

**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-cv-229-CFC

JURY TRIAL DEMANDED

**VIDEOLABS' RESPONSE TO NETFLIX'S
PARTIAL MOTION TO DISMISS**

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NATURE AND STAGE OF PROCEEDINGS

VL Collective IP, LLC and VideoLabs, Inc. (collectively “VideoLabs”) filed their original complaint on February 23, 2022 (D.I. 1), and an amended complaint (“FAC”) on May 6, 2022. D.I. 11. Netflix filed a partial Rule 12(b)(6) motion, seeking to dismiss three patents-in-suit under 35 U.S.C. §101, as well as claims of indirect and willful infringement. D.I. 16. VideoLabs opposes.

SUMMARY OF ARGUMENT

Under Federal Circuit precedent, inventions like VideoLabs’, which claim concrete technical improvements over the prior art, are patent-eligible under 35 U.S.C. § 101. *DDR Holdings, LLC v. Hotels.Com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014).

At *Alice* step 1, Netflix fails to establish that any VideoLabs patent is directed to an abstract idea. Netflix does not address the patents’ improvements to computer networking and video transmission technology, as described in the patent specifications and VideoLabs’ FAC. Instead, Netflix violates the Federal Circuit’s bedrock instruction to “‘avoid oversimplifying the claims’ by looking at them generally and failing to account for the specific requirements of the claims.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016).

If the Court reaches *Alice* step 2, the record demonstrates VideoLabs' claims are inventive, as they comprise non-conventional arrangements of elements that improve upon the prior art. *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016).

Netflix fails to meet its burden on representativeness, as it addresses only three patent claims at issue, and asserts without analysis that the other 57 claims are the same. *See Pragmatus Telecom, LLC v. Genesys Telecomms. Labs., Inc.*, 114 F.Supp.3d 192, 199 (D. Del. 2015).

Finally, Netflix knew about the asserted patents and its infringement of them from VideoLabs' communications occurring over several years pre-suit, including VideoLabs' pre-FAC email to Netflix.

ARGUMENT

I. NETFLIX FAILS TO OVERCOME THE '790 PATENT'S PRESUMPTION OF ELIGIBILITY.

A. The '790 Patent Covers Improved Content Delivery Technology For Device Interoperability.

At the invention of the '790 Patent, the rapid growth of mobile devices challenged then-existing content delivery technology. '790 Pat., 1:40-59; FAC ¶¶50-52. Because different devices require different content packaging formats and provisioning protocols, conventionally, content providers needed to deploy each

item of content multiple times, in multiple packages. '790 Pat., 1:60-2:17; FAC ¶53. Content providers were also challenged by frequent changes in device capabilities. '790 Pat., 12:39-58, 1:10-13.

The '790 Patent addresses these challenges with improved content delivery techniques that recognize devices and then use their capabilities to filter the content available for discovery and download by separating content from device information, packaging content for and effecting delivery, and determining how content is discoverable. FAC ¶54; '790 Pat., 7:39-45, 8:30-52, 12:45-59; 2:50-67, 9:37-50, 11:42-62. Claim 2, at issue in Netflix's motion, encompasses these techniques, and additionally filters discoverable content based on device capabilities to present a portion of a product catalog to the user with a single description of each digital item, regardless of the number of available implementations. *Id.*, cl. 2, 7:30-45, 8:30-9:12, 11:42-12:18, 15:52-61.

B. Claim 2 Of The '790 Patent Is Not Abstract.

Claims pass step 1 where they provide computer-specific improvements. *See DDR*, 773 F.3d at 1257; *see also, e.g., Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016). Claim 2 is a patentable solution to inefficient, slow, and ineffective delivery of digital content to wireless subscribers, “a challenge particular to the Internet.” *DDR*, 773 F.3d at 1257; *see, e.g., '790 Pat.*, 3:45-48,

12:39-58 (“By virtue of this separation, a content supplier is able to deploy content only once,...over a wide range of provisioning protocols.”); 13:3-5.

