No. 2026-1271

In The United States Court of Appeals for the Federal Circuit

VIDSTREAM LLC,
Plaintiff-Appellee,
v.
TWITTER, INC.,
Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Texas
No. 3:16-CV-00764-N, Hon. David C. Godbey

REPLY BRIEF FOR DEFENDANT-APPELLANT TWITTER, INC.

Thomas G. Sprankling
WILMER CUTLER PICKERING HALE AND DORR LLP
2600 El Camino Real
Palo Alto, CA 94306

Matthew T. Martens
WILMER CUTLER PICKERING HALE AND DORR LLP
2100 Pennsylvania Avenue, NW
Washington, DC 20037

Mark S. Davies
Kufere Laing
WHITE & CASE LLP
701 Thirteenth Street, NW
Washington, DC 20005

Yar R. Chaikovsky
David Okano
Radhesh Devendran
WHITE & CASE LLP
3000 El Camino Real
2 Palo Alto Square, Suite 900
Palo Alto, CA 94306

Counsel for Defendant-Appellant Twitter, Inc.

FORM 9. Certificate of Interest

Form 9 (p. 1)
March 2023

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number 2026-1271, -1287

Short Case Caption VidStream LLC v. Twitter, Inc.

Filing Party/Entity Twitter, Inc. (aka X Corp.)

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Signature: /s/ Mark S. Davies

Name: Mark S. Davies

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	**2. Real Party in Interest.** Fed. Cir. R. 47.4(a)(2).	**3. Parent Corporations and Stockholders.** Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. ☐ None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. ☐ None/Not Applicable
Twitter, Inc.	X Corp.	X Corp.'s parent corporation is X Holdings Corp., which is a wholly owned subsidiary of X.AI Holdings LLC, which in turn is a wholly owned subsidiary of Space Exploration Technologies Corp. No publicly traded corporation owns 10% or more of X Corp., X Holdings Corp., X AI Holdings LLC, or Space Exploration Technologies Corp.

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4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

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HAYNES AND BOONE LLP: Charles M. Jones II, David L. McCombs

WILMER CUTLER PICKERING HALE AND DORR LLP: Kim U. Do (former), Sydney E. Donovan, Reshma C. Gogineni, J. Taylor Gooch, Sonal N. Mehta, Scott W. Bertulli (former), Rachel Sarah Bier (former), Rauvin A. Johl (former), Nora Passamaneck (former)

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5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

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INTRODUCTION

Twitter's Opening Brief ("OB") explained that nothing in this case adds up. VidStream's Answering Brief ("AB") confirms that to be true.

For invalidity, VidStream does not refute Twitter's showing that Claim 17 fails to recite a technological advance or supply the inventive concept that 35 U.S.C. § 101 demands. Reversing the district court's erroneous Section 101 ruling moots the rest of the issues on appeal.

But if the Court considers the jury's finding that Claim 17 is valid, that verdict must be reversed. VidStream does not cross-appeal the jury's finding that Claim 22 is invalid, and that jury finding necessarily means all of Claim 17's shared elements are taught by the prior art. As for Claim 17's one distinct element (livestreaming), VidStream does not dispute that it is covered by the same prior art. None of VidStream's responses explain how the jury could have found Claim 22 invalid and Claim 17 valid given the absence of a dispute on the livestreaming limitation.

For damages, VidStream does not meaningfully attempt to reconcile Mr. Weinstein's $632 million opinion with this Court's case law on apportionment and comparability. VidStream concedes the jury's

$105 million award could not have adopted Mr. Weinstein's methodology, and it fails to explain how the jury could have awarded $105 million without relying on speculation. Reflecting its predicament, VidStream asks this Court to overrule its apportionment precedent—an implicit concession that its award is at best on shaky ground under existing case law.

Lacking substantive responses, VidStream falls back on mischaracterizations of the record—for example, repeatedly charging forfeiture where none occurred and asserting that Twitter is a conceded "willful infringer" even though Twitter made no such concession. An invalid patent claim cannot be infringed, and the only remaining claim is not worth a nine-digit sum when VidStream's entire patent portfolio has never sold for more than $5.5 million.

The judgment should be reversed or, at a minimum, vacated.

ARGUMENT

I. Claim 17 is not patent eligible.

Twitter demonstrated that Claim 17 (U.S. Patent No. 8,464,304) is directed to the abstract idea of collecting, processing, and outputting a particular kind of data (at OB28-30) and does not recite an inventive concept sufficient to transform that abstract idea into a patent-eligible invention (at OB31-46). It thus fails the two-step test of *Alice Corp. Pty. v. CLS Bank Int'l*, 573 U.S. 208, 217-218 (2014). Nothing VidStream argues cures Claim 17's fatal flaw: It "simply call[s] for the use of computers and networks as tools to carry out an abstract idea, using their ordinary functions without specific hardware or process advances in those functions." *GoTV Streaming, LLC v. Netflix, Inc.*, 166 F.4th 1053, 1064 (Fed. Cir. 2026).

A. As the district court correctly concluded, Claim 17 is directed to an abstract idea.

1. VidStream does not dispute that Claim 17 is analogous to the claims in *Hawk Technology Systems* and *AI Visualize* that are directed to "collecting, processing, and outputting a particular kind of data." OB28-30. VidStream instead asserts that Twitter's description of the relevant abstract idea is "new" and "forfeited." AB19, AB22. This misrepresents the record. Twitter referred to the "abstract idea" of "collecting, processing, and outputting data" throughout the summary judgment briefing. *E.g.*, Appx25478-25479; Appx16702; Appx16707-16708. And the district court agreed with Twitter's argument: "The patents-in-suit are directed to collecting video, transcoding video, and distributing video. That fits the format of collect data, process data, output the processed data, which is an abstract idea." Appx36-37. Twitter did not forfeit an argument the district court endorsed.

