

# EXHIBIT 6

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

TIVO INC.,	)	
	)	Civil Action No. 2:09-CV-259-DF
Plaintiff,	)	
	)	
vs.	)	
	)	
1. AT&T INC.;	)	
2. AT&T OPERATIONS, INC.;	)	
3. AT&T SERVICES, INC.;	)	
4. AT&T VIDEO SERVICES, INC.;	)	
5. SBC INTERNET SERVICES, INC.;	)	
6. SOUTHWESTERN BELL TELEPHONE	)	Jury Trial Demanded
COMPANY.	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
MICROSOFT CORPORATION,	)	
	)	
Intervenor.	)	
_____	)	

**TIVO'S OPPOSITION TO MICROSOFT AND AT&T OPERATIONS' MOTION  
TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF  
CALIFORNIA UPON SEVERANCE**

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## INTRODUCTION

1  
2 In an attempt to delay the resolution of this dispute, Microsoft Corporation (“Microsoft”) and  
3 AT&T Operations, Inc. (“AT&T Operations”), (collectively, the “movants”), have moved to transfer  
4 this case to the Northern District of California, nearly ten months after TiVo Inc. (“TiVo”) filed its  
5 complaint for patent infringement against AT&T Inc. (“AT&T”). The movants themselves assert  
6 that Defendant AT&T is not subject to personal jurisdiction in California. Accordingly, movants’  
7 transfer request depends on this Court severing the claims involving Microsoft and AT&T  
8 Operations and staying the proceedings involving AT&T pending adjudication of the transferred  
9 claim. But, even assuming the improbable, namely that this Court would grant the motion to sever  
10 and stay that movants have filed along with the current motion and hold that AT&T is not a party of  
11 interest, movants’ transfer motion would still lack merit.

12 Movants do not come close to carrying the heavy burden of demonstrating good cause for  
13 transfer to California. This is not a case where the patentee has gone forum-shopping for a district  
14 that has no connection to the parties’ dispute. To the contrary, TiVo filed a patent infringement suit  
15 against AT&T in this District because it bears a strong nexus to the parties, alleged infringement,  
16 and technology at issue.

17 First, this Court is uniquely qualified to preside over this case given that it was involved in  
18 an earlier case concerning both the same technology and the core patent also at issue here. *TiVo*  
19 *Inc. v. EchoStar Corp.*, 2:04-cv-00001 (E.D. Tex.) (the “EchoStar action”). Over the last six years,  
20 Chief Judge Folsom issued a claim construction ruling for the relevant claims of the core patent,  
21 ruled on motions for summary judgment and in limine and presided over a jury trial. Accordingly,  
22 this Court has already invested substantial time and resources becoming familiar with the technology  
23 at issue in this case. *See TiVo Inc. v. EchoStar Communs Corp.*, 516 F.3d 1290 (Fed. Cir. 2008).  
24 The Federal Circuit and other courts have recognized that issues of judicial economy, such a court’s  
25 familiarity with the patented technology, may be dispositive of the decision about where the case  
26 should go forward.

27 Here, proceeding in another district would result in delay in a case where swift resolution is  
28 at an absolute premium. Indeed, TiVo seeks to resolve this case as quickly as possible in order to

1 obtain effective relief. Each day, thousands of new customers purchase the accused U-verse  
2 products and services. Declaration of Azar Mouzari (“Mouzari Decl.”) at Ex. 1. If TiVo’s  
3 allegations prove true, then AT&T is accumulating a massive customer base at TiVo’s expense on  
4 the basis of an infringing product. Delay – apparently the very point of movants’ transfer motion –  
5 is the last thing this case needs.

6       Second, the parties have a strong nexus with Texas. It is undisputed that AT&T’s corporate  
7 headquarters is in Texas. All the other Defendants, including AT&T Operations, are also based in  
8 Texas. AT&T’s U-verse and EchoStar products and services lie at the heart of TiVo’s patent  
9 infringement claims. As admitted by AT&T in the Two-Way Media case, the U-verse business is  
10 based in Texas.<sup>1</sup> The network engineering, testing, and integration of the accused U-verse products  
11 and services take place in Texas. Project management, financial reporting, and financial analysis for  
12 the accused U-verse products and services also occur in Texas. Employees that work in the U-verse  
13 business are based in Texas. In fact, TiVo has identified over 45 likely witnesses living in Texas,  
14 including 10 witnesses from nonparties who could be compelled to testify at trial by this Court, if  
15 necessary. TiVo provides its products and services throughout Texas, and, in particular, in this  
16 District. Declaration of Pavel Kovar (“Kovar Decl.”) at ¶ 3. TiVo also houses up to 11 million  
17 dollars of inventory in its distribution center in Fort Worth, Texas, and has employees based in  
18 Texas. *Id.* at ¶¶ 4-7.

19       Third, AT&T purposefully directed its allegedly infringing activities at Texas. AT&T  
20 targeted Texas customers to introduce the first rollout of the U-verse products and services accused  
21 of infringement in this lawsuit. Since then, the accused products and services have been offered for  
22 sale and sold throughout Texas, including in the Eastern District of Texas. Citizens of Allen, Frisco,  
23 Lebanon, The Colony, and Plano, for example, can purchase the accused U-verse products or  
24 services through AT&T’s active website, which offers for sale the U-verse products and services to  
25 citizens of those towns. Mouzari Decl. at Ex. 2.

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27 \_\_\_\_\_  
28 <sup>1</sup> AT&T’s admissions are taken from the *Two-Way Media, LLC v. AT&T, Inc.*, Civil No. CC-8-116, 2009 U.S. Dist. LEXIS 47700  
\*10-35 (S.D. Tex. 2009) case. Two-Way Media accused AT&T’s U-verse products and services of patent infringement.  
Defendant AT&T moved to transfer venue to United States District Court for the Western District of Texas. AT&T’s motion to  
transfer was granted.

1 The movants' assertion that the convenience of the parties and witnesses favors transfer to  
2 California is simply wrong. This is a Texas lawsuit through and through.

### 3 **FACTUAL BACKGROUND**

#### 4 **I. The Alleged Infringement Has A Nexus To This District**

5 TiVo, a pioneer in home entertainment, created the first commercially viable digital video  
6 recorder ("DVR"). On August 26, 2009, TiVo filed this patent infringement lawsuit to put an end to  
7 AT&T's ongoing and past infringement of three patents.

8 TiVo alleges ongoing infringement by AT&T's U-verse products and services. AT&T's U-  
9 verse products and services are offered in over 19 states to over 1.3 million customers, including  
10 customers in the Eastern District of Texas. *Id.* at Ex. 1. For example, customers in Allen, Frisco,  
11 Lebanon, The Colony, and Plano are offered U-verse products and services, as AT&T's website  
12 makes clear. *Id.* at Ex. 2. Further, AT&T specifically targeted Texas customers to introduce the  
13 first rollout of the accused U-verse products and services. *Id.* That the accused U-verse products  
14 and services have strong ties to Texas is unmistakable:

- 15 • AT&T's U-verse business is based in San Antonio, Texas;
- 16 • AT&T's senior management for U-verse is based in San Antonio;
- 17 • AT&T's teams responsible for managing the U-verse business and for financial analysis  
18 and reporting related to U-verse products and services are located in San Antonio;
- 19 • Testing and integration of U-verse was performed at AT&T laboratory facilities in  
20 Austin;
- 21 • The team that conducted the testing and integration of U-verse in Austin includes  
22 approximately 45 people who are based in Austin;
- 23 • Approximately 85 employees in San Antonio were involved in the U-verse project.<sup>2</sup>

24 In addition to the accused U-verse products and services, TiVo also seeks to recover  
25 damages arising from AT&T's past infringement, including AT&T's admitted and extensive sales of  
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<sup>2</sup> *Two-Way Media*, *supra* note 2.



1 EchoStar products that this Court has already determined infringe TiVo's patent claims.<sup>3</sup>

2 Accordingly, this Court already addressed in the EchoStar action patented technology at issue here.

3 Because of the undeniable nexus between the accused products and services and this District,  
4 the movants seek to change the subject by arguing about a purported link between Microsoft and  
5 Microsoft's Mediaroom software and the Northern District of California. There is however one  
6 major flaw to this reasoning; TiVo has *not* accused Microsoft's Mediaroom software itself of patent  
7 infringement. Instead, Mediaroom is only one component in the accused AT&T U-verse products.  
8 Despite the movants' lengthy discussion about Microsoft, its Mediaroom software and alleged ties to  
9 California, this case is about AT&T's specifically identified products and services that infringe  
10 TiVo's patents, including AT&T's sales of the infringing EchoStar products, which do not utilize  
11 the Mediaroom software. Products and parties not at issue in this lawsuit cannot establish a nexus  
12 with the Northern District of California.

