

EXHIBIT 3

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17 COX COMMUNICATIONS, INC., HOSPITALITY
18 NETWORK, INC., AND COXCOM, INC.

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 ACACIA MEDIA TECHNOLOGIES
23 CORPORATION,

24 Plaintiff,

25 vs.

26 COMCAST CORPORATION; COX
27 COMMUNICATIONS INC.;
28 HOSPITALITY NETWORK, INC.;
CHARTER COMMUNICATIONS, INC.;
THE DIRECTV GROUP, INC.;
BOULDER RIDGE CABLE TV, D/B/A/
STARSTREAM COMMUNICATIONS;
SEREN INNOVATIONS, INC.;
COMCAST CABLE
COMMUNICATIONS, LLC, COXCOM,
INC.; ECHOSTAR SATELLITE LLC; and
ECHOSTAR TECHNOLOGIES
CORPORATION

Defendants.

Case No. C 04-02308 SI

**DEFENDANT COXCOM, INC.'S
RESPONSE TO PLAINTIFF'S NOTICE
OF PENDENCY OF OTHER ACTIONS**

1 Defendant CoxCom, Inc. ("CoxCom"),¹ by its attorneys, responds to the Notice of
2 Pendency of Other Actions ("Notice") filed by Plaintiff Acacia Media Technologies Corporation
3 ("Acacia") as follows:

4 Acacia correctly states that its patent infringement action against CoxCom and other cable
5 and satellite television providers "involves a material part of the same subject matter" as several
6 consolidated patent infringement actions that it previously filed in the U.S. District Court for the
7 Central District of California and are now pending before Judge James Ware, sitting by
8 designation. However, Acacia's Notice fails to disclose that Judge Ware entered an order on
9 December 18, 2003 prohibiting it from filing any actions for patent infringement involving the
10 same patents in any court other than the Central District. In deference to Judge Ware's order
11 prohibiting Acacia from filing its lawsuit in this District, the Court should dismiss this action
12 without prejudice.

13 **BACKGROUND**

14 Acacia's Notice accurately discloses that in both litigations Acacia is asserting
15 infringement of U.S. Patent Nos. 5,132,992 (the "'992 patent") and 6,144,702 (the "'702 patent"),
16 which purport to cover so-called "streaming media" technology. What Acacia's Notice does not
17 disclose is that Judge Ware entered a December 18, 2003 Order Consolidating Cases, directing
18 that "Plaintiff [Acacia] shall file any case involving the '992 patent or a patent which is a
19 continuation or divisional of the '992 patent in the Central District of California, Southern
20
21

22 _____
23 ¹ Defendants Cox Communications, Inc. ("CCI") and Hospitality Network, Inc. ("Hospitality
24 Network"), which are affiliated with CoxCom, do not join this response in order to preserve their
25 objection to any exercise of personal jurisdiction over them in this action. There is no basis for
26 asserting personal jurisdiction over CCI and Hospitality Network because they are out-of-state
27 corporations that do not have any substantial contacts with California, and have zero contacts
28 with the State that are related to Acacia's claims. For instance, CCI and Hospitality Network do
not do business in California, do not provide any of the allegedly infringing cable and video-on-
demand services to California residents, and have no offices, real property, bank accounts,
addresses, or telephone numbers within the State, and do not provide any of the allegedly
infringing products or services to residents of California. At the appropriate time, CCI and
Hospitality Network will present their objection to personal jurisdiction in an appropriate motion.

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1 *Division*" so that they could be automatically assigned to Judge Ware by the Clerk.² (12/18/03
 2 Order ¶ 7 (emphasis added) (attached as Ex. A.) Despite that clear directive, Acacia filed this
 3 lawsuit involving the '992 and '702 patents and three additional patents that are continuations or
 4 divisions of the '992 patent in this District, not the Central District.

5 **RESPONSE TO NOTICE OF PENDING ACTION**

6 Local Rule 3-13(d) provides that after considering a Notice of Pendency of Other Action
 7 and responses to the Notice, the Court "may make appropriate orders." Here, the only
 8 appropriate order for the Court to make is to dismiss this action for lack of jurisdiction because it
 9 violates Judge Ware's express order—effectively an anti-suit injunction—prohibiting Acacia
 10 from filing actions for infringement of its streaming media patents in any court other than the
 11 Central District. See, e.g., Chauffeurs, Teamsters & Helpers, Lake County, Illinois, Local 301 v.
 12 Holland, 732 F. Supp. 918, 921-22 (N.D. Ill. 1990) (dismissing lawsuit brought in violation of
 13 New York federal district court order requiring that action to be filed in the Southern District of
 14 New York); see also Schauss v. Metals Depository Corp., 757 F.2d 649, 654 (5th Cir. 1985) (5th
 15 Cir. 1985) (vacating default judgment where another district court had issued order prohibiting
 16 the filing of certain lawsuits in other courts because "the important principle of comity between
 17 federal courts is advanced where courts of coordinate rank are respectful of each other's orders").

