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11 **Attorneys for Plaintiff**
 12 **VIGILOS, LLC**

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 15 **IN THE UNITED STATE DISTRICT COURT**
 16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17
 18 VIGILOS, LLC

19 Plaintiff,

20 vs.

21 SLING MEDIA, INC., ET AL.

22 Defendant.

Case No. 4:11-cv-04117-SBA

[Assigned to The Honorable Sandra Brown
 Armstrong]

**SECOND AMENDED COMPLAINT FOR
 PATENT INFRINGEMENT**

DEMAND FOR JURYTRIAL

Original Complaint Filed:
 February 23, 2011

First Amended Complaint Filed:
 May 5, 2011

RUSS, AUGUST & KABAT

1 Plaintiff Vigilos, LLC alleges as follows:

2 **PARTIES**

3 1. Plaintiff Vigilos, LLC (“Vigilos”) is a Texas limited liability company with a
4 principal place of business at 719 West Front Street, Suite 102, Tyler, Texas 75702.

5 2. On information and belief, defendant Sling Media, Inc. is a Delaware corporation
6 with a principal place of business at 1051 East Hillsdale Boulevard, Suite 500, Foster City,
7 California 94404.

8 3. On information and belief, defendant EchoStar Technologies, L.L.C. is a Texas
9 limited liability company with a principal place of business at 9601 South Meridian Boulevard,
10 Englewood, Colorado 80112.

11 4. On information and belief, defendant EchoStar Corporation is a Nevada
12 corporation with a principal place of business at 100 Inverness Terrace East, Englewood,
13 Colorado 80112.

14 5. On information and belief, defendant Monsoon Multimedia, Inc. is a Delaware
15 corporation with a principal place of business at 1730 South Amphlett Boulevard, Suite 101, San
16 Mateo, California 94402.

17 6. On information and belief, defendant DISH Network L.L.C. is a Colorado limited
18 liability company with a principal place of business at 9601 South Meridian Boulevard,
19 Englewood, Colorado 80112.

20 **JURISDICTION AND VENUE**

21 7. This action arises under the patent laws of the United States, Title 35 of the
22 United States Code. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and
23 1338(a).

24 8. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b). On
25 information and belief, each of the defendants has transacted business in this district, and has
26 committed and/or induced acts of patent infringement in this district.

27 9. On information and belief, each of the Defendants is subject to this Court's
28 specific and general personal jurisdiction under due process and/or the California Long Arm

1 Statute, due at least to its substantial business in this forum, including: (i) at least a portion of
2 the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other
3 persistent courses of conduct, or deriving substantial revenue from goods and services provided
4 to individuals in California and in this judicial district.

5
6 **COUNT I**
Infringement of U.S. Patent No. 6,839,731

7 10. Plaintiff Vigilos is the owner by assignment of United States Patent No.
8 6,839,731 (the “’731 patent”), which is entitled System and Method for Providing Data
9 Communication in a Device Network. The ’731 patent issued on January 4, 2005. A true and
10 correct copy of the ’731 patent is attached as Exhibit A.

11 11. Defendant Sling Media has been and now is directly infringing, and jointly and
12 indirectly infringing, by way of inducing infringement by others and/or contributing to the
13 infringement by others of the ’731 patent in the State of California, in this judicial district, and
14 elsewhere in the United States, by, among other things, making, using, importing, offering for
15 sale, and/or selling, without license or authority, products falling within the scope of one or more
16 claims of the ’731 patent. Such products include, without limitation, Slingbox devices and
17 related access software with “placeshifting”¹ technology.² Such products infringe at least claim
18 1, and likely other claims, of the ’731 patent. By making, using, importing, offering for sale,
19 and/or selling such products, Sling Media has injured Vigilos and is thus liable to Vigilos for
20 infringement of the ’731 patent under 35 U.S.C. § 271. If Sling Media is not deemed to directly
21 infringe any of the above-referenced claims of the ’731 patent, those who Sling Media induces to
22 infringe and/or whose infringement to which Sling Media contributes are the end users of the
23 above-referenced products. Sling Media had knowledge of the ’731 patent at least as early as the
24 filing of the original complaint and is thus liable for infringement of one or more claims of the
25 ’731 patent by actively inducing infringement and/or is liable as a contributory infringer of one
26 or more claims of the ’731 patent under 35 U.S.C. § 271.

