

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

SAFECAST LIMITED

Plaintiff,

v.

DISH NETWORK CORPORATION,

DISH NETWORK L.L.C.,

DISH TECHNOLOGIES L.L.C.

Defendants.

CIVIL ACTION NO. 1:22-cv-03037-RMR

PATENT CASE

JURY TRIAL DEMANDED

SCHEDULING ORDER

**1. DATE OF CONFERENCE AND APPEARANCES
OF COUNSEL AND *PRO SE* PARTIES**

The Telephonic Scheduling Conference pursuant to Fed. R. Civ. P. 16(b) is set for March 8, 2023, at 9:30 a.m. in Courtroom C201 before Magistrate Judge S. Kato Crews. The parties are represented by the following counsel:

Attorneys for Plaintiff SafeCast Limited:

William P. Ramey, III
RAMEY LLP
Email: wramey@rameyfirm.com
5020 Montrose Blvd., Suite 800
Houston, TX 77006
Telephone: (713) 426-3923
Fax: (832) 689-9175

**Attorneys for Defendants DISH Network Corporation, DISH Network L.L.C.,
and DISH Technologies L.L.C.:¹**

Ruffin B. Cordell
Adam R. Shartzter
Jack R. Wilson, IV
cordell@fr.com
shartzter@fr.com

¹ On December 1, 2022, Plaintiff SafeCast served an Amended Complaint withdrawing the allegations as to DISH Network Corporation. The parties agree DISH Network Corporation is no longer a defendant and will jointly move to correct the caption accordingly.

jwilson@fr.com
FISH & RICHARDSON P.C.
1000 Maine Avenue, SW
Suite 1000
Washington, DC 20024
Telephone: (202) 783-5070
Facsimile: (202) 783-2331

2. STATEMENT OF JURISDICTION

This action arises under the patent laws of the United States, including 35 U.S.C. § 271 et seq. The jurisdiction of this Court over the subject matter of this action is proper under 28 U.S.C. §§ 1331 and 1338(a).

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff(s):

This is a patent infringement case in which Plaintiff SafeCast Limited (“SafeCast”) alleges that Defendants DISH Network L.L.C. and DISH Technologies L.L.C. (“DISH”) infringe United States Patent No. 9,392,302 (“the ’302 patent”), entitled “System for providing improved facilities in time-shifted broadcasts”.

b. Defendant(s):

Defendants DISH Network L.L.C. and DISH Technologies L.L.C. (“DISH”) assert that the ’302 patent is invalid under 35 U.S.C. § 101. Dkt. No. 31. DISH does not infringe the ’302 patent and the ’302 patent is invalid.

Defendants will identify additional claims and defenses in its answer if one is required.

[Provide concise statements of all claims or defenses. Each party, in light of formal or informal discovery undertaken thus far, should take special care to eliminate frivolous claims or defenses. Fed. R. Civ. P. 11 and 16(c)(2)(A).]

4. UNDISPUTED FACTS The following facts are undisputed:

[The parties should make a good-faith attempt to determine which facts are not in dispute when they have the Rule 26(f) meeting.]

1. There is no dispute regarding the parties' corporate structures, addresses, and registered agents.
2. There is no dispute that this Court has jurisdiction over the subject matter of this action.
3. There is no dispute that venue is proper in this judicial district.

Defendants will identify additional undisputed facts in their Answer.

5. COMPUTATION OF DAMAGES

[Include a computation of all categories of damages sought by all parties and the basis and theory for calculating those damages. See Fed. R. Civ. P. 26(a)(1)(A)(iii).]

SafeCast seeks:

1. damages under 35 U.S.C. § 284 including past damages based on, *inter alia*, any necessary compliance with 35 U.S.C. §287;
2. supplemental damages for any continuing post-verdict infringement through entry of the final judgment (with an accounting as needed);
3. an order awarding a compulsory ongoing royalty.

SafeCast also seeks a preliminary and permanent injunction. In addition, SafeCast seeks pre-and-post judgment interest, and an award of costs of suit.

SafeCast contends damage calculations are premature and should be provided after the completion of discovery.

**6. REPORT OF PRECONFERENCE DISCOVERY
AND MEETING UNDER FED. R. CIV. P. 26(f)**

- a. Date of Rule 26(f) meeting: February 28, 2023.
- b. Names of each participant and party he/she represented. SafeCast was represented by William P. Ramey. DISH was represented by Adam Shartzter and Jack Wilson.

c. Statement as to when Rule 26(a)(1) disclosures were made or will be made.
March 14, 2023.

d. Statement concerning any agreements to conduct informal discovery: The parties have not reached any agreements to conduct informal discovery at this time.

e. Statement concerning any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system:

The parties have agreed to jointly propose a plan for limiting the number of asserted claims and defenses in this case. The parties have agreed to forego preparing privilege logs for documents created after the complaint was filed.

f. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

The parties have agreed to meet and confer early in this case to explore a plan for limiting discovery of electronically-stored information. The parties have included in their proposed schedule a deadline for proposing an ESI order to the Court.