## 13 **II. The Technology At Issue Has A Nexus To This District**

14 This Court is exceedingly well-qualified to preside over this case because of its unique  
15 knowledge about the technology at issue. In 2004, TiVo sued the five parties, collectively referred  
16 to as EchoStar, in this District, alleging that they had infringed various claims of TiVo's U.S. Patent  
17 No. 6,233,389 ("the '389 patent"), entitled "Multimedia Time Warping System." In April 2006,  
18 after nearly three years of protracted litigation, a jury concluded that EchoStar willfully infringed  
19 TiVo's patented DVR technology and awarded TiVo \$73 million in compensatory damages. *TiVo*  
20 *Inc. v. EchoStar Communs Corp.*, 446 F. Supp. 2d 664 (E.D. Tex. 2006) (Folsom, J.). And as  
21 mentioned previously, the accused products in the EchoStar action are also at issue in this case given  
22 AT&T's past infringing use.

23 The present matter includes two additional patents – and both of them are related to the '389  
24 patent that the Court has spent years litigating. The first, U.S. Patent No. 7,529,465 ("the '465

25 \_\_\_\_\_  
26 <sup>3</sup> During appeal in the EchoStar action, AT&T submitted a motion and amicus brief in support of EchoStar in which AT&T  
27 admitted that it sold the adjudged infringing EchoStar products to hundreds of thousands of customers: "AT&T is part of one of the  
28 world's largest communications companies and a reseller of EchoStar's Dish Network® digital satellite television service. As  
a feature of this service, digital video recorders ("DVRs") are provided to AT&T's customers, of which there are presently several  
hundred thousand. In the present matter, TiVo's request for relief includes compensation for these adjudged infringing products."  
*See AT&T Video Services, Inc.'s Motion for Leave to File Amicus Curiae Brief in Support of Defendants-Appellants (April 24,*  
*2007) in TiVo, Inc. v. EchoStar Communs. Corp., et al, Case No. 2006-1574; 2007-1022.*

1 patent”), entitled “System for Time Shifting Multimedia Content Streams,” is a continuation of the  
2 ‘389 patent and includes a nearly identical specification. The second, U.S. Patent No. 7,493,015  
3 (“the ‘015 patent”), entitled “Automatic Playback Overshoot Correction System,” also shares 13  
4 figures and numerous paragraphs of specification in common with the ‘389 patent. Just like the ‘389  
5 patent, both these additional patents cover technology relating to TiVo’s digital video recording and  
6 video playback. The movants’ assertion that twenty of the twenty-two claims at issue here “were  
7 not at issue in the EchoStar litigation” is misleading. Movants’ Mot. to Transfer at 14. All twenty-  
8 two claims relate to the same DVR technology at issue in the EchoStar action. And, of the twenty-  
9 two claims, *sixteen* are contained in the same patent at issue in the EchoStar action, the ‘389 patent,  
10 or in its continuation, the ‘465 patent.

11 This Court’s knowledge of the complex patented technology and products at issue render it  
12 uniquely qualified to preside over this case. In the EchoStar action, Chief Judge Folsom issued  
13 claim construction rulings, decided motions for summary judgment, presided over a jury trial,  
14 conducted a bench trial, adjudicated post-trial motions, and issued a permanent injunction, which the  
15 Federal Circuit affirmed in all pertinent respects on appeal. This Court also presided over contempt  
16 proceedings, and issued a contempt order that the Federal Circuit has since affirmed in all respects  
17 (and is now subject to *en banc* review). Judge Farnan transferred a related case to this district from  
18 the District of Delaware in light of, among other things, Chief Judge Folsom’s “expertise in the  
19 relevant subject matter.” *Dish Network Corp. et al v. TiVo, Inc.*, No. 1:08-CV-327, at 5 (D. Del.,  
20 May 28, 2009).

21 Movants, however, seek to transfer the case to the Northern District of California, a district  
22 devoid of any special knowledge about the issues of this case, but with a more congested docket and  
23 a substantially longer median time to trial. Appendix A. This is nothing but an attempt to delay that  
24 should not meet with success.

### 25 **III. TiVo Has A Nexus To This District**

26 TiVo also maintains a strong local presence around this District. For example, TiVo offers  
27 its products and services nationwide, including in this District, using a centrally located distribution  
28 center, operated by ATC Logistics & Electronics in Texas. Kovar Decl. at ¶ 4. Specifically, TiVo

1 distributes the vast majority—over 90%—of its products from a logistics center in Fort Worth. *Id.*  
 2 Indeed, at any given time over TiVo’s last fiscal year, TiVo housed between \$4.2 million and \$11.4  
 3 million worth of new and refurbished inventory in Fort Worth, Texas. *Id.* at ¶ 5. On average over  
 4 the last fiscal year, TiVo maintained approximately \$6.8 million worth of inventory in Fort Worth.  
 5 *Id.* In addition, two of TiVo’s employees live in Texas, including one that lives specifically in the  
 6 Eastern District. *Id.* at ¶ 7.

#### 7 **IV. Defendants And The Movants Have A Nexus To This District**

8 The movants do not deny that Defendant AT&T’s ties to Texas are strong. For example,  
 9 AT&T’s global corporate headquarters is situated in Texas. The movants further admit that AT&T  
 10 is not subject to personal jurisdiction in California. To set aside this blockade to their motion to  
 11 transfer, the movants claim, however, that “AT&T Inc. is not the real party in interest,” and that the  
 12 Court should grant AT&T Operations’ request to intervene as the real party of interest. AT&T’s  
 13 Mot. to Sever at 1. It should be noted however that the newly-minted assertion that AT&T  
 14 Operations is “the real party of interest” comes nearly ten months after TiVo filed its complaint  
 15 against AT&T. *Id.*

16 To lessen its undeniable Texas connection, AT&T hides behind a façade—calling itself a  
 17 mere “holding company.” *Id.* But, its actions show otherwise. Despite AT&T’s contrary  
 18 allegations, AT&T is one of the entities responsible for the accused U-verse products and services.  
 19 TiVo’s Opp. to Mot. to Sever and Stay (filed concurrently) at III.B.1. Even if this were not the case,  
 20 no practical reason exists to transfer the case. The nexus between the parties, the alleged  
 21 infringement and accused products and this District would remain just as strong. Indeed, all the  
 22 other Defendants, including AT&T Operations, AT&T Services, Inc., AT&T Video Services, Inc.,  
 23 SBC Internet Services, Inc., and Southwestern Bell Telephone Company, operate and are based in  
 24 Texas.<sup>4</sup> TiVo’s Amended Complaint at 6-11. Microsoft also provides products and services in the  
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26 \_\_\_\_\_  
 27 <sup>4</sup> TiVo has been negotiating with AT&T the need to add these related entities since December 2009. Mouzari Decl. at Ex. 4.  
 28 Because the parties have been unable to come to terms, TiVo filed an amended complaint adding these entities on June 23, 2010,  
 several months ahead of the deadline dictated by the scheduling order. TiVo does not expect the new entities to alter the  
 parameters of discovery or trial. TiVo expects AT&T to stipulate to treat all named Defendants as one vis-à-vis the U-verse  
 product and services, as it did in *Two-Way Media, LLC v. AT&T, Inc.*, No. 09-cv-00476 (W.D. Tex 2009). *Id.* at Ex. 5.

1 Eastern District of Texas. Mouzari Decl. at Ex. 3. Further, this Court's unique knowledge of the  
2 technology at issue would also remain unaffected.

