

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Suomen Colorize Oy,

Plaintiff,

- versus -

Dish Network L.L.C.,

Dish Network Corporation,

EchoStar Satellite, L.L.C.

EchoStar Corporation, and

EchoStar Technologies, L.L.C.

Defendants.

Case No.

8:10-cv-2406-VMC-MAP

FIRST AMENDED COMPLAINT

Plaintiff, Suomen Colorize Oy, for its first amended complaint alleges patent infringement of U.S. Pat. No. 7,277,398, as follows:

THE PARTIES

1. Plaintiff, Suomen Colorize Oy, is a Finnish corporation having a place of business at Louhikkotie 12 A A, Vantaa, Finland FI-01390 (hereinafter "Suomen Colorize" or "Plaintiff") owns U.S. Pat. No. 7,277,398 (hereinafter "the '398 Patent"), a true and correct copy of the '398 Patent being attached to this complaint as Exhibit A.

3. DISH Network L.L.C., is a wholly owned subsidiary of DISH Network Corporation, which is organized under the laws of Nevada, (DISH Network L.L.C. and DISH Network Corporation being collectively referred to herein as “Dish”), and EchoStar Corporation, which is organized as a corporation under the laws of Nevada, and EchoStar Technologies L.L.C. (formerly known as EchoStar Technologies Corporation), a limited liability company organized under the laws of the State of Texas, having a place of business at 90 Inverness Circle East, Englewood, Colorado 80112 and being wholly owned by EchoStar Corporation, EchoStar Operating Corporation, which is a wholly-owned subsidiary of EchoStar Corporation organized under the laws of Colorado, and EchoStar Satellite Services L.L.C., which is a wholly-owned subsidiary of EchoStar Corporation organized under the laws of Colorado as a limited liability company (EchoStar Corporation, EchoStar Satellite Services L.L.C., EchoStar Operating Corporation and EchoStar Technologies L.L.C. being collectively referred to herein as “EchoStar”), and Dish and EchoStar are collectively referred to herein as the “Defendants.”

4. The Defendants collectively provide equipment and services (“Dish Services”) as the nation’s third largest pay-TV provider, with approximately 14 million customers across the United States, as of December 31, 2010.

5. Dish Services have been provided since March 1996.

6. Dish’s principal executive offices are located at 9601 South Meridian Boulevard, Englewood, Colorado 80112.

7. EchoStar’s principal executive offices are located at 100 Inverness Terrace East, Englewood, Colorado 80112.

8. EchoStar designs and develops all of Dish's new set-top boxes and certain related components, together with its wholly-owned subsidiary, Sling Media, Inc., and provides transponder capacity, digital broadcast operations and other services to Dish.

9. The Defendants are controlled by one principal stockholder, Charles W. Ergen, who is also the Chairman, President and Chief Executive Officer of Dish Network Corporation, and a substantial majority of the voting power of the shares of both Dish Network Corporation and EchoStar Corporation are owned by Charles W. Ergen or by certain trusts established by him and effectively under his control.

10. The Defendants are under the effective direction and control of Charles W. Ergen, and Charles W. Ergen has the voting power and, upon information and belief, authority, to direct and control the Defendants as business units of a single enterprise with the common purpose of providing quality Dish Services to its subscribers.

DISH SERVICES

11. Dish's Annual Report for 2010, written after this litigation commenced, states the following:

To maintain and enhance our competitiveness over the long term, we are promoting a suite of integrated products designed to maximize the convenience and ease of watching TV anytime and anywhere, referred to as "TV Everywhere." Our TV Everywhere™ service utilizes, among other things, online access and Slingbox "placeshifting" technology.

12. In combination with preexisting and current Dish Services, "TV Everywhere" and Dish Services infringe one or more of the claims of the '398 Patent.

13. EchoStar owns the two principal digital broadcast operations facilities located in Cheyenne, Wyoming and Gilbert, Arizona and six regional digital broadcast operations facilities.

14. Dish Network Corporation has a broadcast agreement with EchoStar, which provides certain broadcast services to Dish Network, including Dish teleport services such as transmission and downlinking, channel origination services, and channel management services for a period ending on January 1, 2012.

