

**United States District Court
Western District of Texas
Austin Division**

Affinity Labs of Texas, LLC,)	
)	
Plaintiff,)	
)	Case No. 1:15-cv-00849
v.)	
)	Jury Trial Demanded
Netflix, Inc.)	
)	
Defendant.)	
)	

Complaint for Patent Infringement

Plaintiff Affinity Labs of Texas, LLC (Affinity Labs) files this Complaint against Defendant Netflix, Inc. (Netflix) and alleges as follows:

Parties

1. Plaintiff Affinity Labs is a Texas limited liability company having offices at 31884 RR 12, Dripping Springs, TX 78620.
2. Defendant Netflix, Inc. is a Delaware corporation with a principal office located at 100 Winchester Circle, Los Gatos, CA 95032. Netflix is registered to do business in and actively engages in business within the State of Texas, and maintains an agent for service of process at National Registered Agents, Inc., 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136.

Jurisdiction

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the federal patent statutes, 35 U.S.C. §§ 271 and 281-285.

4. This Court has general and specific personal jurisdiction over Netflix. Netflix has committed and continues to commit acts giving rise to this action within Texas and within this judicial district and Netflix has established minimum contacts within the forum such that the exercise of jurisdiction over Netflix would not offend traditional notions of fair play and substantial justice. For example, Netflix has committed and continues to commit acts of patent infringement in this judicial district, as set forth below. In conducting its business in Texas and this judicial district, Netflix derives substantial revenue from its patent infringement.

Venue

5. Venue in the Western District of Texas is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because Netflix has committed acts within this judicial district giving rise to this action, and Netflix has and continues to conduct business in this judicial district, including one or more acts of using, selling, and offering to sell its Netflix on-demand Internet streaming media service that constitutes patent infringement in this judicial district, and providing service and support to Netflix's customers in this judicial district.

6. On information and belief, Netflix operates distribution and shipping centers within the state of Texas and this judicial district, including in Austin, Houston, San Antonio, and Dallas, TX.

7. Venue in the Western District of Texas is also proper because Affinity Labs is headquartered in this judicial district in Dripping Springs, Texas.

8. Venue in the Western District of Texas is also proper because the majority of Affinity Labs' documents and relevant evidence is located at Affinity Labs' headquarters within this judicial district and numerous witnesses are also located within this judicial district.

9. Venue in the Western District of Texas is also proper because Affinity Labs is organized and governed by the limited liability company laws of Texas and is subject to taxes in Texas. Affinity Labs maintains a registered agent for service of process in Texas.

10. Venue in the Western District of Texas is also proper because of judicial economy. The Honorable Judge Lee Yeakel in this judicial district previously presided over *Affinity Labs of Texas, LLC v. Clear Channel Broadcasting*, C.A. No. A-12-CV-205-LY, involving another Affinity Labs patent, United States Patent No. 7,970,379, which is in the same patent family sharing the same specification as the Asserted Patent in this matter. In the previous case, Judge Yeakel conducted a fully-briefed claim construction hearing and issued a claim construction order on this related technology.

Background

11. Affinity Labs was founded in 2008 by Russell White and Harlie Frost.

12. Russell White is a successful entrepreneur and inventor with over 30 issued patents owned by Affinity Labs, Apple, AT&T, and others. Mr. White grew up in Houston, Texas, and has an undergraduate degree in mechanical engineering from Texas A&M. Mr. White also graduated from the University of Temple Law School, which he attended at night while working full time as an engineer for The Lincoln Electric Company. After

earning his law degree, Mr. White moved to Austin and co-founded SBC Knowledge Ventures, an entity within AT&T.

13. Mr. White is a prolific inventor listed on at least thirty-four separate United States patents.

14. On March 28, 2000, Mr. White and Kevin R. Imes filed a detailed patent application, No. 09/537,812 (the '812 application) with the United States Patent and Trademark Office (PTO).