[The parties must propose a format for production of electronically stored information and indicate what steps they have taken or will take to (i) preserve electronically stored information; (ii) facilitate discovery of electronically stored information; (iii) limit the associated discovery costs and delay; (iv) avoid discovery disputes relating to electronic discovery; and (v) address claims of privilege or of protection as trial-preparation materials after production of computer-generated records. Counsel should describe any proposals or agreements regarding electronic discovery made at the Rule 26(f) conference and be prepared to discuss issues involving electronic discovery, as appropriate, at the Scheduling Conference.]

g. Statement summarizing the parties' discussions regarding the possibilities for promptly settling or resolving the case.

The parties have discussed settlement and will continue to explore opportunities for promptly settling or resolving the case.

7. CONSENT

All parties have not consented to the exercise of jurisdiction of a magistrate judge. Dkt. No. 27.

8. CASE PLAN AND SCHEDULE

[Parties must confer to provide proposed dates for items b. through q. below. Absent unusual circumstances, proposed dates for items b. through q. should proceed in chronological order]

- a. Deadline to join parties. June 8, 2023.

Infringement Contentions

- b. Deadline to serve Infringement Contentions, Claim Chart(s), and produce accompanying documents: June 8, 2023.
- c. Deadline to serve Response to Infringement Contentions and produce accompanying documents: July 21, 2023.

Invalidity Contentions

- d. Deadline to serve Invalidity Contentions and Claim Chart(s) and produce accompanying items of prior art: July 21, 2023
- e. Deadline to serve Response to Invalidity Contentions and Claim Chart(s) and produce accompanying documents: September 1, 2023

Opinion of Counsel

- f. Deadline to make opinion(s) of counsel available for inspection and copying: *[presumptive deadline: 60 days before the close of discovery]* July 10, 2024

Claim Construction

- g. Deadline for parties to exchange list of claim terms to be construed and proposed construction, specifically identifying up to ten (10) of the most critical terms to be construed: September 29, 2023
- h. Deadline to file Joint Disputed Claim Terms Chart: October 27, 2023
- i. Proposed month for technology tutorial with District Judge and Magistrate Judge (optional): October, 2023

- j. Deadline to file opening Claim Construction brief and all supporting evidence: October 25, 2023
- k. Deadline to file Response to opening Claim Construction brief and all supporting evidence: November 15, 2023
- l. Deadline to file reply brief in support of opening Claim Construction brief: November 22, 2023
- m. Proposed month for claim construction hearing and estimated time necessary for the hearing. December, 2023 (4-hour hearing)

Final Patent Disclosures

- n. Deadline to file Final Infringement Contentions: March 21, 2024
- o. Deadline to file Final Invalidity Contentions: April 11, 2024.

Fact Discovery, Expert Disclosures, and Dispositive Motions Deadlines

- p. Fact discovery deadline. September 8, 2024.
- q. Expert Witness Disclosure.
 - 1. The parties shall identify anticipated fields of expert testimony, if any.
 - 2. Limitations which the parties propose on the use or number of expert witnesses.
 - 3. The parties shall designate all affirmative experts and provide opposing counsel and any pro se parties with all information specified in Fed. R. Civ. P. 26(a)(2) on or before November 22, 2024. *[This includes disclosure of information applicable to "Witnesses Who Must Provide A Written Report" under Rule 26(a)(2)(B) and information applicable to "Witnesses Who Do Not Provide a Written Report" under Rule 26(a)(2)(C).]*
 - 4. The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before January 21, 2025.

[This includes disclosure of information applicable to "Witnesses Who Must Provide A Written Report" under Rule 26(a)(2)(B) and information applicable to "Witnesses Who Do Not Provide a Written Report" under Rule 26(a)(2)(C).]

- r. Expert Discovery Deadline: May 2, 2025
- s. Dispositive motions deadline: ~~August 8, 2025~~ Please refer to Judge Rodriguez's Practice Standards. The parties must email or contact her Chambers in accordance with those practice standards no later than August 18, 2025, regarding any dispositive motions.

[The parties shall file, contemporaneously with the completion of claim construction briefing, a "Joint Motion for Determination." which will serve as notice to the court that briefing has been completed.]