15. The Defendants work in concert to provide Dish Services to subscribers in Florida, nationwide and in Canada, using facilities owned by EchoStar Corporation in Texas, Arizona, California, Wyoming, Illinois, New York, and Georgia.

16. DISH Network may terminate EchoStar's provision of teleport services, channel origination services and channel management services for any reason or no reason, although DISH Network still may have to pay EchoStar under some conditions, if Dish Network terminates EchoStar's teleport services.

17. Regional broadcast operations are located in states other than Colorado to maximize the use of the spot beam capabilities of certain owned and leased satellites used in providing Dish Services to subscribers.

18. Programming content is delivered by Defendants to the digital broadcast operations facilities of EchoStar by fiber or satellite and are processed by EchoStar by multiplexing the programming content into DBS-S2 standard compliant frames and MPEG-2 compliant transport streams, using a multiplexer, providing a plurality of service data in a frame format to form a service multiplex for service transmission, whereby identification and control data of the service data are located in at least one part of the multiplexed frames to be transmitted at the same time with the respective service data.

19. The service multiplex is encrypted and uplinked by EchoStar to satellites for delivery to subscribers' terminals via satellite dish to devices referred to in the industry as set top boxes (STB's).

20. STB's and dish receivers and/or transmitters are installed by Defendants or Defendants' agents, such as retailers, at the subscribers' locations, in Florida and nationwide.

21. More than one-half million subscribers receive Dish Services in Florida, as of December 31, 2010.

22. Subscribers lease STB's through Defendants and/or buy STB's from Defendants or Defendants' agents, such as retailers, and Defendants, or Defendants' agents, install, have installed and support subscriber's leased or owned STB's.

23. Defendants provide electronic programming guides, with selection data formed on the basis of identification and control data, the identification and control data being included in the service multiplex for identifying and controlling service data located in the service multiplex, using DBS-S and/or DBS-S2 compliant standards and MPEG-2 and/or MPEG-4 IP encapsulated programming.

24. Defendants' selection data is transmitted separately, without the actual service data of the service multiplex, to subscribers' terminals, including, without limitation, televisions via STB's, computers, cellular telephones, tablets and other handheld devices.

25. Some of Defendants' STB's receive or have received a separate daily update to selection data of the electronic programming guide via a separate telecommunications network other than Defendants' direct broadcast satellite network.

26. Defendants transmit selection data to subscribers' computers and/or handheld devices connected to Defendants' data network and/or online via the Internet.

27. Defendants transmit selection data to wireless handheld devices connected by cellular telecommunications networks to Defendants' data network.

28. Defendants transmit selection data to tablet computers using telecommunications networks different than Defendants' direct satellite broadcast networks.

29. In response to a subscriber selecting a service displayed on a display of a computer and/or handheld device and/or tablet computer and/or television, DISH Network's services identify the selected service on the basis of the identification and control data associated with the selected service transmitted in multiplexed frames of the service multiplex, and DISH Network's services provide the subscriber with the selected service from the service multiplex.

30. DISH Network's services infringe at least one of the claims of the '398 Patent.

31. DISH Network's services directly infringe claim 2 of the '398 Patent, transmitting selection data to subscribers' terminals via a different network than the network on which the service multiplex is transmitted.

32. Upon information and belief, the selection data comprises a selection data file.

33. Dish Network Corporation, knowing of the '398 Patent, is continuing to actively induce infringement of claim 14 by at least encouraging and instructing its subscribers to use the subscribers' terminals that are connected to DISH Network's services in a manner that infringes one of more of the claims of the '398 Patent, knowing its actions actually induce infringement of the '398 Patent, knowing that the infringement of the '398 Patent would take place, intending that the infringement of the '398 Patent take place in substantial numbers as part of its business strategy to improve competitiveness, and resulting in direct infringement of one or more claims of the '398 Patent by its subscribers use of DISH Network's selection data, provided by DISH Network on subscribers' computers, handheld devices and tablet computers, using a different

network than network used to transmit the service multiplex, in order to display selected service data on subscribers' televisions, computers, hand held devices and tablet computers.

