

rkramer@feinday.com
M. Elizabeth Day
CA Bar No. 177125 (Admitted E.D. Texas)
eday@feinday.com
David Alberti
CA Bar No. 220625 (*pro hac vice*)
dalberti@feinday.com
Sal Lim
CA Bar No. 211836 (*pro hac vice*)
slim@feinday.com
Russell S. Tonkovich
CA Bar No. 233280 (Admitted E.D. Texas)
rtonkovich@feinday.com
Marc C. Belloli
CA Bar No. 244290 (*pro hac vice*)
mbelloli@feinday.com
Sven Raz
CA Bar No. 222262 (*pro hac vice*)
sraz@feinday.com
Andrew Hamill (Admitted E.D. Texas)
CA Bar No. 251156
ahamill@feinday.com
Jeremiah A. Armstrong
CA Bar No. 253705 (*pro hac vice*)
jarmstrong@feinday.com

**FEINBERG DAY KRAMER ALBERTI
LIM TONKOVICH & BELLOLI LLP**

577 Airport Boulevard, Suite 250
Burlingame, California 94101
Telephone: (650) 514-2747
Facsimile: (650) 618-4368

Defendant DISH Network L.L.C. (“DISH”):

John P. Palmer
NAMAN HOWELL SMITH & LEE
P.O. Box 1470
Waco, TX 76703-1470
(254) 755-4100/Fax: (254) 754-6331
palmer@namanhowell.com

Clement Seth Roberts
CA SBN 209203 (*pro hac*)
croberts@orrick.com
Will H. Melehani
CA SBN 285916 (*pro hac*)

wmelehani@orrick.com
ORRICK HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 90071
(415) 773-5700/Fax: (415) 773-5701
croberts@orrick.com

Alyssa Caridis
CA SBN 260103 (*pro hac*)
acaridis@orrick.com
Margaret Abernathy
CA SBN 300273 (*pro hac*)
mabernathy@orrick.com
ORRICK HERRINGTON & SUTCLIFFE LLP
777 South Figueroa St., Suite 3200
Los Angeles, CA 90017
213.612.2372/Fax: 213.612.2499

Bas de Blank
CA SBN 191487 (*pro hac*)
bdeblank@orrick.com
Lillian J Mao
CA SBN 267410 (*pro hac*)
lmao@orrick.com
Elizabeth R Moulton
CA SBN 286937 (*pro hac*)
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025
650-614-7400/Fax: 650-614-7401

Parth Sagdeo
ORRICK, HERRINGTON & SUTCLIFFE LLP
222 Berkeley St., Suite 2000
Boston, MA 02116
(617) 880-1800/Fax: (617) 880-1801
psagdeo@orrick.com

II. STATEMENT OF JURISDICTION:

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. § 1 *et. seq.* The parties do not contest jurisdiction with respect to BBiTV's infringement claims and

DISH's defenses thereto. DISH contests that venue is convenient in this district.

III. JOINT STATEMENT OF THE CASE:

This is a civil action for patent infringement in which BBiTV accuses DISH of infringing Claims 1, 2, 13, 15 and 17 of U.S. Patent No. 9,648,388 ("388 patent"); Claims 1, 6, 7, 8 and 11 of U.S. Patent No. 10,028,026 ("026 patent"); and Claims 1, 3, 5, 12 and 16 of U.S. Patent No. 9,998,791 ("791 patent") (collectively the "Asserted Claims" of the "Asserted Patents"). BBiTV seeks monetary damages in the form of a reasonable royalty, pre- and post-judgment interest, costs, and an award of its fees under 35 U.S.C. § 285.

DISH denies that it has infringed or infringes any of the Asserted Claims of the Asserted Patents. DISH further contends that the Asserted Claims are invalid. DISH denies that BBiTV is entitled to any relief whatsoever. DISH seeks an award of its fees under 35 U.S.C. § 285.

IV. CONTENTIONS OF THE PARTIES:

A. BBiTV's Contentions

By providing these contentions, BBiTV does not concede that all these issues are appropriate for trial; nor do the contentions below include every detail underlying each contention. BBiTV does not waive any of its pending motions, including any motions in *limine*, motions for summary judgment, *Daubert* motions, and motions to strike, and any other already pending and future motions it may file.