VidStream's criticisms of the district court's step one analysis also rest on mischaracterization. The district court did not, as VidStream states, "merely identif[y] general prior art." AB18. Rather, it adopted the same analysis that this Court used in cases like *Content Extraction Transmission LLC v. Wells Fargo Bank*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) and *Electric Power Grp. LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). *See* Appx36 (citing both). VidStream does not mention those decisions, much less suggest that the district court misread or misapplied them.

VidStream further errs when it states that the district court's holding "cannot be correct" because a "claim cannot be 'directed to' something that the intrinsic evidence concedes was previously known." AB18-19. VidStream does not cite a single authority to support that claim, and other cases that VidStream cites throughout its brief rebut it. In *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, for example, the Court held that a patent that described "its invention as combining the advantages of the then-known filtering tools while avoiding their drawbacks" was "directed to" the abstract idea of "filtering content on the Internet." 827 F.3d 1341, 1344, 1348 (Fed. Cir. 2016). And *Cellspin Soft, Inc. v. Fitbit, Inc.* held claims directed "to the idea of capturing and transmitting data from one device to another" were abstract at *Alice* step one even though the earliest issued patent acknowledged that "prior art devices could digitally capture images, video, or other types of content" and that data could be "transfer[red] … onto a personal computer." 927 F.3d 1306, 1309-1310, 1315 (Fed. Cir. 2019).

VidStream also suggests (at AB19) that the district court's analysis conflicts with *Contour IP Holding LLC v. GoPro, Inc.*, which rejected an approach that "characterizes … claims at an impermissibly high level of generality." 113 F.4th 1373, 1379-1380 (Fed. Cir. 2024). But VidStream omits important context: Claims are described "at a high level of abstraction" when the description is "divorced" or "untethered from" "the claim language itself." *Id.* As discussed, the district court's ruling here directly linked claim language from the '304 patent (e.g., "collecting video, transcoding video, and distributing video") to the abstract idea ("collect data, process data, output the processed data"). Appx36. And VidStream does not distinguish Claim 17 from this Court's cases explaining "that the steps of obtaining, manipulating, and displaying data, particularly when claimed at a high level of generality, are abstract concepts." *AI Visualize, Inc. v. Nuance Commc'ns*, 97 F.4th 1371, 1378 (Fed. Cir. 2024).

2. Unable to refute Twitter's *Alice* step one argument under this Court's case law, VidStream (at AB17) asks this Court to break new ground by holding that the *Alice* step one analysis *must* distinguish between a "patent-ineligible concept" and a "patent-eligible application of that ineligible concept." Under VidStream's rule, the "predetermined constraints" element is the only one that matters; the claimed "capturing," "formatting," and "transmitting" limitations must be ignored.

This Court has rejected VidStream's approach. *Cellspin*, for example, held that even if specific "limitations noted by [the patentee] … may evidence an inventive concept" that does not necessarily "change the fact that the claims as a whole … are directed to an abstract idea." 927 F.3d at 1316; *accord Simio, LLC v. FlexSim Software Prods., Inc.*, 983 F.3d 1353, 1362 (Fed. Cir. 2020), *cited in* Appx37. VidStream's argument also conflates *Alice*'s first step (which looks "to the character of the claim[] as a whole") with its second (which determines "whether the claims recite matter that is an inventive concept that renders a claim significantly more than an abstract idea to which it is directed"). *GoTV*, 166 F.4th at 1063, 1067 (internal quotation marks omitted). The two cases that VidStream cites for support (*Tilghman v. Proctor*, 102 U.S. 707 (1881) and *O'Reilly v. Morse*, 56 U.S. 62 (1854)) predate *Alice*'s clarification of the proper test by over a century.

VidStream defends its rule by accusing Twitter (at AB17) of discarding Claim 17's "narrow" limitations (evidently the predetermined constraints limitation). Not true. Twitter explained that the predetermined constraints element is an example of "capturing," "formatting," and "transmitting" data. OB29; OB32. It accordingly "does not make the claimed category non-abstract." *GoTV*, 166 F.4th at 1066. Reading the predetermined constraints element in context confirms this point: video data is "display[ed]" (outputted/transmitted) after the "instructions received from a server system … cause the content to be captured" (collected/captured) "in accordance with predetermined constraints that include a frame rate" (processed/formatted). Appx139 (29:27-31).

VidStream's attempt to distinguish *GoTV* by analogizing this case to *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016) fails. *E.g.* AB20-21. *Enfish* held that patent claims survived Section 101 because a particular limitation improved computer functionality. 822 F.3d at 1337. But *Enfish* and its progeny draw a neat line between claims that describe "a *specific* improvement … in how computers [can] carry out one of their basic functions" and those like Claim 17, which merely use generic "computers as tools in aid of processes focused on abstract ideas." OB28 (emphasis added) (quoting *Elec. Power*, 830 F.3d at 1354); *accord GoTV*, 166 F.4th at 1064.

Indeed, VidStream fails to adequately explain its assertion (at AB16) that Claim 17 provides a patentable "improvement in the client/server network architecture." The cited specification excerpts identify only "generic speed and efficiency improvements inherent in applying the use of a computer to any task" or an "improv[ement] in a user's experience while using a computer application." *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359, 1365 (Fed. Cir.

2020). VidStream never identifies "specific structural or inventive improvements in computer functionality related to [its] claimed system." *Id.*

VidStream's argument (at AB15-16) that Claim 17 "specifies how" the predetermined constraints requirement should function is similarly unsupported: VidStream identifies no claim language that specifies "how" video is processed, "how" data is "analyzed," or "how" data is "transmitted." *Ollnova Techs. v. ecobee Techs.*, 177 F.4th 1343, 1361-1362 (Fed. Cir. 2026). And the "predetermined constraints" are not "specific operational limitations" (e.g., a "conditional transmission" or "timing constraints") that change "*how* the system communicates information." *Id.* (emphasis in original).