15. The '812 application broadly addressed the problem of accessing, managing, and delivering digital audio and video content. In doing so, the '812 application disclosed a number of inventions and defined, for the first time, what is now a ubiquitous digital media ecosystem. These inventions laid the foundation for a revolution in streaming technology that is responsible for the current transformation in how individuals consume media.

16. For instance, in the first half of 2015, Netflix accounted for 37% of North American downstream Internet traffic during evening hours.

17. More particularly, the inventions detailed in the '812 application and claimed in the '802 patent underpin the streaming technology known generally as Hypertext Transfer Protocol adaptive bitrate (HTTP ABR) streaming. HTTP ABR streaming is now ubiquitously utilized among content providers—including Netflix—to stream video to users' electronic devices.

18. HTTP ABR streaming technology dynamically detects local bandwidth and CPU conditions (for example, how fast data in a buffer is being processed) and seamlessly switches the video quality of media files that a player receives. Users with a fast network

connection can experience higher quality videos than users with slower network connections, while both users enjoy a seamless, uninterrupted streaming video experience.

19. Additionally, HTTP ABR streaming technology uses the hypertext transfer protocol (HTTP). Since the Internet was built on HTTP, it is much easier and cheaper to serve streaming data over this protocol as opposed to specialized streaming protocols (i.e., Real Time Streaming Protocol, Microsoft Media Server, and Real Time Messaging Protocol, among others) as was typically the case prior to 2008.

20. In HTTP ABR streaming, the video/audio source is cut into many short segments (“chunks”) that are formatted for delivery. The video/audio is received by the user’s device as a series of downloads of these segments or chunks. A playlist file that is sent to the user’s device at the inception of streaming includes a list of network locations, or URLs, that tell the user’s device where and in what order the user’s device should request the segments of the video/audio. The “adaptive” part of the technology is achieved by formatting the video/audio source into multiple bitrate files, generating segments of various sizes of the video. The user’s device can then choose between the segments of different sizes based upon the device’s current network connection or the device’s CPU performance.

21. Variable network connection speeds can be illustrated where a mobile user traveling in a car connects to different networks with variable data transmission rates during the same media stream. For example, a child may request delivery of a movie or television show while sitting in the back of the family’s car waiting to start a family road trip. The media delivery begins when the requesting device is still connected to a home Wi-Fi network connection. In the middle of the stream, however, the car starts up and backs out of the family’s driveway, causing the requesting device to disconnect from the higher-speed

Wi-Fi network and reconnect to a wireless 4G network with slower data transmission rates. Later, the family nears the outskirts of town and the requesting device again disconnects from the higher-speed 4G network and reconnects to a wireless 3G network with even slower data transmission rates.

22. Alternatively, a user who is connected to the same network may encounter variable network connection speeds and speed slowdowns based on network traffic or other factors the user does not control. Without the benefit of HTTP ABR streaming in both of these scenarios, if the user's data transmission rate dropped below the rate required for continuous streaming of the digital media, the user would experience complications, such as interruptions or delays, in streaming the media.

United States Patent No. 9,094,802 (the '802 patent)

23. On July 28, 2015, the PTO issued U.S. Patent No. 9,094,802 (the '802 patent), entitled "System and Method to Communicate Targeted Information." A copy of this patent is attached as Exhibit A. The '802 patent was issued from a continuation application claiming priority to the '812 application, which was filed with the PTO on March 28, 2000. The '802 patent issued over nearly a thousand pieces of prior art (674 domestic and foreign patents and patent applications; and 308 non-patent references), was explicitly found to satisfy all sections of the patent laws including §§ 101, 102, 103, and 112, was explicitly determined to have March 28, 2000 as its priority date, is presumed valid, and is valid.

