

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

TIVO INC., a Delaware Corporation	§	
	§	
V.	§	No. 2:04CV1
	§	
ECHOSTAR COMMUNICATIONS	§	
CORPORATION, a Nevada Corporation,	§	
ET AL.	§	

ORDER

Pursuant to the Court's April 23, 2008 Order, Plaintiff TiVo Inc. submitted topics for discussion at the status conference on May 30, 2008. One of the topics discussed at the status conference was enforcement of the Court's Permanent Injunction. Specifically, TiVo requests a hearing at the earliest possible date to determine the following: (1) whether Defendant EchoStar Communications Corporation should be held in contempt for its failure to disable the DVR functionality in the Infringing Products and for its placement of new infringing DVRs; and (2) with respect to EchoStar's modified software,¹ whether TiVo should be allowed permission to serve limited discovery to obtain additional technical information before bringing a motion for an order to show cause why EchoStar is not in contempt for the continuing use of the Infringing Products, changed only by downloading modified software.

The Court has set for hearing September 4, 2008 the first issue of whether EchoStar has disabled the DVR functionality with respect to the Infringing Products as required by the Court's Permanent Injunction.² The second issue outlined above, namely TiVo's request to take limited

¹ EchoStar asserts it has complied with the Court's Permanent Injunction by replacing its existing infringing software with redesigned software based on a novel approach.

² At the September 4 hearing, the Court will also consider the damages that TiVo incurred during the period that the injunction was stayed.

discovery regarding EchoStar's allegedly new software, is denied at this time. In the interest of judicial economy, the Court will determine first whether EchoStar should be held in contempt for its failure to disable the DVR functionality in the Infringing Products and for its placement of new infringing DVRs as urged by TiVo or whether, as urged by EchoStar, the language of the Court's Permanent Injunction allows EchoStar to comply with the spirit of the injunction by changing the software so that the products no longer infringe. TiVo may renew its request to serve limited discovery regarding EchoStar's modified software after the Court's decision on the first issue.

IT IS SO ORDERED.

SIGNED this 5th day of June, 2008.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE