



December 1, 2023

Via Email to Chris.Mammen@wbd-us.com

Christian E. Mammen
Womble Bond Dickinson LLP
50 California Street
Suite 2750
San Francisco, CA 94111

Re: Response to Arkose Labs, Inc. Patents

Orrick, Herrington & Sutcliffe LLP

51 West 52nd Street
New York, NY 10019-6142

+1 212-506-5000

orrick.com

Richard F. Martinelli

E rmartinelli@orrick.com

D +1 212 506-3702

F +1 212 506-5151

Dear Mr. Mammen,

We write in response to your previous letters¹ to DataDome on behalf of Arkose Labs, Inc. (“Arkose”), which include claim charts purporting to correlate U.S. Patent No. 9,146,917 (the ’917 patent) and U.S. Patent No. 9,558,340 (the ’340 patent) to DataDome’s CAPTCHA.

Your letters offer DataDome a license to the ’917 patent and the ’340 patent, amongst some others. We have reviewed the claim charts you provided and the license proposal and concluded that they do not make legal or economic sense. Prior counsel has already advised Arkose of the §101 invalidity issues with the ’917 patent, which we agree with but will not restate here.

DataDome’s CAPTCHA Product Does Not Practice *Any* Claim of *Any* of the Identified Arkose Patents

The claim charts for the ’917 patent and the ’340 patent fail to plausibly demonstrate any infringement. The charts do not apply² each of the patent claims’ limitations to DataDome’s in-house CAPTCHA. As such, they fail from the outset and demonstrate non-infringement rather than any need for a license from Arkose. This is not just sloppiness on Arkose’s part. In reality, there is no correspondence between the claims of the Arkose patents and DataDome’s CAPTCHA.

¹ The “previous letters” referenced are the letters sent from Christian Mammen to DataDome and/or Stephen Smith at Cooley, dated October 6, 2022, March 3, 2023, August 8, 2023 and October 3, 2023. They are collectively referred to as “Arkose Letters.”

² The ’917 patent claim chart consists mostly of screenshots of a DataDome video that discusses background information of the CAPTCHA industry. *See* March 1, 2023 Letter. The presenter in the screenshotted video, at the cited timestamps, is not specifically discussing DataDome’s CAPTCHA, but rather general bot detection signals in the industry. The presenter uses “we” and “you” interchangeably to address companies generally in the bot detection industry, rather than DataDome specifically. (*See, e.g.,* <https://www.youtube.com/watch?v=5TBksZBIZFc> at 8:08 (“You can compute reputation on the IP address...”)). The YouTube video screenshotted in the claim charts present an unsupported and frivolous infringement argument.



The '917 Patent

Claim 1 of the '917 patent requires **two questions** in a question-answer system – a first question and a second question that is generated based on the first question, which provides missing information in relation to the answers of the first question. '917 patent at 29:16-26 (emphasis added) (“receiving a **first question** into a question-answer system” and “**generating a user question** in natural language format, to provide said missing information, **based on said first question**”). The '917 patent claim chart does not show that DataDome’s CAPTCHA contains any questions, or a question-answer system. Indeed, DataDome’s CAPTCHA does not use questions at all. In addition to failing to identify any “first question” in DataDome’s CAPTCHA, Arkose’s chart identifies the command “Slide right to complete the puzzle”, as the alleged “user question in a natural language format.” This is simply an instruction to perform a task, not a question. Thus, the DataDome CAPTCHA does not present any questions, much less two questions in a question-answer system.

Claim 1 of the '917 patent also requires generation of “candidate answers” and “confidence scores associated with said candidate answers” that measure the likelihood a candidate answer is correct. *Id.* (“generating candidate answers to said first question and confidence scores associated with said candidate answers, said confidence scores comprising a measure of the likelihood a candidate answer is correct”). This is consistent with the disclosure of the '917 patent system, which seeks to automatically generate factual questions for use in a CAPTCHA. Again, this is nothing like the DataDome CAPTCHA and your claim chart does not identify any “candidate **answers to said first question.**” Indeed, how could the chart do so when you fail to identify a first question. Of course, this further demonstrates that DataDome’s CAPTCHA is completely unlike the CAPTCHA in the '917 patent.

The '340 Patent

The **expired** '340 patent³ claim chart’s allegations are even more unfounded. Your chart simply includes conclusory recitations of claim 1’s language, without any application of those claims to DataDome’s CAPTCHA. Thus, the '340 patent claim chart does not reflect any reasonable allegation of infringement because there is no possible reasonable infringement allegation. Moreover, DataDome did not start using the accused CAPTCHA until *after* the '340 patent expired.

* * *

The other patents identified by Arkose are not accompanied by any claim charts. Given the extraordinary weakness of the claim charts Arkose decided to provide in its letter, there is no basis whatsoever for DataDome to believe these other Arkose Patents are at all relevant to DataDome’s business. And DataDome does not believe it requires a license to any of the Identified Arkose Patents.

³ The '340 patent expired due to nonpayment of maintenance fees on March 8, 2021.



Arkose's License Offer Has No Correspondence to Economic Reality

DataDome is in the business of detecting and countering bot-driven fraud and offers a proprietary bot detection and fraud protection suite that is not based on CAPTCHA's. Rather, the accused CAPTCHA technology constitutes only one small part of DataDome's bot detection and fraud solution suite, and DataDome does not obtain independent revenue from its CAPTCHA product. Indeed, some of DataDome's customers bring their own CAPTCHA solutions, rather than using DataDome's offering.

DataDome's CAPTCHA product was first deployed in the summer of 2022. Prior to that, DataDome used various third-party CAPTCHA products. As I'm sure you are aware, these third-party CAPTCHAs are widely available for a price far cheaper than the proposed license fee. And, while we have no reason to believe your patents are relevant to these third party CAPTCHAs, any claim Arkose has against those CAPTCHAs would be the responsibility of the third-parties, not DataDome.

Because DataDome does not independently charge for its CAPTCHA and has no revenue for its CAPTCHA, your proposed licensing scheme is not relevant to DataDome's business. Moreover, as you know, reasonable patent royalties are based on a simple cost benefit analyses. Because CAPTCHA is not a driver of DataDome's business—even if Arkose had patents relevant to DataDome's activities, which it does not—Arkose's exorbitant license proposal makes no sense when DataDome receives no independent revenue for its CAPTCHA and can simply use a third-party CAPTCHA.

* * *

In light of Arkose's completely deficient and nonsensical infringement analysis, we are compelled to note that any future potential litigation based on such unsupported infringement allegations would be frivolous and baseless. *See Judin v. U.S.*, 110 F.3d 780, 784 (Fed. Cir. 1997)(plaintiff failed to meet the minimum standards imposed by Rule 11 because neither the plaintiff nor his attorney "made a reasonable effort to ascertain whether the accused devices satisfied the two key claim limitations.").

We trust this resolves the matter, but I am available should you have any further issues.

Sincerely,

/s/ Richard F. Martinelli