### 3 **ARGUMENT**

#### 4 **I. This Court Should Not Transfer This Case To The Northern District of California**

5 "For the convenience of parties and witnesses, in the interest of justice, a district court may  
6 transfer any civil action to any other district court where it might have been brought." 28 U.S.C.  
7 §1404(a). The movants, as the party seeking transfer, bear a heavy burden of demonstrating that this  
8 case should be transferred to the Northern District of California. They shoulder the burden of  
9 showing "good cause" for transfer, which means a showing "that the transferee venue is clearly  
10 more convenient." *In re Volkswagen of America, Inc.* ("Volkswagen II"), 545 F. 3d 304, 314 (5th  
11 Cir. 2008) (citing *Norwood v. Kirkpatrick*, 349 U.S. 29, 32 (1955), *cert. denied*, 129 S. Ct. 1336  
12 (2009)). In determining whether the movants have met the heavy burden, "the court must consider  
13 several private and public interest factors." *Monster Cable Prods., Inc. v. Trippe Mfg. Co.*, 2008  
14 U.S. Dist. LEXIS 47198 (E.D. Tex.). These factors support adjudication before this Court.

#### 15 **A. The Private Interest Factors Weigh Against Transfer**

16 The private interest factors include: 1) practical problems that make trial of a case easy,  
17 expeditious and inexpensive; 2) the relative ease of access to sources of proof; 3) the availability of  
18 compulsory process to secure the attendance of witnesses; and 4) the cost of attendance for willing  
19 witnesses. *Volkswagen II*, 545 F. 3d at 315.

#### 20 **1. Practical Problems Making Trial Easy, Expeditious And Inexpensive**

21 It is well-established that "[i]n cases that involve a highly technical subject matter, such as  
22 patent litigation, judicial economy may be best served when the case is heard by a court already  
23 familiar with the issues of the case." *Zoltar Satellite Sys. v. LG Elecs. Mobile Communs. Co.*, 402 F.  
24 Supp. 2d 731, 735 (E.D. Tex. 2005). *See also Regents of Univ. of Cal. v. Eli Lilly & Co.*, 119 F.3d  
25 1559, 1565 (Fed. Cir. 1997) ("[I]n a case such as this in which several highly technical factual issues  
26 are presented and the other relevant factors are in equipoise, the interest of judicial economy may  
27 favor transfer to a court that has become familiar with the issues."). The Federal Circuit has  
28 explicitly stated that, in patent cases, the consideration of the interest of justice, which includes

1 judicial economy, may trump the other private and public interest factors when one court is already  
2 familiar with the issues involved in the case. *Regents of Univ. of Cal.*, 119 F.3d at 1565  
3 (“[c]onsideration of the interest of justice, which includes judicial economy, may be determinative to  
4 a particular transfer motion, even if the convenience of the parties and witnesses might call for a  
5 different result”) (citations omitted). *See also In re Volkswagen* (“*Volkswagen III*”), 566 F.3d 1349,  
6 1351 (Fed. Cir. 2009) (finding that “judicial economy is served by having the same district court try  
7 the cases involving the same patents”); *Red River Fiber Optic Corp. v. Verizon Services Corp.*, No.  
8 2:08-cv-00215-TJW, 2010 WL 1076119 at \*14 (E.D. Tex. Mar. 23, 2010) (finding that where a  
9 Court has done “the heavy lifting involved in claim construction,” the interests of justice “weigh  
10 heavily against transfer”); *Realtime Data v. Morgan Stanley*, No. 6:09-cv-00327-LED, 2010 WL  
11 1064474 at \*20 (E.D. Tex. Mar. 18, 2010) (finding “the Court's extensive involvement with the  
12 technology and issues involved in the previous litigation is an overriding consideration when  
13 weighing the private and public interest factors”).

14 Movants all but ignore this principle, and attempt to rely on the more generic cases in which  
15 the courts required transfer out of this district. *See, e.g., Volkswagen II*, 545 F.3d 304; *In re TS Tech*  
16 *United States Corp.*, 551 F.3d 1315 (Fed. Cir. 2008); *In re Genentech Inc.*, 566 F.3d 1338 (Fed. Cir.  
17 2009). But none of these cases involved transfer from a Court with years of experience litigating  
18 complex patented technology. Further, none of these cases disturbs the legal principle discussed  
19 above, namely that judicial economy is an important factor in the transfer calculus.

20 Here, this Court invested substantial time and resources to learn and understand the same  
21 technology, and legal issues present in this case. In 2004, TiVo sued EchoStar for patent  
22 infringement in this District. Chief Judge Folsom reviewed tutorials on the relevant technology,  
23 conducted claim construction proceedings, issued claim construction orders, considered motions for  
24 summary judgment and motions in limine, conducted a jury trial in which he heard invalidity and  
25 infringement arguments, prepared jury instructions, and considered motions for judgment as a matter  
26 of law. To transfer this case would require duplication by the Northern District of California of the  
27 extensive work already performed by this Court. In other patent cases, similar considerations have  
28 been decisive - so much so that they have even convinced courts to grant venue transfer motions  
(overcoming the weight attached to a plaintiff's choice of forum) to courts already familiar with the

1 patented technology. *See Zoltar Satellite Sys.*, 402 F. Supp. 2d at 735 (granting transfer to court that  
2 had already construed three out of the four patents in prior action against different defendant and  
3 was intimately familiar with the relevant technology, in part because denying the motion to transfer  
4 would require the court to engage in duplicative and unnecessary work); *MHL Tech. v. Nissan Motor*  
5 *Co.*, No. 2:07-cv-289, 2009 WL 440627 at \*7 (E.D. Tex. Feb. 23, 2009) (retaining case for purposes  
6 of judicial economy where another case against different defendants involving the same patents was  
7 also pending before the court); *Logan v. Hormel Foods Corp.*, No. 6:04-cv-211, 2004 WL 5216126  
8 at \*2 (E.D. Tex. Aug. 25, 2004) (granting motion to transfer to court that had adjudicated a previous  
9 case involving the same patent but different defendants; reasoning that there was no reason to  
10 duplicate that court's work and that doing so would "risk inconsistent claim constructions, create  
11 greater uncertainty regarding the patent's scope, and impede the administration of justice").

12 Accordingly, the EchoStar action, and its claim construction ruling, alone create efficiencies  
13 sufficient to preclude transfer. *See In re VTech Communications, Inc.*, Misc. No. 909, 2010 WL  
14 46332 at \*2 (Fed. Cir. Jan. 6, 2010) (denying mandamus relief for refusal to transfer where the  
15 district court relied in part on its "familiarity with the case and the completion of claim  
16 construction."). In fact, where a court has "previously adjudicated a lawsuit involving the same  
17 patents with the same plaintiff" then that court "has already performed much of the heavy lifting  
18 involved in claim construction and the interests of justice weigh heavily against transfer." *Red River*  
19 *Fiber Optic Corp. v. Verizon Services Corp.*, No. 2:08-cv-00215-TJW, 2010 WL 1076119 at \*4  
20 (E.D. Tex. Mar. 23, 2010).

21 In pursuing a transfer, the movants argue that "the overlap between this case and...the  
22 EchoStar litigation...is small" in part because "two claims from the '389 patent that were asserted  
23 against EchoStar are currently rejected in a pending reexamination proceeding before the Patent and  
24 Trademark Office." Movants' Mot. to Transfer at 14. The movants further argue that "the final  
25 office action rejecting the asserted claims of the '389 patent minimizes or completely eliminates any  
26 potential argument that judicial economy prevents the transfer of this action to the Northern District  
27 of California." Movants' Notice of Additional Authority at 2-3. Yet, the reexamination proceeding  
28 has no bearing on movants' meritless motion. The pending second reexamination of the '389 patent  
is not complete. Although the PTO issued a "final" office action, "final" in this context is anything

1 but “final.”<sup>5</sup> TiVo may respond to the examiner’s arguments in a variety of ways, including by  
2 appealing the examiner’s decision. 37 CFR 1.116 In any event, the PTO will not issue a certificate  
3 of patentability, unpatentability, or claim cancellation until the “time for appeal has expired or any  
4 appeal proceeding has terminated.” 35 U.S.C. § 307. Accordingly, the ‘389 patent remains fully  
5 enforceable and is presumed valid. 35 U.S.C. § 282. Further, the movants’ claim that eliminating  
6 the ‘389 patent would eliminate the overlap between this case and EchoStar is flawed. Even were  
7 the ‘389 patent removed from this case, the ‘465 patent would remain. The ‘465 patent is a  
8 continuation of the ‘389 patent and contains a nearly identical specification.

