

# TiVo prevails in patent rights case against Dish

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FILE - In this March 1, 2010 file photo, a TiVo Premiere box, foreground, is displayed with an HD television, in New York. TiVo Inc. prevailed yet again in a long-running dispute with Dish Network Corp. over patents for digital video recorders, as a federal appeals court cleared the way Thursday, March 4, for TiVo to collect hundreds of millions of dollars. (AP Photo/Mark Lennihan, file)

(AP) -- TiVo Inc. prevailed yet again in a long-running dispute with Dish Network Corp. over patents for digital video recorders, as a federal appeals court cleared the way Thursday for TiVo to collect hundreds of millions of dollars. TiVo shares jumped more than 50 percent.

Despite repeatedly losing, however, Dish said it will seek a review of the three-judge panel's decision by the full U.S. Court of Appeals for the Federal Circuit.

TiVo said the decision, if it stands, would let it collect at least \$300

million from Dish - about \$100 million in damages and interest, and the rest in contempt sanctions that TiVo already has been awarded. That would be on top of about \$100 million in damages that Dish had already paid TiVo in earlier litigation.

TiVo has struggled with being consistently profitable, and being able to collect such an amount would help get it into the black. TiVo came out with its [DVR](#) in 1999 and "TiVo" became a verb synonymous with recording TV, but it has faced intense competition from generic DVRs offered by Dish and other [subscription TV](#) providers.

The company also has sued AT&T Inc. and Verizon Communications Inc., charging them with infringing on certain DVR patents. Microsoft Corp. has waded into the fight on AT&T's side.

"The courts have ruled in TiVo's favor numerous times over the past five years, which should help ... in the company's litigation against AT&T, Verizon, and Microsoft," Tony Wible, an analyst from Janney Montgomery Scott, said in a research note.

At issue is a TiVo patent on technology for storing and retrieving video on DVRs, which lets viewers pause, rewind and replay live TV. TiVo sued Dish in 2004 for patent infringement for using a similar technology on its DVRs, a case Dish lost on appeal. Dish paid TiVo \$104.6 million in damages and interest and was barred from using the technology.

While the case was going on, Dish crafted a redesigned technology that it said did not infringe on TiVo's patent. But the U.S. District Court in Marshall, Texas, disagreed and ordered Dish to pay TiVo additional damages - this time at \$103 million plus interest, along with about \$200 million in contempt sanctions.

Dish appealed again, losing that bid on Thursday. Dish said that it is planning a second redesign of its technology and will seek approval from

the district court to use it.

Dish said in a statement that it's disappointed in the ruling but gratified that one of the three appellate judges sided with its position and issued a dissenting opinion Thursday.

Two of the judges found that the lower court applied the right standard in analyzing whether Dish's redesigned technology still infringed on TiVo's patent. But the dissenting judge, Randall Rader, said the court is punishing a company that has made a good faith effort at a redesign.

Dish is counting on a better outcome if the entire [appeals court](#) grants the review it has requested.

Wible believes Dish would lose before the full appeals court as well and would end up paying a license fee to use TiVo's technology on Dish's DVRs or face having to disable the boxes. Comcast Corp. and Cox Communications Inc. already license TiVo's software.

Analysts have been perplexed at Dish's intransigent stance on TiVo, which Dish has repeatedly. But Dish has refused to give up.

TiVo said the \$300 million it was awarded covers Dish's infringement through July 1. The Alviso, Calif.-based company said it will seek damages for Dish's continued infringement since then.

Last August, TiVo sued AT&T and Verizon over the same patent and two others that allow multiroom viewing and correct overshooting when viewers fast-forward TV. Microsoft, whose Mediaroom software is used in AT&T's set-top boxes, sued TiVo in January, alleging that TiVo has violated Microsoft patents related to such things as an on-screen TV guide.

Shares of [TiVo](#) rose \$5.62, or 55 percent, to \$15.83 in afternoon trading Thursday. [Dish Network](#), based in Englewood, Colo., lost \$1.01, or 4.7 percent, to \$20.70.

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