

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

NETFLIX'S REPLY BRIEF
IN SUPPORT OF ITS PARTIAL MOTION TO DISMISS

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Netflix v. VideoLabs
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VideoLabs’ aspirational statements about the patents’ alleged improvements do not establish statutory inventiveness, and its attorney arguments do not make the claims any less abstract. A desired result, even an improved one, without claimed technical specifics, does not confer patent eligibility on an otherwise abstract idea. Here, the patents themselves confirm that VideoLabs’ alleged inventions are for high-level, abstract ideas implemented, at best, with generic computers or components used to manipulate data – precisely what courts routinely rejected under § 101.

On indirect and willful infringement, VideoLabs does not dispute that the late-night e-mail hours before VideoLabs filed suit was the first time it identified any specific patent and any charge of infringement. Its arguments about Netflix knowing generally that VideoLabs had patents, or the patents possibly being part of a technical standard, do not rise to the required knowledge for indirect and willful infringement.

I. THE ’790, ’559 AND ’794 PATENTS ARE PATENT INELIGIBLE

A. The ’790 Patent

Step One: The abstract idea of cataloging content for wireless devices based on device capabilities is not an improvement in computer functionality itself, as in *Enfish*, or in the device, or even the involved network. Nor is it an invention of content delivery, packaging formats, provisioning protocols, or handling user

devices with different capabilities; VideoLabs recognizes that all predated its patent. D.I. 18 at 2–3; ’790 patent at 1:40–2:17. Rather, the alleged “improvement” relates solely to the information that is stored and manipulated, which is unquestionably abstract.

VideoLabs argues that the patent provides “computer-specific improvements” to “inefficient, slow, and ineffective delivery of digital content to wireless subscribers” based on “device capabilities.” D.I. 18 at 3, 5. Even if that were true, it would not make the claim any less abstract. *PersonalWeb Techs. LLC v. Google LLC*, 8 F.4th 1310, 1315–19 (Fed. Cir. 2021). As explained in Netflix’s opening brief, the idea is akin to using a library catalog to keep multiple language translations of a book based on languages spoken by its patrons. D.I. 16 at 11. VideoLabs accuses Netflix of “oversimplification,” but it provides no technical detail as to any particular limitation that takes the claimed invention further. Nor does Netflix suffer any inconsistency in describing the abstract idea, as VideoLabs argues (D.I. 18 at 4): the claims are about transmitting and manipulating information, namely tailored content, based on information about the user, from a catalog of content and references.

Despite VideoLabs’ attorney argument that claim 2 “discloses a specific way” of storing and distributing digital content (*id.* at 6), it never elaborates on the “specific way,” which is the gateway for patentability. By contrast, in *SRI*

International, Inc. v. Cisco Systems, Inc., the court validated a patent where “[t]he claims are directed to using a **specific technique** . . . to solve a technological problem arising in computer networks.” 930 F.3d 1295, 1303 (Fed. Cir. 2019) (emphasis added).

The reason VideoLabs fails to describe a specific technique is because the patent does not provide one. The claims do not specify the device capabilities, metrics or otherwise, on which the selection from the product catalog is based. VideoLabs’ argument that representative claim 2 is not abstract because it “makes a selection based on device capabilities, not user information” (D.I. 18 at 5) is a distinction without a difference. A user’s device (and its attendant capabilities) are part of the information about the user, and tailoring content based on the device’s capabilities is no less abstract. *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (holding that “[t]ailoring information based on the time of day of viewing is [] abstract”).

Finally, VideoLabs’ argument that the ’790 patent does not preempt all forms of customization is of no moment. A “claim is not patent eligible merely because it applies an abstract idea in a narrow way.” *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1287 (Fed. Cir. 2018).

Step Two: The claims do not require arranging components at specific, unconventional locations as VideoLabs argues. Unlike in *Cellspin*, where the court

“ha[d] no basis, at the pleadings stage, to say” the arrangements were conventional, *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1318 (Fed. Cir. 2019), the ’790 patent concedes that the details of physical arrangement of hardware “**are not germane** to the present invention[,]” ’790 patent at 14:12–16 (emphasis added). This is in stark contrast to *Cellspin*, where the claims required “using HTTP **at a specific location.**” 927 F.3d at 1318 (emphasis added). VideoLabs’ reliance on *Bascom* is equally misplaced, because the *Bascom* claims also required “installation of a filtering tool at **a specific location.**” *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016) (emphasis added).

B. The ’559 Patent

Step One: VideoLabs concedes that the claimed idea boils down to providing content to a user device based on the device’s status. D.I. 18 at 8–9. Like in the ’790 patent, that idea is abstract. VideoLabs’ argument that the patent claims a “novel network architecture” (*id.* at 8) is contradicted by the specification, which describes only generic computer components such as a terminal, origin server, and content manager that can be separate or co-located, ’559 patent at 6:38–50.