Above all, VidStream's argument illustrates that Claim 17 is directed to a result (rapid processing of video information) that "call[s] for the use of computers and networks as tools to carry out an abstract idea." *GoTV*, 166 F.4th at 1064; *see also* OB29. The predetermined constraints term has a "broad meaning[]" that, "notwithstanding any first-blush appearance of technical specificity, … cannot support a conclusion that the claim is directed to a concrete computer/network advance.” *GoTV*, 166 F.4th at 1066.

B. Claim 17 does not include an inventive concept.

1. As a matter of law, the predetermined constraints element is not an inventive concept because it is an abstract idea.

VidStream does not dispute that “narrowing or reformulating an abstract idea” is not an inventive concept. *See* OB32-33 (quoting *BSG Tech v. Buyseasons, Inc.*, 899 F.3d 1281, 1291 (Fed. Cir. 2018)). And VidStream fails to show how the predetermined constraints element is anything but a narrow reformulation of the abstract idea of collecting, processing, and outputting data. As Twitter explained (at OB31-36), this is not the rare case where the step one and step two conclusions diverge. *GoTV*, 166 F.4th at 1067.

VidStream asserts (at AB25-26) that the predetermined constraints requirement qualifies as an inventive concept because it “improves the technical operation of that client/server video system” and reduces “the need to reject or transcode non-compliant video.” But as discussed above, the claim language is missing the required “specificity” “as to how” the technical operation “is done.” *GoTV*, 166

F.4th at 1068; OB32-34. Applying an abstract idea to "a particular type of data"—whether information about power grids, farming data, or (here) video data that conforms to some requirements like a frame rate—does "not pass muster at *Alice* step two." *AGI SureTrack LLC v. Farmers Edge Inc.*, 176 F.4th 1373, 1379 (Fed. Cir. 2026).

Unable to point to anything specific in the claim language, VidStream asserts that Twitter is proposing "a categorical rule" that automating "something humans previously performed" can never be an inventive concept. AB22-23. That rule is nowhere in Twitter's opening brief. And none of the cases VidStream cites (at AB23-25) conflict with Twitter's direct quotation of this Court's statement that "mere automation of manual processes using generic computers does not constitute a patentable improvement in computer technology." OB35 (quoting *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1055 (Fed. Cir. 2017)).

VidStream's reliance on *Diamond v. Diehr* is particularly misplaced. *See* AB23-24 (citing 450 U.S. 175 (1981)). That case involved "a physical-realm improvement." *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018). *Diehr* "does not apply when, as here, the claims use generic computer components in which to carry out the abstract idea." *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1375 (Fed. Cir. 2017) (internal quotation marks omitted). If VidStream relies on *Diehr* (or any of its other cited cases) to argue that a patent claim necessarily survives *Alice* step two so long as it "is limited to some specific act or thing in the physical realm," AB29-30, "the Supreme Court [has] emphasized that satisfying the machine-or-transformation test, by itself, is not sufficient to render a claim patent-eligible," *Solutran, Inc. v. Elavon, Inc.*, 931 F.3d 1161, 1169 (Fed. Cir. 2019).

VidStream's assertion (at AB24) that *BASCOM* is "an example" of a case holding "automation" is an "eligible subject matter" if it "improves an existing technological process" fares no better. Twitter already disposed of this argument (at OB37): the *BASCOM* patent "describe[d] how its particular arrangement" was "a technical improvement." 827 F.3d at 1350. And Twitter further explained (at OB37-39) how the district court misread and misapplied *BASCOM*. Remarkably, VidStream does not defend the district court's misreading. Nor does VidStream argue that Claim 17 is patentable simply because its purported benefits flow from a "non-conventional and non-generic arrangement of known, conventional pieces" like the "inventive concept" in "*BASCOM*." *Credit Acceptance Corp.*, 859 F.3d at 1056.

VidStream tries to save Claim 17 (at AB30-31) on the theory that it cannot preempt data collection, processing, and outputting data because there is a non-infringing alternative. But that overstates the role of preemption and Section 101. "While preemption concerns are the basis for the judicial exceptions to patentability, the absence of complete preemption does not demonstrate patent eligibility." *BSG Tech LLC*, 899 F.3d at 1291 (cleaned up). Here, the predetermined constraints limitation merely "narrow[s] or reformulat[es]" the abstract idea and thus fails to "transform[]" Claim 17 "into a patent-eligible application of the abstract idea." *Id.* at 1290-1291.

2. There is no genuine factual dispute that the predetermined constraints requirement is conventional.

Even if the Court concludes that the predetermined constraints limitation is not itself an abstract idea as a matter of law (and it should not, *see* § I.B.1), Twitter explained (at OB33-35, OB42-45) that the district court misconstrued the expert testimony and erroneously awarded VidStream summary judgment. VidStream fails to respond meaningfully.

For example, VidStream implies (at AB28) that Twitter cannot carry its summary judgment burden by pointing to Dr. Jones's concessions because Dr. Jones is not Twitter's witness. VidStream is wrong. Such concessions are "one of the best forms of evidence" because "the deponents' responses are relatively spontaneous" and "taken under oath." 10A Wright & Miller, *Federal Rules of Practice & Procedure* § 2772 (Apr. 2026 update); *see also* Fed. R. Civ. P. 56(c)(1)(A) (parties may cite to "depositions" to establish that "a fact cannot be … genuinely disputed").