34. Prior to January 1, 2008, the Defendants operated under the parent company, EchoStar Communications Corporation, a Nevada corporation

35. Upon information and belief, Dish Network Corporation and EchoStar Corporation have been a single enterprise in the past and continue to operate as a single enterprise, notwithstanding separate corporate structures, with common control and direction of both Dish Network and EchoStar, providing satellite television services to subscribers of Dish Network.

JURISDICTION AND VENUE

36. Federal question jurisdiction is conferred pursuant to 28 U.S.C. §§ 1331 and 1338(a).

37. Venue in this Court is based upon 28 U.S.C. §§ 1391 and 1400(b).

38. Defendants provide Dish Services that infringe one or more of the claims of the '398 Patent to subscribers, and the infringing Dish Services include broadcast satellite television, online television, television on demand via both broadcast satellite and online, Slingbox™-enabled television, an interactive electronic programming guide interface via an interface box and online via the internet, and other online and broadcast services in Florida, including, without limitation, the Middle District of Florida, giving rise to this cause of action for patent infringement against Defendants for patent infringement of the '398 Patent

39. The Dish Services are provided to DISH Network's subscribers residing in Florida including, without limitation, the Middle District of Florida.

40. Defendants and/or Defendants' agents install satellite broadcast receivers and set top boxes in homes and businesses located in Florida including, without limitation, the Middle District of Florida.

41. Defendants, including, without limitation, DISH Network Corporation and EchoStar Corporation do business in Florida including, without limitation, the Middle District of Florida, subjecting DISH Network and EchoStar to personal jurisdiction in the Middle District of Florida.

U.S. PAT. NO. 7,277,398

42. On October 2, 2007, after examination of the '398 patent, the United States Patent and Trademark Office issued U.S. Pat. No. 7,277,398, entitled "METHOD AND TERMINAL FOR PROVIDING SERVICES IN TELECOMMUNICATION NETWORK," (also referred to herein as the '398 patent), and Suomen Colorize Oy is the owner of the '398 patent by assignment, and a copy of the '398 patent is attached to this Complaint as **Exhibit A**.

43. The '398 Patent was filed as an application under the Patent Cooperation Treaty (PCT) on July 15, 1998 as PCT/FI98/00598, and perfected priority to Finnish patent application no. 973,033, which was filed on July 17, 1997, and the '398 Patent was assigned U.S. Pat. Appl. No. 09/462,761 for prosecution of the pending claims before the United States Patent and Trademark Office.

44. The '398 Patent describes a method and a system for using a terminal and one or more telecommunications networks for providing services, wherein the selection data of a service is formed by using identification and control data of the services that is located in multiplexed frames used for transmitting the services to subscribers over the one or more telecommunications networks; and the method is tied to a particular machine, the terminal,

which is used for displaying the selection data for the subscriber to select services provided over the one or more telecommunications networks; and PCT/FI98/00598 was published on February 11, 1999, which publication of PCT/FI98/00598 is attached as **Exhibit B**.

45. The field of the invention of the '398 Patent, as described in column 1, lines 8-18, of the '398 Patent relates to providing a customer with services transmitted in multiplexed form via a terminal connected to a communications network and selection data for selecting available services to be received by a terminal, such as a television or a computer.

46. The United States Patent and Trademark Office issued claims 1-23, including independent claims 1, 13, 18, 20 and 21 and claims 2-12, 14-17, 19 and 22-23, depending, directly or indirectly, from one of the independent claims.

47. Claim 1 recites a method for providing a customer with service information via a terminal connected to a telecommunication network, the method comprising: multiplexing a plurality of service data in a frame format to form a service multiplex for service transmission, whereby identification and control data of the service data are located in at least one part of the multiplexed frames to be transmitted with the respective service data; forming selection data for the selection of the service data on the basis of the identification and control data located in the service multiplex; transmitting the selection data separately, without the actual service data of the service multiplex, to the customer terminal for displaying the selection data; and in response to the user selecting a service displayed on a display unit, identifying the selected service on the basis of said identification and control data associated with the selected service and transmitted in multiplexed frames, and providing the customer with the identified service from the service multiplex.