Netflix describes the abstract idea to which it purports the claim is directed as: “transmitting and manipulating information” (D.I. 16 (“Mot.”) at 12); “tailoring of content based on information about the user” (*id.* at 12, 13); and “a catalog that contains descriptions of content items and associated references” (*id.* at 13). Netflix’s inability to concisely present the alleged abstract idea is itself telling. *See DDR*, 773 F.3d at 1257 (a party’s “varying formulations of the underlying abstract idea” “illustrate[s] th[e] difficulty” of “identifying the precise nature of the abstract idea”). None of the purported abstract ideas properly captures the essence of the claims. *See Enfish*, 822 F.3d at 1335.

Netflix alleges that the claim is directed to “tailoring content based on the capabilities of a user’s device.” Mot. at 12-13. But selecting a portion of the product catalog based on device capabilities is only a portion of one claim element. Netflix’s over-simplification of the claim to merely this portion is improper, as the first step “cannot simply ask whether the claims *involve* a patent-ineligible concept,” but instead must look to “their character as a whole.” *Enfish*, 822 F.3d at 1335.

Further, although the Federal Circuit “has held that customizing information based on information known about the user is an abstract idea,” this sort of

customization is distinguishable from claim 2 for at least two reasons. *Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1271 (Fed. Cir. 2016) (cleaned up). First, claim 2 makes a selection based on *device capabilities*, not user information, constituting an improvement to the computing system that allows the system to perform more efficiently, effectively, and automatically. *E.g.*, ’790 Pat., 13:3-5 (“The ability to deliver the ‘best-fit’ content based on ‘active’ (dynamic) capabilities of a device is advantageous.”). Second, although tailoring may be abstract when it is “not limited to any particular form of customization,” that is not true of claim 2. *Affinity*, 838 F.3d at 1271. Rather, claim 2 performs its selection “based on device capabilities of the wireless device used by the subscriber”—a particular form of selection that achieves a particular improvement in network functionality.¹ *See* ’790 Pat., 15:52-55.

Netflix also argues that the claim is directed to “a catalog that contains descriptions of content items and associated references.” *Mot.* at 13. Here again, Netflix oversimplifies to only one claim element, and ignores that the structure and

¹ Limiting the selection to be based upon device capabilities also avoids the concern of pre-empting all ways to customize or tailor the selection of the portion of the product catalog. *See Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

use of the catalog improve the way computers provide digital content. *See Enfish*, 822 F.3d at 1335.

Oversimplification of claims as the mere “abstract idea of an index” has been rejected by the Federal Circuit. *See Core Wireless Licensing v. LG Elecs.*, 880 F.3d 1356, 1362-63 (Fed. Cir. 2018). Where “claims are directed to a particular manner” of solving a problem “in electronic devices,” they are directed to improved computing devices, not abstract ideas. *See id.* (finding claims “directed to an improved user interface for computing devices, not to the abstract idea of an index,” because they “disclose[d] a specific manner” of solution, “rather than using conventional...methods,” and therefore “recite[d] a specific improvement over prior systems,” rendering them patent eligible.) Similarly here, claim 2 discloses a specific way of efficiently storing and distributing digital content to myriad users in specific implementations, formats, and protocols based on device capabilities, not a generic cataloging function. *Intellectual Ventures I LLC v. Erie Indemnity Co.*, 850 F.3d 1315 (Fed. Cir. 2017) is distinguishable on the same grounds.

SRI International, Inc. v. Cisco Systems, Inc. is more applicable. In *SRI*, the claims were found non-abstract where they “solve[d] a technological problem,” specifically, “solving [identified] weaknesses in conventional networks.” 930 F.3d 1295, 1303 (Fed. Cir. 2019). Like in *DDR* and *SRI*, claim 2 is “directed to more than

an abstract idea that merely require[s] a ‘computer network operating in its normal, expected manner.’” *Id.* (citing *DDR*, 773 F.3d at 1258). “That is, claim 2 “overrides the routine and conventional sequence of events” by storing and distributing multiple items of digital content in multiple provisioning and packaging formats from one server system. *See, e.g.,* ’790 Pat., 2:52-58, 9:37-50. This contrasts a normal computer network, which separately and multiply procures and deploys different implementations of digital content. *See id.* at 1:60-2:17, 12:39-58.

