

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 ASHEVILLE DIVISION

Civil Action No: 1:00 CV 144 *J*

4
5 SUPERGUIDE CORPORATION, a)
North Carolina Corporation,)

6 Plaintiff,)

7 Vs.)

8 DIRECTV ENTERPRISES, INC., a)
9 Delaware Corporation; DIRECTV,)
INC., a California Corporation;)
10 DIRECTV OPERATIONS, INC., a)
California Corporation; HUGHES)
11 ELECTRONICS CORPORATION, a)
Delaware Corporation; THOMSON)
12 CONSUMER ELECTRONICS, INC.,)
dba RCA, a Delaware Corporation;)
13 ECHOSTAR COMMUNICATIONS)
CORPORATION, a Nevada)
14 Corporation; ECHOSTAR)
SATELLITE CORPORATION, a)
15 Colorado Corporation; ECHOSTAR)
TECHNOLOGIES CORPORATION,)
16 a Texas Corporation,)

17 Defendants.)
18

FILED
CHARLOTTE, N. C.
JUN 27 2000
U. S. DISTRICT COURT
W. DIST. OF N. C.

COMPLAINT FOR PATENT
INFRINGEMENT AND
PERMANENT INJUNCTION

JURY TRIAL DEMANDED

19
20 Plaintiff SuperGuide Corporation ("SuperGuide" or "Plaintiff"), as and for
21 its claims for relief herein, alleges on information and belief as follows:

22
23 GENERAL ALLEGATIONS AND PARTIES

24 1. In this action, SuperGuide seeks damages and injunctive relief
25 against defendants DirecTV Enterprises, Inc., DirecTV, Inc., DirecTV Operations, Inc.,
26 (collectively, "DTV"); Hughes Electronics Corporation ("Hughes"); Thomson Consumer
27 Electronic, Inc., dba RCA ("RCA"); and, EchoStar Communications Corporation,
28 EchoStar Satellite Corporation, and EchoStar Technologies Corporation (collectively

1 "EchoStar") for acts of patent infringement in violation of the Patent Act of the United
2 States, 35 U.S.C. §§ 1 *et seq.* DTV, Hughes, RCA, and EchoStar are referred to collectively
3 as "Defendants."

4 2. SuperGuide is a corporation organized and existing under the laws
5 of the State of North Carolina and maintains its principal place of business at 501 North
6 Washington Street, Shelby, North Carolina.

7 3. SuperGuide alleges on information and belief that DirecTV
8 Enterprises, Inc., is a Delaware corporation with its principal place of business at 2230 E.
9 Imperial Highway, El Segundo, California. SuperGuide further alleges on information
10 and belief that DirecTV Enterprises, Inc., is a wholly owned subsidiary and business unit
11 of Hughes Electronics Corporation.

12 4. SuperGuide alleges on information and belief that DirecTV, Inc.,
13 and DirecTV Operations, Inc., are California corporations with their principal place of
14 business at 2230 E. Imperial Highway, El Segundo, California. SuperGuide further
15 alleges on information and belief that DirecTV, Inc., and DirecTV Operations, Inc., are
16 wholly owned subsidiaries of DirecTV Enterprises, Inc.

17 5. Hughes Electronics Corporation is a Delaware corporation, and has
18 its principal place of business at 2230 E. Imperial Highway, El Segundo, California.

19 6. SuperGuide alleges on information and belief that Thomson
20 Consumer Electronics, Inc., is a Delaware corporation with its principal place of business
21 at 10330 North Meridian Street, Indianapolis, Indiana and does business as "RCA."
22 SuperGuide further alleges on information and belief that DirecTV Enterprises, Inc.,
23 owns approximately 5% of Thomson multimedia, the parent corporation of Thomson
24 Consumer Electronics, Inc.

25 7. SuperGuide alleges on information and belief that EchoStar
26 Communications Corporation is a Nevada corporation with its principal place of
27 business at 5701 South Santa Fe Drive, Littleton, Colorado.

28 8. SuperGuide alleges on information and belief that EchoStar Satellite

1 Corporation is a Colorado corporation with its principal place of business at 5701 South
2 Santa Fe Drive, Littleton, Colorado.

3 9. SuperGuide alleges on information and belief that EchoStar
4 Technologies Corporation is a Texas corporation with its principal place of business at
5 5701 South Santa Fe Drive, Littleton, Colorado.

6 10. DTV and EchoStar provide direct broadcast satellite ("DBS") service
7 to subscribers throughout the United States, with over 500,000 subscribers in the State of
8 North Carolina, including the Western District of North Carolina. The DBS service that
9 DTV and EchoStar offer includes an interactive electronic program guide.

10 11. Hughes, RCA, and EchoStar manufacture or have manufactured
11 DBS receiver equipment that is offered for sale and sold to consumers for use with
12 DTV's and EchoStar's DBS service, including over 500,000 consumers in the State of
13 North Carolina, including the Western District of North Carolina. The receiver
14 equipment that Hughes, RCA and EchoStar offer for sale and sell includes hardware and
15 software for the receipt, operation, and display of the electronic program guide that DTV
16 and EchoStar provide through their DBS service to every one of their subscribers.

