

Dish in contempt of court in TiVo patent fight

21 April 2011, By JOELLE TESSLER , AP Technology Writer

(AP) -- A panel of federal appeals judges has found Dish Network Corp. and EchoStar Corp. in contempt of court for failing to abide by an injunction barring them from using technology patented by TiVo Inc. in older Dish set-top boxes.

The judges are sending the case back to a lower court to consider whether a work-around technology being used in newer Dish boxes still infringes on TiVo's patents.

Wednesday's ruling by the 12-judge panel for the U.S. Court of Appeals for the Federal Circuit - with five judges dissenting in part - pushed TiVo's shares up \$2.47, or 30 percent, to \$10.84 Wednesday. It marks the latest turn in a seven-year patent fight between [TiVo](#), a pioneer in the DVR industry, and [satellite TV](#) operator Dish and its sister company EchoStar, which makes set-top boxes.

TiVo, based in Alviso, Calif., first sued Dish and EchoStar in 2004 for infringing on patents covering its "Time Warp" [digital video recorder](#) technology, which lets users digitally record television programs and then play them back as well as pause, fast-forward and rewind them.

The latest ruling upholds a finding by a three-judge panel of the same federal court that concluded that Dish and EchoStar were in violation of an injunction issued by the U.S. District Court for the Eastern District of Texas that prohibited the companies from using the disputed technology in eight set-top box models and ordered them to disable those boxes. Wednesday's ruling requires Dish and EchoStar to disable the boxes and awards \$90 million in damages to TiVo.

In a statement, Dish and EchoStar said they plan to appeal this part of the decision to the Supreme Court and will seek a stay of the injunction while they pursue that avenue. The Englewood, Colo., companies argue that the injunction should be

lifted since TiVo's patent claims with the Patent & Trademark Office have been narrowed. The companies added that Dish customers with DVRs will not be affected by the latest court ruling since Dish has upgraded most subscribers to newer set-top boxes that don't rely on the contested technology. The companies said they will work quickly to upgrade the rest if the stay is denied.

Wednesday's ruling also sends the dispute back to the district court in Texas to determine whether a "software design around" in newer-model Dish boxes is substantially different than the disputed technology in the older boxes.

If the court determines that it is, Dish and EchoStar would be entitled to a new jury trial. If the court determines that it is not substantially different, it could find Dish and EchoStar liable for infringement. The district court had previously ruled that the work-around technology also infringed on TiVo's patents - a decision unanimously vacated by Wednesday's ruling.

In a statement, TiVo said it will "continue our efforts to protect our intellectual property from further infringement by EchoStar and [Dish Network](#)."

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