C. The ’790 Patent Claims An Inventive Concept.

Claim 2 recites an inventive concept and therefore is patent eligible under step 2; it “provid[es] a specific technical solution beyond simply using generic computer concepts in a conventional way.” *Bascom*, 827 F.3d at 1352.

Netflix ignores that “claims that use an environment—a computer, a mobile phone, etc.—to do significantly more than simply carry out an abstract idea are patent eligible.” *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1319 (Fed. Cir. 2019) (citing *Electric Pwr.*, 830 F.3d at 1355). Claim 2 is inventive because the components are arranged in a novel way that permits improved functionality,

including with a “download manager.”² ’790 Pat., Figs. 13, 14; *Bascom*, 827 F.3d at 1350. This download manager “store[s]” and “use[s]” information “to select the proper packaging and provisioning protocol” (*id.* at 12:59-64), and has “[t]he ability to deliver the ‘best-fit’ content...[which] is advantageous.” *Id.* at 13:3-5; *see also id.* at 13:13-15; *see also* FAC ¶¶52-54. At the 12(b)(6) stage, such allegations must be taken as true. *See Cellspin*, 927 F.3d at 1318.

II. NETFLIX FAILS TO OVERCOME THE ’559 PATENT’S PRESUMPTION OF ELIGIBILITY.

A. The ’559 Patent Describes An Improved Network Architecture That Enables Efficient Content Access.

The inventors of the ’559 Patent recognized that the Internet disrupted traditional channels of delivering video content, such as television and cable, and that new solutions were needed to optimize online video access. They developed a novel network architecture—and specific ways to use it—that provides myriad improvements over previous means of controlling access to video.

In 2003, the time of the invention, video content was increasingly available to be viewed over the Internet on a variety of computing devices. ’559 Pat., 1:17-2:53;

² This download manager performs the primary functions of claim 2 of the ’790 Patent. *Compare* ’790 Pat., 11:56-63 *with* ’790 Pat., cl. 2.

FAC ¶¶44-46. Content providers wanted to provide broad access to their movies and other content, but also needed to maintain control over the content, such as ensuring that copyrighted works were only provided to authorized devices. ’559 Pat., 2:25-39; FAC ¶47. Further, the content needed to be provided in the appropriate format for each device.

Simultaneously, user devices contained information that, if provided to content providers, could greatly improve the user experience—for example, the technical capabilities of the device, and information about what content the user was currently viewing, had previously viewed, and wished to view in the future. ’559 Pat., 2:40-53, 3:62-66. Existing solutions did not have the ability to efficiently obtain this information. *Id.*, 2:25-53, 3:1-9, 10:48-56. Notably, the ubiquitous “pull” technique, where a user device would directly request content from a server by selecting content for download, could not. *Id.*

The ’559 Patent addresses this disconnect between user devices and content providers by adding a separate “content flow manager” that obtains status information and uses it to control the flow of content. *E.g., id.*, 3:10-25; FAC ¶48. The addition of this content flow manager, a device that is logically separate from the terminals and content servers, was a modification to then-existing network architectures for content delivery, and its inclusion led to a variety of benefits.

For instance, terminals can now automatically be instructed to download certain content, such as when a new season of a previously-watched show is released. '559 Pat., 3:1-66, 11:21-30, 12:60-13:37. Alternatively, content already stored on a terminal can be automatically deleted, like when digital rights management (“DRM”) dictates that the user no longer has access to the content, potentially due to a time or geographic restriction. *Id.* Terminal preferences could also be matched with available advertisement content to better tailor advertisements to particular users. *Id.*, 11:17-21.

Netflix makes substantial use of content flow control features to greatly enhance its user experience, including using status information from the client and/or a content server to “bookmark” content so that, when a viewer stops viewing content and then returns to view the same content later, the content begins at the time segment where the viewer left off. FAC ¶75. Also, Netflix’s Smart Downloads feature will automatically delete watched episodes and download new ones. *Id.*, ¶76; *see also* ¶77. The network architecture powering these features was pioneered by the '559 Patent inventors.

B. Claim 1 Of The '559 Patent Is Not Abstract.

Claim 1 recites all the components of this novel network architecture and the relationships between its constituent parts. In particular, it describes a “processor”

(content flow manager), a “terminal” (user device), and a “server” source that contains content. The processor receives status information from both the terminal and the server, where the server status information includes information about available content. The processor uses this information to control access to the content by instructing the terminal accordingly.