Here, Dr. Jones's deposition concessions confirmed that there was no genuine dispute that the very idea VidStream claims as the inventive concept—"distributing client-side software that controls how video is captured"—was generally "known as of the time of the" asserted patents. Appx16637 ("Generally, yes[.]"). And his other concessions (at Appx16637-16638), Twitter explained (at OB34-35), further establish that the concepts that make up the predetermined constraints were well-known. Thus, VidStream is wrong when it states (at AB29) that

Dr. Jones's concessions are limited to only "the lack of novelty of isolated, individual elements."

VidStream also fails to rebut Twitter's point (at OB40) that the district court erroneously credited Dr. Jones's three-sentence conclusory opinion regarding the asserted claims' purported technological benefits. *Compare* Appx15206-15207 *with* Appx40-41. Instead, VidStream points to a different paragraph from Dr. Jones's report (at Appx15752-15753), which the district court did not cite. VidStream then claims without explanation (at AB28) that Dr. Jones "opine[s] in detail" about technological benefits. But Dr. Jones fails to cite the claims or the specification and does not provide "real-world knowledge and practices" needed at *Alice* step two in that excerpt. *GoTV*, 166 F.4th at 1067. Nor does Dr. Jones say anything specific in that passage about the benefits of a constraint on "frame rate," which is all Claim 17 expressly describes. At most, Dr. Jones cites the same kind of purported benefits that Twitter has addressed (at OB40)—i.e., those that only "speed up human activity," which this Court has "consistently held, in the context of computer-assisted methods" does not make a "patent eligible under §

101." *Recentive Analytics, Inc. v. Fox Corp.*, 134 F.4th 1205, 1214 (Fed. Cir. 2025).

When VidStream shifts its discussion to Twitter's expert, Dr. Almeroth, (at AB28), it merely restates the district court's errors. Dr. Almeroth did opine on the precise process claimed by the '304 patent, *e.g.*, Appx15467-15469. And he opined that capturing video according to the predetermined constraints limitation was "well-known" "long before 2011" and had generic speed and efficiency benefits, Appx15858, Appx15938-15941. He never conceded that the predetermined constraints limitation has "real-world benefits" as VidStream asserts (at AB28-29). Dr. Almeroth's opinion was corroborated by Dr. Jones, Appx16638-16640, and Ryland Reed, one of the inventors, OB33-34; Appx15268 (pre-trial admission); Appx1215-1216 (trial admission).

Finally, even if VidStream's arguments survived Dr. Jones's concessions and Dr. Almeroth's testimony, there is at least a dispute of material fact that requires a remand for a trial. OB45; *e.g.*, *Ollnova Techs.*, 177 F.4th at 1358 (recognizing the jury may "decide whether what is alleged to be the inventive concept is well-understood, routine, and conventional”). If the district court’s grant of summary judgment to VidStream is not outright reversed, it should be vacated.

II. Claim 17 is invalid in light of the Covell System.

Twitter’s brief demonstrated that the jury’s verdict on Claim 17 must have rested on one finding: the livestreaming limitation was not met by prior art. OB46-47. VidStream does not dispute that Twitter carried its burden to show that the livestreaming limitation is taught by the Covell System. If the Court reaches this issue, VidStream’s silence compels a straightforward conclusion: Claim 17 is invalid in light of the Covell System.

A. VidStream does not dispute that Claim 22 is invalid or that the Covell System discloses Claim 17’s livestreaming limitation.

VidStream has not disputed that the livestreaming limitation is the only limitation that appears in Claim 17 that does not also appear in Claim 22. Because VidStream does not cross-appeal the jury’s finding that Claim 22 is invalid, it effectively concedes that the Covell System discloses Claim 17’s and Claim 22’s shared limitations. As Twitter explained (and VidStream does not dispute), Mr. Covell and Dr. Almeroth provided uncontested testimony that Claim 17’s livestreaming limitation was met by the Covell System. OB50-52. These concessions are precisely the kind of "key admission[s]" that make this the "extreme case[]" that supports "granting judgment as a matter of law for the party carrying the burden of proof." *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1364 (Fed. Cir. 2018); *compare* AB32 (arguing Twitter did not satisfy *Core Wireless*'s standard).

VidStream does not discuss the livestreaming limitation. Instead, it states (at AB38) that "the entire dispute" distills to whether Twitter provided substantial evidence that the predetermined constraints limitation is met by the Covell System. That's not true. Claim 17 and Claim 22 share that limitation. *See* Appx139 (29:27-30 and 30:2-5). The jury's Claim 22 verdict confirms that Twitter proved that this limitation, and all shared limitations, are covered by the Covell System. VidStream never explains how opposite conclusions on Claim 17's shared limitations are possible. *Cf. Ormco Corp. v. Align Tech., Inc.*, 498 F.3d 1307, 1319-1320 (Fed. Cir. 2007) (holding, under the law of the case doctrine, that prior art that defeated a claim's limitations required invalidation of related claims that shared the same limitations). And because VidStream does not dispute that the Covell System covers the livestreaming limitation, there is "no basis on which a reasonable jury could reject the evidence" that Claim 17 is covered by the Covell System. *E.g.*, *ParkerVision, Inc. v. Qualcomm, Inc.*, 621 F. App'x 1009, 1023-1024 (Fed. Cir. 2015) (vacating a jury's validity finding where "uncontradicted" expert testimony established that the "one claim limitation" at issue was covered by prior art).

To limit the import of the jury's Claim 22 factual findings, VidStream argues (at AB37) that the "implied findings of validity for Claim 17 could also be applied to the other claims." But the Seventh Amendment requires courts to "adopt" the "view of the case which makes the jury's answers consistent," *Mercer v. Long Mfg.*, 671 F.2d 946, 948 n.1 (5th Cir. 1982); *accord Carr v. Wal-Mart Stores, Inc.*, 312 F.3d 667, 672 (5th Cir. 2002) (cited at AB39). The only way to comply with this instruction is to presume the jury rejected Twitter's evidence on Claim 17's distinct livestreaming limitation. *See* OB46-47. Twitter's argument rests on the principles discussed in *Mercer* and *Carr*, not on "the fallacy that the one verdict … has priority over another." AB37.