1. Plaintiff BBiTV is the owner of the '388 Patent titled "Video-on-Demand Content Delivery System for Providing Video-on-Demand Services to TV Services Subscribers." DISH has been and is now infringing the '388 Patent under 35 U.S.C. § 271 by offering for sale/lease and/or selling/leasing products and services that provide DISH's subscribers with VOD services using a set-top box ("STB") which are covered by one or more claims of the '388 Patent within the United States. BBiTV accuses DISH's products of infringing claims 1, 2, 13, 15 and 17 of the

'388 Patent.

2. DISH infringes claims 1, 2, 13, 15 and 17 of the '388 Patent, literally and under the doctrine of equivalents, by making, using, selling/leasing and offering for sale/lease the Accused Products in the United States.

3. BBiTV is the owner of the '026 Patent titled "System for Addressing On-Demand TV Program Content on TV Services Platform of a Digital TV Services Provider." DISH has been and is now infringing the '026 Patent under 35 U.S.C. § 271 by offering for sale/lease and/or selling/leasing in the United States products and services that provide DISH's subscribers with video on-demand ("VOD") services using set-top boxes ("STBs") and mobile device apps covered by one or more claims of the '026 Patent within the United States. BBiTV accuses DISH's products of infringing claims 1, 6, 7, 8 and 11 of the '026 Patent.

4. DISH infringes claims 1, 6, 7, 8 and 11 of the '026 Patent, literally and under the doctrine of equivalents, by making, using, selling/leasing and offering for sale/leave the Accused Products in the United States.

5. BBiTV is the owner of the '791 Patent titled "Video-on-Demand Content Delivery Method for Providing Video-on-Demand Services to TV Service Subscribers." DISH has been and is now infringing the '791 Patent under 35 U.S.C. § 271 by offering for sale/lease and/or selling/leasing in the United States products and services that provide DISH's subscribers with VOD services using STBs, covered by one or more claims of the '791 Patent within the United States. BBiTV accuses DISH's products of infringing claims 1, 3, 5, 12 and 16 of the '791 Patent.

6. DISH infringes claims 1, 3, 5, 12 and 16 of the '791 Patent, literally and under the doctrine of equivalents, by making, using, selling/leasing and offering for sale/leave the Accused Products in the United States.

7. DISH indirectly infringes through inducement and contributory infringement claims 1, 2, 13, 15 and 17 of the '388 Patent and claims 1, 6, 7, 8 and 11 of the '026 Patent.

8. BBiTV seeks the following relief:

- a. A judgment that DISH has infringed the '388 Patent;
- b. A judgment that DISH has infringed the '026 Patent;
- c. A judgment that DISH has infringed the '791 Patent;
- d. A judgment and order requiring DISH to pay BBiTV damages under 35 U.S.C. § 284, together with pre-judgment and post-judgment interest;
- e. A judgment and order requiring DISH to pay BBiTV the costs of this action;
- f. A judgment and order declaring this case to be exceptional based on DISH's litigation conduct; and
- g. A judgment and order awarding attorneys' fees to BBiTV under 35 U.S.C. § 285.

9. BBiTV contends that the Asserted Patents are valid, eligible and enforceable and that its claims are not barred or otherwise limited as a result of any of the affirmative defenses raised by DISH.

B. DISH's Contentions

By providing these contentions, DISH does not concede that all these issues are appropriate for trial; nor do the contentions below include every detail underlying each contention. DISH does not waive any of its pending motions, including any motions in *limine*, motions for summary judgment, *Daubert* motions, and motions to strike, and any other already pending and future motions it may file.

10. DISH does not infringe, directly or indirectly, literally or under the doctrine of equivalents, any valid and enforceable claim of the '388 Patent.

11. The asserted claims of the '388 Patent are invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112.

12. DISH does not infringe, directly or indirectly, literally or under the doctrine of equivalents, any valid and enforceable claim of the '026 Patent.

13. The asserted claims of the '026 Patent are invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112.

14. DISH does not infringe, directly or indirectly, literally or under the doctrine of equivalents, any valid and enforceable claim of the '791 Patent.

15. The asserted claims of the '791 Patent are invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112.

16. Collateral estoppel bars BBiTV from arguing the claims of the Asserted Patents are patent eligible.

17. DISH seeks the following relief:

- a. A judgment that DISH does not infringe the '388 Patent;
- b. A judgment that DISH does not infringe the '026 Patent;
- c. A judgment that DISH does not infringe the '791 Patent;
- d. A judgement that the asserted claims of the '388 Patent are invalid;
- e. A judgement that the asserted claims of the '791 Patent are invalid;
- f. A judgement that the asserted claims of the '026 Patent are invalid;
- g. A judgment and order requiring BBiTV to pay DISH the costs of this action;
- h. A judgment and order declaring this case to be exceptional; and
- i. A judgment and order awarding attorneys' fees to DISH under 35 U.S.C. § 285.

V. LIST OF STIPULATED FACTS

18. Plaintiff BBitV is a Delaware corporation with an office at 1164 Bishop Street, Suite 1612, Honolulu, Hawaii 96813.

19. Defendant DISH Network L.L.C. is established under the laws of the State of Colorado, with a principal place of business at 9601 S. Meridian Boulevard, Englewood, Colorado 80112. Defendant DISH Network L.L.C. is an indirectly-held wholly owned subsidiary of DISH Network Corporation.

20. The Asserted Patents are U.S. Patent No. 9,648,388 (“the ’388 patent”); U.S. Patent No. 10,028,026 (“the ’026 patent”); and U.S. Patent No. 9,998,791 (“the ’791 patent”).

21. U.S. Patent No. 9,648,388 titled “Video-on-Demand Content Delivery System for Providing Video-on-Demand Services to TV Services Subscribers” issued on May 9, 2017. It names Milton Diaz Perez as inventor.

22. U.S. Patent No. 10,028,026 titled “System for Addressing On-Demand TV Program Content on TV Services Platform of a Digital TV Services Provider,” issued on July 17, 2018. It names Milton Diaz Perez as inventor.

23. U.S. Patent No. 9,998,791 titled “Video-on-Demand Content Delivery Method for Providing Video-on-Demand Services to TV Service Subscribers,” issued on June 12, 2018. It names Milton Diaz Perez as inventor.

VI. DISPUTED ISSUES OF FACT AND LAW

The parties identify the following issues that remain to be litigated. The parties reserve the right to identify additional factual and legal issues that may arise, including issues raised by the

Court's rulings or any pending motion, or rulings made at the pretrial conference in this action. By providing this statement, the parties do not concede that all of these issues are appropriate for trial. The parties also do not waive any of their pending motions.

A. BBiTV's Positions

1. Whether DISH directly infringes, either literally or under the doctrine of equivalents, claims 1, 2, 13, 15 and 17 of the '388 Patent.

2. Whether DISH directly infringes, either literally or under the doctrine of equivalents, claims 1, 6, 7, 8 and 11 of the '026 Patent.

3. Whether DISH directly infringes, either literally or under the doctrine of equivalents, claims 1, 3, 5, 12 and 16 of the '791 Patent.

4. Whether DISH indirectly infringes claims 1, 2, 13, 15 and 17 of the '388 Patent.

5. Whether DISH indirectly infringes claims 1, 6, 7, 8 and 11 of the '026 Patent.

6. Whether BBiTV has suffered damages in an amount to be determined at trial as a direct and proximate cause of DISH's infringement, which includes an accounting of revenue information for any award for past damages, including pre-judgment and post-judgment interest.

7. What award of damages after trial should be determined by the Court and awarded to BBiTV to compensate for continued infringement occurring after the date of trial.

8. Whether DISH has proven by clear and convincing evidence that claims 1, 2, 13, 15 and 17 of the '388 Patent are invalid.

9. Whether DISH has proven by clear and convincing evidence that claims 1, 6, 7, 8 and 11 of the '026 Patent are invalid.

10. Whether DISH has proven by clear and convincing evidence that claims 1, 3, 5, 12 and 16 of the '791 Patent are invalid.

B. DISH's Positions

11. Whether DISH directly infringes, either literally or under the doctrine of equivalents, claims 1, 2, 13, 15 and 17 of the '388 Patent.