24. The '802 patent sought to solve several problems specifically arising from digital media streaming and delivery. In doing so, the inventors conceived of solutions that are now foundational to today's streaming technologies. For example, the inventors

recognized that users would experience varying network connection speeds, either on the same network or by switching between networks while on the go, and that the changes in speeds would prevent smooth and continuous media playback. Furthermore, the inventors recognized the importance and advantage of delivering media using conventional Internet website technology and infrastructure, for example, by using web servers and links or URLs to identify the differently formatted media segments.

25. The '802 patent further offered particular technical solutions to protect streaming digital media from delays or interruptions when users experience slowdowns or congestion in a delivery network. For example, the '802 patent disclosed that digital media "may be formatted and transmitted to achieve a desirable transmission rate." Ex. A, 5:23-25. "In one embodiment, the information may be wirelessly communicated at a relatively slow transmission rate." *Id.* at 5:52-53. "In this manner, communication networks having less or slower transfer rates may be used to wirelessly communicate the selected audio information to the electronic device." *Id.* at 5:62-65. In other circumstances, "high-speed wireless communications networks may be used to communicate the selected audio information" *Id.* at 5:66-6:1. In yet another embodiment, "a hybrid of wireless communication rates may be deployed depending on the requirements of the selected audio information and/or the electronic device." *Id.* at 6:5-8. Thus, a user experiencing variable network connection speeds, such as the child sitting in the back of the family car during a road trip, can still receive a continuous media stream without breaks or interruptions in the media because the delivery system includes a playlist that facilitates varied data transmission rates to the requesting device.

26. The '802 patent accomplishes this variable rate solution by breaking up and formatting the digital media into segments so that the same media can be delivered in different resolutions or qualities at different transmission rates. *See, e.g., id.* at 3:26-29 (“For example, an audio file may be formatted, segmented, compressed, modified, etc. for the purpose of providing or communicating the audio invention.”); *id.* at 4:58-63 (“For example, a wireless device may be operable to receive packets of information having a specific size and in a specific format. In such an embodiment, communications engine **102** could format the information into a desirable format for wirelessly communicating the information to electronic device **103**.”)

27. During prosecution of the '802 patent, the Patent and Trademark Office considered the Office's post-*Alice* guidelines and determined that all the claims of the '802 patent claim patent eligible subject matter and surpassed the requirements set forth in § 101.

28. No claim of the '802 patent relates to a fundamental economic practice.

29. No claim of the '802 patent relates to a method of organizing human activity.

30. No claim of the '802 patent could be performed in full by the human mind or with a pen-and-paper.

31. No claim of the '802 patent recites or claims a mathematical relationship or formula.

32. No claim of the '802 patent claims recites a computer merely receiving, processing, and storing data in a generic manner.

33. No claim of the '802 patent recites a longstanding or historical commercial practice.

34. As of March 2000, every claim of the '802 patent recites a combination of elements that were not well-understood, routine, or conventional to those of ordinary skill in the art.

35. Every claim of the '802 patent recites patent eligible subject matter as required by § 101.

36. Numerous other companies have recognized the value and importance of Affinity Labs' innovation. For instance, twenty-eight companies have licensed Affinity Labs' patent portfolio for the patents in the same family as the Asserted Patent.

37. Netflix does not have a license to the '802 patent or any patent in Affinity Labs' patent portfolio.

Count I

Infringement of U.S. Patent No. 9,094,802 by Netflix

38. Affinity Labs restates and realleges each of the allegations set forth above and incorporates them herein.

39. Affinity Labs holds all legal title, interest, and rights in the '802 patent.

40. Netflix did not and does not have authority to make, use, sell, or offer for sale any system covered by any claim of the '802 patent.

41. Netflix has and continues to manufacture, use, sell, and offer to sell, without authority, its Netflix on-demand Internet streaming media service.

42. End users and subscribers use the Netflix on-demand Internet streaming media service to watch Netflix's movie and television media library on any Internet-connected device that offers a Netflix application, such as a computer, gaming console, DVD or Blu-ray player, HDTV, set-top box, home theater system, phone, or tablet.

43. Netflix uses and controls a media delivery system to stream and deliver movies and television programs to its subscribers and end users using HTTP ABR streaming.