VidStream does not offer a way to view the verdicts consistently. Instead, VidStream asserts that "inherently inconsistent verdicts can stand if each is supported with substantial evidence." AB36. But VidStream's only support for this argument is *L&W, Inc. v. Shertech, Inc.*, 471 F.3d 1311 (Fed. Cir. 2006), which addressed when a party must object to preserve a challenge to inconsistent verdicts, *id.* at 1318-1319. That has nothing to do with the issue presented here. VidStream's reliance on *Carr* and related case law (at AB39-40) is misplaced because those cases addressed the issue of inconsistent jury findings—no such inconsistency is present here.

VidStream's other responses are distractions. VidStream implies (at AB13) that the district court did not enter judgment on Claim 22's invalidity. Wrong—the court expressly "enter[ed] judgment on the jury's verdict," Appx99, and that verdict included the finding that Claim 22 is invalid, Appx63. VidStream's IPR argument (at AB32) is beside the point: That IPR considered Lahti, different prior art. *See Twitter, Inc. v. VidStream*, 825 F. App'x 844, 848 (Fed. Cir. 2020). VidStream's suggestion (at AB40) that the jury found Claim 22 invalid on anticipation grounds rather than obviousness grounds does not avoid the need for at least vacatur; Claim 17 remains invalid (whether as anticipated or as obvious). VidStream's assertion (at AB40) that Dr.

Almeroth used a different claim scope for Claims 17 and 22 is incorrect. *See generally* Appx1991-1995.

In sum, the jury's verdict of no invalidity of Claim 17 is not supported by substantial evidence.

B. VidStream's procedural argument is meritless.

Unable to win on substance, VidStream argues procedure—asserting that "Rule 50 forecloses Twitter's argument" "[a]s a practical matter" because there are no "implied findings … when 50(a) motions are made." AB35-36. VidStream is wrong again. Rule 50(b) necessitates the use of implied findings because the appellant "must show that the jury's findings, presumed or express, are not supported by substantial evidence or, if they were, that the legal conclusion(s) implied from the jury's verdict cannot in law be supported by those findings." *Perkin-Elmer Corp. v. Computervision Corp.*, 732 F.2d 888, 893 (Fed. Cir. 1984).

Tellingly, none of the Fifth or Federal Circuit cases VidStream cites require courts to ignore the underlying factual findings that support a jury verdict when reviewing a Rule 50(b) motion when those findings support an argument that was made at the Rule 50(a) stage—

as was the case here. *See* Appx16711-16712 (Twitter 50(a) brief); Appx25385 (Twitter 50(b) opening brief); Appx16714 (Twitter 50(b) reply). Thus, VidStream's discussion of Dr. Almeroth's testimony about the shared elements of Claim 17 and 22 (at AB32-35, AB38) is meritless. VidStream has abandoned any challenge to the sufficiency of Dr. Almeroth's testimony on Claim 22 by dismissing its cross-appeal. C.A. Dkt.9. And as explained above, VidStream fails to reconcile its arguments that necessarily produce an inconsistent jury verdict with the Seventh Amendment. *See also* OB50.

The Court should reverse the district court's denial of JMOL on obviousness or grant a new trial on anticipation.

III. VidStream cannot save the flawed $105 million damages award.

Twitter provided three independent grounds to vacate the jury's $105 million damages award: (1) Mr. Weinstein failed adequately to apportion the amount of damages to the claimed invention (OB66-71), (2) he relied on documents that were not comparable to the hypothetical negotiation (OB58-65), and (3) in the alternative, the jury's award is not supported by substantial evidence because Mr. Weinstein did not offer any testimony about Claim 17's standalone value (OB71-73).

Lacking a meritorious response, VidStream requests en banc reconsideration of this Court's case law applying the apportionment principle announced over a century ago in *Garretson v. Clark*, 111 U.S. 120 (1884). AB58-59. Suggesting en banc consideration as an appellee is a tacit acknowledgment that the district court's ruling is unlikely to survive under this Court's binding case law.

A. The district court's abdication of its gatekeeping duties requires vacatur.

Twitter explained (at OB55-56) that the district court erroneously presumed expert testimony is admissible and, in the words of *EcoFactor, Inc. v. Google LLC*, 137 F.4th 1333, 1339 (Fed. Cir. 2025) (en banc), conflated "critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology" with "determinations of weight and credibility"—the very error that inspired the 2023 amendment to Federal Rule of Evidence 702. VidStream defends the district court's presumption (at AB57) based on Rule 702's now-outdated 2000 amendment—ignoring that the reasoning behind the 2023 amendment clarifies that there "is no presumption of admission." *Engilis v. Monsanto Co.*, 151 F.4th 1040, 1050 (9th Cir. 2025). VidStream's cases either predate the 2023 amendment, *Puga v. RCX*

Sols., Inc., 922 F.3d 285 (5th Cir. 2019), or are unpublished, *Whalen v. Monsanto Co.*, 2024 WL 4524170 (5th Cir. Oct. 18, 2024).

VidStream's assertion (at AB57) that a presumption of admissibility is "the governing standard in the Fifth Circuit" fails on two levels. First, this Court applies its "own circuit law" to "admissibility rulings" that "depend on patent law standards." *Willis Elec. Co. v. Polygroup Ltd.*, 166 F.4th 1363, 1371, 1374 (Fed. Cir. 2026). Second, VidStream overstates Fifth Circuit law. At least one recent decision did not presume admissibility; it rejected expert testimony where there was "too great an analytical gap between the data and the opinion proffered." *Ruffin v. BP Expl. & Prod., Inc.*, 176 F.4th 855, 863 (5th Cir. 2026).

