

1 Nili T. Moghaddam (CA SBN 226636)  
2 BOIES SCHILLER FLEXNER LLP  
3 2029 Century Park East, Suite 1520  
4 Los Angeles, CA 90067  
5 Telephone: (213) 995-5724  
6 Facsimile: (213) 629-9022  
7 Email: nmoghaddam@bsflp.com

8 Ryan D. Dykal (*pro hac vice forthcoming*)  
9 Jordan T. Bergsten (*pro hac vice forthcoming*)  
10 Mark Schafer (*pro hac vice forthcoming*)  
11 BOIES SCHILLER FLEXNER LLP  
12 1401 New York Ave, NW  
13 Washington, DC 20005  
14 Telephone: (202) 274-1109  
15 Email: rdykal@bsflp.com  
16 jbergsten@bsflp.com  
17 mschafer@bsflp.com

18 Sabina Mariella (*pro hac vice forthcoming*)  
19 BOIES SCHILLER FLEXNER LLP  
20 55 Hudson Yards, 20th Floor  
21 New York, NY 10001  
22 Telephone: (212) 446-2300  
23 Email: smariella@bsflp.com

24 Counsel for Plaintiff  
25 *Touchstream Technologies, Inc.*

26 **IN THE UNITED STATES DISTRICT COURT**  
27 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

28 **TOUCHSTREAM**  
**TECHNOLOGIES, INC.**

*Plaintiff,*

v.

**VIZIO, INC.**

*Defendant.*

Case No. \_\_\_\_\_

**COMPLAINT FOR PATENT**  
**INFRINGEMENT;**  
**JURY TRIAL DEMANDED**

1 Plaintiff Touchstream Technologies, Inc. hereby files this Complaint for Patent  
2 Infringement against VIZIO, Inc. and alleges, upon information and belief, as follows:

3 **THE PARTIES**

4 1. Plaintiff Touchstream Technologies, Inc., d/b/a Shodogg, (“Touchstream”  
5 or “Plaintiff”) is a Delaware corporation with its principal place of business in South  
6 Dakota.

7 2. On information and belief, Defendant VIZIO, Inc. (“VIZIO”) is a  
8 California corporation with its principal place of business at 39 Tesla, Irvine, California  
9 92618.

10 **NATURE OF THE ACTION**

11 3. This is a civil action against VIZIO for patent infringement arising under  
12 the patent statutes of the United States, 35 U.S.C. § 271 *et seq.* for the infringement of  
13 United States Patent Nos. 11,468,118 (the “’118 Patent”) and 11,860,938 (the “’938  
14 Patent”) (collectively, the “Touchstream Patents”). A true and correct copy of the ’118  
15 Patent and the ’938 Patent are attached as **Exhibits 1**, and **2**, respectively, to this  
16 Complaint.

17 **JURISDICTION AND VENUE**

18 4. This action arises under the patent laws of the United States, Title 35 of the  
19 United States Code. This Court has subject matter jurisdiction over this action under 28  
20 U.S.C. §§ 1331 and 1338(a).

21 5. This Court has personal jurisdiction over VIZIO in this action because  
22 VIZIO resides within the District, being incorporated in California and having its  
23 principal place of business within the District. Additionally, VIZIO has committed acts  
24 within this District giving rise to this action and has established minimum contacts with  
25 this forum such that the exercise of jurisdiction over VIZIO would not offend traditional  
26 notions of fair play and substantial justice. VIZIO has engaged in continuous,  
27 systematic, and substantial activities within this District, including development,  
28 marketing, and sales of products—including the SmartCast products that are used by

1 VIZIO in connection with performing the accused SmartCast functionalities—within  
2 this District. Furthermore, VIZIO has committed and continues to commit acts of  
3 infringement in this District by, among other things, selling, offering to sell, and using  
4 the SmartCast service. VIZIO also has derived substantial revenues from infringing acts  
5 in this District, including from the performance and use of the infringing SmartCast  
6 products and functionalities in this District, as well as the import, sale, and offer for sale  
7 of SmartCast compatible products, including through official retailers located in this  
8 District.

9 6. Venue is proper as to VIZIO because, *inter alia*, pursuant to 28 U.S.C. §§  
10 1391(b)-(c) and/or 1400(b), VIZIO is incorporated in California with its principal place  
11 of business in Orange County and therefore resides in the District.

12 7. Venue is also proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c)  
13 and/or 1400(b) because VIZIO maintains a permanent physical presence within the  
14 Central District of California, conducting business from numerous locations. VIZIO  
15 also has committed acts of infringement in this District, as described above.

16 8. VIZIO directly and/or indirectly tests, distributes, markets, offers to sell,  
17 sells, and/or utilizes the SmartCast products that VIZIO uses to perform the accused  
18 SmartCast functionalities in this District, and otherwise purposefully directs infringing  
19 activities to this District in connection with its SmartCast products.

20 **TOUCHSTREAM'S PATENTS**

21 9. In 2010, David Strober, the inventor of the Touchstream Patents and the  
22 original founder of Touchstream, was working at Westchester Community College as a  
23 Program Manager and e-learning instructional designer. At this job, Mr. Strober  
24 facilitated the development of online college courses, developing software as needed to  
25 support those efforts.

26 10. At least as early as mid-2010, Mr. Strober perceived the need to be able to  
27 take content that could be viewed on a smaller device, like a smartphone, and “move”  
28 it to another device, like a computer monitor or television. In working to bring his idea

1 to fruition, Mr. Strober expanded his work by using a device like a smartphone to cause  
2 content to play on a second screen, even if that video resided elsewhere (like the public  
3 internet). Near the end of 2010, Mr. Strober had developed a working prototype that  
4 demonstrated his groundbreaking concept. Recognizing that his invention could  
5 revolutionize how people located, viewed, and shared media, Mr. Strober filed his first  
6 patent application in April 2011.

7 11. The Touchstream Patents are not directed to an abstract idea, but are  
8 limited to a specific, concrete messaging architecture. The claims require various  
9 components to send or receive signals (or messages) to control the playback of content  
10 from various media players over a network, with precise requirements varying by claim.  
11 They do not cover all forms of remote control of content over a network. Steps of the  
12 '118 Patent claims include, *inter alia*:

- 13 • Receiving a unique identifier of a content presentation system by a personal  
14 computing device;
- 15 • Generating a set of messages including a command in a first format, a reference  
16 to a piece of content associated with a particular media playing application, an  
17 identifier that corresponds to the particular media playing application, and the  
18 unique identifier of the content presentation system;
- 19 • Communicating the generated set of messages to a server system that sends a  
20 second command in a second format converted from the set of messages based  
21 on the command and a configuration of the particular media playing application  
22 to a content presentation system based on its unique identifier;
- 23 • Causing the content presentation system to utilize the second command and the  
24 particular media playing application to control the referenced piece of content.

25 12. The '938 Patent claims typically include similar, and some additional, steps  
26 from the perspective of a server system.

27 13. Further, the claims of the Touchstream Patents do not reflect routine or  
28 conventional steps. The arrangement of components and steps themselves is inventive,

1 enabling, among other things, using different media players, associating different  
2 devices with a unique identifier, and coordinating between a personal computing device  
3 and content presentation system utilizing a plurality of media players, pieces of content,  
4 and control commands.

5 14. The Touchstream Patents, which are entitled “Play Control of Content on  
6 a Display Device,” each claim priority to U.S. Provisional Patent Application No.  
7 61/477,998 (filed on April 21, 2011).

8 15. Touchstream is the owner, by assignment, of all rights, title, and interest in  
9 the ’118 Patent and the ’938 Patent.

10 **TOUCHSTREAM REVOLUTIONIZES CONTENT STREAMING**

11 16. In 2011, inventor David Strober officially incorporated Touchstream to  
12 share his inventions with the world.

13 17. In the following years, Touchstream raised millions of dollars in  
14 investments.

15 18. Since 2011, Touchstream, d/b/a “Shodogg,” developed software that  
16 enables content to be wirelessly cast (*e.g.*, accessed, displayed, and controlled) from a  
17 mobile device to a second device (*e.g.*, TV, computer, tablet, etc.). Touchstream has  
18 been a leader in developing casting technology and has received numerous awards and  
19 recognition.

20 19. Unfortunately, the efforts of Touchstream and Touchstream’s partners to  
21 appropriately monetize Mr. Strober’s inventions were significantly hindered by  
22 infringement of the Touchstream Patents, including by VIZIO. The timing and scope  
23 of VIZIO’s infringement is discussed in more detail below.

24 **THE ACCUSED SMARTCAST FUNCTIONALITIES**

25 20. VIZIO unveiled its line of SmartCast products and smartphone controller  
26 application—which perform the infringing SmartCast functionalities—in or around  
27  
28

1 2016.<sup>1</sup> The smartphone controller application is now named WatchFree+, though, on  
2 information and belief, it was previously known as the SmartCast Application or VIZIO  
3 Mobile.

4 21. According to VIZIO’s website, SmartCast is “[t]he (incredibly) smart  
5 platform that powers every VIZIO TV.”<sup>2</sup> In addition to built-in streaming applications  
6 such as Netflix, Hulu, Disney+, and FuboTV, VIZIO’s SmartCast platform features  
7 “[c]ontrol in the palm of your hand” via the WatchFree+ mobile application available  
8 for iOS and Android devices.<sup>3</sup>

9 22. The accused SmartCast functionalities comprise the methods performed  
10 through operation of at least the WatchFree+ applications<sup>4</sup> and associated SmartCast  
11 compatible devices, such as TVs, speakers, and sound bars.<sup>5</sup> The SmartCast products  
12 did provide in the past, and continue to provide, functionality that facilitates the  
13 controlling of content, such as video and audio content, on a content presentation system  
14 utilizing any one of a plurality of different media players (e.g., VIZIO WatchFree+,  
15 Netflix, Prime Video, Hulu, Apple TV, Disney+, Tubi, Max, YouTube, Sling, Spotify,  
16 etc.), as described in further detail below.

17 //  
18 //

21 <sup>1</sup> VIZIO, *VIZIO Debuts Next Generation Streaming Ecosystem on All-New VIZIO*  
22 *SmartCast™ P-Series™ Ultra HD HDR Home Theater Display™*, (Mar. 22, 2016)  
23 <https://www.vizio.com/en/press/2016/mar/vizio-debuts-next-generation-streaming-ecosystem-on-all-new-vizio-smartcast-p-series-ultra-hd-hdr-home-theater-display>.

24 <sup>2</sup> VIZIO, *SmartCast*, <https://www.vizio.com/en/smartcast> (last visited Oct. 24, 2024);  
25 VIZIO, *VIZIO | WatchFree+*, (Oct. 8, 2024)  
26 [https://play.google.com/store/apps/details?id=com.vizio.vue.launcher&hl=en\\_US&pli=1](https://play.google.com/store/apps/details?id=com.vizio.vue.launcher&hl=en_US&pli=1).

27 <sup>3</sup> VIZIO, *SmartCast*, <https://www.vizio.com/en/smartcast> (last visited Oct. 24, 2024);

28 <sup>4</sup> VIZIO, *VIZIO | WatchFree+*, *Apple Store* (<https://apps.apple.com/us/app/vizio-watchfree/id1054033219> (last visited Oct. 24, 2024)).

<sup>5</sup> VIZIO, *TVs*, <https://www.vizio.com/en/shop/tv> (last visited Oct. 24, 2024).

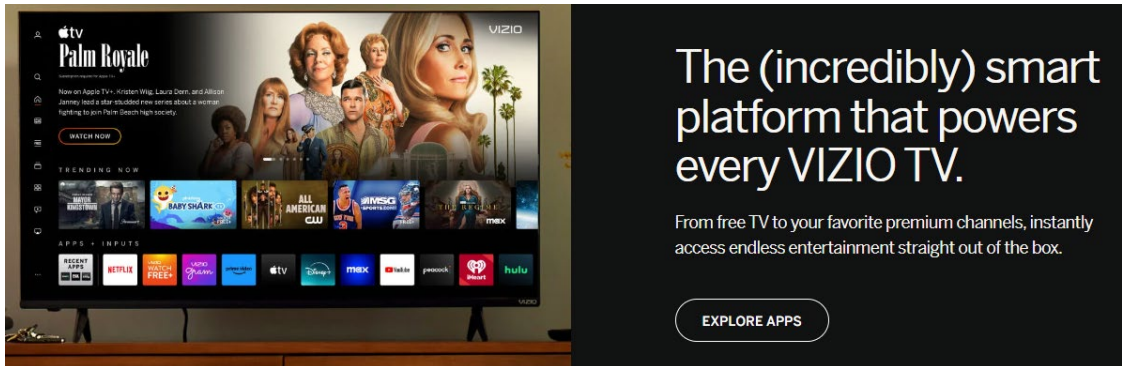


iPhone Screenshots



VIZIO WatchFree+ Application.<sup>6</sup>

23. SmartCast compatible devices support wireless communication protocols including Wi-Fi and Bluetooth as well as wired communication interfaces such as HDMI, optical, and USB.<sup>7</sup> SmartCast provides playback of content including from Internet-based streaming video and audio services. An example of this is shown below.



Exemplary SmartCast Device Supporting Streaming Video Applications.<sup>8</sup>

<sup>6</sup> VIZIO, *VIZIO| WatchFree+*, Apple Store (<https://apps.apple.com/us/app/vizio-watchfree/id1054033219> (last visited Oct. 24, 2024)).

<sup>7</sup> See e.g., VIZIO, *VFD32M-0807*, <https://www.vizio.com/en/tv/fhd/VFD32M-0807> (last visited Oct. 24, 2024).

<sup>8</sup> VIZIO, *SmartCast*, <https://www.vizio.com/en/smartcast> (last visited Oct. 24, 2024).

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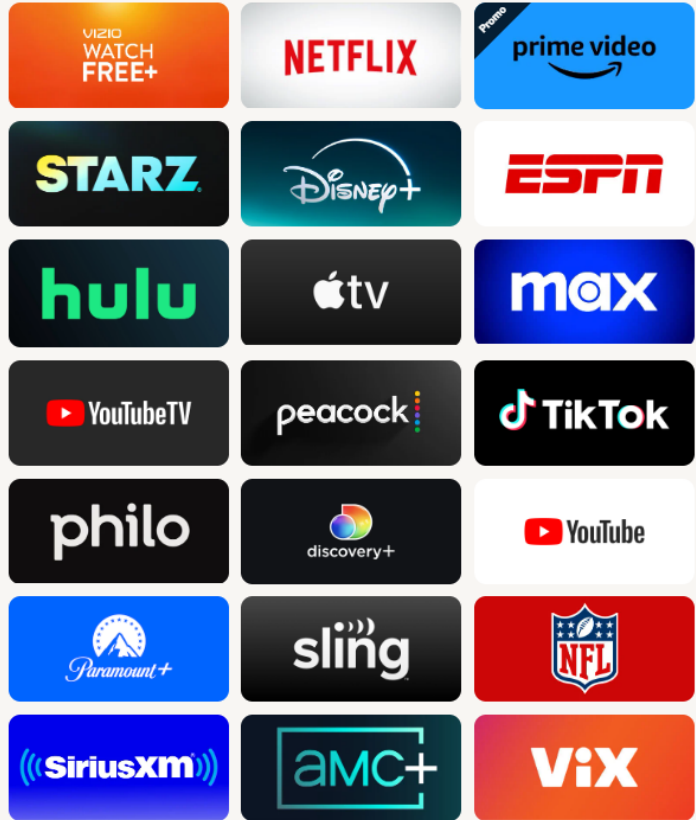
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International



Exemplary Streaming Video Applications Supported by SmartCast Devices.<sup>9</sup>

