

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BLACKBIRD TECH LLC d/b/a
BLACKBIRD TECHNOLOGIES,

Plaintiff,

v.

NETFLIX, INC.,

Defendant.

C.A. No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies (“Blackbird Technologies”) hereby alleges for its Complaint for Patent Infringement against Defendant Netflix, Inc. (“Netflix”) on personal knowledge as to its own activities and on information and belief as to all other matters, as follows:

THE PARTIES

1. Plaintiff Blackbird Technologies is a Delaware limited liability company with its principal place of business located at 200 Baker Avenue, Suite 203, Concord, Massachusetts 01742.

2. On information and belief, Defendant Netflix is a Delaware corporation. Netflix may be served via its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street., Wilmington, Delaware 19801.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code §§ 100, *et seq.*

4. Subject-matter jurisdiction over Blackbird Technologies' claims is conferred upon this Court by 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (patent jurisdiction).

5. This Court has personal jurisdiction over Netflix because Netflix is subject to general and specific jurisdiction in Delaware. Netflix has also established minimum contacts with this forum. Netflix has been incorporated in Delaware at all relevant times. Netflix regularly conducts business in Delaware, including by marketing, selling, and/or offering for sale subscriptions to movies and TV shows on-demand (the "Netflix Service") through its website, www.netflix.com, which is accessible throughout the United States, including Delaware. Netflix has also specifically promoted the Netflix Service in this district. *See, e.g.*, <http://www.delawareonline.com/story/news/2016/10/05/gilmore-girls-takes-over-loma-coffee/91598378/> (Netflix promotion held at a café in Wilmington, Delaware). The exercise of personal jurisdiction comports with Netflix's right to due process because, as described above, Netflix has purposefully availed itself of the privilege of conducting activities within Delaware such that it should reasonably anticipate being haled into court here. As alleged herein, acts by Netflix in this district have caused injury to Blackbird Technologies.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and § 1400(b) at least because Netflix transacts business within this district and has committed acts in this district that infringe U.S. Patent No. 7,174,362.

U.S. PATENT NO. 7,174,362

7. U.S. Patent No. 7,174,362 (the "'362 patent" or "patent-in-suit") entitled, "Method and System for Supplying Products from Pre-Stored Digital Data in Response to Demands Transmitted via Computer Network," was duly and legally issued by the U.S. Patent

and Trademark Office on February 6, 2007. Blackbird Technologies is the owner by assignment of all right, title, and interest in and to the '362 patent, including all right to recover for any and all infringement thereof. The '362 patent is valid and enforceable. A true and correct copy of the '362 patent is attached as Exhibit A.

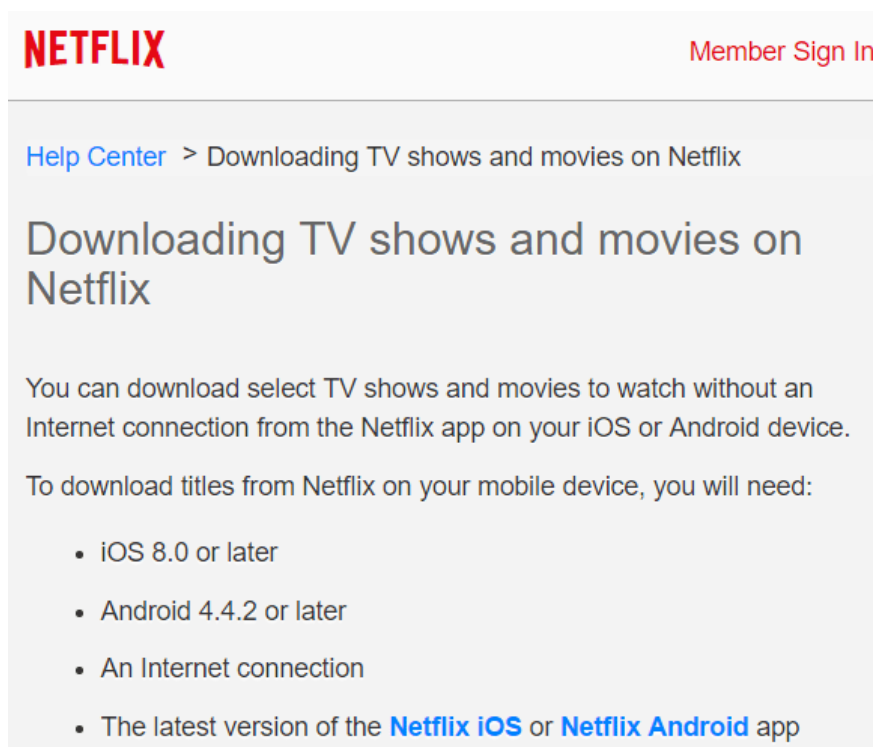
8. Claim 2 of the '362 patent recites, for example, a computer-implemented method of digital data duplication whereby requests are processed by a computer over a network. The computer comprises modules configured to execute the requests: A first module configured to create a task log based on incoming requests; a second module configured to store all available digital data for duplication, which comprises an expandable indexed archive of digital data, and a resource file for an output device; and a third module configured to retrieve requested digital data, download the data to an output device, and command the output device to transfer the data onto media.