17
18 **JURISDICTION AND VENUE**

19 12. This court has subject matter jurisdiction over this action under 28
20 U.S.C. §§ 1338(a) and 1331.

21 13. Venue is proper in this judicial district pursuant to 28 U.S.C. §§
22 1391(b)(2), 1391(c), and 1400(b), in that the patents at issue are the property of a
23 corporation located in this district, Defendants reside in this judicial district by virtue of
24 their business activity in this judicial district, and Defendants have committed acts of
25 infringement in this district.

1 FIRST CLAIM FOR RELIEF
2 INFRINGEMENT OF U.S. PATENT NO. 5,038,211 AGAINST ALL DEFENDANTS

3 14. SuperGuide repeats and realleges on information and belief as
4 though fully set forth here paragraphs 1 through 13 of this Complaint.

5 15. At all relevant times in the DBS field, SuperGuide is and has been
6 the owner of the entire right, title, and interest in and to U.S. Letters Patent No. 5,038,211
7 (the "Hallenbeck '211 Patent"), entitled "METHOD AND APPARATUS FOR
8 TRANSMITTING AND RECEIVING TELEVISION PROGRAM INFORMATION,"
9 which was duly granted by the United States Patent and Trademark Office on August 6,
10 1991. (A copy of the Hallenbeck '211 Patent is attached as Exhibit A.)

11 16. SuperGuide alleges on information and belief that Defendants have
12 infringed and continue to infringe the Hallenbeck '211 Patent by making, using, or
13 selling in the United States products or devices that embody or otherwise practice one or
14 more of the claims of the Hallenbeck '211 Patent, or by otherwise contributing to
15 infringement or inducing others to infringe said patent.

16 17. SuperGuide has given notice to DTV, Hughes, RCA, and EchoStar
17 of their infringement of the Hallenbeck '211 Patent.

18 18. SuperGuide electronically marked all patented articles in the DBS
19 field that it made, offered for sale, and sold in the United States following the issuance of
20 the Hallenbeck '211 patent with the patent number.

21 19. SuperGuide alleges on information and belief that Defendants will
22 continue to infringe the Hallenbeck '211 Patent unless enjoined by this Court.

23 20. SuperGuide alleges on information and belief that Defendants'
24 infringement of the Hallenbeck '211 Patent is, has been, and continues to be willful and
25 deliberate.

26 21. As a direct and proximate result of Defendants' infringement of the
27 Hallenbeck '211 Patent, SuperGuide has been and continues to be damaged in an
28 amount yet to be determined.

1 22. By reason of the above acts, Defendants have caused, are causing,
2 and unless enjoined and restrained by this court, will continue to cause SuperGuide
3 great and irreparable injury to, among other things, the good will and business
4 reputation of SuperGuide and its business relations with its customers, all of which
5 cannot be adequately compensated or measured in money. SuperGuide has no
6 adequate remedy at law. SuperGuide is entitled to injunctive relief enjoining and
7 restraining Defendants, and their respective officers, agents, servants, and employees,
8 and all persons acting in concert with them, and each of them, from further infringement
9 of the Hallenbeck '211 Patent.

10
11 **SECOND CLAIM FOR RELIEF**

12 **INFRINGEMENT OF U.S. PATENT NO. 5,293,357 AGAINST ALL DEFENDANTS**

13 23. SuperGuide repeats and realleges on information and belief as
14 though fully set forth here paragraphs 1 through 22 of this Complaint.

15 24. At all relevant times in the DBS field, SuperGuide is and has been
16 the owner of the entire right, title, and interest in and to U.S. Letters Patent No. 5,293,357
17 (the "Hallenbeck '357 Patent"), entitled "METHOD AND APPARATUS FOR
18 CONTROLLING A TELEVISION PROGRAM RECORDING DEVICE," which was duly
19 granted by the United States Patent and Trademark Office on March 8, 1994. (A copy of
20 the Hallenbeck '357 Patent is attached as Exhibit B.)

21 25. SuperGuide alleges on information and belief that Defendants have
22 infringed and continue to infringe the Hallenbeck '357 Patent by making, using, or
23 selling in the United States products or devices that embody or otherwise practice one or
24 more of the claims of the Hallenbeck '357 Patent, or by otherwise contributing to
25 infringement or inducing others to infringe said patent.

26 26. SuperGuide has given notice to DTV, Hughes, RCA, and EchoStar
27 of their infringement of the Hallenbeck '357 Patent.

28 27. SuperGuide alleges on information and belief that Defendants will

1 continue to infringe the Hallenbeck '357 Patent unless enjoined by this Court.

2 28. SuperGuide alleges on information and belief that Defendants'
3 infringement of the Hallenbeck '357 Patent is, has been, and continues to be willful and
4 deliberate.

5 29. As a direct and proximate result of Defendants' infringement of the
6 Hallenbeck '357 Patent, SuperGuide has been and continues to be damaged in an
7 amount yet to be determined.