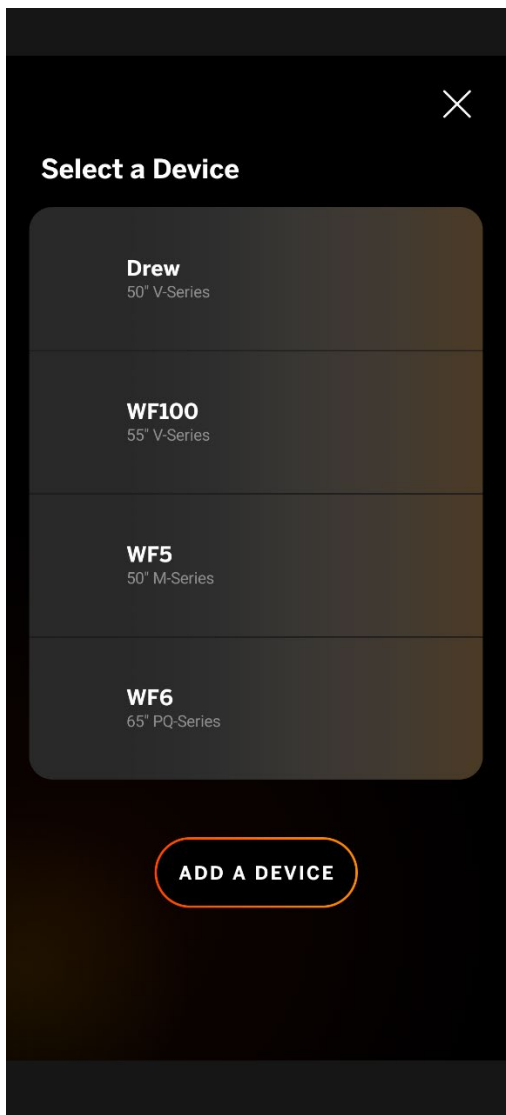
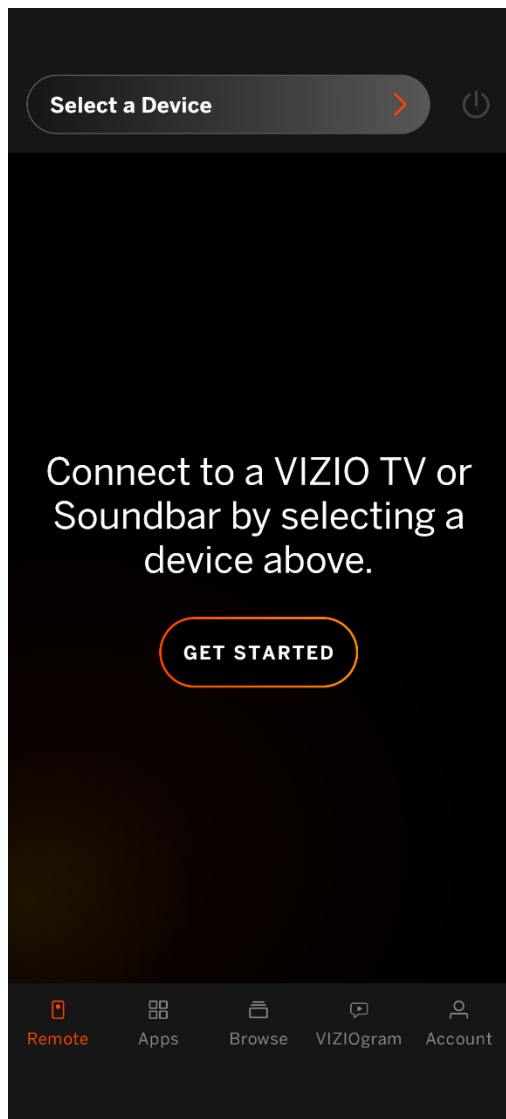
24. SmartCast compatible devices connected to a network via wireless or wired interfaces such as Wi-Fi or Ethernet are assigned a network identifier such as an IP address. SmartCast compatible devices are additionally associated with device identifiers including a “DEVICE\_NAME” and “DEVICE\_ID.”<sup>10</sup> Upon initial operation, available SmartCast compatible devices are discovered on the network via SSDP and displayed for user selection in the WatchFree+ application by name, model, and/or location. An example of this is shown below.

<sup>9</sup> VIZIO, *Smart TV Apps*, <https://www.vizio.com/en/smart-tv-apps> (last visited Oct. 24, 2024).

<sup>10</sup> GitHub, *VIZIO SmartCast API*, [https://github.com/exiva/Vizio\\_SmartCast\\_API](https://github.com/exiva/Vizio_SmartCast_API) (last visited Oct. 24, 2024).



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VIZIO Support Documentation.<sup>11</sup>

25. Using the WatchFree+ application on a mobile device such as a smartphone or tablet, a user can select content and a content provider for playback, connect to a SmartCast compatible device, and control playback of the content via universal commands such as play. For instance, a user may select a particular video on-demand title from a catalog. SmartCast commands comprising this information are communicated in messages generated at the smartphone or tablet such as HTTP PUT

<sup>11</sup> VIZIO, *Pairing a Smart Phone or Tablet to Your VIZIO SmartCast Device*, VIZIO Support [https://support.vizio.com/s/article/Pairing-a-Smart-Phone-or-Tablet-to-your-VIZIO-SmartCast-Device?language=en\\_US](https://support.vizio.com/s/article/Pairing-a-Smart-Phone-or-Tablet-to-your-VIZIO-SmartCast-Device?language=en_US) (last visited Oct. 24, 2024).

1 messages to a server system including at least the HTTP server component of a  
 2 SmartCast compatible device in accordance with the SmartCast API.<sup>12</sup> On information  
 3 and belief, the server system implements the control functions of the SmartCast API  
 4 resulting in a conversion of at least the command format based on the included  
 5 command and an identified streaming video or audio playing application. The result of  
 6 the communication of control messages to the server system causes a selected SmartCast  
 7 compatible device to utilize the converted command and a particular media playing  
 8 application to control playback of content referenced in the messages.

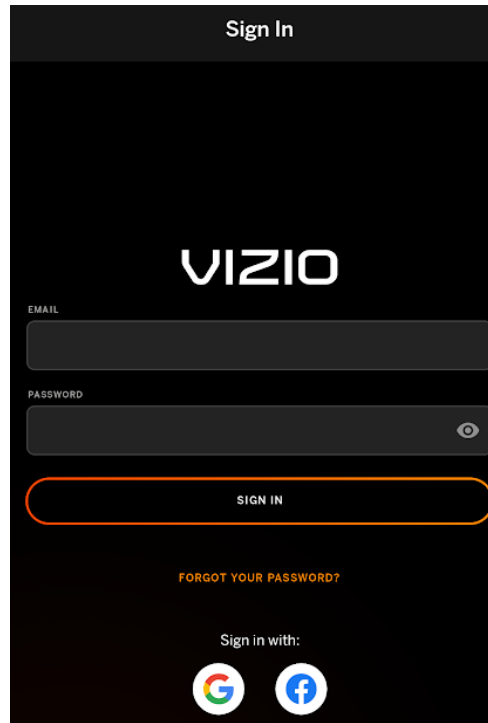
9 26. Vizio's SmartCast servers (including e.g., content and metadata servers)  
 10 receive requests for metadata (e.g., video content descriptions, images, scheduling  
 11 information, etc.) from Vizio WatchFree+ applications running on mobile devices.  
 12 Vizio's SmartCast servers respond to these requests with relevant media. An example  
 13 of this is shown below.