18 Acacia's previous suggestion, in its now "superseded" Notice of Related Case, that venue
 19 in this action may be improper in the Central District of California does not excuse its violation of
 20 Judge Ware's express and unambiguous directive that Acacia could file this case only in the
 21 Central District. If Acacia desires to file suit on its streaming media patents against defendants
 22 who are not subject to personal jurisdiction or venue in the Central District, its only recourse is to
 23 first apply to Judge Ware for relief from or of from the December 18, 2003 Order. It is not
 24 appropriate, however, for Acacia to collaterally attack the Order by filing in this District and

25 _____
 26 ² Judge Ware further ordered the Clerk of the Central District of California to "assign directly all
 27 cases filed by the Plaintiff [Acacia] for infringement of the '992 patent and any related patents to
 28 U.S. District Judge James Ware." (Id. ¶ 12.) And, Judge Ware ordered Acacia to, when filing a
 lawsuit involving the '992 or related patents, "notify the Clerk of this direct assignment Order."
 (Id.)

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1 inviting this Court to modify or countermand Judge Ware's directive. See Chauffeurs, 732 F.
2 Supp. at 922 (refusing to "overrule the New York court or ignore the injunction" by adjudicating
3 complaint filed in violation of order requiring it to be filed in the Southern District of New York,
4 as "the appropriate forum for review of the injunction is the Court of Appeals for the Second
5 Circuit").

6 Accordingly, the Court should dismiss Acacia's action without prejudice because it was
7 filed in violation of Judge Ware's December 18, 2003 Order. In the alternative, the Court could
8 order that the matter be reassigned within this District to Judge Ware so that he can determine the
9 appropriate remedy for Acacia's violation of his Order.

10 Dated: August 5, 2004

COBLENTZ, PATCH, DUFFY & BASS, LLP

11
12 By: / S /
 J. TIMOTHY NARDELL

13 Annamarie A. Daley (*pro hac vice* application pending)
14 Tara D. Sutton (*pro hac vice* application pending)
15 Stephen P. Safranski (*pro hac vice* application pending)
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19 Attorneys for Defendants Cox Communications, Inc.,
20 Hospitality Network, Inc., and CoxCom, Inc.

PROOF OF MAILING/SERVICE

The undersigned hereby declares:

I am over the age of 18 years and not a party to or interested in the within entitled cause. I am an employee of Coblentz, Patch, Duffy & Bass, LLP and my business address is One Ferry Building, Suite 200, San Francisco, CA 94111. On the date stated below, I served a true copy of:

DEFENDANT COXCOM, INC.'S RESPONSE TO PLAINTIFF'S NOTICE OF PENDENCY OF OTHER ACTIONS

(X) By mail, by placing said document(s) in an envelope addressed as shown below. I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I sealed said envelope and placed it for collection and mailing on the date stated below to the addressee stated below, following ordinary business practices.

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Attorneys for Charter
Communications

I declare under penalty of perjury, under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed at San Francisco, California on August 5, 2004.

/s/
Norma Garza Black

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FILED
DEC 18 2003
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
BY *[Signature]* DEPUTY

NOT FOR CITATION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ACACIA MEDIA TECHNOLOGIES
CORPORATION,

Plaintiff,

vs.

NEW DESTINY INTERNET GROUP,
ET AL.,

Defendants.

SA CV02-1040-JW (MLGx); ✓
SA CV02-1048-JW (MLGx);
SA CV02-1063-JW (MLGx);
SA CV02-1165-JW (MLGx);
SA CV03-0201-JW (MLGx);
SA CV03-0202-JW (MLGx);
SA CV03-0217-JW (MLGx);
SA CV03-0218-JW (MLGx);
SA CV03-0219-JW (MLGx);
SA CV03-0252-JW (MLGx);
SA CV03-0259-JW (MLGx);
SA CV03-0271-JW (MLGx);
SA CV03-0308-JW (MLGx); &
SA CV03-1610-JW (MLGx)

AND ALL RELATED CASE ACTIONS.

