

## Legal Updates & News

### Bulletins

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#### **Morrison & Foerster Team Obtains Defendant's Jury Verdict in Eastern District of Texas**

June 2007

##### **IP Update, June 8, 2007**

A team of Morrison & Foerster lawyers and their co-counsel recently obtained a favorable jury verdict in a patent infringement case brought against two subsidiaries of client EchoStar Communication Corporation. The case was tried in the U.S. District Court for the Eastern District of Texas (Tyler Division) before Judge Leonard Davis. The Eastern District has proven to be a difficult venue for defendants accused of patent infringement.

An eight-person jury took just over an hour to find the plaintiff's patent invalid on several separate grounds. It was only the second time on record that a jury in the Eastern District of Texas had handed down a defense win in a patent case by finding the patent at issue invalid. The unanimous verdict was returned on May 21, 2007, in Tyler, which is approximately 100 miles east of Dallas.

The Plaintiff was Forgent Networks, of Austin, Texas, a patent-holding company. In 2005, Forgent sued major satellite and cable companies, including EchoStar, claiming that their use of DVR (digital video recorder) technology infringed a patent issued to Forgent in 2001.

Shortly before trial, a number of cable operators and DVR manufacturers — including Time Warner Cable, Comcast, Cox, Charter, Digeo, Motorola, and Scientific Atlanta — settled with Forgent for a total of approximately \$20 million. Satellite television rival DIRECTV also reached a settlement with Forgent just prior to trial for an estimated \$8 million.

EchoStar (NASDAQ: DISH), based in Englewood, Colorado, decided to fight Forgent's claims. Forgent sought damages from EchoStar in excess of \$205 million.

Rachel Krevans, a partner in Morrison & Foerster's San Francisco office and Charles S. Barquist, a partner in the firm's Los Angeles office, led the trial team with Otis Carroll of the Tyler, Texas firm of Ireland, Carroll & Kelley, P.C. EchoStar argued that Forgent's patent was invalid for lack of an adequate written description, and was anticipated and obvious in light of the prior art. The jury found all of the asserted claims were invalid on every one of these grounds. EchoStar elected not to dispute infringement at trial in favor of a strategy focused on the invalidity of the patent.

"We demonstrated to the jury that Forgent's patent was void on three distinct grounds: written description, anticipation, and obviousness," Ms. Krevans said. "The swift and unanimous ruling of the jury vindicates EchoStar's decision to fight this meritless lawsuit. We are gratified by their verdict, which demanded a thorough understanding of quite complex technology issues."

In addition to Ms. Krevans and Mr. Barquist, the Morrison & Foerster lawyers representing EchoStar included Jason A. Crotty (San Francisco) and Scott F. Llewellyn (Denver). EchoStar's in-house legal counsel on the case was Jeffrey H. Blum.