12. Whether DISH directly infringes, either literally or under the doctrine of equivalents, claims 1, 6, 7, 8 and 11 of the '026 Patent.

13. Whether DISH directly infringes, either literally or under the doctrine of equivalents, claims 1, 3, 5, 12 and 16 of the '791 Patent.

14. Whether DISH indirectly infringes claims 1, 2, 13, 15 and 17 of the '388 Patent.

15. Whether DISH indirectly infringes claims 1, 6, 7, 8 and 11 of the '026 Patent.

16. The amount of damages, if any, that BBiTV should be awarded.

17. Whether claims 1, 2, 13, 15 and 17 of the '388 Patent are invalid.

18. Whether claims 1, 6, 7, 8 and 11 of the '026 Patent are invalid.

19. Whether claims 1, 3, 5, 12 and 16 of the '791 Patent are invalid.

20. Whether BBiTV's doctrine of equivalents infringement theories are barred by prosecution history estoppel.

21. Whether claims 1, 6, 7, and 8 of the '026 Patent are entitled to a 2004 priority date.

22. Whether collateral estoppel bars BBiTV from arguing the claims of the Asserted Patents are patent-eligible.

23. Whether the validity of the patents under § 101 should be submitted to the jury.

24. Whether subsidiary fact findings, if any, underlying the § 101 inquiry should be submitted to the jury.

25. Whether the limitation that "reserved area content" is "generated using the received video content, the associated metadata, and the associated plurality of images" in claim 1 of the '026 is a product-by-process limitation.

26. Whether the “wherein” limitation in each of the apparatus claims of the ’338, ’026, and ’269 patents is limiting.

VII. EXHIBIT LIST:

BBiTV’s Exhibit List is attached as **Exhibit 1**.

DISH’s Exhibit List is attached as **Exhibit 2**.

The Parties’ Joint Exhibit List is attached as **Exhibit 3**.

VIII. WITNESS LIST:

BBiTV’s Witness List for the jury trial is attached hereto as **Exhibit 4**.

DISH’s Witness List for the jury trial is attached hereto as **Exhibit 5**.

IX. DEPOSITION DESIGNATIONS:

BBiTV’s Deposition Designations and DISH’s Counter-Designations (and objections to both) are attached as **Exhibit 6**.

DISH’s Deposition Designations and BBiTV’s Counter-Designations (and objections to both) are attached as **Exhibit 7**.

X. AGREED JURY CHARGE:

The Parties’ agreed Requested Jury Charge is attached as **Exhibit 8**.

The Parties’ agreed Requested Jury Charge and Interrogatories is attached as **Exhibit 9**.

XI. VERDICT FORM:

BBiTV’s Proposed Verdict Form is attached as **Exhibit 10**.

DISH’s Proposed Verdict Form is attached as **Exhibit 11**.

XII. PROPOSED VOIR DIRE QUESTIONS:

BBiTV’s Proposed Voir Dire is attached as **Exhibit 12**.

DISH’s Proposed Voir Dire is attached as **Exhibit 13**.

XIII. MEMORANDA ON DISPUTED ISSUES OF LAW:

The Parties have disputed issues of law and fact regarding infringement, invalidity, damages and the exceptional nature of this case. In addition, DISH and BBiTV attach hereto as **Exhibits 14** and **15** their memorandum of law on the submission of § 101 to the jury.

XIV. MOTIONS IN LIMINE:

BBiTV's Motions in *Limine* are attached as **Exhibit 16**.

DISH's Motions in *Limine* are attached as **Exhibit 17**.

XV. LIST OF OTHER PENDING MOTIONS:

DISH's Pending Motions:

1. Motion for Summary Judgment that Broadband iTV's Doctrine of Equivalent Infringement Theory is Barred by Prosecution History Estoppel [D110].
2. Motion for Summary Judgment that U.S. Patent No. 10,026,026 is not Entitled to a 2004 Priority Date [D114].
3. Motion for Summary Judgment of Invalidity Under 35 U.S.C. Section 101 [D115].
4. Motion for Summary Judgment of Non-Infringement of the '026 Patent [D118].
5. Motion to Exclude Testimony of Mr. Roy Weinstein [D112].
6. Motion for Further Construction of the "Wherein" Limitation [D148].

XVI. TRIAL DISCLOSURES:

The parties agree to the following procedures which will govern the disclosure of witnesses, exhibits, deposition testimony and demonstratives to use at trial and the process to identify any objections remaining between the parties with regard to these disclosures:

A. Motions

All motions for judgment as a matter of law pursuant to Fed. R. Civ. P. 50(a) may be brought to the Court orally or in writing. Unless the Court sets alternative deadlines, all

oppositions to motions filed pursuant to Fed. R. Civ. P. 50(b) must be filed within 28 days of the filing of the Motion. All replies in support of the motions must be filed within 21 days of service of any oppositions. The parties reserve their right to seek reasonable extensions of these deadlines, subject to the Court's approval.

B. Exhibits

The Exhibit Lists set forth the parties' exhibits for their respective cases-in-chief. The maximum universe of exhibits to be used in any party's case-in-chief and rebuttal and all objections to the admission of such exhibits shall be identified on the exhibit lists to be submitted to the Court, none of which shall be supplemented without approval of all parties or leave of the Court, on good cause shown. Exhibits not listed will not be admitted unless good cause is shown.

No exhibit will be admitted unless offered into evidence through a witness, who must at least be shown the exhibit and testify about it. Exhibits with noted objections may not be published, displayed, or otherwise shown to the jury until after they have been admitted into evidence.

The parties agree that any description of a document on an exhibit list is provided for convenience only and shall not be used as an admission or otherwise as evidence regarding the listed document or any other listed document.

Legible copies of United States patents and the file prosecution histories of United States patents may be offered and received in evidence in lieu of certified copies thereof, subject to all other objections which might be made to the admissibility of certified copies.

The parties may use each other's exhibits listed on the parties' respective exhibit lists attached hereto to the same effect as though it were on its own exhibit list, subject to all evidentiary objections. Any exhibit, once admitted at trial, may be used equally by either party for any proper purpose in accordance with the Federal Rules of Evidence. However, the listing of a document on

a party's exhibit list is not an admission that such document is relevant or admissible when offered by the opposing party for the purpose that the opposing party wishes to enter the document into evidence. This agreement does not waive any party's objection to the admissibility of that exhibit.

No party will remove a document from its exhibit list without agreement from the other party, unless it provides the other party the opportunity to add the document to its exhibit list.

Subject to all foundational requirements and other objections that might be made to the admissibility of the original, a legible copy of any exhibit may be offered into evidence in lieu of the original. The parties may use electronic versions of exhibits. A party may replace poor print or digital quality copies of exhibits with improved or higher resolution print or digital quality copies, provided the improved or higher resolution copy is provided to the opposing party a reasonable time in advance of its use so that it can be confirmed as otherwise identical.

The parties agree that any exhibit that has already been admitted into evidence at the pre-trial conference, is listed on the joint exhibit list, or is listed on a party's exhibit list as to which no objection remains pending at the time of opening statements, may be shown to the jury during opening statements if the exhibit will be the subject of testimony and explained to the jury by a witness at trial.

None of the foregoing stipulations shall serve as a waiver of any other objections a party may have to any trial exhibits, or abrogate the requirement that the party offering an exhibit into evidence satisfy any other rules governing the admissibility of evidence set forth in the Federal Rules of Evidence, the Federal Rules of Civil Procedure, this Court's Local Rules, the Court's practices, or any other applicable rule or regulation. The parties agree to meet and confer in good faith to resolve objections to trial exhibits prior to their introduction at trial.

C. Demonstrative Exhibits

Demonstrative exhibits that the parties intend to use at trial need not be included on the

parties' respective exhibit lists.

Any demonstratives to be used during opening statements are to be exchanged by 4:00 p.m. two days before the opening statements. If a party intends to create a demonstrative during the opening statement itself, a mock-up of such demonstrative conveying all the details and substance of the demonstrative to be created during the opening statement must be disclosed at the same time as the other opening statement demonstratives. Any physical demonstratives, including any poster boards, must be made available for inspection at the same time and photos or electronic images of the physical demonstratives must be disclosed at the same time along with the other demonstratives.