VidStream notably does not defend the district court's failure "to create a record suitable for appellate review." OB55-56. Instead, VidStream implies (at AB57) that the district court's "inadequate explanation" is "harmless" error. Wrong again. As explained, the district court's erroneous presumption led to the admission of "unreliable testimony" that was the entire basis for VidStream's damages case (OB54)—that is "undoubtedly prejudicial." *EcoFactor*, 137 F.4th at 1346.

B. Mr. Weinstein's damages opinion of $632 million was methodologically unreliable.

VidStream lacks effective responses to Twitter's apportionment and comparability arguments (at OB57-73). Instead, it again falls back on forfeiture—suggesting that Twitter did not raise a post-trial challenge to admissibility. Not so. Twitter's opening post-trial brief argued that "because Mr. Weinstein's flawed methodology 'tainted' the jury's damages calculation, a new trial is warranted" under *Daubert* and Rule 702. Appx25397-25398 (cleaned up). On reply, Twitter asked the district court to "grant a new trial on *Daubert* grounds, which Twitter requested as an alternative." Appx25449-25450. VidStream's related assertion (at AB45-46) that Twitter's arguments must "depend[] solely on the *Daubert* record" is also wrong. The Court's "assessment" of a "district court's denial of a motion for a new trial based upon" the admission of unreliable expert testimony "includes everything before the district court, not just [] testimony before the jury." *Willis*, 166 F.4th at 1382 n.8.

1. Mr. Weinstein failed to adequately apportion.

VidStream does not dispute that Mr. Weinstein needed to apportion. Its responses confirm he failed to do so adequately. The proffered award is not "based on the incremental value that the patented invention adds to the end product." *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1226 (Fed. Cir. 2014). Indeed, VidStream does not cite a single case from this Court or any other that has upheld a similar methodology—despite claiming (at AB41) that Mr. Weinstein's "damages analysis is similar to many this Court has seen."

Overbroad Royalty Base. Twitter explained (at OB66-67) that Mr. Weinstein's royalty base included Vine users who VidStream concedes did not infringe Claim 17 and Twitter users who did not use the technology covered by the asserted patents. VidStream does not dispute that Mr. Weinstein's royalty base was not apportioned, as it includes "all users" of every app that purportedly infringed any claim. AB54; *see* Appx25429 (VidStream post-trial brief).

Inflated Royalty Rate. Mr. Weinstein's adjustments to the royalty rate ignored the value of the accused products' many non-infringing features. OB67-71. VidStream's primary response (at AB42, AB49, AB53) is that Mr. Weinstein purportedly adopted "Twitter's software-valuation practices." VidStream does not point to any record evidence that identifies, or otherwise explains, Twitter's valuation practices. If VidStream is referring to Mr. Weinstein's blanket downward adjustment of $2.6 million in development costs, that cannot satisfy the apportionment requirement. Mr. Weinstein acknowledged on direct examination that "development costs" are "completely different" from "the value of the technology." OB70; Appx1461. This sort of "blanket" adjustment, untethered from the asserted patents, evinces "unreliable" testimony. *E.g.*, *Jiaxing Super Lighting Elec. v. CH Lighting Tech.*, 146 F.4th 1098, 1112 (Fed. Cir. 2025).

VidStream's arguments fare no better upon individualized inspection. While VidStream claims (at AB43-44, AB54-55) that Mr. Weinstein adjusted the royalty rates in Youtoo's documents to "account for a usage-agnostic royalty base," Mr. Weinstein's adjustments do not "reflect the value attributable to the infringing features of the product, and no more." *Ericsson*, 773 F.3d at 1226. The adjustment to the Verizon MOUs, for example, "reflect the number of users who watched mobile video on Twitter," AB54-55 (emphasis omitted), but fails to exclude the value of Twitter's non-infringing features and the technology in the MOUs that were unrelated to the patented technology. OB67-69. The same problem appears in Mr. Weinstein's 98% downward adjustment based on bandwidth usage in the Asia TV agreement—this is untethered to the value of the unpatented technology contemplated in that agreement. OB69-70. Twitter raised each of these points in its opening brief and VidStream tellingly has no direct response.

On the Periscope Deal Review slide, VidStream suggests (at AB55) that the rate need not be apportioned because "all videos on the accused app would have been made through infringement." Twitter's brief (at OB62) explains why VidStream is wrong: The slide contemplates revenue from inserting advertisements on Periscope videos, not use of the claimed video uploading technology. What's more, Mr. Weinstein conceded that "there's nothing that suggests that the advertiser would be using Periscope to record the ad" and the underlying video was not necessarily "captured … through the [purportedly infringing] in-app camera." Appx1498.

2. Mr. Weinstein did not rely on comparable licenses.

Twitter explained (at OB58-65) that the documents that informed Mr. Weinstein's opinion were not "sufficiently comparable to the royalty proposed by a party for the technology at issue." *VLSI Tech. LLC v. Intel Corp.*, 87 F.4th 1332, 1346 (Fed. Cir. 2023) (cleaned up). Missing from these documents is a "discernible link to the claimed technology." *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 870 (Fed. Cir. 2010); *see also* OB58-60. And Mr. Weinstein compounded that problem because his analysis failed "to account for differences in the technologies and economic circumstances of the contracting parties." *Rex Med., L.P. v. Intuitive Surgical, Inc.*, 156 F.4th 1289, 1296 (Fed. Cir. 2025) (internal quotation marks omitted).

VidStream's response is premised on two red herrings. First, VidStream asserts (at AB46-47, AB50-52) that Mr. Weinstein's testimony was permissible because he relied on admissible documents. That is irrelevant. Testimony can be inadmissible under Rule 702 even if the underlying documents were admissible under Rule 401. *See EcoFactor*, 137 F.4th at 1343.

Second, VidStream argues (at AB47, AB50-51, AB52-53) that comparability issues are "'best addressed by cross examination.'" *Bio-Rad Labs., Inc. v. 10X Genomics, Inc.*, 967 F.3d 1353, 1374 (Fed. Cir. 2020) (quoting *Bio-Rad*, 396 F. Supp. 3d at 388). That overstates the law. *Bio-Rad* did not announce a per se rule as VidStream suggests; in fact, it recognized that "[t]his court has often excluded licenses that are technologically or economically non-comparable." *Id.* at 1373 (collecting cases).

When VidStream addresses more granular points, its arguments again fail. On economic comparability, VidStream runs from the *EcoFactor* issue Twitter raised (at OB60): Three of the four documents that Mr. Weinstein relied upon (two Verizon MOUs and the Periscope Deal Review slide) are informal agreements; they are not evidence that "prior willing licensees had agreed to" the proffered rate. 137 F.4th at 1343. VidStream does not point to any case that holds documents that merely contemplate a future agreement between a patent owner and a third party can be relied upon in a hypothetical negotiation. While VidStream tries (at AB47) to analogize Mr. Weinstein's approach to the licenses in *SSL Servs., LLC v. Citrix Sys., Inc.*, 769 F.3d 1073, 1093-

1094 (Fed. Cir. 2014), the agreements in that case "were between" the defendant and the patent owner and "referenced the [asserted] [p]atent … that was relevant to the technology underlying the agreements." *Id.* at 1093. Here, no document references the asserted patents or involves both (1) Twitter and (2) VidStream or Youtoo. OB61-63. VidStream never shows where Mr. Weinstein "account[s] for [these] differences." *Rex Medical*, 156 F.4th at 1296.

VidStream likewise fails to show where Mr. Weinstein explained the economic differences in the hypothetical license and the Asia TV agreement and the Periscope Deal Review Slide. *See* OB61-63. On the Asia TV agreement, VidStream responds that Mr. Weinstein made a downward adjustment to account for Twitter usage information (at AB51-52), but it does not dispute that Mr. Weinstein failed to account for the fact that Asia TV "required a running royalty payment based on the quantity of bandwidth used." *See* OB61. On the Periscope Deal Slide, VidStream (at AB53) does not show where in the record Mr. Weinstein accounted for his concession that the Periscope proposal would generate "$60 million a year [in] revenue" while imposing "$65 million in costs." Appx1501.

On technological comparability, VidStream insists (at AB48) that "Mr. Weinstein relied on testimony from Dr. Jones and Mr. Reed" that shows the documents included "patent-practicing software." VidStream does not meaningfully respond to Twitter's argument (at OB61-62) that the documents were at least overbroad and included far more technology than the patent-practicing software. In *Trell*, for example, the "district court's apparent failure to consider" that the expert relied on an agreement that "conveyed rights more broad in scope than those covered by [the asserted] patent" was one of the errors that compelled "reversal." *Trell v. Marlee Elecs. Corp.*, 912 F.2d 1443, 1446-1447 (Fed. Cir. 1990). This Court later reaffirmed the same overbreadth principle, holding that an expert's methodology was unreliable, in "important[]" part, because the hypothetical negotiation rested on overbroad agreements with "no record evidence" that the asserted patents were the "key" technology in those agreements. *Apple v. Wi-LAN*, 25 F.4th 960, 973 (Fed. Cir. 2022).

VidStream does not explain how Mr. Weinstein accounted for the overbreadth problem. Instead, VidStream offers a threadbare conclusion (at AB51): Mr. Weinstein "adjusted for that unpatented software." This appears to be yet another reference to the $2.6 million blanket downward adjustment, which was not tethered to any one of the four "licenses" considered. OB66, OB70-71. And VidStream "fail[s]" to show where Mr. Weinstein "address[ed] the extent to which [the] other [technology] contributed to the royalty rate in the" relied upon documents. *Apple*, 25 F.4th at 973. Mr. Weinstein's "silence" is "troubling and makes his opinion unreliable." *Id.* at 974.

At any rate, Mr. Weinstein's asserted reliance on Dr. Jones's and Mr. Reed's testimony to establish technological comparability is contradicted by the record. Mr. Weinstein's testimony about the technological comparability of the Youtoo documents was concededly limited to "*only*" his "nontechnical assessment" and Mr. Reed's testimony—he did not "ask Dr. Jones whether any of the Youtoo agreements covered" the patented technology. Appx1485 (emphasis added). And Mr. Weinstein further acknowledged that Mr. Reed (who was not offered as an expert) testified that he had never "mapp[ed]" Youtoo's multiple patents "to any of the services" Youtoo was providing under its agreements. Appx1485-1486; *see also* Appx1224-1225 (Reed testimony). The record also disproves VidStream's assertion that

Twitter did not "factually contend at any time that the licensed software does not practice the patents." AB48. Twitter has repeatedly raised this issue since the *Daubert* stage. *E.g.*, Appx16041-16043.