Claim 1 of the '559 Patent thus embodies a novel network architecture that improves the functioning of computers and is not directed to an abstract idea. It is analogous to the claims in *SRI*, which deployed a plurality of network monitors to analyze data with the goal of identifying hackers or potential intruders on a network. 930 F.3d at 1303-04. This improved on prior techniques, as it departed from “the normal, expected operation of a conventional computer network.” *Id.* So too here. Claim 1 uses an intermediate content flow manager server to analyze status information from terminals and content sources to provide benefits to consumers and content providers in the management of content. This network architecture represents a departure from the conventional “pull” technique for accessing content. *See Broadcom Corp. v. Netflix Inc.*, No. 20-cv-4677-JD, 2021 WL 4170784, at *11-12 (N.D. Cal. Sept. 14, 2021) (finding separating two known functions and performing them on two devices instead of one was not an abstract idea).

Rather than grapple claims 1’s technical improvements over the prior art, Netflix impermissibly oversimplifies, asserting that the claim is directed to “the abstract (and utterly unremarkable) idea of controlling content on a device based on the device’s capabilities and the device user’s preferences.” Mot. at 14. This assertion ignores the relevant context of the invention and is contradicted by the specification and the FAC allegations.

Netflix’s unfounded analogy to *Two-Way Media v. Comcast Cable Communications* relies on its overly-abstracted understanding of the claim. In *Two-Way*, unlike here, the patentee did not show *how* the claims were directed to a “network architecture that itself leads to an improvement in the functioning of the system.” 874 F.3d 1329, 1338 (Fed. Cir. 2017). The other cases Netflix cites involve patents that are directed at a technological objective, but do not explain *how* the technology improves over the prior art. Mot. at 15-16. By contrast, claim 1 and the ’559 specification explain *how* content flow is controlled based on information from the terminal and the server, addressing a prior art inefficiency problem resulting from the application of old broadband network content flow policies. FAC ¶¶46-48.

C. The ’559 Patent Claims An Inventive Concept.

The Court need not go further. Nevertheless, at *Alice* step 2, the Federal Circuit has established that unconventional arrangement of Circuit has established

that unconventional arrangement of processing in a network architecture—as claim 1 provides—plausibly includes an inventive concept.

In *Bascom*, the court found an inventive concept in “the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user.” 827 F.3d at 1350 (contrasting prior art locating filter at the end-user computer). In *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, the claim described software receiving and correlating network billing and accounting records from different sources rather than at a central location, avoiding bottlenecks. 841 F.3d 1288, 1301 (Fed. Cir. 2016). In *Cellspin*, the court found an inventive concept where a claim required a “a two-step, two-device structure requiring a connection *before* data is transmitted” over prior art that did not require such a connection. 927 F.3d at 1318. *See also Kajeet, Inc. v. Gryphon Online Safety, Inc.*, No. 19-2370-MN, 2021 WL 780737, at *7-8 (D. Del. Mar. 1, 2021) (claims directed to storing policy information patent-eligible at step 2 where feature described as unconventional and advantageous).

Similarly, claim 1 contains an inventive concept. Claim 1 specifies a novel arrangement of a flow controller and network components that results in greater efficiency and responsiveness to device preferences than the prior art. ’559 Pat.,

2:25-39, 6:38-50, 11:6-30, 15:15-25. Accordingly, Netflix fails to show that claim 1 is patent ineligible.

III. NETFLIX FAILS TO OVERCOME THE '794 PATENT'S PRESUMPTION OF ELIGIBILITY.

A. The '794 Patent Uses Assignment Rules To More Efficiently Synchronize Segments.

Prior to the early 2000s, content was predominantly transmitted using television signals, and everyone received the same content, encoded in the same way. '794 Pat., 1:23-33; FAC ¶57. But with increasing Internet access, improved network speeds, and advanced video compression algorithms, this was all changing. '794 Pat., 1:34-43; FAC ¶58. Content was being transmitted over the Internet to many different devices, including desktop computers, laptops, and PDAs. *Id.* Unlike televisions, which were all designed to play content formatted in the same way, these new devices would play content packaged in various new formats (e.g., with different resolutions, pixel ratios, and encodings). *Id.*