Any objections to the opening statement demonstratives must be provided by 1:00 p.m. the day after the demonstratives are received (one day before the opening statements). The parties shall meet and confer telephonically in an attempt to resolve any objections to these opening statement demonstratives at 3:00 p.m. If objections cannot be resolved by the parties, the unresolved issues will be raised with the Court in the morning before the demonstratives are to be presented to the jury. Any opening statement demonstratives modified to overcome the other party's objections must be disclosed as soon as possible and no later than 7 p.m. the day before the opening statements. Deposition testimony displayed or played by video during an opening statement is treated as a demonstrative and the procedure for disclosing and objecting to demonstratives in this paragraph apply.

Demonstratives exchanged will not be used by an opposing party prior to being used by the disclosing party.

The parties shall exchange copies of all documentary, graphic, slide, animation, and any other form of demonstratives, including mock ups of demonstratives intended to be created live

during witness presentations with all the details and substance of the to-be-created demonstratives, that they plan to use at trial during direct examination, but not for cross-examinations, by 7:00 p.m. the day before their anticipated use. Any physical demonstratives must be made available for inspection at that time and photos or electronic copies of those physical demonstratives must also be disclosed at that time. Any objections to the demonstrative exhibits shall be provided by 9:00 p.m. The parties shall meet and confer telephonically in an attempt to resolve any objections to the demonstrative at 10:00 p.m. If objections cannot be resolved by the parties, the unresolved issues will be raised with the Court in the morning before the exhibits are to be used in front of the jury. Any changes to the demonstratives made after the parties confer must be disclosed immediately and no later than three (3) hours before Court session starts for the day. Demonstratives exchanged will not be used by an opposing party prior to being used by the disclosing party. This provision does not apply to the demonstratives to be used for cross-examination or adverse direct examination, which need not be provided to the other side in advance of their use.

All demonstratives used in Court (other than those used during cross-examination and closing arguments) must be disclosed according to the schedules above; no hand-written or other demonstratives created or presented during openings, or during witness examinations will be allowed without such scheduled, prior disclosure, except for those permitted by the Court upon a showing of good cause. Any demonstrative that has been disclosed and shown to the jury may be used again without requiring further disclosure. The parties do not need to disclose demonstratives they intend to use during their respective closing arguments.

D. Witnesses

No later than 7:00 p.m. two (2) days before their introduction (*i.e.*, Monday evening for a witness to be called on Wednesday), counsel shall provide to opposing counsel: (1) the names and

order of witnesses to be called (both live and by deposition); and (2) an identification of trial exhibits to be used on direct examination of each witness (both live and by deposition). No later than 7:00 p.m. two (2) days before their introduction, counsel shall also make available for inspection any non-documentary trial exhibits that they plan to use at the trial during direct examination of each witness. The parties shall make their best efforts to follow the specified order of presentation; however, they recognize that the order of presentation may change based on timing or other circumstances.

If counsel intends to change the order of witnesses, they shall notify the other side immediately. The parties also recognize that the COVID-19 pandemic may affect the manner of presentation of witness testimony.

Any objections to the identified exhibits shall be provided by 6:00 p.m. the day before their introduction. The parties shall meet and confer telephonically or in person in an attempt to resolve any objections to the exhibits at 9:00 p.m. that evening. If objections cannot be resolved by the parties, the unresolved issues will be raised with the Court in the morning before the exhibits are to be used in front of the jury.

For any exhibits identified in the 7:00 p.m. exchange that require physical inspection, such inspection shall occur no later than 10:00 p.m. the evening the exhibit is identified. The exhibits subject to the physical inspection must also be made available for inspection at 7:00 pm the day before a party intends to introduce them in Court and any inspection should take place no later than 10:00 pm that same evening. Parties do not need to identify exhibits they intend to use during cross-examination or adverse direct examination.

