

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

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<b>CRFD RESEARCH, INC.,</b>	:	<b>C.A. No. _____</b>
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
	:	<b>JURY TRIAL DEMANDED</b>
<b>NETFLIX, INC.,</b>	:	
	:	
<b>Defendant.</b>	:	
	:	
	x	

**Complaint for Patent Infringement**

Plaintiff CRFD Research, Inc. (“CRFD”) alleges the following for its complaint of patent infringement against Netflix, Inc. (“Defendant” or “Netflix”).

**Nature of the Action**

This is an action for patent infringement of United States Patent No. 7,191,233 (the “’233 Patent”) under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, and seeking damages and injunctive and other relief under 35 U.S.C. § 281, *et seq.*

**The Parties**

1. Plaintiff CRFD is a Delaware corporation with its principal place of business at 2331 Mill Road, Suite 100, Alexandria, Virginia 22314.

2. On information and belief, Netflix is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 100 Winchester Circle, Los Gatos, California 95032. Netflix has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 as its agent for

service of process.

### **Jurisdiction and Venue**

3. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action concerns the infringement of United States patents.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b) because, among other reasons, Defendant has transacted business in the State of Delaware, including at least some of the infringements alleged herein.

6. Upon information and belief, this Court has personal jurisdiction over Defendant because it is a corporation organized under the laws of the State of Delaware and has purposely availed itself of the privileges and benefits of the laws of the State of Delaware.

### **The Patent-In-Suit**

7. CRFD is the owner by assignment of the '233 Patent, entitled "System for Automated, Mid-Session, User-Directed, Device-to-Device Session Transfer System," which the United States Patent & Trademark Office duly issued on March 13, 2007. A true and correct copy of the '233 Patent is attached hereto as Exhibit A.

8. The inventions of the '233 Patent are applicable to, among other things, a transfer of an on-going software session from one device to another device.

### **Defendant's Infringing Products and Methods**

9. Netflix purports to be the leading Internet television network in the world, which includes provision of streaming video services.<sup>1</sup> Netflix purports to have more than 44 million streaming members in over 40 countries, to which Netflix provides video content accessible on

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<sup>1</sup> Netflix, Inc., Annual Report (Form 10-K), at 1 (Feb. 3, 2014).

nearly any Internet-connected device.<sup>2</sup> Netflix provides video streaming services to its customers by transferring content onto its customers' Netflix-enabled devices.

10. Upon information and belief, Defendant makes, uses, sells, leases, imports and offers for sale products that allow users to transfer an on-going software session from one device to another device, including but not limited to its streaming video services and device applications ("Defendant's Infringing Products"). For example, Defendant offers streaming video services, which conduct a session with a user's Netflix-enabled device, including computers, game consoles, Blu-ray players, televisions, streaming players, home theater systems, phones, and tablets, among other devices, and transfer content to a user's additional Netflix-enabled devices, via a Netflix App or web interface. Defendant purports that when a user's Netflix-enabled devices are networked, the video content on a registered Netflix-enabled device can be accessed by up to six registered Netflix-enabled devices when connected to the Internet. Defendant purports that a user can "continue watching something [on a device], even if [the user] started watching on a different device."<sup>3</sup> Similarly, Defendant purports on other company's websites that a user can "[s]tart watching on one device, and resume watching on another" and should "[c]heck out netflix.com for all the TVs, game consoles, tablets, phones, Blu-ray players and set top boxes on which [a user] can watch Netflix."<sup>4</sup>

#### **COUNT I: INFRINGEMENT OF THE '233 PATENT**

11. Plaintiff incorporates paragraphs 1-10 herein by reference as if set forth here in full.

12. Upon information and belief, Defendant has been and is currently directly

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<sup>2</sup> *Id.*

<sup>3</sup> *Netflix US & Canada Blog: iPad User Experience Update*, Netflix US & Canada Blog (Mar. 7, 2011), <http://blog.netflix.com/2011/03/ipad-user-experience-update.html>.

<sup>4</sup> *Netflix - Android Apps on Google Play*, Google Play, <https://play.google.com/store/apps/details?id=com.netflix.mediaclient&hl=en> (last visited Mar. 5, 2014).

infringing, literally or under the doctrine of equivalents, one or more claims of the '233 Patent by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, products and services that transfer an on-going software session from one device to another device. Without limitation, and by example only, Defendant directly infringes and continues to directly infringe at least claim 23 of the '233 Patent by making, selling, using and offering for sale at least Netflix's streaming video services and device applications. Additionally, Defendant directly infringes and continues to directly infringe at least claim 1 of the '233 Patent by making, using, selling, and offering for sale at least Netflix's streaming video services and device applications.

13. Defendant also directly infringes one or more claims of the '233 Patent by directing and/or controlling its employees, executives, users, agents, affiliates, suppliers and customers to use the aforementioned products that transfer an on-going software session from one device to another device within the United States.

14. To the extent that any claim is construed to require a system, Defendant also directly infringes one or more claims of the '233 Patent by providing to users software, hardware and/or platforms that transfer an on-going software session from one device to another device, thus putting the aforementioned system into use.