VidStream closes its comparability argument (at AB49) with a revealing concession: There was not "a different or better license to the patents that Mr. Weinstein ignored." That's the point. No document could have supported Mr. Weinstein's $632 million running royalty. Indeed, there is no evidence that Twitter ever agreed to a per-user running royalty (as opposed to a lump sum) and Mr. Weinstein admittedly never accounted for the "fundamental differences [that] exist between lump-sum … and running royalty agreements." *Lucent Techs. v. Gateway, Inc.*, 580 F.3d 1301, 1330 (Fed. Cir. 2009); *see also* Appx16040 (Twitter *Daubert* motion challenging Mr. Weinstein's failure to consider Twitter's "own patent licenses"); Appx25397-25398 (post-trial argument). Mr. Weinstein's opinion relied on documents that were so incomparable that they could not have provided a reliable basis to calculate a "reasonable" award as the damages statute contemplates. 35 U.S.C. § 284.

C. The $105 million jury award is speculative.

Twitter provided another reason to eliminate the $105 million jury award (at OB71-73): Mr. Weinstein's testimony assumed that the jury would find every claim infringed. VidStream's "all-or-nothing approach" reflects a "deliberate strategy to adhere to a single damages theory," which left the jury ill-equipped to calculate a damages award for its lone infringement finding. *Cf. Promega Corp. v. Life Techs. Corp.*, 875 F.3d 651, 662 (Fed. Cir. 2017). VidStream does not dispute that it presented an all-or-nothing damages theory and that the jury's award of $105 million for infringement of one patent claim is precisely one-sixth of Mr. Weinstein's proposed award of $632 million for infringement of six patent claims. OB72. Nor does VidStream dispute that this type of straightforward division would be improper because Mr. Weinstein's model assumed that Vine infringed when the jury found that it did not. OB72. And VidStream does not dispute that if the Court finds this award "speculative," the correct result is to reduce it "to nominal damages." OB73.

In fact, VidStream affirmatively argues that "the jury did not adopt Mr. Weinstein's [damages] opinion." AB62. Yet VidStream fails to provide an alternative, concrete basis for the jury to reach its $105 million award. VidStream speculates that the jury could have (1) combined Dr. Jones's testimony about which accused products practiced specific claims with, among other things, (2) an exhibit Mr. Weinstein introduced the following day regarding the "royalty amounts for each feature." AB60. But no witness or attorney suggested this fine-grained approach at trial. To the contrary, Mr. Weinstein told the jury that they should award the full $632 million "to compensate VidStream for infringement by Twitter." Appx1461-1462.

VidStream further contends that Mr. Weinstein's "Deal Review analysis about the infringing Periscope app independently supports the award." AB61. But the "analysis" that VidStream cites (Appx16128-16130) was never placed in front of the jury—this is an excerpt from Mr. Weinstein's expert report. And, as explained above, Mr. Weinstein's methodology that relied on this slide was unreliable. Finally, while VidStream (at AB61) offers a scattershot of alternative damages numbers that it claims that a jury might have relied upon (e.g., Periscope's overall purchase price), it identifies nothing in the record that links those numbers to the $105 million award.

As a last-ditch effort, VidStream charges forfeiture one more time. But Twitter's Rule 50(a) motion argued that Mr. Weinstein's testimony was speculative precisely because it "fail[ed] to account for the specific value of … each of the asserted claims," Appx25369, and Twitter repeated the same point in its Rule 50(b) papers—i.e., that "no reasonable jury could have relied on Mr. Weinstein's overall apportionment analysis to determine the value of Claim 17," Appx25393; *see* Appx25452.

IV. The prejudgment interest award is excessive.

Twitter's brief demonstrated that, on this record, the jury must have awarded a running royalty because the district court's interest calculation is not based on "the time that the royalty payments would have been received." *Gen. Motors Corp. v. Devex Corp.*, 461 U.S. 648, 655-656 (1983). VidStream does not dispute (at AB62-63) that the district court's interest award erroneously includes the time before VidStream acquired the patents from Youtoo. Nor does it adequately address Twitter's showing that the award is excessive in structure and timing. OB73-76. Instead, VidStream argues (at AB62) that the prejudgment interest may be affirmed based on the possibility that the jury awarded a lump sum award—even though the only damages expert who testified told the jury to award a running royalty sum, OB74, and Twitter never argued the jury should award a lump sum. This case is very different from *Telecordia Technologies, Inc. v. Cisco Sys.*, 612 F.3d 1365, 1378 (Fed. Cir. 2010), which involved forward-looking relief (not prejudgment interest) and testimony from the defendant's expert that urged the jury to award "a lump-sum, paid-up license."

CONCLUSION

The judgment should be reversed or vacated and remanded.

Dated: July 20, 2026

Respectfully submitted,

/s/ Mark S. Davies

Mark S. Davies
Kufere Laing
WHITE & CASE LLP
701 Thirteenth Street, NW
Washington, DC 20005

Yar R. Chaikovsky
David Okano
Radhesh Devendran
WHITE & CASE LLP
3000 El Camino Real
2 Palo Alto Square, Suite 900
Palo Alto, CA 94306

Thomas G. Sprankling
WILMER CUTLER PICKERING
HALE AND DORR LLP
2600 El Camino Real
Palo Alto, CA 94306

Matthew T. Martens
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Avenue, NW
Washington, DC 20037

CERTIFICATE OF SERVICE

I hereby certify that, on this 20th day of July, 2026, I filed the Reply Brief of Defendant-Appellant Twitter, Inc. with the Clerk of the United States Court of Appeals for the Federal Circuit via the CM/ECF system, which will send notice of such filing to all registered CM/ECF users.

Dated: July 20, 2026

Respectfully submitted,

/s/ Mark S. Davies

Mark S. Davies
WHITE & CASE LLP
701 Thirteenth Street, NW
Washington, DC 20005

Counsel for Defendant-Appellant Twitter, Inc.

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Dated: July 20, 2026

Respectfully submitted,

/s/ Mark S. Davies
Mark S. Davies
WHITE & CASE LLP
701 Thirteenth Street, NW
Washington, DC 20005

Counsel for Defendant-Appellant Twitter, Inc.