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28 ¹See <http://www.slingmedia.com/go/placeshifting>.

²E.g., <http://www.slingmedia.com/go/oem-products>.

1 12. Defendant EchoStar Technologies has been and now is directly infringing, and
2 jointly and indirectly infringing, by way of inducing infringement by others and/or contributing
3 to the infringement by others of the '731 patent in the State of California, in this judicial district,
4 and elsewhere in the United States, by, among other things, making, using, importing, offering
5 for sale, and/or selling, without license or authority, products falling within the scope of one or
6 more claims of the '731 patent. Such products include, without limitation, "SlingLoaded" set-
7 top boxes and related access software with placeshifting technology.³ Such products infringe at
8 least claim 1, and likely other claims, of the '731 patent. By making, using, importing, offering
9 for sale, and/or selling such products, EchoStar Technologies has injured Vigilos and is thus
10 liable to Vigilos for infringement of the '731 patent under 35 U.S.C. § 271. If EchoStar
11 Technologies is not deemed to directly infringe any of the above-referenced claims of the '731
12 patent, those who EchoStar Technologies induces to infringe and/or whose infringement to
13 which EchoStar Technologies contributes are the end users of the above-referenced products.
14 EchoStar Technologies had knowledge of the '731 patent at least as early as the filing of the
15 original complaint and is thus liable for infringement of one or more claims of the '731 patent by
16 actively inducing infringement and/or is liable as a contributory infringer of one or more claims
17 of the '731 patent under 35 U.S.C. § 271.

18 13. Defendant EchoStar Corporation has been and now is directly infringing, and
19 jointly and indirectly infringing, by way of inducing infringement by others and/or contributing
20 to the infringement by others of the '731 patent in the State of California, in this judicial district,
21 and elsewhere in the United States, by, among other things, making, using, importing, offering
22 for sale, and/or selling, without license or authority, products falling within the scope of one or
23 more claims of the '731 patent. Such products include, without limitation, SlingLoaded set-top
24 boxes and related access software with placeshifting technology.⁴ Such products infringe at least

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26 ³E.g., <http://www.echostar.com/Products/SetTopBoxes.aspx>;
<http://www.myechostar.com/Features.aspx#devices>.

27 ⁴E.g.,
28 <http://www.echostar.com/NewsEvents/PressReleases/PressRelease.aspx?prid=%7B0BCCE5FD-F6BB-4B61-85E6-F2326F5FAB61%7D>

1 claim 1, and likely other claims, of the '731 patent. By making, using, importing, offering for
2 sale, and/or selling such products, EchoStar Corporation has injured Vigilos and is thus liable to
3 Vigilos for infringement of the '731 patent under 35 U.S.C. § 271. If EchoStar Corporation is
4 not deemed to directly infringe any of the above-referenced claims of the '731 patent, those who
5 EchoStar Corporation induces to infringe and/or whose infringement to which EchoStar
6 Corporation contributes are the end users of the above-referenced products. EchoStar
7 Corporation had knowledge of the '731 patent at least as early as the filing of the original
8 complaint and is thus liable for infringement of one or more claims of the '731 patent by actively
9 inducing infringement and/or is liable as a contributory infringer of one or more claims of the
10 '731 patent under 35 U.S.C. § 271.