9 The two additional patents at issue here in no way minimize the waste of judicial resources  
10 that a transfer of this case would cause. The two additional patents do not introduce new  
11 technology. The ‘465 patent is a continuation of the ‘389 patent and includes a nearly identical  
12 specification, and the ‘015 patent also shares 13 figures and numerous paragraphs of specification in  
13 common with the ‘389 patent. Like the ‘389 patent, both these patents relate solely to TiVo’s DVR  
14 technology. Further, even a partial overlap of significant issues in pending matters can be a  
15 dispositive reason for this Court to deny the motion to transfer. Indeed, in *Volkswagen III*, dozens of  
16 different defendants had each manufactured and sold tire monitoring systems. *See MHL Tech. v.*  
17 *Nissan Motor Co.*, No. 2:07-cv-289, 2009 WL 440627 at \*2 (affirmed by *Volkswagen III*, 566 F.3d  
18 at 1351). The Federal Circuit ruled that although the cases, “may not involve precisely the same  
19 issues, there will be significant overlap and a familiarity with the patents could preserve time and  
20 resources,” such that a motion to transfer should be denied. *Id.*

21 In addition, the movants misleadingly cite *In re Zimmer Holdings, Inc.*, 2010 U.S. App.  
22 LEXIS 12939 (Fed. Cir. June 24, 2010) to argue that “the existence of a second, ongoing lawsuit  
23 involving ‘the same patent, the same plaintiff, and similar technology’ d[oes] not outweigh the  
24 convenience factors favoring transfer” in this case. Movants’ Second Notice of Additional  
25 Authority at 1. Yet, the movants fail to discuss the important distinctions that exist between this  
26 case and the present matter. First, unlike in the present matter where the Court has expended  
27 important judicial resources litigating the technology at issue and presided over a jury trial, in  
28 *Zimmer Holdings*, this District had no prior experience with the technology and patents at issue. The

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<sup>5</sup> For example, in the first reexamination of the ‘389 patent, the PTO issued a “final” office action where several of the patent’s claims were rejected. Mouzari Decl. at Ex. 6. The PTO later allowed those claims without change. *Id.* at Ex. 7.

1 only overlap cited by the Plaintiff was the existence of another pending suit “in the infancy stages of  
2 litigation” filed in the District by the Plaintiff. *Id.* at \*9-10. Further, unlike in this case where the  
3 accused products have strong ties to this District, the Plaintiff operates in this District and has Texas-  
4 based employees, and all Defendants are based in Texas and operate in this District, in *Zimmer*  
5 *Holdings*, no such ties existed. In fact, the Federal Court stated that “[t]his is a classic case where  
6 the plaintiff is attempting to game the system by artificially seeking to establish venue by sharing  
7 office space with another of the trial counsel’s clients.” *Id.* at \*8. Finally, TiVo has named 45  
8 potential witnesses, and specifically 10 non-party witnesses, in, and around, this District, whereas  
9 the Plaintiff in *Zimmer Holdings* could not name a single non-party witness living in this District.  
10 *Medldea LLC v. Zimmer Holdings, Inc.*, Case No. 2:09-cv-258, 2010 WL 796738 \*2 (E.D.Tex.).

11 Hence, the movants’ arguments miss the point. Because of this Court’s familiarity with the  
12 technology at issue, the interests of judicial economy so strongly disfavor transfer, that “other factors  
13 may be afforded little or no weight.” *Jackson v. Intel Corp.*, 2009 U.S. Dist. LEXIS 22117 at \*13  
14 (E.D. Tex. 2009) (granting transfer because “the knowledge and experience that the judges of that  
15 district have developed with respect to the [] patent cannot easily be replicated in this district without  
16 a substantial duplication of effort”).

## 17 2. Relative Ease Of Access To Sources Of Proof

18 The movants state that “the place where evidence about the *accused technology* is kept  
19 weighs in favor of a transfer to that location.” However, the movants ignore the Texas location of  
20 evidence about AT&T’s U-verse products and attempt to focus instead on the location of  
21 Microsoft’s Mediaroom software. Microsoft’s argument that the bulk of the evidence will come  
22 from its Silicon Valley campus lacks merit because the infringement issues in this case relate  
23 principally to AT&T’s accused products and services, not the Mediaroom software. The  
24 Mediaroom software is *one* component of *some* of the accused products. For example, the accused  
25 products and services relating to AT&T’s alleged prior infringement, namely the EchoStar products,  
do not include the Mediaroom software.

26 AT&T’s own statements make clear that a large number of documents will be collected from  
27 AT&T’s corporate headquarters, AT&T Operations and the other four Defendants, laboratory  
28 facilities, U-verse business office, and the hard drives of employees involved in the U-verse business



1 and project, all located in Texas.<sup>6</sup> Simply put, the parties will have a greater ease of access to  
 2 sources of proof in Texas.

3 Further, the movants' contention that that this District is an inconvenient forum for TiVo is  
 4 baseless. TiVo itself chose to file in this District, accepting any potential inconvenience its decision  
 5 would bring. *See Connectel, LLC v. Cisco Sys.*, 2005 U.S. Dist. LEXIS 2252 (E.D. Tex.)  
 6 (“[C]onvenience to a plaintiff is not a consideration when analyzing a defendant’s motion to transfer  
 7 since the plaintiff chose the forum and presumably considered convenience and cost.”). Rather, the  
 8 Court must presume that this District is the most convenient forum for TiVo. *See j2 Global*  
 9 *Communs., Inc. v. Protus IP Solutions, Inc.*, 2008 U.S. Dist. LEXIS 103609 (E.D. Tex. 2008) (“The  
 10 Court further presumes that this district is the most convenient forum for j2 because it filed here.”);  
 11 *Odom v. Microsoft Corp.*, 596 F. Supp. 2d 995, 1002 (E.D. Tex. 2009) (“Concerning the location of  
 12 the plaintiff’s witnesses, this Court has noted that when a plaintiff files suit in a particular forum it is  
 13 presumed to be more convenient for the plaintiff to litigate in that forum.”).

14 The majority of documents that will be produced in this case are situated in Texas, and not  
 15 thousands of miles away in California. But movants’ attempt to argue that they will have a greater  
 16 burden to produce evidence in this District must be disregarded for another reason as well: the  
 17 exchange of documents here will be electronic. *See, for example, Network-1 Sec. Solutions, Inc. v.*  
 18 *D-Link Corp.*, 433 F. Supp. 2d 795, 799 (E.D. Tex. 2006) (giving little weight to burden imposed by  
 19 document production given that it is done electronically); *In re Volkswagen of Am., Inc.*  
 20 *(“Volkswagen I”)*, 506 F.3d 376, 385 (5th Cir. 2007) (“access to some sources of proof presents a  
 21 lesser inconvenience now than it might have absent recent developments”).

22 Finally, additional sources of proof exist in Texas, including in the Eastern District, such as  
 23 the following: (1) 45 potential party witnesses; (2) 10 potential non-party witnesses; (3) documents  
 24 of the potential nonparty witnesses; and (4) the court files from the related EchoStar action.

25 Appendices B and C. The relative ease of access factor therefore disfavors transfer to California.

### 26 3. Availability Of Compulsory Process To Secure Attendance Of Witnesses

27 A court’s power to issue a deposition or trial subpoena under Rule 45 of the Federal Rules of  
 28 Civil Procedure extends to any witness who resides in the district or within 100 miles of where the

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<sup>6</sup> *Two-Way Media*, *supra* note 1.

1 deposition or trial is held, and for the purpose of this analysis, are applied specifically to non-party  
2 witnesses. *See* Fed. R. Civ. P. Rule 45(b)(2); *Volkswagen II*, 545 F. 3d at 316 (court only considered  
3 the location of non-party witness).

4 Here, the movants claim that “there are no significant non-party witnesses in the Eastern  
5 District of Texas.” Even without the benefit of discovery, TiVo already can list 10 non-party  
6 witnesses living in, or near, this District, and that could be compelled to trial by this District.  
7 Appendix B. Further, although the movants claim to have identified 24 non-party potential  
8 witnesses in the Northern District of California, they fail to provide facts that suggest that any of the  
9 witnesses identified as being located outside of this District are unable or unwilling to attend trial or  
10 a deposition. *See AMS Staff Leasing v. Starving Students*, 2003 WL 21436476, \*3 (N.D. Tex. 2003)  
11 (defendants’ failure to explain why witness would be “either unwilling or unable to travel to Texas  
12 for trial” is a factor for denying transfer motion); *Odom v. Microsoft Corp.*, 596 F. Supp. 2d at 1002  
13 (considers parties’ failure to explain why witness would be unwilling to travel to Texas for trial).