Further, the development of a wide variety of Internet speeds led to providers formatting content at different quality levels. '794 Pat., 1:56-2:3; FAC ¶59. This enabled a consumer with a slower Internet connection to receive lower quality content more quickly than if only higher quality content was available. *Id.* Content

providers also began breaking up content into multiple data segments so that they could be more easily stored and transmitted to consumer devices. *Id.*

The innovations of the '794 Patent were made in this context. Specifically, because data was segmented, segments of audio and video could arrive at different times and out of order. FAC ¶¶62-64. This problem did not exist with prior-existing television transmission signals, which are continuous; nor with other content media, like video cassettes or DVDs, where the content is all stored together in order. *Id.*

A known solution for correctly ordering audio and video segments and aligning them with one another was to use the timestamp information stored in the segment files (e.g., audio content from 5:14 to 6:22 of the movie). '794 Pat., 2:4-12, 2:36-54, 5:10-13; FAC ¶¶63-64. That is, once each segment was downloaded, the timestamp information is read, additional processing occurs, and the timestamp is then used to order the segment alongside other segments. *Id.* Disadvantageously, this technique had large overhead, and could be slow and resource intensive. *Id.*

The '794 Patent improves upon this process using flexible, predefined assignment rules. *Id.* Importantly, these assignment rules are not based on timestamps, but instead dictate the relationships between the segments themselves without reference to absolute times. *Id.* As one example, each sequential video segment can be aligned with every fourth audio segment. '794 Pat., 2:55-60,

5:35-6:42. By creating relationships between segments, these assignment rules enable quick and efficient alignment of segment files without needing to access timestamps. *Id.*

The benefits of the '794 Patent have been recognized through its incorporation into industry standard protocols for online video streaming, including Dynamic Adaptive Streaming over HTTP ("DASH"). FAC ¶¶65-66. DASH enjoys widespread use, including by many licensees of the '794 Patent. *Id.*

B. Claim 1 Of The '794 Patent Is Not Abstract.

Claim 1 of the '794 Patent requires the use of an "assignment rule" to "sequentially output[...]content-related first data segments and the content-related second data segments according to their chronological sequence," thus capturing the innovation described in the specification. Properly construed in light of the specification and file history, the assignment rule is not based on a timestamp. *See, e.g., '794 Pat., 2:39-43.* VideoLabs made this claim interpretation clear in its FAC. FAC ¶¶63-64.

Yet Netflix's motion assumes that claim 1 encompasses *any* technique for aligning content segments, including timestamp-based techniques. This claim construction dispute, i.e. whether the "assignment rule" permits aligning the segments based on timestamps, necessitates the denial of Netflix's motion with

respect to the '794 Patent until the disagreement is resolved. *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1129-30 (Fed. Cir. 2018).

Properly understood, claim 1 is analogizable to cases where the claimed invention is an improvement in computer functioning. In *Koninklijke KPN N.V. v. Gemalto M2M GMBH*, 942 F.3d 1143, 1150 (Fed. Cir. 2019), the claims were found to be directed to “a non-abstract improvement in an existing technological process” because they took an existing functionality—generating check data—and improved it by requiring that a permutation applied to the original data be modified “in time.” This is akin to how claim 1 takes an existing process—ordering and aligning data segments for proper playback—and improves it by using assignment rules that interrelate the segments rather than relying on timestamps. The *Finjan, Inc. v. Blue Coat Sys., Inc.* claims were held to be directed toward improving computer security by using a new kind of file that could identify potential attacks in addition to known threats. 879 F.3d 1299, 1304-05 (Fed. Cir. 2018). Claim 1 similarly improves the streaming of video by using a new way to store the relationships between media segments (assignment rules) that does not require using timestamps and so is faster and requires less overhead. *See also McRO*, 837 F.3d at 1314-15.

Netflix relies on inapposite authority. In *VideoShare, LLC v. Google, Inc.*, No. 13-cv-990-GMS, 2016 WL 4137524, at *7 (D. Del. Aug. 2, 2016), *aff'd*, 695 F.