27 <https://apps.apple.com/us/app/vizio-watchfree/id1054033219>

28 <sup>12</sup> GitHub, *VIZIO SmartCast API*, [https://github.com/exiva/Vizio\\_SmartCast\\_API](https://github.com/exiva/Vizio_SmartCast_API) (last visited Oct. 24, 2024).

1 27. Requests include at least a user account or user identification (e.g., Vizio  
2 account credentials). An example of this is shown below.



Screenshot of Vizio WatchFree+ app.

15 28. Vizio’s SmartCast servers (including e.g., SmartCast HTTP servers) also  
16 receive requests from mobile devices indicating the video content and video display  
17 selections as discussed above in order to generate and transmit additional commands  
18 causing the selected display to load a media player and present the selected video  
19 content on the selected display under control of the mobile device, including in  
20 accordance with control commands from the mobile device. An example of this is  
21 shown below.

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## Overview

- On firmware versions older than 4.0 the API server runs on port `9000` , on 4.0 and newer the API server runs on port `7345` . Both are using https and will not respond to http.

*Don't port forward it. There are some commands that can be executed without authentication.*

- Certificate's CN is `BG2.prod.vizio.com` so will likely fail SSL validation.
- API includes a `Status` object, `URI` requested, and `Execution time` on every response. It's included below, but excluded in all of the examples for redundancy.

```

{
  ...
  "STATUS": {
    "RESULT": String,
    "DETAIL": String
  },
  "URI": String,
  "TIME": String
}

```

API does not seem to be fully restful, and doesn't apply proper status codes in responses. Verify request's result from the `status` object. Result codes included where applicable.

- All requests made should contain a JSON body with the header `Content-Type: application/json` set.
- When authentication is required, send `Auth: AUTH_TOKEN` header with request.
- This does not cover any MyVizio Account APIs.

[https://github.com/exiva/Vizio\\_SmartCast\\_API](https://github.com/exiva/Vizio_SmartCast_API)

## Launch TV App

Authenticated

`PUT /app/launch`

### Body

```

{
  "VALUE": {
    "MESSAGE": String,
    "NAME_SPACE": Integer,
    "APP_ID": String
  }
}

```

See [App IDs](#) for Values

[https://github.com/exiva/Vizio\\_SmartCast\\_API](https://github.com/exiva/Vizio_SmartCast_API)

29. Through the managing of the SmartCast API provided by the server component of SmartCast compatible devices, and through the processing of messaging sent by the WatchFree+ application running on the mobile device, the SmartCast system allows the user to consume media content on a remote device, separate from the user's mobile device, where the media content and/or media player may be downloaded from

1 the network rather than from the mobile device itself. The user is therefore free to use  
2 his or her mobile device for other purposes during playback of the media on the remote  
3 SmartCast compatible device.

4 30. Each of the steps discussed above is either performed by or otherwise  
5 attributable to VIZIO. To the extent another actor performs any of these steps, VIZIO  
6 directs or controls that performance, conditioning participation in the activity or the  
7 receipt of a benefit upon performance of the patented method steps and establishing the  
8 manner or timing of that performance. Additionally, VIZIO profits from its  
9 infringement and has the right and ability to stop or limit the infringement. For instance,  
10 VIZIO tests and demonstrates the accused functionality, including in advertisements.  
11 Further, VIZIO advertises and demonstrates to customers, and directs to SmartCast and  
12 content partner developers, that the infringing method steps will be performed, as shown  
13 above.<sup>13</sup> Further, VIZIO causes automatic updates to the SmartCast system.<sup>14</sup> As  
14 discussed below, the functionality advertised and directed by VIZIO infringes the  
15 Touchstream Patents, and on information or belief, is known by VIZIO to do so.

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<sup>13</sup> VIZIO, *Content Partners*, <https://www.vizio.com/en/content-partners> (last visited  
Oct. 24, 2024).

27 <sup>14</sup> VIZIO, D24h-G9 D32h-G9 D40f-G9 Firmware Information, VIZIO Support,  
28 [https://support.vizio.com/s/article/Firmware-Information-156?language=en\\_US](https://support.vizio.com/s/article/Firmware-Information-156?language=en_US) (last  
visited Oct. 24, 2024).

**VIZIO'S KNOWLEDGE OF TOUCHSTREAM'S PATENTS**

31. Since at least December 14, 2011, Touchstream has made publicly clear that its revolutionary product offerings were “patent-pending.”<sup>15</sup>

32. Just days after the first Touchstream Patent issued on January 15, 2013, Touchstream issued a press release announcing this patent award.<sup>16</sup>

33. It was pattern and practice for Touchstream to inform potential business partners of its patents and patent applications, as well as the fact that its technology was protected by those patents and patent applications.

34. In or around 2011, Touchstream’s CEO met VIZIO Co-Founder and Vice President Laynie Newsome. On November 1, 2011, Touchstream’s CEO reached out to Ms. Newsome to explain Touchstream’s technology and request a meeting. In this communication, Touchstream’s CEO informed Ms. Newsome that Touchstream’s “patent pending technology allows any smartphone/tablet to wirelessly stream content

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<sup>15</sup> See e.g., Sean Ludwig, *Shodogg will let you pause and restart video from any device (exclusive)*, VentureBeat (Dec. 14, 2011), <https://venturebeat.com/2011/12/14/shodogg-video-sharing-phones-tvs-exclusive/>; Shodogg, *Shodogg Launches at CES and Transforms Streaming Video Delivery by Fueling Industry Expansion with Content Providers*, Cision PR Newswire (Jan. 10, 2012), <https://www.prnewswire.com/news-releases/shodogg-launches-at-ces-and-transforms-streaming-video-delivery-by-fueling-industry-expansion-with-content-providers-137010098.html>; see also <https://web.archive.org/web/20111003131546/http://shodogg.com/> (archived snapshot of Shodogg website from October 3, 2011) (“Shodogg is a patent-pending technology that allows viewers to access online streaming content from any smartphone and display it to any larger connected screen, such as a laptop, tablet, or TV.”).