#### 14 4. Cost Of Attendance For Willing Witnesses

15 In evaluating the factor of witness convenience, the Federal Circuit recognized a “100-mile  
16 rule, which requires that when the distance between an existing venue for trial of a matter and a  
17 proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses  
18 increases in direct relationship to the additional distance to be traveled.” *In re TS Tech*, 551 F.3d at  
19 1320 (citation omitted).

20 This is not a case where the accused infringer is seeking transfer to its home district. Rather,  
21 this is a case where a transfer out of the accused infringer’s home State is sought. As admitted by  
22 AT&T in the Two-Way Media case, many important witnesses are located in Texas: AT&T’s U-  
23 verse business is based in and managed from Texas, the senior management for U-verse work in  
24 Texas, employees with knowledge about the product design and development of the accused U-  
25 verse products and services work in Texas, technical personnel involved in the testing and  
26 integration of accused U-verse products and services work in Texas, and AT&T’s global corporate  
27 headquarters is in Texas.<sup>7</sup> For the 35 party witnesses and 10 non-party witnesses TiVo has  
28 identified thus far, this District is clearly the more convenient forum. Appendices B and C. For the

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<sup>7</sup> *Two-Way Media*, *supra* note 1.

1 movants to argue convenience, when all 45 of these witnesses will most likely have to travel  
2 thousands of miles if this case is transferred to California, makes little sense.

3 **B. The Public Interest Factors Weigh Against Transfer**

4 The public interest factors include: 1) the local interest in having local issues decided at  
5 home; 2) the administrative difficulties flowing from court congestion; 3) the forum's familiarity  
6 with the governing law; and 4) the avoidance of unnecessary conflict of law problems involving  
7 application of foreign law. *Volkswagen II*, 545 F. 3d at 315.

8 **1. Local Interest In Having Local Issues Decided At Home**

9 This factor analyzes the "factual connection" that a case has with both the transferee and  
10 transferor venues. *See In re Volkswagen AG*, 371 F. 3d 201, 206 (5th Cir. 2004) (giving significant  
11 weight to the "local interest in having localized interests decided at home"). Accordingly, local  
12 interests that "could apply virtually to any judicial district or division in the United States" are  
13 disregarded in favor of particularized local interests. *In re Volkswagen of America, Inc.*, 545 F. 3d at  
14 318.

15 In this case, the movants seem to have largely disregarded the fact this District has a strong  
16 local interest in adjudicating this suit. AT&T's headquarters, U-verse business, and laboratory  
17 facilities are all in Texas. The network engineering, testing, integration of the accused U-verse  
18 products as well as the project management, financial reporting, and financial analysis for the  
19 accused U-verse products and services also all occur in Texas. Nearly all aspects of AT&T's U-  
20 verse business involve Texas-based employees. Further, all six Defendants, including AT&T  
21 Operations, operate and are based in Texas. Texas residents are especially affected by AT&T's U-  
22 verse business because it is based in Texas – not in California.

23 In addition, the allegedly infringing activities are purposefully directed at Texas. The  
24 accused U-verse products and services were first launched in Texas. Since then, the accused  
25 products and services have been offered for sale and sold throughout Texas, including the Eastern  
26 District of Texas. In the Eastern District of Texas, citizens of Allen, Frisco, Lebanon, The Colony,  
27 and Plano, for example, can purchase the accused products or services through AT&T's website.  
28

## 2. Administrative Difficulties Flowing From Court Congestion

The speed with which a case can come to trial and be resolved affects the public interest calculus. *See, for example, Deep Nines, Inc. v. McAfee, Inc.*, 2009 U.S. Dist. LEXIS 104817 (E.D. Tex.) (“[T]he speed with which a case can come to trial and be resolved may be a factor.”) (citing *In re Genentech, Inc.*, 566 F. 3d 1338, 1347 (Fed. Cir. 2009)). Although the movants argue that “the dockets of the Eastern District of Texas and the Northern District of California are comparably crowded,” a closer look at movants’ own documents reveals a different story. Movants’ Mot. to Transfer at 14. According to the movants’ own cited document, the median time to trial is 20.8 months in the Eastern District of Texas and 25.5 months in the Northern District of California. This represents *an increase of nearly 23%* to the Eastern District of Texas’ time to trial.

Accordingly, transfer to California will likely result in significant delay in a case where time is of the essence. AT&T expects U-verse to pass 30 million living units by the end of 2011, thus entrenching itself further with each passing year based on an infringing product. Mouzari Decl. Ex. 8. The movants should not be permitted to deprive TiVo of the expeditious resolution this Court can provide.

## 3. Familiarity Of The Forum With The Law That Will Govern The Case

As cited above, this Court has already confronted many of the precise issues in this particular case and gained intimate knowledge of the technology at issue and one of the patents-in-suit.

### C. TiVo’s Choice Of Forum Is Entitled To Deference

TiVo has chosen to litigate its claim in the Eastern District of Texas, where sales of AT&T’s allegedly infringing U-verse products undoubtedly occur. TiVo’s choice of forum is one of several factors to be considered under the venue transfer analysis, and is entitled to deference. *Volkswagen I*, 506 F. 3d 380 (“[W]e must still determine the proper degree of deference to be given to a plaintiff’s choice of forum.”). Consequently, unless the movants show that California is clearly more convenient – a showing they have not made – TiVo’s choice of forum should not be disturbed.

## CONCLUSION

The movants have failed to meet their heavy burden of proving that the balance of convenience and justice substantially weighs in favor of transfer. Accordingly, TiVo respectfully requests that this Court deny their motion.



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was served on counsel of record by electronic filing and electronic service this June 28, 2010.

/s/ Azar Mouzari

## Appendix A

**Table C-5.**  
**U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases**  
**Terminated, by District and Method of Disposition,**  
**During the 12-Month Period Ending March 31, 2009**

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
<b>TOTAL</b>	<b>180,181</b>	<b>8.2</b>	<b>44,281</b>	<b>4.8</b>	<b>110,402</b>	<b>8.1</b>	<b>21,191</b>	<b>13.5</b>	<b>4,307</b>	<b>33.1</b>
<b>DC</b>	<b>1,829</b>	<b>8.9</b>	<b>607</b>	<b>6.4</b>	<b>1,142</b>	<b>9.8</b>	<b>54</b>	<b>13.3</b>	<b>26</b>	<b>35.6</b>
<b>1ST</b>	<b>4,685</b>	<b>9.4</b>	<b>1,417</b>	<b>6.1</b>	<b>2,471</b>	<b>9.1</b>	<b>630</b>	<b>17.0</b>	<b>167</b>	<b>27.4</b>
ME	390	7.1	172	4.5	189	7.9	14	13.6	15	17.0
MA	2,241	9.4	773	6.1	1,133	9.6	246	18.3	89	27.5
NH	375	7.7	92	3.6	140	6.1	137	13.5	6	-
RI	410	9.7	137	8.5	196	9.1	68	12.3	9	-
PR	1,269	11.0	243	8.0	813	9.7	165	23.0	48	36.1
<b>2ND</b>	<b>18,388</b>	<b>8.4</b>	<b>4,696</b>	<b>5.4</b>	<b>10,595</b>	<b>8.1</b>	<b>2,799</b>	<b>13.7</b>	<b>298</b>	<b>30.6</b>
CT	1,962	9.4	1,257	7.0	585	13.1	64	25.4	56	29.7
NY,N	1,043	11.2	228	4.8	510	12.5	282	15.0	23	30.8
NY,E	4,581	10.3	855	8.3	2,620	9.2	1,020	13.7	86	31.2
NY,S	9,483	6.9	2,235	4.3	5,777	6.4	1,360	13.0	111	28.4
NY,W	1,086	11.2	106	4.1	895	11.9	69	15.3	16	58.4
VT	233	7.3	15	2.0	208	7.4	4	-	6	-
<b>3RD</b>	<b>23,137</b>	<b>8.9</b>	<b>3,632</b>	<b>4.6</b>	<b>16,172</b>	<b>9.0</b>	<b>3,059</b>	<b>12.4</b>	<b>274</b>	<b>25.1</b>
DE	857	9.3	166	6.3	644	9.4	12	26.1	35	32.2
NJ	6,082	7.9	1,798	5.6	2,711	5.7	1,496	14.1	77	29.1
PA,E	12,476	9.6	545	2.3	10,550	10.1	1,279	10.0	102	18.2
PA,M	1,442	7.2	413	4.2	940	7.6	56	18.5	33	24.1
PA,W	1,881	7.2	565	4.6	1,255	8.0	35	20.6	26	32.5
VI	399	25.8	145	21.8	72	26.7	181	28.4	1	-
<b>4TH</b>	<b>11,515</b>	<b>6.7</b>	<b>2,880</b>	<b>5.7</b>	<b>7,492</b>	<b>6.6</b>	<b>956</b>	<b>8.6</b>	<b>187</b>	<b>20.0</b>
MD	2,438	7.2	807	7.1	1,360	6.2	227	12.9	44	22.0
NC,E	870	8.3	309	6.2	541	9.4	12	10.9	8	-
NC,M	652	8.6	405	5.8	227	14.4	12	13.7	8	-
NC,W	957	5.2	228	6.4	627	4.8	88	13.2	14	33.8
SC	2,268	8.2	463	5.0	1,659	9.0	104	11.3	42	24.6
VA,E	2,142	4.7	296	2.1	1,329	4.1	470	6.5	47	9.4
VA,W	610	8.9	159	6.5	420	9.3	16	11.9	15	19.3
WV,N	382	10.2	173	8.0	193	11.2	11	14.7	5	-
WV,S	1,196	4.6	40	4.6	1,136	4.6	16	15.9	4	-

