

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

TiVo Inc., a Delaware corporation,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2-04cv01 DF
)	
1. EchoStar Communications Corporation, a)	
Nevada corporation, 2. EchoStar DBS)	DEMAND FOR JURY TRIAL
Corporation, a Colorado corporation, 3.)	
EchoStar Technologies Corporation, a Texas)	
corporation, and 4. Echosphere Limited)	
Liability Company, a Colorado limited liability)	
company)	
)	
Defendant.)	

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff TiVo Inc. ("TiVo") alleges as follows:

PARTIES

1. TiVo is a Delaware corporation with a principal place of business at 2160 Gold Street, Alviso, California 95002-2160.
2. EchoStar Communications Corporation ("EchoStar") is a Nevada corporation with a principal place of business at 5701 South Sante Fe Drive, Littleton, Colorado, 80120.
3. EchoStar DBS Corporation ("EchoStar DBS") is a Colorado corporation, and a wholly-owned subsidiary of EchoStar. On information and belief, EchoStar DBS's principal place of business is the same as EchoStar's.
4. EchoStar Technologies Corporation ("EchoStar Tech") is a Texas corporation, and a wholly-owned subsidiary of EchoStar DBS. On information and belief, EchoStar Tech's principal place of business is the same as EchoStar's.

5. Echosphere Limited Liability Company ("Echosphere") is a Colorado limited liability company, and a wholly-owned subsidiary of EchoStar DBS. On information and belief, Echosphere's principal place of business is the same as EchoStar's.

6. EchoStar Satellite LLC ("EchoStar Satellite") is a Colorado limited liability company, and a wholly-owned subsidiary of EchoStar. Collectively, EchoStar, EchoStar DBS, EchoStar Tech, Echosphere, and EchoStar Satellite are referred to herein as "Defendants."

JURISDICTION

7. This is an action for patent infringement arising under the patent laws of the United States of America, 35 U.S.C. section 1, et seq., including 35 U.S.C. section 271. This Court has subject matter jurisdiction pursuant to 28 U.S.C. sections 1331 and 1338(a) in that this is a civil action arising out of the patent laws of the United States of America.

VENUE

8. Venue in the Eastern District of Texas is proper pursuant to 28 U.S.C. sections 1391(b) and (c) because, on information and belief, a substantial part of the events or omissions giving rise to TiVo's claims occurred in this district, and Defendants may be found and/or reside in this district.

COUNT ONE **(Patent Infringement)**

9. TiVo incorporates by reference paragraphs 1 through 8 of this Complaint and realleges them as though fully set forth herein.

10. On May 15, 2001, the United States Patent and Trademark Office issued U.S. Patent No. 6,233,389, entitled "Multimedia Time Warping System" (the "'389 Patent"), a copy of which is attached as Exhibit A.

11. TiVo is the owner by assignment of all rights, title and interest in and to the '389 Patent.

12. On information and belief, Defendants are making, using, offering to sell and/or selling digital video recording devices, digital video recording device software and/or personal television services in the United States of America.

13. On information and belief, Defendants have been and are now willfully and deliberately infringing, contributorily infringing and/or actively inducing infringement of the '389 Patent by making, using, offering to sell and/or selling in the United States of America digital video recording devices, digital video recording device software and/or personal television services falling within the scope of one or more claims of the '389 Patent.

14. As a consequence of Defendants' infringement, TiVo is entitled to recover damages adequate to compensate it for the infringement complained of herein, but in no event less than a reasonable royalty.

15. The infringement by Defendants has injured and will continue to injure TiVo, unless and until such infringement is enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, TiVo requests that the Court:

- A. Adjudge that the '389 Patent is valid and enforceable;
- B. Adjudge that Defendants are infringing and have infringed, and have contributed to and induced infringement of, the '389 Patent, and that such infringement has been willful and deliberate;
- C. Enjoin Defendants and their affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns and all those acting for them and on their behalf, or acting in concert with them, from further infringement of the '389 Patent;
- D. Award compensatory damages to TiVo, together with interest;
- E. Award treble damages to TiVo for Defendants' willful infringement of the '389 Patent;
- F. Award TiVo its costs and attorneys' fees pursuant to 35 U.S.C. section 285;
- G. Award TiVo such other and further relief as it deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff TiVo hereby demands a jury trial on all issues so triable.

McKOOL SMITH, P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document is being served upon all counsel of record by ECF on the 24th day of January, 2006:

/s/ Garret W. Chambers
Garret W. Chambers