9. Claim 10 of the '362 patent recites, for example, a computer-implemented method of digital data duplication whereby requests are processed by a computer over a network. The computer comprises modules configured to execute the requests: A first module configured to create a task log based on incoming requests; a second module configured to store all available digital data for duplication; and a third module configured to retrieve requested digital data, download the data to an output device, and command the output device to transfer the data onto media. The storage capacity remaining in an output device is tracked.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,174,362

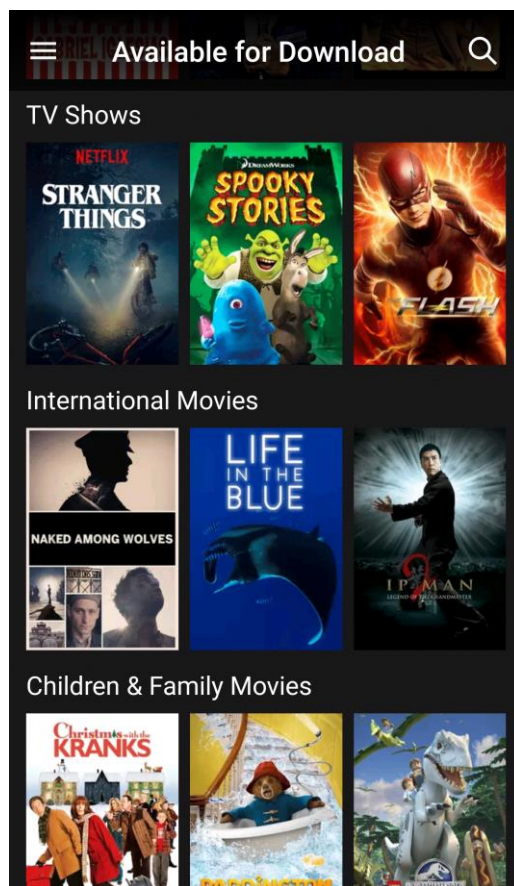
10. Blackbird Technologies reasserts and incorporates by reference Paragraphs 1 through 9 of this Complaint as if fully set forth herein.

11. The Netflix Service is accessible from multiple devices, including mobile devices. The latest version of the Netflix iOS app or Netflix Android app enables Netflix Service subscribers to download certain TV shows and movies to their mobile device for offline viewing (the “Netflix App”):




(*Downloading TV shows and movies on Netflix*, NETFLIX, <https://help.netflix.com/en/node/54816>.)

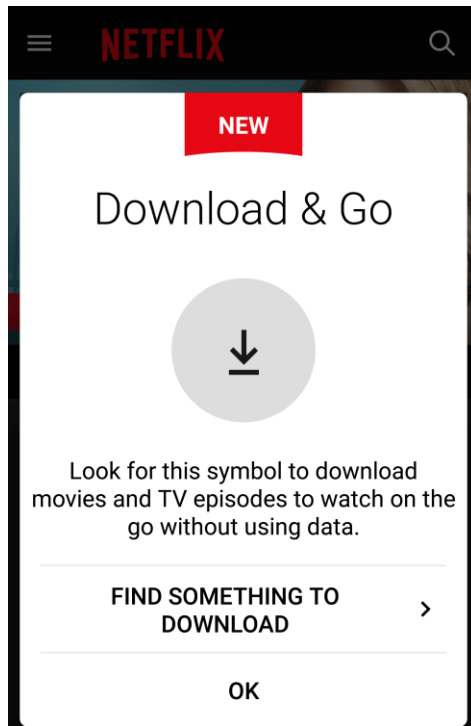
12. Netflix stores an expandable indexed archive of TV shows and movies, certain of which are available for download to a mobile device with the Netflix App:



(screenshot from Netflix App for Android 4.12.2 build 14444 (listing TV shows and movies available for download onto the mobile device.)

13. Netflix takes download requests for certain TV shows and movies from the



Netflix App upon selection of a download icon . For example:




(screenshot from Netflix App for Android 4.12.2 build 14444.)

▼ Download a title

Download a title

Not all titles are available for download. If you have a particular title in mind, you can search for that title and look for the download icon . If you are interested in browsing downloadable titles, select **Available for Download** from the Netflix menu . Once you have found a title, follow the steps below.