8 30. By reason of the above acts, Defendants have caused, are causing,
9 and unless enjoined and restrained by this court, will continue to cause SuperGuide
10 great and irreparable injury to, among other things, the good will and business
11 reputation of SuperGuide and its business relations with its customers, all of which
12 cannot be adequately compensated or measured in money. SuperGuide has no
13 adequate remedy at law. SuperGuide is entitled to injunctive relief enjoining and
14 restraining Defendants, and their respective officers, agents, servants, and employees,
15 and all persons acting in concert with them, and each of them, from further infringement
16 of the Hallenbeck '357 Patent.

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18 **THIRD CLAIM FOR RELIEF**

19 **INFRINGEMENT OF U.S. PATENT NO. 4,751,578 AGAINST ALL DEFENDANTS**

20 31. SuperGuide repeats and realleges on information and belief as
21 though fully set forth here paragraphs 1 through 30 of this Complaint.

22 32. At all relevant times in the DBS field, SuperGuide is and has been
23 the owner of the entire right, title, and interest in and to U.S. Letters Patent No. 4,751,578
24 (the "Reiter '578 Patent"), entitled "SYSTEM FOR ELECTRONICALLY
25 CONTROLLABLY VIEWING ON A TELEVISION UPDATEABLE TELEVISION
26 PROGRAMMING INFORMATION," which was duly granted by the United States
27 Patent and Trademark Office on June 14, 1988. (A copy of the Reiter '578 Patent is
28 attached as Exhibit C.)

1 33. SuperGuide alleges on information and belief that Defendants have
2 infringed and continue to infringe the Reiter '578 Patent by making, using, or selling in
3 the United States products or devices that embody or otherwise practice one or more of
4 the claims of the Reiter '578 Patent, or by otherwise contributing to infringement or
5 inducing others to infringe said patent.

6 34. SuperGuide has given notice to DTV, Hughes, RCA, and EchoStar
7 of their infringement of the Reiter '578 Patent.

8 35. SuperGuide electronically marked all patented articles in the DBS
9 field that it made, offered for sale, and sold in the United States following the issuance of
10 the Reiter '578 patent with the patent number.

11 36. SuperGuide alleges on information and belief that Defendants will
12 continue to infringe the Reiter '578 Patent unless enjoined by this Court.

13 37. SuperGuide alleges on information and belief that Defendants'
14 infringement of the Reiter '578 Patent is, has been, and continues to be willful and
15 deliberate.

16 38. As a direct and proximate result of Defendants' infringement of the
17 Reiter '578 Patent, SuperGuide has been and continues to be damaged in an amount yet
18 to be determined.

19 39. By reason of the above acts, Defendants have caused, are causing,
20 and unless enjoined and restrained by this court, will continue to cause SuperGuide
21 great and irreparable injury to, among other things, the good will and business
22 reputation of SuperGuide and its business relations with its customers, all of which
23 cannot be adequately compensated or measured in money. SuperGuide has no
24 adequate remedy at law. SuperGuide is entitled to injunctive relief enjoining and
25 restraining Defendants, and their respective officers, agents, servants, and employees,
26 and all persons acting in concert with them, and each of them, from further infringement
27 of the Reiter '578 Patent.

PRAYER FOR RELIEF

WHEREFORE, SuperGuide prays for judgment against Defendants as follows:

1. for a judicial determination and declaration that Defendants, and each of them, infringe U.S. Letters Patent Nos. 5,038,211, 5,293,357, and 4,751,578;

2. for a judicial determination and decree that Defendants' infringement of U.S. Letters Patent Nos. 5,038,211, 5,293,357, and 4,751,578 is willful;

3. for damages resulting from Defendants' past and present infringement of U.S. Letters Patent Nos. 5,038,211, 5,293,357, and 4,751,578, and the trebling of such damages because of the willful and deliberate nature of Defendants' infringement;

4. for injunctive relief enjoining against further infringement of U.S. Letters Patent Nos. 5,038,211, 5,293,357, and 4,751,578 by Defendants, their officers, directors, shareholders, agents, servants, employees, and all other entities and individuals acting in concert with them or on their behalf;

5. for an assessment of prejudgment interest on damages;

6. for a declaration that this is an exceptional case under 35 U.S.C. § 285 and for an award of attorneys' fees and costs in this action; and,

7. for such other and further relief as the court deems just and equitable.

1 DATED: June 27, 2000

2 A. Ward McKeithen, by EJB
3 A. Ward McKeithen
4 N.C. Bar No. 5063

5 Everett J. Bowman
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21 Attorneys for Plaintiff
22 SuperGuide Corporation
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1 DEMAND FOR JURY TRIAL

2
3 Plaintiff hereby demands a trial by jury of any issue triable by right by a
4 jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

5 DATED: June 27, 2000

6 A. Ward McKeithen, by EPB
7 A. Ward McKeithen
8 N.C. Bar No. 5063

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27
28

NOTE:

**THIS IS A PARTIALLY
SCANNED DOCUMENT.**

**PLEASE SEE THE CASE
FILE FOR
ATTACHMENTS,
EXHIBITS, AFFIDAVITS
OR OTHER MATERIAL
WHICH HAS NOT BEEN
SCANNED.**