VideoLabs rests its “new architecture” contention on a logically separate “content flow manager.” D.I. 18 at 9. But the claim merely recites computer components solely by their function (e.g., processor configured . . .), meaning the logical separation is simply describing a results-based function that happens to be

performed on a generic computer, with no technical details on how the manager manages. That is not architecture, such as data transmission means, switching, or physical arrangement of network components. Without structure, the content flow manager is merely an aspirational black box, left to be implemented using conventional technology. That is the very definition of abstract. *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 615 (Fed. Cir. 2016) (finding a “‘control unit’ [that] predictably ‘controls’ various aspects of the claimed functionality” abstract).

VideoLabs falls back to generic arguments of efficiency and automation.¹ D.I. 18 at 10. None of these confer patent eligibility, and none are recited in the claims. “[A]utomation of a long-standing human process cannot be the inventive concept because such automation is itself an abstract idea.” *Repifi Vendor Logistics, Inc. v. IntelliCentrics, Inc.*, 2022 WL 794981, at *3 (Fed. Cir. Mar. 15, 2022). Downloading and deleting content from a computer are, of course, actions that a human may perform (e.g., collecting and destroying papers with contents from a file cabinet).

¹ Left without any meaningful technical arguments, VideoLabs resorts to an infringement argument about Netflix’s accused technology. D.I. 18 at 10. VideoLabs cannot use the specifics of Netflix’s accused technology to confer technical heft to its abstract idea, and VideoLabs provides no authority for doing so.

Step Two: There is no inventive concept, only the abstract idea of controlling the flow of multimedia content from a server to a terminal based on the terminal’s status information and the server’s status. The patent implements this over a computer network with generic computer components using conventional technology. See *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1329 (Fed. Cir. 2017) (“sending and receiving information” over a network are “routine computer functions”). For example, the specification explains that the invention can be implemented with any “conventional Web browser.” ’559 patent at 10:33–44. *Bascom* is thus inapposite because the claims were directed to “a technology-based solution (not an abstract idea-based solution implemented with generic technical components in a conventional way) to filter content[.]” 827 F.3d at 1351. To wit, the claims do not specify the “response to the content status” and the “actions” that supposedly control the flow of content to the terminal. *Free Stream Media Corp. v. Alphonso Inc.*, 996 F.3d 1355, 1363–64 (Fed. Cir. 2021) (claims directed to gathering, matching, and sending information ineligible because they “do not at all describe how [the claimed] result is achieved”).

C. The ’794 Patent

Step One: VideoLabs argues that the patent improves upon the process of correctly ordering audio and video segments and aligning them by “using flexible, predefined assignment rules.” D.I. 18 at 15. Yet VideoLabs does not specify any

assignment rule. Nor does claim 1, which recites an “assignment rule” that does nothing more than “sequentially output[] . . . content-related first data segments and the content-related second data segments according to their chronological sequence” – which is merely the desired result.

VideoLabs’ attempts to manufacture technical detail by conjuring a purported claim construction issue. Yet, even under VideoLabs’ construction (excluding timestamps from the assignment rule), the claims are still abstract. Despite arguing that claim 1 “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” (*id.* at 17), VideoLabs and the patent do not describe what assignment rules are, or specify the “new way” to store the relationships; nor do the claims describe the technical way of making matters faster and with less overhead.

Step Two: VideoLabs’ briefing confirms that there is no technical improvement claimed by the patent. VideoLabs admits various video formats were known (*id.* at 14), as was breaking up content into multiple data segments for storage and transmission (*id.* at 15), and correctly ordering audio and video segments and aligning them with one another using timestamps (*id.*). VideoLabs even concedes that there exist “many techniques for properly ordering and outputting audiovisual content,” including “assignment rules based on timestamps, interrelating segments

without assignment rules, and streaming content without breaking it into segments.”

Id. at 19.

VideoLabs thus defines its technical improvement by promising what it is not. VideoLabs disclaims the use of timestamps; but it does not say what the patented idea *does* use, beyond “assignment rules” that dictate relationships between the segments, or provide any technical detail. Even read most generously, the abstract idea of interrelating segments never culminates in a specific technical improvement.