15. By using the methods claimed in the '233 Patent and by making, selling, importing, offering for sale and/or using the aforementioned products that transfer an on-going software session from one device to another device, Defendant has been and is now directly infringing under 35 U.S.C. § 271(a) one or more claims of the '233 Patent, either literally or under the doctrine of equivalents.

16. Upon information and belief, upon knowledge of the '233 Patent (at least since

the filing date of this Complaint) Defendant is contributing to the infringement of the '233 Patent by, among other things, knowingly and with intent, actively encouraging its customers, suppliers, agents, users and affiliates to make, use, sell and/or offer for sale at least Netflix's streaming video services and device applications, which constitutes infringement of at least claims 1 and 23 of the '233 Patent. For example, to the extent that any claim is construed to require a system, Defendant provides components, including software, hardware and/or platforms, for use in networked systems, which transfer an on-going software session from one device to another device. Defendant knows that such products constitute a material part of the inventions of the '233 Patent, knows those products to be especially made or adapted to infringe the '233 Patent, and knows that those products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

17. By contributing to its customers', suppliers', agents', users' and affiliates' use of the apparatus and methods claimed in the '233 Patent and their making and/or using the aforementioned streaming video products and/or services, Defendant has been and is now indirectly infringing under 35 U.S.C. § 271(c) one or more claims of the '233 Patent, either literally or under the doctrine of equivalents.

18. Upon information and belief, upon knowledge of the '233 Patent (at least since the filing date of this Complaint), Defendant is inducing infringement of the '233 Patent by, among other things, knowingly and with intent, actively encouraging its customers, suppliers, users, agents and affiliates to make, use, sell and/or offer for sale Defendant's aforementioned products that transfer an on-going software session from one device to another device in a manner that constitutes infringement of one or more claims of the '233 Patent, with the knowledge and specific intent to encourage, direct and facilitate those infringing activities, and

knowing that such activities infringe the '233 Patent, including through the creation and dissemination of promotional and marketing materials, instructional materials, product materials and technical materials. For example, Defendant provides users with information explaining how to operate Netflix's streaming video services on Netflix-enabled devices, including how a user can resume watching a prior, partially-watched video from another device on the user's current device.<sup>5</sup>

19. To the extent that Defendant's users can be considered to put the aforementioned products that transfer an on-going software session from one device to another device into use (for example, to the extent any claim is construed to require such a system), then Defendant would also be inducing infringement of the '233 Patent by, among other things, knowingly and with intent (at least since the filing date of this Complaint) actively encouraging its users to make and use Defendant's aforementioned products that transfer an on-going software session from one device to another device in a manner that constitutes infringement of one or more claims of the '233 Patent, with the knowledge and specific intent to encourage, direct and facilitate those infringing activities, and knowing that such activities infringe the '233 Patent, including through the creation and dissemination of promotional and marketing materials, instructional materials, product materials and technical materials.

20. By inducing its customers', suppliers', users', agents' and affiliates' use of the apparatus and methods claimed in the '233 Patent and its making and/or using at least Netflix's streaming video services and device applications, Defendant has been and is now indirectly infringing under 35 U.S.C. § 271(b) at least claims 1 and 23 of the '233 Patent, either literally or under the doctrine of equivalents.

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<sup>5</sup> See, e.g., *Netflix Features on Your Windows Phone - Netflix Help Center*, Netflix.com, <https://support.netflix.com/en/node/408> (last visited Mar. 5, 2014).

21. As a result of Defendant's unlawful infringement of the '233 Patent, CRFD has suffered and will continue to suffer damage. CRFD is entitled to recover from Defendant the damages adequate to compensate for such infringement, which have yet to be determined.

22. Defendant will continue to infringe the '233 Patent unless and until it is enjoined by this Court.

23. Defendant, by way of its infringing activities, has caused and continues to cause CRFD to suffer damages in an amount to be determined at trial. CRFD has no adequate remedy at law against Defendant's acts of infringement and, unless Defendant is enjoined from its infringement of the '233 Patent, CRFD will suffer irreparable harm.

#### **PRAYER FOR RELIEF**

WHEREFORE, CRFD respectfully requests that this Court enter judgment in its favor as follows:

A. Holding that Defendant has directly infringed, literally and/or under the doctrine of equivalents, one or more of the claims of the '233 Patent;

B. Holding that Defendant has indirectly infringed, literally and/or under the doctrine of equivalents, one or more of the claims of the '233 Patent;

C. Permanently enjoining Defendant and its officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, parents and all others acting in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of the '233 Patent;

D. Permanently enjoining the use of the products that transfer an on-going software session from one device to another device created or used according to the patented methods of the '233 Patent;

E. Awarding to CRFD the damages to which it is entitled under 35 U.S.C. § 284 for Defendant's past infringement and any continuing or future infringement up until the date Defendant is finally and permanently enjoined from further infringement, including compensatory damages;

F. Declaring this to be an exceptional case and awarding CRFD's attorneys' fees under 35 U.S.C. § 285;

G. Awarding CRFD costs and expenses in this action;

H. Awarding CRFD pre- and post-judgment interest on its damages; and

I. Awarding CRFD such other and further relief in law or in equity as this Court deems just and proper.

### **JURY DEMAND**

CRFD, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any and all issues so triable by right.

Dated: March 7, 2014

Respectfully submitted,

FARNAN LLP

/s/ Brian E. Farnan

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