For any witnesses whose testimony the parties intend to present at trial by deposition, the parties shall identify a list of deposition designations to be played or read to the jury by 7:00 p.m.

two (2) days before the designations are to be played or read to the jury. In other words, if deposition testimony is intended to be played on Wednesday, the corresponding deposition designations must be provided by 7:00 p.m. on Monday. Any objections and counter-designations shall be provided by 10:00 a.m. the following morning. The party introducing the deposition testimony shall be responsible for editing the deposition video to include the testimony and any counter-designation testimony, and remove any attorney objections or colloquy, and provide a final version of the video to the other party by 7:00 p.m. the day before it is to be shown to the jury or state in writing that the deposition testimony will be instead read into the record. The parties shall meet and confer in an attempt to resolve any additional objections to the deposition testimony at 10:00 p.m. If objections cannot be resolved by the parties, the unresolved issues will be raised with the Court in the morning before the testimony is to be presented to the jury. This procedure does not apply to any previously admitted witness deposition testimony the parties intend to present during the closing statements.

To the extent permitted by the Federal Rules of Evidence and rulings from the Court, the parties agree that depositions may be used at trial whether or not the transcripts of such depositions have been signed and filed as set forth in Federal Rule of Civil Procedure 30(b).

Any deposition testimony not specifically identified on a party's deposition designation list may still be used at trial for the purposes of impeachment, if otherwise competent for that purpose.

When a party uses deposition testimony for impeachment, the party may elect to either play the deposition testimony by video or to read the deposition testimony live, unless the Court orders otherwise.

To the extent that the trial is subject to specific time limitations, the time available for each party's trial presentation shall be reduced by the length of its designated and counter-designated

testimony read or played.

E. Agreed Juror Notebook

Twelve (12) copies of an agreed juror notebook containing witness names and color photographs, a list of construed terms, copies of the Asserted Patents, a legal pad and pen will be delivered to the Court by the day before jury selection at noon.

F. Stipulations Regarding Subject Matter Not to Be Presented to the Jury

The parties have stipulated to the following:

1. There will not be any testimony, argument or evidence presented regarding how BBiTV is currently financed as a company or any BBiTV attorney fee agreements. For the avoidance of any doubt, nothing herein prevents DISH from presenting evidence, testimony or argument regarding BBiTV's financial situation generally.

2. There will not be any testimony, argument or evidence regarding whether the Western District of Texas is a popular venue for the purpose of forum shopping.

3. There will not be any testimony, argument or evidence disparaging the Patent Office or its Examiners.

4. There will not be any testimony, argument or evidence about the possibility that damages could be enhanced.

5. There will not be any testimony, argument or evidence suggesting that the possibility of damages or the failure to award damages could have a negative impact on a party, such as leading to the increase in pricing of DISH's products, lead to the loss of any jobs and/or put companies out of business.

6. There will not be any testimony, argument or evidence regarding any withdrawn, non-asserted or dismissed claims or defenses in this action.

7. There will not be any testimony, argument or evidence disparaging any of the

parties and witnesses. Disparaging comments about BBiTV include, but are not limited to, alluding or suggesting that it is “not a real company” or is a “patent troll”, “litigious,” “pirate,” “submarine patent,” “stick up,” “hold up,” “shakedown,” “playing the lawsuit lottery,” and “being in the business of filing lawsuits” or any similarly derogatory terms. For the avoidance of doubt, this stipulation does not prevent any testimony, argument or evidence discussing the fact of whether BBiTV currently makes, sells, or offers for sale any products or technology (or whether or when it has in the past). This stipulation also does not prejudice BBiTV’s motion in *limine* seeking exclusion of additional references and characterizations, including “patent assertion entity” or DISH’s opposition thereto.

8. There will not be any attempt to use the COVID-19 pandemic or related conditions against any party or its witnesses or how any party structures its trial presentation (i.e., through use of video testimony).

9. There will be no testimony, argument or evidence of pretrial discovery or other litigation disputes between the parties.

10. There will be no testimony or argument or evidence as to the '336 patent being found invalid. This stipulation does not prejudice any attempt by DISH to introduce other evidence and findings from the BBiTV - Hawaiian Telecom litigation or BBiTV's right to oppose introduction of such evidence or findings (or motions in *limine* on that issue).

11. There will be no reference to or argument about the co-pending litigations against ATT/DIRECTV and Amazon. This stipulation neither precludes use of materials from those litigations nor opposition to their introduction (or motions in *limine* on that issue).

12. There will be no reference to or argument that BBiTV may file or prosecute hereafter applications, including continuations, on products already on the market or that such

practice would be against Patent Office rules or is improper.