1. Select the title you would like to download.
2. On the description page, tap the download icon .
 - For TV shows, the icon will appear next to each available episode.
3. Once the title has completed downloading, you can access it from the **My Downloads** section of the app.

(*Downloading TV shows and movies on Netflix*, NETFLIX,

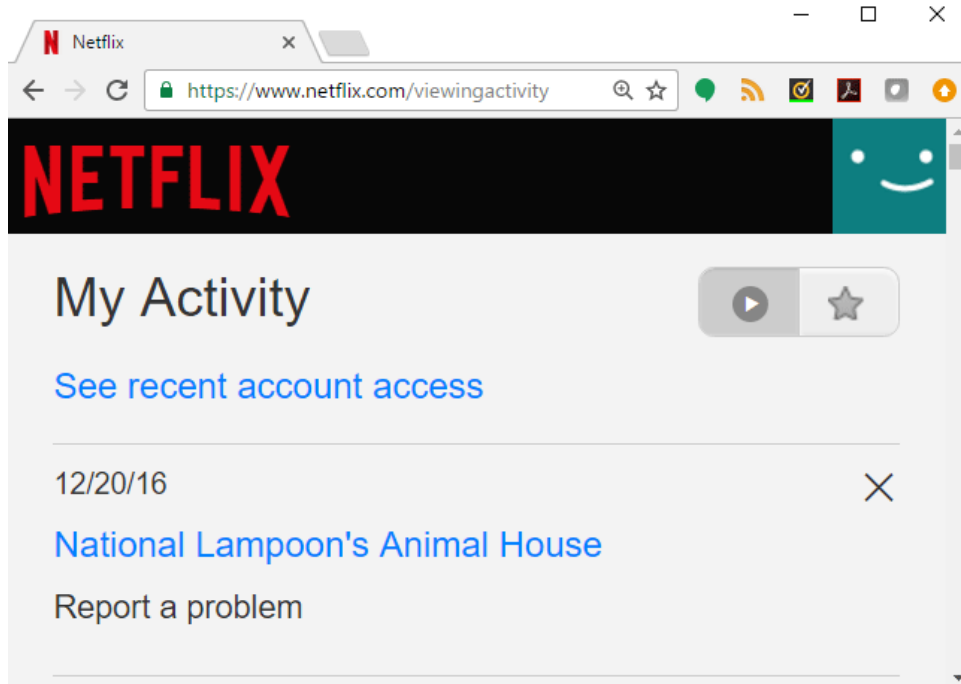
<https://help.netflix.com/en/node/54816>.)

14. After Netflix processes a Netflix Service subscriber's download request for a TV show or movie, that TV show or movie is stored on that Netflix Service subscriber's mobile device such that it can be viewed offline:



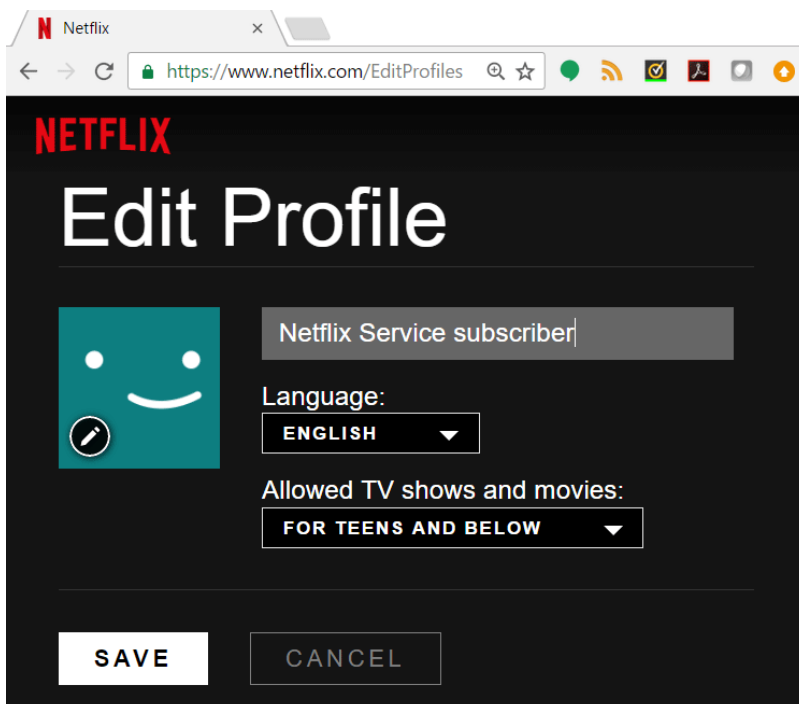
(screenshot from Netflix App for Android 4.12.2 build 14444 (showing option to play downloaded movie).)