9. DISCOVERY LIMITATIONS

- a. Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules.

The parties propose all discovery shall be consolidated for DISH Network L.L.C. and DISH Technologies L.L.C. and that DISH Network L.L.C. and DISH Technologies L.L.C. shall be treated as a single side for purposes of the discovery limitations.

~~The parties propose limiting the number of fact depositions to up to (5) individuals per side. This limit does not include third-party depositions.~~

The parties are limited to five depositions, exclusive of depositions of each party.

[Any party who proposes to exceed the numerical limits set forth in Fed. R. Civ. P. 30(a)(2)(A)(i) should be prepared to support that request by reference to the factors identified in Fed. R. Civ. P. 26(b)(2)(C).]

b. Limitations which any party proposes on the length of depositions.

Duration of Depositions. Unless otherwise agreed in advance, the daily limit of seven (7) hours shall apply to all depositions including any re-cross of a witness following redirect examination. To the extent not limited herein, discovery limitations are controlled by the Federal Rules of Civil Procedure and the Local Rules. Any party may later move to modify these limitations for good cause.

Location of Depositions. The parties will agree upon mutually acceptable deposition locations convenient for the witnesses, including the taking of any remote depositions.

c. Limitations which any party proposes on the number of requests for production and/or requests for admission.

Request for Admission. The parties agree to a maximum of twenty-five (25) requests for admission are permitted.

Request for Production. The parties agree to a maximum of twenty-five (25) requests for production are permitted.

d. Other Planning or Discovery Orders

1. Deadline for filing proposed protective order(s): DISH filed a proposed protective order on February 24, 2023. Dkt. No. 44
2. Other issues: The parties will file a proposed ESI order by March 24, 2023.

10. DATES FOR FURTHER CONFERENCES

[The magistrate judge will complete this section at the scheduling conference if he or she has not already set deadlines by an order filed before the conference.]

- a. Status conferences will be held in this case at the following dates and times:
A joint status report is due June 1, 2023. Refer to the undersigned's Practice Standards for the required content of the Joint Status Report.
- b. A final pretrial conference will be held in this case on _____ at _____ o'clock __ m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than five (5) days before the final pretrial conference.

11. OTHER SCHEDULING MATTERS

- a. Identify those discovery or scheduling issues, if any, on which counsel after a good faith effort, were unable to reach an agreement.

The parties have not identified any such issues at this time.

- b. Anticipated length of trial and whether trial is to the court or jury.

The parties propose five days should be set aside for a bench trial.

- c. Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facility at 212 N. Wahsatch Street, Colorado Springs, Colorado; Wayne Aspinall U.S. Courthouse/Federal Building, 402 Rood Avenue, Grand Junction, Colorado; or the U.S. District Court, LaPlata County Courthouse, Suite 150, 1060 E. 2nd Avenue Durango, CO 81301.

The parties have not identified any such issues at this time.

[Determination of any such request will be made by the magistrate judge based on the individual needs of the case and the availability of space and security resources.]

12. NOTICE TO COUNSEL AND PRO SE PARTIES

[The following paragraphs shall be included in the scheduling order.]

Motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1, by containing proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1(a).

In addition to filing an appropriate notice with the clerk's office, a *pro se* party must file a copy of a notice of change of his or her address or telephone number with the clerk of the magistrate judge assigned to this case. In addition to filing an appropriate notice with the clerk's office, counsel must file a copy of any motion for withdrawal, motion for substitution of counsel, or notice of change of counsel's address or telephone number with the clerk of the magistrate judge assigned to this case.

13. AMENDMENTS TO SCHEDULING ORDER

This scheduling order may be altered or amended only upon a showing of good cause.

DATED this 8th day of March, 2023.

BY THE COURT:


United States Magistrate Judge

APPROVED:

/s/ William P. Ramey, III
William P. Ramey, III
RAMEY LLP
Email: wramey@rameyfirm.com
5020 Montrose Blvd., Suite 800
Houston, TX 77006
Telephone: (713) 426-3923
Fax: (832) 689-9175

Attorney for Plaintiff
SafeCast Limited

/s/ Adam R. Shartz
Ruffin B. Cordell
Adam R. Shartz
Jack R. Wilson, IV
cordell@fr.com
shartz@fr.com
jwilson@fr.com
FISH & RICHARDSON P.C.
1000 Maine Avenue, SW
Suite 1000
Washington, DC 20024
Telephone: (202) 783-5070
Facsimile: (202) 783-2331

Attorneys for Defendants DISH Network
L.L.C., and DISH Technologies L.L.C.