

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

Digital CBT LLC,  
Plaintiff,  
v.  
TiVo Inc.,  
Defendant.

C.A. No.

**DEMAND FOR JURY TRIAL**

**COMPLAINT FOR PATENT INFRINGEMENT  
PERMANENT INJUNCTION AND DAMAGES**

For its Complaint against TiVo Inc. (“TiVo”), Plaintiff Digital CBT LLC (“CBT”) alleges as follows:

**THE PARTIES**

1. Plaintiff CBT is a limited liability corporation duly organized and existing under the laws of California with its principal place of business at 4000 MacArthur Blvd, West Tower, Suite 1100, Newport Beach, CA 92660. As alleged below, CBT is the owner of all right, title, and interest in U.S. Patent No. 5,805,173.

2. Defendant TiVo Inc. is a corporation duly organized and existing under the laws of Delaware, with its principal place of business at 2160 Gold Street, P.O. Box 2160, Alviso, California, 95002. TiVo is in the business of making, selling, and distributing digital video recorders and digital video recording services to persons in the U.S. through physical and electronic channels, including the Internet.

### **JURISDICTION AND VENUE**

3. This is a civil action for patent infringement arising under the Patent Act of the United States, 35 U.S.C. §§ 1 et seq. This court has subject matter jurisdiction of such federal question claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) in that the acts and transactions complained of herein were conceived, carried out, made effective, and had effect within the State of Delaware and within this district, among other places. TiVo resides in this judicial district by virtue of its state of incorporation and business activities in this district and has committed acts of infringement in this judicial district.

### **U.S. PATENT NO. 5,805,173**

5. On September 8, 1998, the United States Patent & Trademark Office duly and legally issued United States Letters Patent No. 5,805,173 (“the ‘173 Patent”), entitled “System and Method for Capturing and Transferring Selected Portions of a Video Stream in a Computer System.”

6. The ‘173 patent claims, among other things, a system for processing a video signal in accordance with instructions from application software. In certain of the claimed embodiments, the systems comprise a processing unit for executing the application software, a main memory associated with the processing unit, a peripheral memory, a bus system operatively coupling the main memory and the peripheral memory, and a video processing system associated with the peripheral memory for processing the video signal. The video processing system includes a circuit for sending a selected portion of the video signal to the peripheral memory for storage, a circuit for detecting when the selected portion of the video signal for a threshold number of frames has been stored in the peripheral memory, and a

circuit for allowing the selected portion of the video signal to be transferred to the main memory for use by the application software.

**FIRST CLAIM FOR RELIEF**  
**AGAINST DEFENDANT TIVO INC. FOR DIRECT, CONTRIBUTORY**  
**AND INDUCING INFRINGEMENT OF U.S. PATENT NO. 5,805,173**

7. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1-6 of the Complaint as though fully set forth herein.

8. A true and correct copy of the '173 Patent is attached as Exhibit A and incorporated herein by reference. Defendant TiVo makes, uses, sells, offers for sale, and/or distributes digital video recorders labeled the TiVo HD XL DVR, TiVo HD DVR, TiVo Premiere, TiVo Premiere XL, Series3 HD DVR, Series2 Dual Tuner, Series2 Single Tuner, and Series1 DVR (collectively, the "TiVo DVR Products"). By doing so, TiVo generates service fee or subscription revenue from residential and/or business customers on a monthly or one-time charge basis.

9. By making, using, selling, and offering for sale the TiVo DVR Products, TiVo has directly infringed and continues to directly infringe the '173 Patent, including infringement under 35 U.S.C. § 271(a) and (f).

10. On information and belief, TiVo has also indirectly infringed and continues to indirectly infringe the '173 Patent by actively inducing direct infringement by other persons who operate methods and systems that embody or otherwise practice one or more of the claims of the '173 Patent when TiVo had knowledge of the '173 Patent and knew or should have known that their actions would induce direct infringement by others and intended that their actions would induce direct infringement by others.

11. On information and belief, TiVo has also indirectly infringed and continues to indirectly infringe the '173 Patent by contributory infringement by providing non-staple articles of commerce to others for use in an infringing system

or method with knowledge of the '173 Patent and knowledge that these non-staple articles of commerce are used as a material part of the claimed invention of the '173 Patent.

12. On information and belief, TiVo will continue to infringe the '173 Patent unless enjoined by this Court.

13. On information and belief, TiVo's infringement of the '173 Patent is, has been, and continues to be willful and deliberate.

14. As a direct and proximate result of TiVo's infringement of the '173 Patent, CBT has been and continues to be damaged in an amount yet to be determined.

15. Unless a preliminary and permanent injunction are issued enjoining TiVo and its officers, agents, servants and employees, and all others acting on their behalf or in concert with TiVo, from infringing the '173 Patent, CBT will be greatly and irreparably harmed.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff CBT prays for judgment against Defendant TiVo as follows:

(1) For a judicial determination and declaration that Defendant TiVo has directly infringed, and continue to directly infringe, United States Letters Patent No. 5,805,173;

(2) For a judicial determination and declaration that Defendant TiVo has induced, and continue to induce, the infringement of United States Letters Patent No. 5,805,173;

(3) For a judicial determination and declaration that Defendant TiVo has contributorily infringed, and continue to contributorily infringe, United States Letters Patent No. 5,805,173;

(4) For a judicial determination and decree that Defendant TiVo's infringement of United States Letters Patent No. 5,805,173 has been, and continues to be, willful and deliberate;

(5) For a judicial determination and decree that Defendant TiVo, its respective subsidiaries, officers, agents, servants, employees, licensees, and all other persons or entities acting or attempting to act in active concert or participation with it or acting on its behalf, be preliminarily and permanently enjoined from further infringement of the '173 Patent;

(6) For a declaration that TiVo notify all of its customers and users of the infringing system and customers' participation in the infringement with TiVo's encouragement, and that TiVo encourages customers to cease all such infringing actions;

(7) For a judicial decree that orders Defendant TiVo to account for and pay to CBT all damages caused to CBT by reason of Defendant TiVo's infringement pursuant to 35 U.S.C. Section 284, including enhanced damages under 35 U.S.C. Section 285;

(8) For an award of damages according to proof at trial;

(9) For a judicial declaration that this case is exceptional under 35 U.S.C. Section 285 and Defendant TiVo be ordered to pay CBT costs, expenses, and reasonable attorney's fees pursuant to 35 U.S.C. Sections 284 and 285;

(10) For a judicial order awarding to CBT pre-judgment and post-judgment interest on the damages caused to it by Defendant TiVo's infringement; and

(11) For any such other and further relief as the Court may deem just and proper under the circumstances.

### **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure as to all issues in this lawsuit.

Dated: October 6, 2011

By: /s/ Kenneth L. Dorsney  
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