15. Netflix creates a task log based on incoming download requests as evidenced by, for example, the downloaded TV show or movie's identification on a Netflix Service subscriber's activity history:



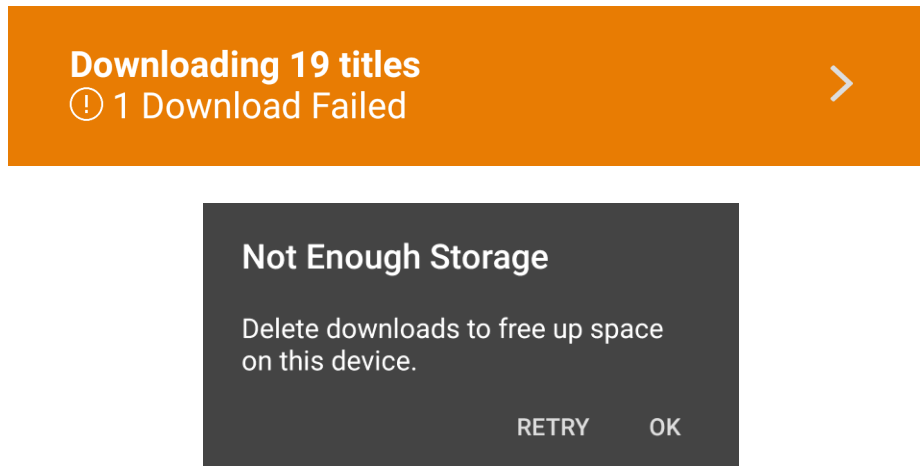
(My Activity, NETFLIX, <https://www.netflix.com/viewingactivity> (screenshot from “My Activity” page for logged in Netflix Service subscriber identifying a downloaded movie).)

16. Netflix maintains information associated with the Netflix Service subscriber’s mobile device, including for example any download limitations:



(*Edit Profile*, NETFLIX, <https://www.netflix.com/EditProfiles> (screenshot from “Edit Profile” page for logged in Netflix Service subscriber).)

17. Netflix tracks the storage capacity remaining in the Netflix Service subscriber’s mobile device:



(messages displayed on Netflix App for Android 4.12.2 build 14444 after a queued Netflix Service download request causes the total size of the pending downloads to exceed the mobile device’s available storage space).

18. Therefore, Netflix, pursuant to 35 U.S.C. § 271(a), has directly infringed and continues to directly infringe, literally and/or under the doctrine of equivalents, one of more claims of the ’362 patent, including at least claims 2 and 10.

Damages

19. Blackbird Technologies has sustained damages as a direct and proximate result of Defendant’s infringement of the ’362 patent.

20. As a consequence of Defendant’s past infringement of the ’362 patent, Blackbird Technologies is entitled to the recovery of past damages in the form of, at a minimum, a reasonable royalty.

21. As a consequence of Defendant's continued and future infringement of the '362 patent, Blackbird Technologies is entitled to royalties for its infringement of the '362 patent on a going-forward basis.

PRAYER FOR RELIEF

WHEREFORE, Blackbird Technologies respectfully requests that this Court enter judgment against Defendant, as follows:

A. Adjudging that Defendant has infringed at least claims 2 and 10 of the '362 patent literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a);

B. An award of damages to be paid by Defendant adequate to compensate Blackbird Technologies for Defendant's past infringement and any continuing or future infringement up until the date such judgment is entered, and in no event less than a reasonable royalty, including interest, costs, and disbursements pursuant to 35 U.S.C. § 284;

C. Ordering Defendant to continue to pay royalties to Blackbird Technologies for infringement of the '362 patent on a going-forward basis;

D. Adjudging that this case be exceptional under 35 U.S.C. § 285 and awarding enhanced damages, including costs and attorneys' fees, to Blackbird Technologies;

E. Awarding Blackbird Technologies pre-judgment and post-judgment interest at the maximum rate permitted by law on its damages; and

F. Granting Blackbird Technologies such further relief as this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Blackbird Technologies demands a trial by jury on all claims and issues so triable.

Dated: February 1, 2017

STAMOULIS & WEINBLATT LLC

OF COUNSEL

Christopher Freeman
cfreeman@blackbird-tech.com
Wendy Verlander
wverlander@blackbird-tech.com
John Handy
jhandy@blackbird-tech.com
Blackbird Tech LLC d/b/a
Blackbird Technologies
One Boston Place, Suite 2600
Boston, MA 02108
(617) 307-7100

/s/ Stamatios Stamoulis
Stamatios Stamoulis #4606
stamoulis@swdelaw.com
Richard C. Weinblatt #5080
weinblatt@swdelaw.com
Two Fox Point Centre
6 Denny Road, Suite 307
Wilmington, DE 19809
(302) 999-1540

Attorneys for Plaintiff
Blackbird Tech LLC
d/b/a Blackbird Technologies