App’x 577 (Fed. Cir. 2017), the claims were found to “merely automate a sequence of known steps using conventional technology so that a human is not burdened with various manual steps,” and so did not improve computing technology. *VideoShare* is irrelevant, as Netflix does not assert that claim 1 of the ’794 Patent could be performed manually. The claims in *Dropbox, Inc. v. Synchronoss Techs., Inc.*, 815 Fed. App’x 529, 537 (Fed. Cir. 2020) were held to not yield any tangible improvement to computer technology, but instead merely the abstract result of associating interactive and data transfer connections with a single session ID. By contrast, claim 1 describes a new technique for ordering and aligning segments that is faster and more efficient than prior techniques. ’794 Pat., 2:4-54.

Netflix does briefly address assignment rules that are not based on timestamps vis-à-vis claims 20 and 21. Mot. at 17. For these claims, Netflix asserts without explanation that prohibiting using timestamps as part of the assignment rule has no affect on the §101 analysis. *Id.* But Netflix cites *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) in support. The claims in *Intellectual Ventures* were directed to the abstract idea of identifying and categorizing photographs, a process that the patent acknowledged could be performed manually. *Id.* at 575. The claims did not solve a computer-centric problem, but merely used a computer as a tool to perform work

that could otherwise be performed manually. *Id.* This is not the case for claim 1, for all the reasons described above.

Finally, Netflix briefly raises pre-emption concerns, which are premised on Netflix's overly broad construction of claim 1. Mot. at 18. Netflix's fears are unfounded, as there are many techniques for properly ordering and outputting audiovisual content besides those encompassed by claim 1, including using assignment rules based on timestamps, interrelating segments without using assignment rules, and streaming content without breaking it into segments.

C. The '794 Patent Claims An Inventive Concept.

Even if the Court were to reach step 2, Netflix's cursory argument is unavailing. Netflix provides no relevant evidence that the '794 Patent claims lack an inventive concept. Netflix again disregards the proper scope of claim 1 and cites the same two cases as it did for step 1. Mot. at 19. Moreover, Netflix fails to address VideoLabs' allegations that the unconventional use of assignment rules that are not based on timestamps provides technical benefits over the prior art, as exemplified by the patent's adoption into the DASH standard. FAC ¶¶56-66. The facts on record, which must be construed in favor of eligibility on a 12(b)(6), support the existence of an inventive concept. *Cellspin*, 972 F.3d at 1317.

IV. NETFLIX FAILS TO MEET ITS BURDEN TO SUPPORT ITS ALLEGATION OF REPRESENTATIVE CLAIMS.

Netflix makes the sweeping argument that a total of *sixty* claims across the three patents are ineligible—but addresses only one claim for each patent. Netflix “bears the burden to demonstrate that its asserted Section 101 defense is well taken as to each claim.” *TriPlay, Inc. v. WhatsApp Inc.*, No. 13-1703-LPS, 2015 WL 1927696, at *6 (D. Del. Apr. 28, 2015) (adopted in all substantive respects, 2015 WL 4730907 (D. Del. Aug. 10, 2015)). Simply reciting, as Netflix does, that the “claims describe the same invention” (Mot. at 11, 14) and “only change the form of the claim language” (Mot. at 11) is not enough, and its motion must be denied on this point. *See Pragmatus*, 114 F. Supp. 3d at 199; D. Del. L.R. 7.1.3(c)(2).³

V. VIDEOLABS HAS ADEQUATELY PLED KNOWLEDGE FOR INDIRECT INFRINGEMENT AND WILLFULNESS.

Netflix implies it was sued without warning, negating the possibility of “knowledge,” when in fact VideoLabs and Netflix were in communication for years regarding VideoLabs’ streaming patent portfolio and Netflix’s need for a license. Mot. at 20; *e.g.*, FAC ¶112. VideoLabs’ FAC plausibly alleges the reasons Netflix

³ Netflix only even *mentions* three other ’794 patent claims (without differentiating “content-related markers”) and two others about an assignment rule. Mot. at 17.

had adequate notice of the patents and knew or was willfully blind that it infringed the patents.