Table C-5. (March 31, 2009—Continued)

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
<b>5TH</b>	<b>25,132</b>	<b>10.3</b>	<b>4,836</b>	<b>6.6</b>	<b>15,116</b>	<b>8.6</b>	<b>3,356</b>	<b>16.0</b>	<b>1,824</b>	<b>166.4</b>
LA,E	8,485	11.0	63	3.6	5,794	8.5	2,559	16.3	69	19.0
LA,M	2,069	166.4	236	5.4	379	12.3	19	22.8	1,435	166.4
LA,W	1,529	12.3	461	8.2	951	12.9	78	21.3	39	20.2
MS,N	768	13.0	176	9.3	375	11.2	184	17.2	33	23.8
MS,S	2,602	7.1	1,551	8.6	963	5.1	53	19.9	35	20.1
TX,N	2,392	7.2	306	5.8	2,035	7.3	1	-	50	22.7
<b>TX,E</b>	<b>1,830</b>	<b>9.8</b>	<b>377</b>	<b>7.0</b>	<b>1,357</b>	<b>9.9</b>	<b>47</b>	<b>18.9</b>	<b>49</b>	<b>20.8</b>
TX,S	3,443	7.2	1,126	3.9	1,895	8.2	356	10.6	66	18.7
TX,W	2,014	8.4	540	7.2	1,367	8.3	59	15.6	48	17.8
<b>6TH</b>	<b>15,299</b>	<b>9.6</b>	<b>3,943</b>	<b>5.2</b>	<b>7,829</b>	<b>9.6</b>	<b>3,300</b>	<b>13.0</b>	<b>227</b>	<b>22.8</b>
KY,E	1,259	9.2	153	4.9	1,058	9.4	32	18.7	16	23.7
KY,W	986	9.1	307	7.8	587	8.8	77	21.5	15	21.7
MI,E	3,651	8.9	987	4.6	1,229	6.7	1,381	12.7	54	25.9
MI,W	875	7.6	132	2.7	717	8.9	8	-	18	26.4
OH,N	3,361	9.4	817	4.2	1,661	11.7	848	9.8	35	17.6
OH,S	2,291	10.8	788	5.8	812	10.8	662	14.5	29	24.1
TN,E	948	11.5	196	7.2	471	10.3	259	15.9	22	24.2
TN,M	1,090	9.0	251	5.6	810	9.6	9	-	20	16.8
TN,W	838	11.7	312	8.7	484	12.4	24	21.4	18	26.8
<b>7TH</b>	<b>11,898</b>	<b>7.3</b>	<b>3,577</b>	<b>4.7</b>	<b>6,472</b>	<b>7.3</b>	<b>1,655</b>	<b>12.1</b>	<b>194</b>	<b>25.1</b>
IL,N	6,611	6.2	2,300	4.8	3,598	6.4	618	11.5	95	25.5
IL,C	610	9.9	221	7.0	370	11.0	6	-	13	36.2
IL,S	663	10.0	176	4.8	452	10.6	18	24.9	17	25.2
IN,N	1,032	11.2	240	4.4	338	9.4	430	14.6	24	29.0
IN,S	1,680	9.0	412	4.7	842	8.6	404	11.8	22	24.4
WI,E	852	7.8	158	4.4	649	8.3	29	15.1	16	25.9
WI,W	450	4.8	70	2.1	223	3.3	150	7.8	7	-
<b>8TH</b>	<b>13,538</b>	<b>5.5</b>	<b>5,014</b>	<b>2.6</b>	<b>7,323</b>	<b>9.0</b>	<b>1,011</b>	<b>14.4</b>	<b>190</b>	<b>22.4</b>
AR,E	1,302	5.9	223	8.9	1,043	5.3	8	-	28	22.5
AR,W	618	10.6	25	3.1	574	10.7	2	-	17	17.0
IA,N	403	8.7	71	5.2	321	9.0	2	-	9	-
IA,S	576	10.6	147	7.0	291	9.8	121	16.1	17	21.6
MN	6,640	2.9	3,023	2.3	2,751	10.2	835	13.7	31	22.7
MO,E	1,623	6.6	678	4.2	917	8.1	2	-	26	21.5
MO,W	1,464	7.9	679	5.3	745	9.4	12	18.3	28	24.1
NE	509	7.9	28	2.8	444	7.7	19	16.5	18	20.0
ND	203	6.1	81	4.2	116	6.7	2	-	4	-
SD	200	12.3	59	12.5	121	11.0	8	-	12	25.9



Table C-5. (March 31, 2009—Continued)

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
<b>9TH</b>	<b>26,781</b>	<b>7.9</b>	<b>8,453</b>	<b>5.6</b>	<b>15,922</b>	<b>8.1</b>	<b>1,921</b>	<b>14.4</b>	<b>485</b>	<b>23.3</b>
AK	306	8.0	149	6.4	150	10.0	2	-	5	-
AZ	1,934	8.4	698	7.3	1,175	8.5	19	36.2	42	33.2
CA,N	4,009	8.7	800	4.6	2,011	7.1	1,144	14.1	54	25.5
CA,E	1,988	9.2	849	5.9	1,063	10.8	28	31.3	48	27.4
CA,C	9,488	6.7	3,526	5.7	5,707	6.9	110	18.3	145	19.8
CA,S	1,587	6.1	166	3.2	1,008	5.2	385	10.8	28	26.7
HI	511	9.4	289	6.9	162	10.4	38	21.6	22	31.8
ID	338	10.3	38	3.8	285	10.8	12	24.3	3	-
MT	458	10.6	194	7.0	164	10.0	86	16.1	14	18.7
NV	1,615	8.3	515	6.2	1,032	8.9	44	17.1	24	33.4
OR	1,693	11.0	484	8.5	1,152	11.9	9	-	48	21.8
WA,E	465	8.9	135	4.0	292	9.2	27	15.0	11	22.5
WA,W	2,322	7.2	576	4.2	1,694	8.1	14	15.8	38	16.7
GUAM	28	19.3	9	-	17	19.3	1	-	1	-
NMI	39	10.5	25	9.9	10	9.8	2	-	2	-
<b>10TH</b>	<b>7,262</b>	<b>8.5</b>	<b>1,595</b>	<b>5.3</b>	<b>4,416</b>	<b>8.1</b>	<b>1,084</b>	<b>11.9</b>	<b>167</b>	<b>20.3</b>
CO	1,987	6.2	155	2.5	1,734	6.2	63	16.9	35	27.9
KS	1,144	9.1	537	6.9	482	9.4	97	18.1	28	21.8
NM	1,030	9.9	268	5.1	420	10.5	311	11.5	31	22.2
OK,N	573	9.6	74	3.3	467	10.3	17	16.8	15	15.8
OK,E	335	8.9	215	9.7	103	6.6	9	-	8	-
OK,W	1,068	8.3	291	3.4	346	7.8	414	10.1	17	16.1
UT	901	9.2	50	3.4	788	9.2	43	18.2	20	30.4
WY	224	10.8	5	-	76	6.7	130	11.2	13	15.4
<b>11TH</b>	<b>20,717</b>	<b>6.9</b>	<b>3,631</b>	<b>3.4</b>	<b>15,452</b>	<b>7.0</b>	<b>1,366</b>	<b>13.3</b>	<b>268</b>	<b>18.5</b>
AL,N	2,534	11.4	494	7.5	1,999	12.7	21	19.8	20	22.0
AL,M	727	9.1	188	6.8	467	9.0	57	17.0	15	16.1
AL,S	579	7.7	135	7.7	417	7.4	15	15.8	12	15.6
FL,N	818	8.0	98	6.1	684	8.1	11	15.7	25	16.5
FL,M	5,450	7.9	502	5.1	4,789	7.9	101	17.2	58	22.6
FL,S	6,533	4.5	1,646	2.2	4,762	5.3	47	15.5	78	14.9
GA,N	2,982	6.7	350	2.1	1,504	4.9	1,084	11.9	44	26.6
GA,M	676	11.1	155	6.9	504	11.8	5	-	12	23.1
GA,S	418	8.6	63	5.8	326	8.6	25	14.3	4	-

NOTE: MEDIAN TIME INTERVALS NOT COMPUTED WHEN FEWER THAN 10 CASES REPORTED. THIS TABLE EXCLUDES LAND CONDEMNATIONS, PRISONER PETITIONS, DEPORTATION REVIEWS, RECOVERY OF OVERPAYMENTS, AND ENFORCEMENT OF JUDGMENTS. FOR FISCAL YEARS PRIOR TO 2001, THIS TABLE INCLUDED DATA ON RECOVERY OF OVERPAYMENTS AND ENFORCEMENT OF JUDGMENTS.

**Appendix B**

**Potential Non-Party Witnesses Living in, or near, the Eastern District of Texas**

NAME	POTENTIAL TESTIMONY
Wade David Shaw Austin, TX	Mr. Shaw is a named inventor of U.S. patent 5,870,553, which has been cited as prior art in the prosecution history of the '389 and '465 patents. Mr. Shaw may have relevant evidence concerning the scope and content of prior art.
Elbert G. Tindell Dallas, TX 75201-1903	Mr. Tindell is a named inventor of U.S. patent 5,130,792, which has been cited as prior art in the prosecution history of the '389 and '465 patents. Mr. Tindell may have relevant evidence concerning the scope and content of prior art.
Kyle Crawford Last known address is Grand Prairie, TX.	Mr. Crawford is a named inventor of U.S. patent 5,130,792, which has been cited as prior art in the prosecution history of the '389 and '465 patents. Mr. Crawford may have relevant evidence concerning the scope and content of prior art.
Ivan H. Darius Plano, TX.	Mr. Darius is a named inventor of U.S. patent 6,788,882, which has been cited as prior art in the prosecution history of the '389 and '465 patents. Mr. Darius may have relevant evidence concerning the scope and content of prior art.
Charles W. Martin Ft. Worth, TX.	Mr. Martin is a named inventor of U.S. patent 5,214,768, which has been cited as prior art in the prosecution history of the '389 and '465 patents. Mr. Martin may have relevant evidence concerning the scope and content of prior art.
Fredrick S. Reid Plano, TX.	Mr. Reid is a named inventor of U.S. patent 5,214,768, which has been cited as prior art in the prosecution history of the '389 and '465 patents. Mr. Reid may have relevant evidence concerning the scope and content of prior art.
Gary L. Forbus Dallas, TX	Mr. Forbus is a named inventor of U.S. patent 5,214,768, which has been cited as prior art in the prosecution history of the '389 and '465 patents. Mr. Forbus may have relevant evidence concerning the scope and content of prior art.
Steve M. Adams last known location is Garland, TX	Mr. Adams is a named inventor of U.S. patent 5,214,768, which has been cited as prior art in the prosecution history of the '389 and '465 patents. Mr. Adams may have relevant evidence concerning the scope and content of prior art.
C. Pat Shannon Garland, TX	Ms. Shannon is a named inventor of U.S. patent 5,214,768, which has been cited as prior art in the prosecution history of the '389 and '465 patents. Mr. Shannon may have relevant evidence concerning the scope and content of prior art.
Eric A. Pirpich Garland, TX	Mr. Pirpich is a named inventor of U.S. patent 5,214,768, which has been cited as prior art in the prosecution history of the '389 and '465 patents. Mr. Pirpich may have relevant evidence concerning the scope and content of prior art.

**Appendix C**

**Potential Party Witnesses Living Near, the Eastern District of Texas**

NAME	POTENTIAL TESTIMONY
Paul Abraham Jr c/o Baker Botts L.L.P. 620 Hansen Way Palo Alto, CA 94304 (650) 739-7500	Mr. Abraham is Financial Director of AT&T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.
Regina Ackerman c/o Baker Botts L.L.P. 620 Hansen Way Palo Alto, CA 94304 (650) 739-7500	Ms. Ackerman is Executive Director of Network Planning and Engineering of AT&T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.
Bruce Aglietti c/o Baker Botts L.L.P. 620 Hansen Way Palo Alto, CA 94304 (650) 739-7500	Mr. Aglietti is Director, Market Research and Analysis, of AT&T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.
Raj Anbalagan c/o Baker Botts L.L.P. 620 Hansen Way Palo Alto, CA 94304 (650) 739-7500	Mr. Anbalagan is Senior Technical Director of AT&T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.
Donna Angiulo c/o Baker Botts L.L.P. 620 Hansen Way Palo Alto, CA 94304 (650) 739-7500	Ms. Angiulo is Senior Vice President, Chief Financial Officer and Assistant Treasurer of AT&T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.
Bill Archer c/o Baker Botts L.L.P. 620 Hansen Way Palo Alto, CA 94304 (650) 739-7500	Mr. Archer is Chief Marketing Officer of AT&T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.
Terry Bailey c/o Baker Botts L.L.P. 620 Hansen Way Palo Alto, CA 94304 (650) 739-7500	Mr. Bailey is Senior Vice President, Sales Operation and Customer Care, of AT&T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.

NAME	POTENTIAL TESTIMONY
<p>1 Sandra Baker 2 c/o Baker Botts L.L.P. 3 620 Hansen Way 4 Palo Alto, CA 94304 5 (650) 739-7500</p>	<p>Ms. Baker is Executive Director Operations of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>5 Jace Barbin 6 c/o Baker Botts L.L.P. 7 620 Hansen Way 8 Palo Alto, CA 94304 9 (650) 739-7500</p>	<p>Ms. Barbin is Vice President, Direct Marketing, of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>8 David Barton 9 c/o Baker Botts L.L.P. 10 620 Hansen Way 11 Palo Alto, CA 94304 12 (650) 739-7500</p>	<p>Mr. Barton is Chief Technology Officer Security Director of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>11 Carol Beckham 12 c/o Baker Botts L.L.P. 13 620 Hansen Way 14 Palo Alto, CA 94304 15 (650) 739-7500</p>	<p>Ms. Beckham is Vice President, Intellectual Property, of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>14 Marc Bell 15 c/o Baker Botts L.L.P. 16 620 Hansen Way 17 Palo Alto, CA 94304 18 (650) 739-7500</p>	<p>Mr. Bell is Vice President Finance of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>17 Carolyn Billings 18 c/o Baker Botts L.L.P. 19 620 Hansen Way 20 Palo Alto, CA 94304 21 (650) 739-7500</p>	<p>Ms. Billings is Executive Director of Product Marketing Management of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>21 Eric Boyer 22 c/o Baker Botts L.L.P. 23 620 Hansen Way 24 Palo Alto, CA 94304 25 (650) 739-7500</p>	<p>Mr. Boyer is Vice President Operations of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>24 Neil Boyer 25 c/o Baker Botts L.L.P. 26 620 Hansen Way 27 Palo Alto, CA 94304 28 (650) 739-7500</p>	<p>Mr. Boyer is Director Sales and Marketing of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>