<sup>16</sup> Shodogg, *Shodogg announces the release of ScreenDirect a business-to-business solution enabling companies to seamlessly direct digital content across screens*, Cision PR Newswire (Jan. 17, 2013 9:15 ET) <https://www.prnewswire.com/news-releases/shodogg-announces-the-release-of-screendirect-a-business-to-business-solution-enabling-companies-to-seamlessly-direct-digital-content-across-screens-187284641.html>; See also, e.g., *Meet Shodogg Who Won this Year’s Techweek NYC Launch Competition*, AlleyWatch (Dec. 2014), <https://www.alleywatch.com/2014/12/meet-shodogg-who-won-this-years-techweek-nyc-launch-competition/>.



1 to any connected device.” Thus, no later than November 1, 2011, VIZIO was on notice  
2 that Touchstream’s technology was covered by a patent application, and that any  
3 copying or other use of that technology without Touchstream’s permission would risk  
4 infringing on the later issuing patents.

5 35. On December 15, 2011, Touchstream’s CEO sent Ms. Newsome additional  
6 information on Touchstream’s technology—including a link to Touchstream’s website  
7 and images of Touchstream’s application at work—and invited Ms. Newsome to stop  
8 by Touchstream’s booth at the Consumer Electronics Show (“CES”) in January 2012.  
9 At CES, Touchstream presented its technology to develop business opportunities.

10 36. Touchstream has also been involved in significant, widely public litigation  
11 regarding infringement of its patents:

12 37. **Vizbee, Inc.** In 2017, Touchstream sued Vizbee in the Southern District  
13 of New York, asserting patents that claim priority back to the same patent application  
14 at issue in this case and, like the patents asserted here, claim priority to Mr. Strober’s  
15 original prototype work in October 2010. *Touchstream Technologies, Inc v. Vizbee, Inc.*,  
16 17-cv-06247-PGG-KNF (S.D.N.Y.). Vizbee and Touchstream litigated for more than  
17 two years and resolved the dispute in early 2020.

18 38. **Google, LLC.** In 2021, Touchstream sued Google in the Western District  
19 of Texas, asserting patents that claim priority back to the same patent application at  
20 issue in this case and, like the patents asserted here, claim priority to Mr. Strober’s  
21 original prototype work in October 2010. *Touchstream Technologies, Inc. v. Google*  
22 *LLC*, 6:21-cv-00569-ADA (W.D. Tex.). The Court rejected at summary judgment  
23 Google’s defense that Touchstream’s patents are invalid, and Google’s requests *for inter*  
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1 *partes* review were denied by the Patent and Trademark Office. At trial, the jury  
2 awarded Touchstream approximately \$339 million in damages.<sup>17</sup>

3 39. **Cable Companies.** In 2023, Touchstream sued the three largest cable  
4 company groups—Comcast, Charter, and Altice—in the Eastern District of Texas.  
5 *Touchstream Technologies, Inc. v. Charter Communications, Inc. et al.*, 2:23-cv-00059-  
6 JRG (E.D. Tex.). Touchstream’s claims against Comcast and Charter are set to be tried  
7 to a jury in December 2024.

8 40. **Yamaha Corporation.** In 2024, Touchstream sued Yamaha in the Eastern  
9 District of Texas, asserting patents that claim priority to Mr. Strober’s original prototype  
10 work in October 2010, including the ’118 patent asserted against VIZIO. *Touchstream*  
11 *Technologies, Inc. v. Yamaha Corp.*, 2:24-cv-00739-JRG (E.D. Tex.).

12 41. These litigations—and particularly Touchstream’s verdict against  
13 Google—have received significant press coverage.<sup>18</sup> VIZIO was either aware of these  
14 litigations or willfully blind to them, and never approached Touchstream about a license  
15 during the pendency of these litigations.

16 42. In April 2024, representatives of Touchstream sent a letter to VIZIO  
17 describing its patented technology and further identifying the Touchstream Patents by  
18 patent number. A representative of Vizio acknowledged receipt of this letter.

19 43. Despite its knowledge of the Touchstream Patents, VIZIO intentionally  
20 disregarded Touchstream’s intellectual property rights and willfully infringed the  
21 Touchstream Patents without a license or permission.

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23  
24 <sup>17</sup> As Touchstream has explained in public filings, the imputed rate to awarded to  
25 Touchstream from Google by the jury was \$5.53 per activated device for “Chromecast  
26 Dongles,” \$2.76 per activated device for “Google Chromecast-enabled devices,” and  
27 \$1.38 per activated device for “Third-Party Chromecast-enabled Devices.”  
28 *Touchstream v. Google*, 21-569, ECF No. 281 p. 5 (W.D. Tex. Sept. 27, 2023).

<sup>18</sup> See, e.g., Blake Brittain, *Google Owes \$338.7 Million in Chromecast Patent Case*,  
*US Jury Says*, Reuters (July 24, 2023); Ryan Davis, *Google Told to Pay \$339M In*  
*WDTX Chromecast Patent Trial*, Law360 (July 21, 2023).

1 44. Accordingly, on information and belief, VIZIO knew of Touchstream’s  
2 patented technology and the Touchstream Patents, knew that its products were  
3 infringing, but despite that knowledge continues to sell, offer for sale, and/or use the  
4 accused functionalities such that VIZIO is willfully infringing the Touchstream Patents.

