

IP Law News

Google, YouTube Move to Nix Claims in Rival's Tech Patents (1)

By Ian Lopez

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- Tech giants say claims cover unpatentable subject matter
- Virentem Ventures amended its complaint

Google LLC and YouTube LLC have asked a Delaware federal court to toss a lawsuit against them, arguing that claims in data and video-related patents they're accused of infringing are invalid.

Virentem Ventures LLC's asserted patents "are merely directed to abstract ideas related to playback rates of content," the Alphabet, Inc. entities told the U.S. District Court for the District of Delaware Sept. 26.

Google and YouTube's bid shows how companies trying to shake patent infringement allegations can, in turn, question the validity of the asserted claims. The move marks "a pretty standard way of trying to get something invalidated by Section 101," Ravi Mohan, an intellectual property partner at Rutan & Tucker LLP unaffiliated with the case, said, referring patent law governing eligibility.

Virentem, doing business as Enounce, sued Google and YouTube for allegedly infringing 11 patents related to variable playback speeds for digital audio and video. The tech companies, however, allege in their brief that these patents "contain no inventive concepts."

"The claims merely require practice of the abstract ideas through routine and conventional activities with generic computer hardware and software; they do not explain how the claimed functions are achieved," Google and YouTube wrote. "As courts routinely find, this is insufficient to supply an inventive step. Virentem's claims should be dismissed."

Virentem's counsel at Bunsow De Mory LLP and Ashby & Geddes P.A. didn't immediately respond to

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Google and YouTube told the court that Virentem's patents wouldn't hold up under the two-part eligibility test laid out in the Supreme Court's 2014 *Alice Corp. v. CLS Bank Int'l* ruling. Under the test, a patented invention must not cover an abstract idea or law of nature. If it does, it must have an inventive concept that takes it beyond the abstract.

They said U.S. Patent No. 6,598,228, as one example, isn't unique when describing "guidance information" used to present violence or adult language in video or audio segments.

"The idea of presenting information in accordance with its content, or information known about its content, has long been known," Google and YouTube argued in their brief. "Parents have long done this, for example, fast forwarding through a risqué scene in a movie during family movie night, or heeding a broadcaster's warning to avoid a news segment that contains content inappropriate for young viewers."

The U.S. Court of Appeals for the Federal Circuit has repeatedly found claims involving the presenting of information to users to be invalid under Section 101 of federal patent law, the companies noted. The '228 patent claims don't take the invention past the abstract, they said.

Virentem also made a move on Sept. 26. The company filed its second amended complaint in the litigation, asking for damages and future royalties, among other requests.

Quinn Emanuel Urquhart & Sullivan LLP and Richards, Layton & Finger, P.A. represent the technology companies. The firms didn't immediately respond for requests comment.

The case is Virentem Ventures, LLC v. YouTube, LLC et al, D. Del., 1:18 00917, 9/26/19

(Updated with additional reporting.)

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