11 14. Defendant Monsoon Multimedia has been and now is directly infringing, and
12 jointly and indirectly infringing, by way of inducing infringement by others and/or contributing
13 to the infringement by others of the '731 patent in the State of California, in this judicial district,
14 and elsewhere in the United States, by, among other things, making, using, importing, offering
15 for sale, and/or selling, without license or authority, products falling within the scope of one or
16 more claims of the '731 patent. Such products include, without limitation, Vulkano devices and
17 related access software that allow watching, scheduling and recording live TV and movies from
18 anywhere in the world on devices such as iPads, iPod touches, iPhones, Androids, BlackBerry
19 smartphones, PCs and Macs.⁵ Such products infringe at least claim 1, and likely other claims, of
20 the '731 patent. By making, using, importing, offering for sale, and/or selling such products,
21 Monsoon Multimedia has injured Vigilos and is thus liable to Vigilos for infringement of the
22 '731 patent under 35 U.S.C. § 271. If Monsoon Multimedia is not deemed to directly infringe
23 any of the above-referenced claims of the '731 patent, those who Monsoon Multimedia induces
24 to infringe and/or whose infringement to which Monsoon Multimedia contributes are the end
25 users of the above-referenced products. Monsoon Multimedia had knowledge of the '731 patent
26 at least as early as the filing of the original complaint and is thus liable for infringement of one or
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28 ⁵<http://www.monsoonmultimedia.com/products.html>.

1 more claims of the '731 patent by actively inducing infringement and/or is liable as a
2 contributory infringer of one or more claims of the '731 patent under 35 U.S.C. § 271.

3 15. Defendant DISH Network has been and now is directly infringing, and jointly and
4 indirectly infringing, by way of inducing infringement by others and/or contributing to the
5 infringement by others of the '731 patent in the State of California, in this judicial district, and
6 elsewhere in the United States, by, among other things, making, using, importing, offering for
7 sale, and/or selling, without license or authority, products falling within the scope of one or more
8 claims of the '731 patent. Such products include, without limitation, SlingLoaded set-top boxes,
9 set-top boxes with Sling adapters, and related access software with placeshifting technology.⁶
10 Such products infringe at least claim 1, and likely other claims, of the '731 patent. By making,
11 using, importing, offering for sale, and/or selling such products, DISH Network has injured
12 Vigilos and is thus liable to Vigilos for infringement of the '731 patent under 35 U.S.C. § 271. If
13 DISH Network is not deemed to directly infringe any of the above-referenced claims of the '731
14 patent, those who DISH Network induces to infringe and/or whose infringement to which DISH
15 Network contributes are the end users of the above-referenced products. DISH Network had
16 knowledge of the '731 patent at least as early as the filing of the original complaint against its
17 related entity defendants (Sling Media, EchoStar Technologies, and EchoStar Corporation) and
18 is thus liable for infringement of one or more claims of the '731 patent by actively inducing
19 infringement and/or is liable as a contributory infringer of one or more claims of the '731 patent
20 under 35 U.S.C. § 271.

21 16. To the extent that any marking was required by 35 U.S.C. § 287, all predecessors
22 in interest to the '731 patent have complied any with such requirements.

23 17. To the extent that facts learned in discovery show that any one of the defendants'
24 infringement of the '731 patent is or has been willful, Vigilos reserves the right to request such a
25 finding at the time of trial.

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28 ⁶*E.g.*, <http://www.dishnetwork.com/receivers/dvr/default.aspx>;
<http://www.dishnetwork.com/tveverywhere/slingadapter/default.aspx>.

1 18. As a result of each defendants' infringement of the '731 patent, Vigilos has
2 suffered monetary damages and will continue to suffer damages in the future unless defendants'
3 infringing activities are enjoined by this Court.

4 19. Unless a permanent injunction is issued enjoining each defendant and its agents,
5 servants, employees, representatives, affiliates, and all others acting or in active concert
6 therewith from infringing the '731 patent, Vigilos will be greatly and irreparably harmed.

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8 **COUNT II**
Infringement of U.S. Patent No. 7,370,074

9 20. Plaintiff Vigilos is the owner by assignment of United States Patent No.
10 7,370,074 (the "'074 patent"), which is entitled System and Method for Implementing Open-
11 Protocol Remote Device Control. The '074 patent issued on May 6, 2008. A true and correct
12 copy of the '074 patent is attached as Exhibit B.

13 21. Defendant Sling Media has been and now is directly infringing, and jointly and
14 indirectly infringing, by way of inducing infringement by others and/or contributing to the
15 infringement by others of the '074 patent in the State of California, in this judicial district, and
16 elsewhere in the United States, by, among other things, making, using, importing, offering for
17 sale, and/or selling, without license or authority, products falling within the scope of one or more
18 claims of the '074 patent. Such products include, without limitation, Slingbox devices and
19 related access software with "placeshifting"⁷ technology.⁸ Such products infringe at least claim
20 1, and likely other claims, of the '074 patent. By making, using, importing, offering for sale,
21 and/or selling such products, Sling Media has injured Vigilos and is thus liable to Vigilos for
22 infringement of the '074 patent under 35 U.S.C. § 271. If Sling Media is not deemed to directly
23 infringe any of the above-referenced claims of the '074 patent, those who Sling Media induces to
24 infringe and/or whose infringement to which Sling Media contributes are the end users of the
25 above-referenced products. On information and belief, Sling Media had knowledge of the '074
26 patent at least as early as the filing of the original complaint and is thus liable for infringement of

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⁷See <http://www.slingmedia.com/go/placeshifting>.

28 ⁸E.g., <http://www.slingmedia.com/go/oem-products>.

1 one or more claims of the '074 patent by actively inducing infringement and/or is liable as a
2 contributory infringer of one or more claims of the '074 patent under 35 U.S.C. § 271.

3 22. Defendant EchoStar Technologies has been and now is directly infringing, and
4 jointly and indirectly infringing, by way of inducing infringement by others and/or contributing
5 to the infringement by others of the '074 patent in the State of California, in this judicial district,
6 and elsewhere in the United States, by, among other things, making, using, importing, offering
7 for sale, and/or selling, without license or authority, products falling within the scope of one or
8 more claims of the '074 patent. Such products include, without limitation, "SlingLoaded" set-
9 top boxes and related access software with placeshifting technology.⁹ Such products infringe at
10 least claim 1, and likely other claims, of the '074 patent. By making, using, importing, offering
11 for sale, and/or selling such products, EchoStar Technologies has injured Vigilos and is thus
12 liable to Vigilos for infringement of the '074 patent under 35 U.S.C. § 271. If EchoStar
13 Technologies is not deemed to directly infringe any of the above-referenced claims of the '074
14 patent, those who EchoStar Technologies induces to infringe and/or whose infringement to
15 which EchoStar Technologies contributes are the end users of the above-referenced products.
16 On information and belief, EchoStar Technologies had knowledge of the '074 patent at least as
17 early as the filing of the original complaint and is thus liable for infringement of one or more
18 claims of the '074 patent by actively inducing infringement and/or is liable as a contributory
19 infringer of one or more claims of the '074 patent under 35 U.S.C. § 271.

20 23. Defendant EchoStar Corporation has been and now is directly infringing, and
21 jointly and indirectly infringing, by way of inducing infringement by others and/or contributing
22 to the infringement by others of the '074 patent in the State of California, in this judicial district,
23 and elsewhere in the United States, by, among other things, making, using, importing, offering
24 for sale, and/or selling, without license or authority, products falling within the scope of one or
25 more claims of the '074 patent. Such products include, without limitation, SlingLoaded set-top
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28 ⁹E.g., <http://www.echostar.com/Products/SetTopBoxes.aspx>;
<http://www.myechostar.com/Features.aspx#devices>.

1 boxes and related access software with placeshifting technology.¹⁰ Such products infringe at
2 least claim 1, and likely other claims, of the '074 patent. By making, using, importing, offering
3 for sale, and/or selling such products, EchoStar Corporation has injured Vigilos and is thus liable
4 to Vigilos for infringement of the '074 patent under 35 U.S.C. § 271. If EchoStar Corporation is
5 not deemed to directly infringe any of the above-referenced claims of the '074 patent, those who
6 EchoStar Corporation induces to infringe and/or whose infringement to which EchoStar
7 Corporation contributes are the end users of the above-referenced products. On information and
8 belief, EchoStar Corporation had knowledge of the '074 patent at least as early as the filing of
9 the original complaint and is thus liable for infringement of one or more claims of the '074
10 patent by actively inducing infringement and/or is liable as a contributory infringer of one or
11 more claims of the '074 patent under 35 U.S.C. § 271.