44. As part of its media delivery system, Netflix maintains media, such as movies and television programs, available for delivery to end users' requesting device as a series of segments.

45. The segments are configured to allow delivery via network links capable of delivering information at different rates.

46. Netflix's media delivery system includes a media playlist with the different network locations of the configured segments.

47. Netflix's media delivery system also maintains a delivery resource that responds to a plurality of file requests to deliver a continuous stream of the requested media to the end users' requesting device.

48. The Netflix on-demand Internet streaming media service allows Netflix's end users to stream media at different rates using HTTP ABR streaming for continuous viewing on the end users' requesting device, even during fluctuating network conditions.

49. In violation of 35 U.S.C. § 271(a), Netflix has infringed, and if not enjoined, will continue to infringe claims of the '802 patent by manufacturing, using, selling, and/or offering to sell, without authority, a media delivery system that includes the Netflix on-demand Internet streaming media service, which is covered by one or more claims of the '802 patent, literally and/or under the doctrine of equivalents, in this judicial district and elsewhere in the United States.

50. For example, Netflix directly infringes at least claims 1, 9, and 14 of the '802 patent by having and continuing to make, use, sell, and/or offer to sell its media delivery system that includes the Netflix on-demand Internet streaming media service.

51. Netflix has known of the '802 patent since at least August 5, 2015. For instance, Mr. Frost, President of Affinity Labs, wrote Netflix's CEO, Reed Hastings, on August 5, 2015. In that letter, Mr. Frost enclosed a copy of the '802 patent because of Netflix's media delivery system.

52. Neither Mr. Hastings nor anyone on behalf of Netflix responded to Mr. Frost's August 5, 2015 letter.

53. Despite Affinity Labs' written notice of and Netflix's knowledge of the '802 patent, Netflix has not stopped its infringement. Instead, Netflix continues to make, use, sell, and/or offer for sale its media delivery system that includes the Netflix on-demand Internet streaming media service, which infringes the '802 patent.

54. Netflix's infringement of the '802 patent has been and is willful because Netflix has known of the '802 patent, knew or was at least reckless with respect to its infringement of the '802 patent, and yet continues to offer the Netflix on-demand Internet streaming media service in at least reckless disregard of Affinity Labs' patent rights.

55. Netflix does not have a license or permission to use the claimed subject matter in the '802 patent.

56. Affinity Labs has been injured and has been caused significant financial damage as a direct and proximate result of Netflix's infringement of the '802 patent.

57. Netflix will continue to infringe the '802 patent, and thus cause irreparable injury and damage to Affinity Labs unless enjoined by this Court.

58. Affinity Labs is entitled to recover from Netflix the damages sustained by Affinity Labs as a result of Netflix's wrongful acts in an amount subject to proof at trial.

Demand for Trial by Jury

Affinity Labs demands a jury trial on all issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Prayer for Relief

Plaintiff Affinity Labs prays for the following relief:

1. A declaration that Netflix has infringed and is infringing the '802 patent and is liable to Affinity Labs for infringement;
 2. An order enjoining Netflix from infringing the '802 patent;
 3. If a permanent injunction is not granted, a judicial determination of the conditions for future infringement such as an ongoing royalty;
 4. An award of damages, including pre-judgment and post-judgment interest, in an amount adequate to compensate Affinity Labs for Netflix's infringement of the '802 patent, and that the damages be trebled pursuant to 35 U.S.C. § 284;
 5. An equitable accounting of damages owed by Netflix for the period of infringement of the '802 patent, following the period of damages established by Affinity Labs at trial;
 6. A finding that this case is exceptional and an award of attorneys' fees pursuant to 35 U.S.C. § 285;
 7. An award of costs, expenses, and disbursements; and
- Such other and further relief as the Court deems Affinity Labs may be entitled to in law and equity.

Dated: September 22, 2015

Respectfully Submitted,

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