5 45. The facts discussed above support an inference of conscious copying by  
6 VIZIO of Touchstream’s technology, which VIZIO knew or should have known was  
7 patented such that copying would amount to patent infringement. The similarity of  
8 VIZIO’s technology to that presented by Touchstream evidences copying with the  
9 knowledge that this would lead to infringement.

10 46. Further, VIZIO has not ceased its infringing behavior. To date, VIZIO is  
11 still selling, offering for sale, and/or using the accused functionalities such that VIZIO  
12 is willfully infringing the Touchstream Patents.

13 47. All of these facts taken together constitute willful infringement by VIZIO,  
14 with actual or imputed knowledge of Touchstream’s patents, or at the very least willful  
15 blindness to the knowledge of those patents.

16 **TOUCHSTREAM’S PATENTED TECHNOLOGY IS**  
17 **HIGHLY VALUABLE TO VIZIO**

18 48. Touchstream’s patented technology is highly valuable to VIZIO, as  
19 demonstrated by the history of how that technology is used and licensed in the industry,  
20 and by how this technology is used and advertised by VIZIO.

21 49. As discussed in the *Touchstream v. Google* trial, in July 2013 Touchstream  
22 entered into a license agreement with Quadriga, the second largest provider of relevant  
23 technology to hotel chains,<sup>19</sup> with a license to Touchstream’s patented technology for a  
24 license fee to Touchstream of \$.48 per hotel room per month, and a 50/50 split of  
25 advertising revenue through that technology.

26  
27  
28 <sup>19</sup> See Hotel Business Archive, “Quadriga Partners with LobbyFriend” Nov. 14, 2012  
(available at <https://archive.hotelbusiness.com/quadriga-partners-with-lobbyfriend/>).

1 50. VIZIO's 2023 Annual Report to shareholders reported 18.5 million  
2 SmartCast Active Accounts, described as a "+6% YOY Growth" from the previous year,  
3 with 20.5 billion "SmartCast Hours" that year, and \$32.48 "SmartCast Average  
4 Revenue Per User" representing "+15% YOY Growth," and "+31% Advertising  
5 Revenue YOY Growth."<sup>20</sup> That report divides VIZIO's business into its "Device"  
6 business, which includes sales of smart TVs and sound bars, and its "Platform+"  
7 business, which includes SmartCast and Inscape technology for tracking data for  
8 advertising and licensing, reporting \$1,081.8 million in net revenue for its Device  
9 business and a \$598.2 million gain in its Platform+ business.<sup>21</sup> The same report states  
10 that in 2022 VIZIO's Device business made \$1,394.9 million in net revenue while its  
11 Platform+ business made \$477.9 million in net revenue. In addition, Platform+ net  
12 revenue increased 19% year-over-year in Q2 (June 30, 2023) to \$169 million.  
13 Cumulatively, VIZIO generated \$1,384.8 million in net revenue between 2021-23 from  
14 its Platform+ business. Vizio also grew SmartCast hours per average SmartCast Active  
15 Account to 100 per month, up 6% YoY.<sup>22</sup>

16 51. Looking at profits, VIZIO's 2023 Annual Report to shareholders reported  
17 an \$8.6 million loss in gross profit for its Device business and a \$364.9 million gain in  
18 its Platform+ business. The same report states that in 2022 Vizio's Device business  
19 made \$16.0 million in gross profit while its Platform+ business made \$296.5 million in  
20 gross profit.<sup>23</sup>

21 52. VIZIO's 2022 Annual Report to shareholders reported 17.4 million  
22 SmartCast Active Accounts, described as a "+15% YOY Growth" from the previous  
23 year, with 17.4 billion "SmartCast Hours" that year, and \$28.30 "SmartCast Average  
24

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25 <sup>20</sup> VIZIO, 2023 Annual Report, p. 2 (available at  
26 [https://s29.q4cdn.com/107810760/files/doc\\_financials/2023/ar/vizio-2023-annual-  
report.pdf](https://s29.q4cdn.com/107810760/files/doc_financials/2023/ar/vizio-2023-annual-report.pdf)).

27 <sup>21</sup> *Id.* p. 5, 64.

28 <sup>22</sup> *Id.*

<sup>23</sup> *Id.*

1 Revenue Per User” representing “+31% YOY Growth,” and “+55% Advertising  
2 Revenue YOY Growth.”<sup>24</sup>

3 53. VIZIO’s 2021 Annual Report to shareholders reported 14.6 billion  
4 “SmartCast Hours” that year, and \$21.68 “SmartCast Average Revenue Per User”  
5 representing “+67% YOY Growth,” and “+222% Advertising Revenue Growth.”<sup>25</sup>

6 54. A 2023 Forbes article, as part of an interview with VIZIO founder,  
7 chairman, and CEO William Wang, described Smartcast as a “big innovation,”  
8 explaining: “That was another crucial shift for VIZIO, and the industry. Having an  
9 internet-connected, regularly updated interface that could navigate apps in effect turned  
10 the home’s biggest screen into a non-mobile version of the iPhone, with much of the  
11 same flexibility and power, and ability to provide customized programming and ad  
12 experiences.”<sup>26</sup>

13 55. To this day, the download page for the VIZIO WatchFree+ App advertises  
14 the following: “Whether it’s your TV or Soundbar, control your VIZIO family of  
15 devices from the palm of your hand;” and “Organize your apps and launch to your TV  
16 with one click.”<sup>27</sup>

### 17 **COUNT I: INFRINGEMENT OF THE ’118 PATENT**

18 56. Touchstream adopts and incorporates by reference the allegations set forth  
19 in ¶¶ 1-55, *supra*.

20  
21 <sup>24</sup> VIZIO, 2022 Annual Report, p. 2 (available at  
22 [https://s29.q4cdn.com/107810760/files/doc\\_financials/2021/ar/vizio-2022-annual-report.pdf](https://s29.q4cdn.com/107810760/files/doc_financials/2021/ar/vizio-2022-annual-report.pdf)).