12 24. Defendant Monsoon Multimedia has been and now is directly infringing, and
13 jointly and indirectly infringing, by way of inducing infringement by others and/or contributing
14 to the infringement by others of the '074 patent in the State of California, in this judicial district,
15 and elsewhere in the United States, by, among other things, making, using, importing, offering
16 for sale, and/or selling, without license or authority, products falling within the scope of one or
17 more claims of the '074 patent. Such products include, without limitation, Vulkano devices and
18 related access software that allow watching, scheduling and recording live TV and movies from
19 anywhere in the world on devices such as iPads, iPod touches, iPhones, Androids, BlackBerry
20 smartphones, PCs and Macs.¹¹ Such products infringe at least claim 1, and likely other claims,
21 of the '074 patent. By making, using, importing, offering for sale, and/or selling such products,
22 Monsoon Multimedia has injured Vigilos and is thus liable to Vigilos for infringement of the
23 '074 patent under 35 U.S.C. § 271. If Monsoon Multimedia is not deemed to directly infringe
24 any of the above-referenced claims of the '074 patent, those who Monsoon Multimedia induces
25 to infringe and/or whose infringement to which Monsoon Multimedia contributes are the end

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¹⁰*E.g.*,

27 <http://www.echostar.com/NewsEvents/PressReleases/PressRelease.aspx?prid=%7B0BCCE5FD-F6BB-4B61-85E6-F2326F5FAB61%7D>

28 ¹¹<http://www.monsoonmultimedia.com/products.html>.

1 users of the above-referenced products. On information and belief, Monsoon Multimedia had
2 knowledge of the '074 patent at least as early as the filing of the original complaint and is thus
3 liable for infringement of one or more claims of the '074 patent by actively inducing
4 infringement and/or is liable as a contributory infringer of one or more claims of the '074 patent
5 under 35 U.S.C. § 271.

6 25. Defendant DISH Network has been and now is directly infringing, and jointly and
7 indirectly infringing, by way of inducing infringement by others and/or contributing to the
8 infringement by others of the '074 patent in the State of California, in this judicial district, and
9 elsewhere in the United States, by, among other things, making, using, importing, offering for
10 sale, and/or selling, without license or authority, products falling within the scope of one or more
11 claims of the '074 patent. Such products include, without limitation, SlingLoaded set-top boxes,
12 set-top boxes with Sling adapters, and related access software with placeshifting technology.¹²
13 Such products infringe at least claim 1, and likely other claims, of the '074 patent. By making,
14 using, importing, offering for sale, and/or selling such products, DISH Network has injured
15 Vigilos and is thus liable to Vigilos for infringement of the '074 patent under 35 U.S.C. § 271. If
16 DISH Network is not deemed to directly infringe any of the above-referenced claims of the '074
17 patent, those who DISH Network induces to infringe and/or whose infringement to which DISH
18 Network contributes are the end users of the above-referenced products. On information and
19 belief, DISH Network had knowledge of the '074 patent at least as early as the filing of the
20 original complaint against its related entity defendants (Sling Media, EchoStar Technologies, and
21 EchoStar Corporation) and is thus liable for infringement of one or more claims of the '074
22 patent by actively inducing infringement and/or is liable as a contributory infringer of one or
23 more claims of the '074 patent under 35 U.S.C. § 271.

24 26. To the extent that any marking was required by 35 U.S.C. § 287, all predecessors
25 in interest to the '074 patent have complied any with such requirements.

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28 ¹²E.g., <http://www.dishnetwork.com/receivers/dvr/default.aspx>;
<http://www.dishnetwork.com/tveverywhere/slingadapter/default.aspx>.

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CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served on November 15, 2011 with a copy of this document via the Court’s CM/ECF system per Local Rule CV-5-6(a). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

Dated: November 15, 2011

/s/ Bruce D. Kuyper
Bruce D. Kuyper

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