

Question No. 4:

EchoStar claims that the MediaStream anticipates all of the asserted claims of the '389 patent. EchoStar also claims that the Screamin' Streamer anticipates the asserted software claims of the '389 patent.

Has EchoStar proven by clear and convincing evidence that any of the claims of the '389 patent are invalid by anticipation? Answer "yes" or "no."

HARDWARE CLAIMS

Claim 1 Answer: no

Claim 5 Answer: no

Claim 21 Answer: no

Claim 23 Answer: no

Claim 32 Answer: no

Claim 36 Answer: no

Claim 52 Answer: no

SOFTWARE CLAIMS

Claim 31 Answer: no

Claim 61 Answer: no

Question No. 5:

Has EchoStar proven by clear and convincing evidence that any of the claims of the '389 patent are invalid for obviousness? Answer "yes" or "no."

HARDWARE CLAIMS

Claim 1 Answer: no

Claim 5 Answer: no

Claim 21 Answer: no

Claim 23 Answer: no

Claim 32 Answer: no

Claim 36 Answer: no

Claim 52 Answer: no

Question No. 6:

Has TiVo proven by a preponderance of the evidence that TiVo marked substantially all of its DVR products, and that it took reasonable efforts to ensure its licensees marked substantially all of their DVR products, with the number of the '389 patent prior to the filing of this lawsuit on January 5, 2004?

Answer "yes" or "no":

Yes

If you answered "yes," by what date did TiVo and its licensees mark substantially all of TiVo's DVR products with the number of the '389 patent?

Answer: January 2, 2002

Question No. 7:

If you have found that any of the accused receivers infringes any claim of the '389 patent, even if you have answered "yes" to any portion of Questions Nos. 4 and 5, please determine the amount of damages that would fairly and adequately compensate TiVo for infringement.

Has TiVo proven by a preponderance of the evidence that it is entitled to damages on the theory of lost profits?

Answer "yes" or "no":

Yes

If you answered "yes," for how many receivers is TiVo entitled to lost profit damages? 192,708

If you answered "yes," what is the total amount TiVo is entitled to in lost profit damages? \$ 32,663,906

Has TiVo proven by a preponderance of the evidence that it is entitled to damages under a theory of a reasonable royalty?

Answer "yes" or "no":

Yes

If you answered "yes," for how many receivers is TiVo entitled receive reasonable royalty damages? 4,179,253

If you answered "yes," what is the total amount TiVo is entitled to in reasonable royalty damages? \$ 41,328,058

What is the total amount of damages (the total of lost profit damages and reasonable royalty damages) that TiVo has proven?

\$ 73,991,964