48. Examples of a terminal are described in column 1, lines 8-18, of the '398 Patent and include, without limitation, a television or a computer.

49. The process of claim 1 is a patentable process tied to a particular machine, the terminal connected to a telecommunication network.

50. Claim 2 depends from claim 1 and adds the following limitation: "...further comprising transmitting the selection data to the customer terminal via a different network than the service multiplex is transmitted."

51. Under the doctrine of claim differentiation, claim 1 is broader than claim 2; therefore, claim 1 is not limited to "transmitting the selection data to the customer terminal via a different network than the service multiplex is transmitted," and the scope of claim 1 includes transmitting the selection data separately, without the actual service data of the service multiplex, via the same network as the service multiplex is transmitted or via a different network than the service multiplex is transmitted.

52. Claim 3 depends from claim 1 and adds the following limitation: "...further comprising creating a service directory from said identification and control data, which service directory comprises the selection data and by which the services are presented on a display unit."

53. Under the doctrine of claim differentiation, claim 1 is broader than claim 3; therefore, claim 1 is not limited to "creating a service directory from said identification and control data, which service directory comprises the selection data and by which the services are presented on a display unit."

54. Claim 10 depends from claim 1 and adds the following limitation: "...further comprising forming automatically the selectin (sic) data for selection of the service on the basis of the identification and control data located in the service multiplex," and "selectin" data must

be interpreted to mean selection data based on the face of the patent in claim 10, as an obvious typographical error.

55. Under the doctrine of claim differentiation, the scope of claim 1 is broader than the limitation of claim 10; therefore, claim 1 is not limited to “forming automatically the selection data for selection of the service on the basis of the identification and control data located in the service multiplex,” and the step of “forming the selection data” in claim 1 includes, within its scope, automatically forming and not automatically forming the selection data.

56. Claim 11 depends from claim 1 and adds the following limitation: “...further comprising presenting the services on the display unit in a form of an icon.”

57. Under the doctrine of claim differentiation, the scope of claim 1 is not limited to “...presenting the services on the display unit in a form of an icon;” therefore, the scope of claim 1 includes presenting the services on the display unit in the form of an icon or in a form other than an icon.

COUNT I: INFRINGEMENT OF UNITED STATES PATENT NO. 7,277,398

58. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 41 as if set forth herein.

59. Dish and/or EchoStar have infringed and continue to infringe one or more claims of the ‘398 Patent by providing Dish Services to approximately 14 million subscribers, nationwide, making, using, selling and/or offering for sale the Dish Services.

60. The Dish Services have infringed one or more of the claims of the ‘398 Patent prior to January 1, 2008, and Dish Services have infringed and continue to infringe one or more claims of the ‘398 Patent after Dish Network and EchoStar adopted a new corporate structure on January 1, 2008.

61. To maintain and enhance its competitiveness over the long term, it is DISH Network's business strategy to promote a suite of integrated products and services designed to maximize the convenience and ease of watching television service data anytime and anywhere, referred to by DISH Network as its "TV Everywhere" services, which in conjunction with Dish Services, infringe one or more of the claims of the '389 Patent.

62. DISH Network's TV Everywhere™ service utilizes, among other things, online access and control of a television via an interactive guide made available on computers online, handheld devices over a cellular network or tablet computers over a network different than Dish Networks' satellite broadcast network, and Slingbox "placeshifting" technology, which provides for a transmitter to transmit combined service selection data to computers connected to servers online, handheld devices over cellular networks and provides service data to the subscribers' terminals in response to subscribers selecting services on the combined service selection list.

63. Dish Services use a satellite dish, which is located at subscribers' locations, and television signals are sent over a coaxial connection to STB's at each subscribers' location that accepts both the television signals, in a standard format, and other formatted electronic programming guide data, widgets, setups and/or video on demand data, separately from the television signals, over the same coaxial connection and/or using a separate telephone line and/or utilizing the Internet coupled to subscribers' computers and/or Slingbox™ enabled set top boxes.