13. There will be no reference to or argument related to the 2011 DISH-TiVo settlement agreement (including the amount of the payment).

14. BBiTV agrees not to proffer evidence of DISH's total revenue as a company or argument that BBiTV is seeking a "small percentage" of DISH's total revenue as a company. This stipulation is without prejudice to BBiTV's ability to introduce evidence of DISH's revenue per subscriber, or argument that BBiTV is seeking a "small percentage" of DISH's per subscriber revenue (or motions in *limine* on that issue).

15. BBiTV will not present a willfulness case. This stipulation is without prejudice to BBiTV's ability to introduce evidence relevant to the claims at issue in this case, including without limitation evidence probative of indirect infringement.

XVII. ESTIMATE OF THE PROBABLE LENGTH OF THE JURY TRIAL AND BENCH HEARING:

The probable length of the jury trial is five (5) days, including jury selection, with each side to be allotted twelve (12) hours for trial, exclusive of jury selection, preliminary and final jury instructions, opening statements and closing arguments. It is DISH's position that while a five day trial is appropriate, for it to be feasible BBiTV needs to reduce the number of asserted patents and claims. A trial of all three currently asserted patents and all fifteen currently asserted claims would require at least ten (10) days.

The Parties propose a voir dire length of 40 minutes each, opening statements of 40 minutes each and closing arguments of 45 minutes each.

This Joint Pre-Trial Order is hereby Approved this ____ day of _____, 2021.

UNITED STATES DISTRICT JUDGE

Dated: October 7, 2021

Respectfully submitted,

By: Robert F. Kramer
FEINBERG DAY KRAMER ALBERTI
LIM TONKOVICH & BELLOLI LLP
Robert F. Kramer (*pro hac vice*)
rkramer@feinday.com
M. Elizabeth Day (*pro hac vice*)
eday@feinday.com
David Alberti (*pro hac vice*)
dalberti@feinday.com
Sal Lim (*pro hac vice*)
slim@feinday.com
Russell S. Tonkovich (*pro hac vice* to be submitted)
rtonkovich@feinday.com
Marc Belloli (*pro hac vice*)
mbelloli@feinday.com
Lawrence G. McDonough (Admitted to Practice)
lmcdonough@feinday.com
Hong Lin (*pro hac vice*)
hlin@feinday.com
Jeremiah A. Armstrong (*pro hac vice*)
jarmstrong@feinday.com
Ryan Dooley (*pro hac vice*)
rdooley@feinday.com
Sven Raz (*pro hac vice*)
sraz@feinday.com
Andrew Hamill (*pro hac vice*)
ahamill@feinday.com
577 Airport Blvd., Suite 250
Burlingame, California 94010
Tel: 650-825-4300
Fax: 650-460-8443

Wesley Hill (Texas Bar No. 24032294)
wh@wsfirm.com
Andrea L. Fair (Texas Bar No. 24078488)
andrea@wsfirm.com
Claire Abernathy Henry (Texas Bar No. 24053063)
claire@wsfirm.com
WARD, SMITH & HILL, PLLC
1507 Bill Owens Parkway
Longview, Texas 75604
Tel: 903-757-6400
Fax: 903-757-2323

Attorneys for Plaintiff
Broadband iTV, Inc.

By: /s/ John P. Palmer

John P. Palmer
State Bar No. 15430600
Naman, Howell, Smith & Lee, PLLC
400 Austin Avenue, 8th Floor
P.O. Box 1470
Waco, TX 76701
Telephone: +1 254 755 4100
Facsimile: +1 254 754 6331
Email: palmer@namanhowell.com

Clement Roberts *pro hac vice*
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard St.
San Francisco, CA 94105-2669
Telephone: 415-773-5700
Email: croberts@orrick.com

Alyssa Caridis *pro hac vice*
Orrick, Herrington & Sutcliffe LLP
777 South Figueroa St., Suite 3200
Los Angeles, CA 90017-5855
Telephone: 213-629-2020
Email: acaridis@orrick.com

Attorneys for Defendant
DISH Network L.L.C.

CERTIFICATE OF SERVICE

I certify that the foregoing document is being served via the Court's CM/ECF system on October 7, 2021, on all counsel of record who have consented to electronic service.

/s Robert F. Kramer