First, with respect to the '878, '790, and '559 patents, it is undisputed that VideoLabs provided Netflix specific notice of the patents and the acts that constitute infringement through its February 2022 email. FAC ¶¶112, 147, 175; FAC Ex. 50 at 1-2; Mot. at 3. Netflix relies on a single decision to argue that the email is insufficient to plausibly allege that Netflix knowingly infringes these patents because the email was sent the day before the Complaint was filed. Mot. at 20 (citing *Express Mobile, Inc. v. Squarespace, Inc.*, No. 20-1163-RGA, 2021 WL 3772040, at *4 (D. Del. Aug. 25, 2021)). The email was not sent in a vacuum, but after years of correspondence. Moreover, Netflix ignores that the February 2022 email was sent 2.5 months before the FAC was filed—more than sufficient time for Netflix to appreciate the nature of its infringement.

Second, regarding the '794 patent, VideoLabs alleged that due to Netflix's involvement in the development of the DASH standard, it either actually knew or was willfully blind to both the existence of the '794 patent and its infringement thereof. FAC ¶207. Netflix does not address these allegations at all, much less establish that they are implausible—to the contrary, it would be surprising if Netflix, whose entire business is based on streaming video, did not investigate the 10 patents

that were deemed “essential” (meaning they are necessarily practiced) to the video streaming technology (DASH) that it helped develop. Knowledge of patents has been imputed under similar circumstances. *See ELM 3DS Innovations, LLC v. SK Hynix Inc.*, No. 14-1432-LPS-CJB, 2016 WL 1274803, at *1 (D. Del. Mar. 31, 2016).

Third, VideoLabs’ FAC alleges that prior to the filing of the Complaint and FAC, Netflix willfully blinded itself to the existence of and its infringement of the asserted patents by ignoring communications from VideoLabs that would have informed it of its infringement of the asserted patents and then using a dispute over a non-disclosure agreement (“NDA”) as a pretext to further delay obtaining such knowledge. FAC ¶¶9-10, 112-113, 147-148, 175-176, 206, 208. These allegations are sufficient to satisfy the willful blindness standard. *See Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 769 (2011). Netflix disagrees and presents a competing viewpoint. Mot. at 20-21. But at the pleading stage, all such disagreements must be resolved in VideoLabs’ favor. *Maio v. Aetna, Inc.*, 221 F.3d 472, 481-82 (3d Cir. 2000).

Fourth, Netflix overstates the law, arguing that notice through a complaint is “legally insufficient.” Mot. at 21. Here, the complaint is not the “sole source of knowledge,” but only part of a long history between the parties. *Cf. ZapFraud*, 528

F. Supp. 3d at 249 (notice based on complaint). As this Court recognized in *ZapFraud*, additional allegations can make it “plausible to infer” the requisite knowledge. *Id.* at 251 n3 (discussing *Deere & Co., v. AGCO Corp.*, 2019 WL 668492 (D. Del. Feb. 19, 2019)).

Moreover, as Judge Stark recently recognized, there is relevant Federal Circuit guidance with respect to induced infringement. *See Tonal Sys., Inc. v. iFIT Inc.*, No. 20-1197-LPS-CJB, 2022 WL 951549, at *2 (D. Del. Mar. 30, 2022) (“[T]he Federal Circuit has recognized, at least for induced infringement, the service of the original complaint is sufficient to support, in an amended complaint, post-suit knowledge of a patent’s existence and infringement.”) (citing *In re Bill of Lading Transmission and Processing Sys. Patent Litig.*, 681 F.3d 1323, 1345 (Fed. Cir. 2012)). The same logic applies to the knowledge requirements of contributory and willful infringement, making the allegations in VideoLabs’ pleadings sufficient to support its claims that Netflix is knowingly infringing. FAC ¶¶113-116, 148-151, 176-179, 208-211.

CONCLUSION

VideoLabs respectfully requests the Court deny Netflix’s motion.

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Respectfully submitted,

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The undersigned hereby certifies that the foregoing filing contains 4,908 words, in compliance with the 5,000 word-count limit provided in the Court's Standing Order Regarding Briefing In All Cases. The undersigned further certifies that the foregoing filing complies with the font/typeface requirements of the same, and is typed in 14-point, Times New Roman typeface.

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