23 <sup>25</sup> VIZIO, 2021 Annual Report, p. 2 (available at  
24 [https://s29.q4cdn.com/107810760/files/doc\\_financials/2021/ar/VIZIO-HOLDING-CORP\\_AR\\_2022\\_V1.pdf](https://s29.q4cdn.com/107810760/files/doc_financials/2021/ar/VIZIO-HOLDING-CORP_AR_2022_V1.pdf)).

25 <sup>26</sup> Forbes, “VIZIO Founder William Wang’s Front-Row Seat On TV’s Transformation  
26 The Past 20 Years,” David Bloom, Jan. 3, 2023 (available at  
27 <https://www.forbes.com/sites/dbloom/2023/01/03/vizio-founder-william-wangs-front-row-seat-on-tvs-transformation-the-past-20-years/>).

28 <sup>27</sup> App Store Preview, VIZIO WatchFree+ (available at  
<https://apps.apple.com/us/app/vizio-watchfree/id1054033219>).

1 57. VIZIO directly infringes at least claim 8 of the '118 Patent by performing  
2 the methods described in ¶¶ 20-30, *supra*.

3 58. For example, VIZIO performs the computer-implemented method for  
4 remotely presenting various types of content. *See, e.g.*, ¶¶ 21-29, *supra*. VIZIO further  
5 receives, by a personal computing device, a unique identifier of a content presentation  
6 system. *See, e.g.*, ¶ 24 *supra*. VIZIO further generates, by the personal computing  
7 device, a set of messages that includes a first command in a first format, a reference to  
8 a piece of content associated with a particular media playing application, an identifier  
9 that corresponds to the particular media playing application, and the unique identifier.  
10 *See, e.g.*, ¶¶ 24-25, *supra*. VIZIO further communicates, by the personal computing  
11 device, the generated set of messages to a server system configured to send, to the  
12 content presentation system based on the unique identifier, a second command in a  
13 second format, the second command being converted from the set of messages based on  
14 each of the first command and a configuration of the particular media playing  
15 application, wherein the second format is associated with the particular media playing  
16 application and the second command corresponds to the first command. *See, e.g.*, ¶¶  
17 25-28, *supra*. VIZIO further causes, by the personal computing device, the content  
18 presentation system to utilize the second command and the particular media playing  
19 application to control the referenced piece of content. *See, e.g.*, ¶¶ 25, 28, *supra*.

20 59. VIZIO's infringement of the '118 Patent has been, is, and continues to be  
21 willful, including VIZIO's infringement of at least claim 8 as described at ¶¶ 31-47,  
22 *supra*.

23 60. Touchstream has been and will continue to be irreparably harmed by  
24 VIZIO's infringing acts, requiring the entry of a permanent injunction to prevent  
25 VIZIO's further infringement of the '118 Patent because Touchstream does not have  
26 another adequate remedy at law.

27  
28





1 device are communicated to the selected remote display device by way of a video  
2 content provider server system. *See, e.g.*, ¶¶ 28, *supra*.

3 64. VIZIO's infringement of the '938 Patent has been, is, and continues to be  
4 willful, including VIZIO's infringement of at least claim 14 as described at ¶¶ 31-37,  
5 *supra*.

6 65. Touchstream has been and will continue to be irreparably harmed by  
7 VIZIO's infringing acts, requiring the entry of a permanent injunction to prevent  
8 VIZIO's further infringement of the '938 Patent because Touchstream does not have  
9 another adequate remedy at law.

10 **JURY DEMAND**

11 66. Touchstream demands a trial by jury on all issues.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Touchstream requests entry of a judgment in its favor and against  
14 VIZIO as follows:

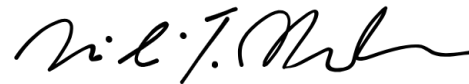
- 15 a) Judgment that VIZIO has directly infringed one or more claims of the  
16 Touchstream Patents;
- 17 b) An award of damages to compensate for VIZIO's infringement, including  
18 damages pursuant to 35 U.S.C. § 284, as well as prejudgment and post-  
19 judgment interest;
- 20 c) An award of costs and expenses in this action, including an award of  
21 Touchstream's reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- 22 d) A permanent injunction restraining and enjoining VIZIO, and its respective  
23 officers, agents, servants, employees, attorneys, and those persons or  
24 entities in active concert or participation with VIZIO who receive actual  
25 notice of the order by personal service or otherwise, from any further sales  
26 or use of their infringing products and/or services and any other  
27 infringement of the Touchstream Patents;
- 28

- 1 e) A finding that VIZIO has willfully infringed and is willfully infringing one
- 2 or more claims of the Touchstream Patents;
- 3 f) A finding that this case is an exceptional case, and awarding treble damages
- 4 due to VIZIO’s deliberate and willful conduct, and ordering VIZIO to pay
- 5 Touchstream’s costs of suit and attorneys’ fees; and
- 6 g) For such other and further relief as the Court may deem just, proper, and
- 7 equitable under the circumstances.

8 Dated: October 25, 2024

Respectfully submitted,

**BOIES SCHILLER FLEXNER LLP**



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Nili T. Moghaddam (SBN 226636)  
2029 Century Park East, Suite 1520  
Los Angeles, CA 90067  
Email: nmoghaddam@bsfllp.com

Ryan D. Dykal\*  
Jordan T. Bergsten\*  
Mark Schafer\*  
1401 New York Ave, NW  
Email: rdykal@bsfllp.com  
jbergsten@bsfllp.com  
mschafer@bsfllp.com

Sabina Mariella\*  
55 Hudson Yards, 20th Floor  
New York, NY 10001  
Email: smariella@bsfllp.com

*\*Pro Hac Vice Application Forthcoming*

Counsel for Plaintiff  
TOUCHSTREAM TECHNOLOGIES,  
INC.