D. Representativeness

VideoLabs argues the selected claims are not representative without meaningful identifying why the other claim limitations would affect the *Alice* analysis. To the extent it disagrees, VideoLabs bears the burden of persuading the Court why. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018). VideoLabs does not carry that burden, choosing instead simply to rest on the sheer number of claims in the patents. *See Realtime Data LLC v. Array Networks Inc.*, 537 F. Supp. 3d 591, 605 (D. Del. 2021) (finding representativeness where patentee failed to “meaningfully respond” to arguments on representativeness). Of those claims, VideoLabs asserts infringement of only claim 2 of the ’790 patent, claim 1 of the ’559 patent, and claim 1 of the ’794 patent (*see* D.I. 11), which Netflix addressed. *Axcess Int’l, Inc. v. Genetec (USA) Inc.*, 375 F. Supp. 3d 533, 537 (D. Del. 2019) (addressing only claims asserted in the complaint).

II. INDIRECT AND WILLFUL INFRINGEMENT

VideoLabs’ correspondence hours before suit cannot plausibly have given the required notice, and VideoLabs does not dispute that *Express Mobile* counsels exactly that result. Instead, VideoLabs disparages that case as only a “single decision.” It is not. *See Evolved Wireless, LLC v. Samsung Elecs. Co.*, 2016 WL 1019667, at *4 (D. Del. Mar. 15, 2016) (“When a notice letter is filed one day before the infringement suit commences, the defendant does not have sufficient time to react to the notice letter to prevent a suit from being filed.”); *Intellectual Ventures I LLC v. Toshiba Corp.*, 66 F. Supp. 3d 495, 500 (D. Del. 2014).

VideoLabs’ reliance on general licensing communications regarding its portfolio is also insufficient to confer the requisite knowledge for these patents. *See Dynamic Data Techs. v. Google LLC*, 2020 WL 1285852, at *2–3 (D. Del. Mar. 18, 2020) (licensing letter regarding plaintiff’s patent portfolio insufficient to confer knowledge). Whatever the length of the parties’ interactions, there can be no context imputed where VideoLabs undisputedly failed to identify to Netflix even a single patent being allegedly infringed until the night before suit.

Additionally, VideoLabs asserts that the service of the original complaint is sufficient to support knowledge of the patents in an amended complaint. That proposition has been explicitly rejected by this Court. *See, e.g., ZapFraud, Inc. v. Barracuda Networks, Inc.*, 528 F. Supp. 3d 247, 251–52 (D. Del. 2021); *WSOU*

Invs., LLC v. Xilinx, Inc., 2021 WL 2328014, at *1 (D. Del. June 8, 2021) (dismissing induced infringement claims where the sole allegation of knowledge of the patent was that the defendants had been “served with a prior version of the operative complaint”).² Thus, neither the night-before-filing e-mail nor the original complaint legally provided Netflix with the requisite knowledge of infringement required for indirect or willful infringement.

Additionally, VideoLabs does not dispute that it never identified the ’794 patent to Netflix. Instead, VideoLabs relies on Netflix’s supposed involvement in a standard setting group six years prior to the patent pool. As the Court is aware, “essentiality” is in the eye of the patentee – it does not mean that a patent is “necessarily practiced” when employing a standard – and there is no evidence that VideoLabs offered any licenses constrained by the standard’s licensing requirements for essential patents. VideoLabs does not even allege that Netflix had knowledge of or was involved in the patent pool, leaving VideoLabs with nothing more than a speculative insinuation that Netflix investigated or monitored patents that it was

² VideoLabs cites *Tonal Systems* to argue that its amended complaint somehow changed Netflix’s analysis. As Judge Stark noted in *Tonal Systems*, this Court has a different view than Judge Stark on the effect of the amended complaint. *Tonal Sys., Inc. v. iFIT Inc.*, 2022 WL 951549, at *6 (D. Del. Mar. 30, 2022). In any event, unlike *Tonal Systems*, VideoLabs alleged indirect and willful infringement in its original complaint, and those allegations did not change in the amended complaint with regard to the originally asserted patents. Additionally, Netflix has interposed defenses of non-infringement and invalidity since the original complaint. D.I. 15.

never accused of infringing. This cannot rise to the level of willful blindness. *Malvern Panalytical Ltd v. Ta Instruments-Waters LLC*, 2021 WL 3856145, at *4 (D. Del. Aug. 27, 2021) (rejecting a competitor relationship and activity monitoring as sufficient to support willful blindness). VideoLabs' reliance on *ELM 3DS Innovations* is similarly misplaced, as that court credited the allegation that the patent was common knowledge in a market in which defendant was a participant. *ELM 3DS Innovations, LLC v. SK Hynix Inc.*, 2016 WL 1274803, at *1 (D. Del. Mar. 31, 2016). Here, VideoLabs makes no such allegation.

CONCLUSION

Netflix respectfully requests that the Court grant its motion to dismiss.

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CERTIFICATE OF SERVICE

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