64. Dish Services utilize a telephone line from the set top box allowing subscribers to communicate over the network for selecting pay-per-view programming and the like.

65. Dish Services include viewing of a formatted interactive electronic programming guide, widgets and video on demand on subscribers' televisions, and upon information and belief Dish Services and/or EchoStar provides STB's.

66. Dish Services follow digital broadcast video standards for broadcasting digital video by satellite; and the standards require the multiplexing of a plurality of service data in a frame format to form a service multiplex for service transmission, whereby identification and control data of the service data are located in at least one part of the multiplexed frames to be transmitted with the respective service data.

67. Dish Services broadcast a service multiplex for service transmission including identification and control data in the form of one or more of the following: a program association table, conditional access table, program map table, network information table, bouquet association table, service description table and event information table, which are located in at least one part of the multiplexed frames to be transmitted with the respective service data.

68. Standard definition video and/or high definition video may be viewed on subscribers' televisions using Dish Services.

69. Subscribers interact with the online programming guide provided via an interface box using a remote control or online via a broadband connected computer, including, without limitation, viewing an electronic programming guide delivered separately from a television video signal.

70. Defendants multiplex, or have multiplexed in the past, a plurality of service data in a frame format to form a service multiplex for service transmission, the frame format using an MPEG-2 and/or H.264/MPEG4 AVC and/or IP frame format.

71. Dish Services locate identification and control data of the service data in at least one part of the multiplexed frames of the service multiplex.

72. Defendants transmit the identification and control data with its respective service data via satellites owned and/or leased by Defendants..

73. On the basis of the identification and control data located in the service multiplex, Dish Network forms its selection data for the selection of the service data, and/or its selection data is formed from the identification and control data, and/or its selection data is automatically derived from the identification and control data.

74. Defendants transmit selection data separately, without the actual service data of the service multiplex, in the form of an electronic programming guide.

75. Dish Services have transmitted and/or transmit selection data separately, without the actual service data of the service multiplex, over a telephone network for the purposes of requesting video on demand or pay per view services, and a telephone line must be connected to a set top box, which is connected to the subscribers' televisions, for video on demand or pay per view services.

76. Dish Services transmit selection data separately, without the actual service data of the service multiplex, to its subscribers' computers connected to Dish Network servers online, over the internet, for displaying the selection data as an online electronic programming guide.

77. Dish Services provide subscribers with the identified service from the service multiplex by identifying the selected service on the basis of said identification and control data associated with the selected service, in response to the subscriber selecting the service displayed on the subscriber's terminal, such as a television and/or computer and/or wireless device..

78. Dish Services provide the ViP 922 SlingLoaded DVR set top box, which transmits selected services of the service multiplex to its subscribers' computers and/or wireless handheld devices, in response to the subscribers selecting the services displayed in programming guide lists, which are transmitted separately from the broadcast service data and are displayed on

the subscribers' computers and/or wireless handheld devices, displaying the selected services on the computers' display screens and/or wireless handheld devices' display screens.

79. Dish Services enable recording of selected services for later viewing on the subscriber's television via the online electronic programming guide and the electronic programming guide provided by its set top boxes installed in subscribers' homes.

80. In response to its subscribers selecting the services displayed, Dish Services determines whether to deliver the services to the subscribers' televisions or computers and/or wireless handheld devices connected by a different telecommunications network and transmits the services selected by the subscribers from the transmitting address to the subscribers' televisions or computers and/or wireless handheld devices.

81. Upon information and belief, Dish Network Corporation has actively induced and is currently actively inducing others to infringe one or more claims of the '398 Patent, such as through Defendants' promotional materials, advice, instructions and other actions marketed under the name of Dish Network.

82. As a result of the actions of Dish and/or EchoStar, Suomen Colorize has suffered and continues to suffer substantial injury, including irreparable injury, and such actions of the Defendants will result in damages to Suomen Colorize, including, without limitation, the incorporation of Plaintiff's methods into standards and *de facto* standards, without consultation with or compensation for the Plaintiff, unless Defendants are enjoined by this Court.