**ORDER CONSOLIDATING
RELATED CASES; SETTING
CLAIMS CONSTRUCTION
HEARING; SETTING INTERIM
CASE MANAGEMENT
CONFERENCE**

ENTERED ON ICMS
DEC 19 2003
[Signature]

The Court conducted a case management conference in the above-entitled matter on November 21, 2003. Present were Plaintiff Acacia Media and Defendants New Destiny Internet Group, Audio Communications, VS Media, Inc., Ademia Multimedia, Excalibur Entertainment, Cyberheat, International Web Innovations, Offendale, Adult Entertainment Broadcast Network, Cyber Trend, Private Media Group, Lightspeedcash, Innovative Ideas International, ASK.com, Game Link and On Command. The Court orders as follows:

EXHIBIT A (49)

1 1. The Court orders the following related cases consolidated: SA CV02-1040-JW
2 (MLGx), SA CV02-1048-JW (MLGx), SA CV02-1063-JW (MLGx), SA CV02-1165-JW
3 (MLGx), SA CV03-0201-JW (MLGx), SA CV03-0202-JW (MLGx), SA CV03-0217-JW
4 (MLGx), SA CV03-0218-JW (MLGx), SA CV03-0219-JW (MLGx), SA CV03-0252-JW
5 (MLGx), SA CV03-0259-JW (MLGx), SA CV03-0271-JW (MLGx), and SA CV03-0308-JW
6 (MLGx). The cases are consolidated for all pretrial purposes and shall bear the Case No. SA
7 CV-02-1040-JW(MLGx).

8 2. The Court will hold a Claim Construction Hearing to construe the claims involving
9 approximately ten disputed terms and phrases of U.S. Patent No. 5,132,992 on February 6, 2004
10 at 10:00 a.m. to 4:00 p.m. in the United States District Court, Central District of California,
11 Southern Division. At the hearing the Court will consider only intrinsic evidence to interpret the
12 disputed claims, i.e., the claims themselves, the written description portion of the specification
13 and the prosecution history. Pertinent portions of the intrinsic evidence should be highlighted
14 and indexed to the disputed claim language. No tutorial or testimony will be allowed, unless the
15 Court orders otherwise, based upon a timely motion noticed for hearing at least 10 days prior to
16 the claim hearing by any party wishing to present testimony. Pursuant to the Court's order at the
17 November 21, 2003 case management conference, no party shall file expert declarations in
18 support of its claim construction contentions. The named inventors of the '992 patent shall not be
19 deposed for purposes of claim construction.

20 3. Parties may engage in discovery for purposes of the claims construction hearing. The
21 Court refers the action to Magistrate Judge Marc L. Goldman to establish a discovery plan and to
22 hear and decide all discovery related disputes.

23 4. Parties shall file a joint claim construction contention chart, a brief and a file wrapper,
24 no later than January 5, 2004. Defendants may submit individual or separate briefs. Reply
25 briefs, if any, shall be filed no later than January 20, 2004.

26 5. Plaintiff shall make available a copy of the current claims construction chart to all
27 parties electronically or by mail no later than December 1, 2003.
28

1 6. Plaintiff may join additional Defendants to this action until December 9, 2003.

2 7. Plaintiff shall file any case involving the '992 patent or a patent which is a
3 continuation or divisional of the '992 patent in the Central District of California, Southern
4 Division. Plaintiff shall file a notice of related case with this Court in any action that involves
5 U.S. Patent Nos. '702, '992 or other patents held by Plaintiff filed outside of California.

6 8. The Court sets an interim telephonic case management conference on January 7, 2004
7 at 11:30 a.m. Plaintiff shall coordinate the telephone conference and contact the Court at (408)
8 535-5454. If any party is unable to participate, the party shall notify the Courtroom Deputy at
9 (714) 338-4759, no later than January 2, 2004.

10 9. Except as otherwise ordered, the parties are ordered to comply with the Local Rules of
11 Court for the Central District of California.

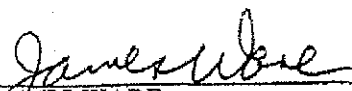
12 10. In addition to filing papers with the Court, parties shall lodge with chambers an
13 electronic copy, until further order of the Court. The parties shall electronically mail all papers
14 filed to jwpo@cand.uscourts.gov and crd_ware@cacd.uscourts.gov, attached with PDF (Adobe
15 Acrobat) format. The subject of the electronic mail should specify "In re Acacia Media."

16 11. When filing papers in connection with any motion for determination by the Court, the
17 parties shall, in addition to filing papers electronically, lodge with chambers a printed copy of the
18 papers by the close of the next court day following the day the papers are filed. These printed
19 copies shall be marked "Chambers Copy" and shall be submitted to Judge James Ware, United
20 States District Court, 280 South First Street, San Jose, CA, 95113.

21 12. Until further order of the Court, the Clerk of Court is ordered to assign directly all
22 cases filed by the Plaintiff for infringement of the '992 patent and any related patents to U.S.
23 District Judge James Ware, through the Central District of California, Southern Division. At the
24 time of filing a lawsuit covered by this Order, the Plaintiff is ordered to notify the Clerk of the
25 Court of this direct assignment Order.

26 ///

27 Dated: December 12, 2003


JAMES WARE
United States District Judge