NAME	POTENTIAL TESTIMONY
<p>1 James W Callaway 2 c/o Baker Botts L.L.P. 3 620 Hansen Way 4 Palo Alto, CA 94304 5 (650) 739-7500</p>	<p>Mr. Callaway is Senior Executive Vice President, Executive Operations, of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>6 George Cambron 7 c/o Baker Botts L.L.P. 8 620 Hansen Way 9 Palo Alto, CA 94304 10 (650) 739-7500</p>	<p>Mr. Cambron is President and Chief Executive Officer, AT&amp;T Labs, of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>11 Ernest Carey 12 c/o Baker Botts L.L.P. 13 620 Hansen Way 14 Palo Alto, CA 94304 15 (650) 739-7500</p>	<p>Mr. Carey is President, Advanced Network Technologies, of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>16 Jim Carter 17 c/o Baker Botts L.L.P. 18 620 Hansen Way 19 Palo Alto, CA 94304 20 (650) 739-7500</p>	<p>Mr. Carter is President, Executive Director, Customer Analytics, of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>21 James W. Cicconi 22 c/o Baker Botts L.L.P. 23 620 Hansen Way 24 Palo Alto, CA 94304 25 (650) 739-7500</p>	<p>Mr. Cicconi is Senior Executive Vice President, External and Legislative Affairs, of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>26 Catherine M. Coughlin 27 c/o Baker Botts L.L.P. 28 620 Hansen Way Palo Alto, CA 94304 (650) 739-7500</p>	<p>Ms. Coughlin is Senior Executive Vice President and Global Marketing Officer of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>Drucilla Dru Cessac c/o Baker Botts L.L.P. 620 Hansen Way Palo Alto, CA 94304 (650) 739-7500</p>	<p>Ms. Cessac is Director, Investor Relations, of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>Kristen Cogswell c/o Baker Botts L.L.P. 620 Hansen Way Palo Alto, CA 94304 (650) 739-7500</p>	<p>Ms. Cogswell is Director of Development, of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>

NAME	POTENTIAL TESTIMONY
1 2 Kevin Collins 3 c/o Baker Botts L.L.P. 4 620 Hansen Way 5 Palo Alto, CA 94304 6 (650) 739-7500	Mr. Collins is Marketing and Business Development Director, of AT&T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.
5 6 Chanda Collins 7 c/o Baker Botts L.L.P. 8 620 Hansen Way 9 Palo Alto, CA 94304 10 (650) 739-7500	Ms. Collins is Marketing and Director, Marketing Operations, of AT&T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.
9 10 Laura Connelly 11 c/o Baker Botts L.L.P. 12 620 Hansen Way 13 Palo Alto, CA 94304 14 (650) 739-7500	Ms. Connelly is Director, Data Marketing, of AT&T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.
12 13 Richard D. Lindner 14 c/o Baker Botts L.L.P. 15 620 Hansen Way 16 Palo Alto, CA 94304 17 (650) 739-7500	Mr. Lindner is Senior Executive Vice President and Chief Financial Officer of AT&T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.
15 16 Forrest E. Miller 17 c/o Baker Botts L.L.P. 18 620 Hansen Way 19 Palo Alto, CA 94304 20 (650) 739-7500	Mr. Miller is Corporate Strategy and Development of AT&T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.
18 19 Kieran Nolan 20 c/o Baker Botts L.L.P. 21 620 Hansen Way 22 Palo Alto, CA 94304 23 (650) 739-7500	Mr. Nolan is Vice President of AT&T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.
22 23 John T. Stankey 24 c/o Baker Botts L.L.P. 25 620 Hansen Way 26 Palo Alto, CA 94304 27 (650) 739-7500	Mr. Stankey is President and Chief Executive Officer of AT&T Operations, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.
25 26 Randall L. Stephenson 27 c/o Baker Botts L.L.P. 28 620 Hansen Way 620 Hansen Way Palo Alto, CA 94304 (650) 739-7500	Mr. Stephenson is Chairman, Chief Executive Officer and President of AT&T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.

NAME	POTENTIAL TESTIMONY
<p>1 Jeff Weber 2 c/o Baker Botts L.L.P. 3 620 Hansen Way 4 Palo Alto, CA 94304 5 (650) 739-7500</p>	<p>Mr. Weber is Vice President of Product and Strategy of AT&amp;T Operations, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>6 Richard Wellerstein 7 c/o Baker Botts L.L.P. 8 620 Hansen Way 9 Palo Alto, CA 94304 10 (650) 739-7500</p>	<p>Mr. Wellerstein is Vice President, On Demand Programming, of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>11 Dan York 12 c/o Baker Botts L.L.P. 13 620 Hansen Way 14 Palo Alto, CA 94304 15 (650) 739-7500</p>	<p>Mr. York is Executive Vice President, Programming, of AT&amp;T, Inc., and may have information regarding the infringement of the patents-in-suit, and the design, development, manufacture, marketing sale, licensing, distribution and operation of the accused products and digital video recording products and services.</p>
<p>16 Jeffrey Michael Moore 17 c/o Irell &amp; Manella LLP 18 1800 Avenue of the Stars, Suite 900 19 Los Angeles, CA 90067 20 (310) 277-1010</p>	<p>Mr. Moore is sales manager for TiVo, and may have information regarding the patents-in-suit, the accused products, and TiVo's products and business.</p>

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**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1800 Avenue of the Stars, Suite 900, Los Angeles, California 90067-4276.

On June 28, 2010, I served the foregoing document described as **TIVO'S OPPOSITION TO MICROSOFT AND AT&T OPERATIONS' MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA UPON SEVERANCE** by Plaintiff Tivo, Inc. on each interested party, as follows:

SBC Internet Services, Inc.,  
c/o CT Corporation System  
350 N. Saint Paul Street, Suite 2900  
Dallas, TX 75201-4234

AT&T Services, Inc.  
c/o CT Corporation System  
350 N. Saint Paul Street, Suite 2900  
Dallas, TX 75201-4234

AT&T Video Services, Inc.,  
c/o CT Corporation System  
350 N. Saint Paul Street, Suite 2900  
Dallas, TX 75201-4234

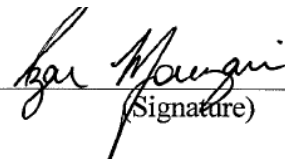
Southwestern Bell Telephone Company  
c/o Timothy A. Whitley  
6500 West Loop Street, Room 5.5  
Bellaire, TX 77401-3503

(BY U.S. MAIL) I caused to be placed a true copy of the foregoing document in sealed envelopes as set forth above. I caused to be placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Irell & Manella LLP, Los Angeles, California. I am readily familiar with Irell & Manella LLP's practice for collection and processing of correspondence for mailing with the United States Mail. Under that practice, the correspondence would be deposited with the United States Mail on that same day in the ordinary course of business.

Executed on June 28, 2010, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Azar Mouzari  
\_\_\_\_\_  
(Type or print name)

  
\_\_\_\_\_  
(Signature)



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

TIVO INC.,	)	
	)	Civil Action No. 2:09-CV-259-DF
Plaintiff,	)	
	)	
vs.	)	
	)	
1. AT&T INC.;	)	
2. AT&T OPERATIONS, INC.;	)	
3. AT&T SERVICES, INC.;	)	
4. AT&T VIDEO SERVICES, INC.;	)	
5. SBC INTERNET SERVICES, INC.;	)	
6. SOUTHWESTERN BELL TELEPHONE	)	<b>Jury Trial Demanded</b>
COMPANY.	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
MICROSOFT CORPORATION,	)	
	)	
Intervenor.	)	
_____	)	

**ORDER DENYING MOTION BY MICROSOFT AND AT&T OPERATIONS TO  
TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA UPON  
SEVERANCE**

On this day came for consideration the Motion by Microsoft Corporation and AT&T Operations, Inc., to Transfer Venue to the Northern District of California Upon Severance pursuant to 28 U.S.C. Section 1404(a). After considering the same, the Court is of the opinion that the motion should be **DENIED**.

It is hereby **ORDERED** that the Motion by Microsoft and AT&T Operations to Transfer Venue to the Northern District of California Upon Severance pursuant to 28 U.S.C. Section 1404(a) is **DENIED**.