83. DISH Networks offers for sale its services and use of EchoStar's system through direct sales channels in the State of Florida and nationwide; however, a majority of new subscribers are generated from independent third parties, such as small satellite retailers, direct marketing groups, local and regional consumer electronics stores, nationwide retailers, and

telecommunications companies, which offer for sale and/or sell the products and services on behalf of DISH Network ("Third Party Retailers"), directly and indirectly infringing one or more of the claims of the '389 Patent.

84. DISH Network pays Third Party Retailers upfront and/or monthly incentives to offer for sale DISH Network's services and use of EchoStar's system.

85. DISH Network continues to knowingly induce Third Party Retailers to infringe the '398 Patent by inducing the Third Party Retailers to offer for sale DISH Networks' infringing services and components of EchoStar's infringing system, including the Slingloaded ViP 922 DVR and will continue to knowingly induce Third Party Retailers to infringe the '398 Patent unless preliminary or permanent injunctive relief is granted.

86. Subscribers using Dish Services select a service to be transmitted to a terminal in a multiplexed form

87. EchoStar and/or Dish own and/or operate a system having a multiplexer, a data generator and a transmitter.

88. Defendants multiplexer and transmitter are disposed at one or more uplink nodes.

89. Upon information and belief, a system for providing Dish Services includes a data generator capable of generating a combined service multiplex, automatically, (the "System").

90. In response to a subscriber selecting a service on a combined service selection list packaged as an electronic program guide by the System, the subscriber's terminal automatically identifies and provides to the customer the service using service data from those subsequently received multiplexed frames which contain identification and control data matching to the service selection data associated with the service selected by the subscriber.

91. The transmitter of the System is capable of transmitting and/or transmits the combined service selection data, independently from the transmission of the corresponding service data and the associated identification and control data of the service multiplex.

92. The Service is capable of transmitting and transmits service data via ViP SlingLoaded DVR's leased or sold to subscribers of the Dish Services, or alternatively, subscribers of Dish Services use the system; Defendants, and Defendants' agents, sell or offer for sale use of the System.

93. Defendants contributorily infringe by selling or leasing components of the system, such as the ViP 922 SlingLoaded DVR, knowing the components to be specially made or adapted for infringing one or more claims of the '398 Patent and not to be a staple article or commodity of commerce suitable for substantial non-infringing uses.

WHEREFORE, Suomen Colorize demands judgment against Dish Network and EchoStar as follows:

A. That a judgment be entered that Defendants have infringed, actively induced others to infringe, and/or contributorily infringed United States Letters Patent No. 7,277,398 ("the '398 Patent").

B. That Defendants, Defendants' agents, sales representatives, distributors, servants, technology suppliers and employees, attorneys, affiliates, subsidiaries, successors and assigns, and any and all persons or entities acting at, through, under or in active concert or in participation with any or all of them, be enjoined and restrained preliminarily during the pendency of this action, and thereafter permanently, from infringing, actively inducing others to infringe, and/or contributorily infringing the '398 Patent.

C. That a judgment be entered that Defendants be required to pay over to Suomen Colorize all damages sustained by Suomen Colorize due to such patent infringement.

D. That this case be adjudged and decreed exceptional under the 35 U.S.C. § 285 entitling Suomen Colorize to an award of its reasonable attorney fees and that such reasonable attorney fees be awarded.

E. That Suomen Colorize be awarded its costs and prejudgment interest on all damages.

F. That Defendants be required to file with the Court within thirty (30) days after entry of final judgment of this cause a written statement under oath setting forth the manner in which defendant has complied with the final judgment.

G. That Suomen Colorize be awarded such other and further relief as the Court deems just and equitable.

JURY DEMAND

Suomen Colorize hereby demands and requests trial by jury of all issues raised that are triable by jury.

DATED: March 7, 2011

By: s/Christopher Paradies
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 7, 2011, I electronically filed the foregoing Plaintiff, Suomen Colorize OY's **FIRST AMENDED COMPLAINT** by using the CM/ECF system and that the notice of electronic filing was sent by United States Mail and/or electronic filing to the following:

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