabs and learning more about VideoLabs' patents—and [allegedly] continues to act in wanton disregard of VideoLabs' patent rights." *See* D.I. 11, ¶¶ 113, 148, 176, 208. The exhibits to the amended complaint contradict those allegations. *See* D.I. 11, Ex. 50. Netflix actively engaged with VideoLabs for four months in an effort to execute an agreement that would allow the parties to freely communicate in good faith. *Id.* Any supposed reluctance to discuss licensing on Netflix's part stems solely from VideoLabs' unwillingness to enter into the agreement. Netflix's willingness to discuss VideoLabs' patent licensing assertions, but unwillingness to do so with the sword of litigation hanging over its head, hardly rises to "active efforts" by Netflix to avoid knowing about the alleged infringement. *Helios Streaming, LLC v. Vudu, Inc.*, C.A. 19-1792-CFC/SRF, 2020 WL 3167641, at *2 (D. Del. June 15, 2020). In fact, Netflix invited VideoLabs to share non-confidential information (which presumably would have encompassed the identification of specific patents and infringement charts), but VideoLabs declined to do so. Netflix should not be charged with the consequences of VideoLabs' legal strategy.

Finally, VideoLabs' alternative allegations of notice through the filing of its complaints are legally insufficient. D.I. 11, ¶¶ 113, 148, 176, 208. Such post-suit knowledge, as a matter of law, cannot be the sole source of the knowledge for indirect and willful infringement. *ZapFraud*, 528 F. Supp. 3d at 251-52; *Wrinkl*,

Inc. v. Facebook, Inc., C.A. No. 20-1345, 2021 WL 4477022, at *7-8 (D. Del. Sept. 30, 2021).

VI. CONCLUSION

Counts II-IV of the amended complaint should be dismissed in their entirety. Independently, Counts I-IV should be dismissed to the extent they allege indirect and willful infringement.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Jennifer Ying

Jack B. Blumenfeld (#1014)
Jennifer Ying (#5550)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@morrisnichols.com
jying@morrisnichols.com

Attorneys for Defendant Netflix Inc.

OF COUNSEL:

Indranil Mukerji
Stephen A. Marshall
Linda Chang
Christopher Hong
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, DC 20006-1238
(202) 303-1000

Gabrielle K. Antonello
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019-6099
(212) 728-8000

June 10, 2022

WORD COUNT CERTIFICATION

The undersigned counsel hereby certifies that the foregoing document contains 4,954 words, which were counted by using the word count feature in Microsoft Word, in 14-point Times New Roman font. The word count includes only the body of the brief. The word count does not include the cover page, tables of contents and authorities, or the counsel blocks.

/s/ Jennifer Ying

Jennifer Ying (#5550)

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2022, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on June 10, 2022, upon the following in the manner indicated:

Brian E. Farnan, Esquire *VIA ELECTRONIC MAIL*
Michael J. Farnan, Esquire
FARNAN LLP
919 North Market Street, 12th Floor
Wilmington, DE 19801
Attorneys for Plaintiffs

Christine E. Lehman, Esquire *VIA ELECTRONIC MAIL*
REICHMAN JORGENSEN LEHMAN
& FELDBERG LLP
1710 Rhode Island Avenue NW, 12th Floor
Washington, DC 20036
Attorneys for Plaintiffs

Wesley L. White, Esquire *VIA ELECTRONIC MAIL*
Jaime F. Cardenas-Navia, Esquire
REICHMAN JORGENSEN LEHMAN
& FELDBERG LLP
750 Third Avenue, Suite 2400
New York, NY 10017
Attorneys for Plaintiffs

Courtland L. Reichman, Esquire
REICHMAN JORGENSEN LEHMAN
& FELDBERG LLP
100 Marine Parkway, Suite 300
Redwood Shores, CA 94065
Attorneys for Plaintiffs

VIA ELECTRONIC MAIL

Taylor N. Mauze, Esquire
REICHMAN JORGENSEN LEHMAN
& FELDBERG LLP
7500 Rialto Blvd., Suite 1-250
Attorneys for Plaintiffs
Austin, TX 78735

VIA ELECTRONIC MAIL

/s/ Jennifer Ying

Jennifer Ying (#5550)