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April 19, 2020

Peter R. Marksteiner
Circuit Executive and Clerk of Court
United States Court of Appeals For the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Re: *Dragon Intellectual Property, LLC v. DISH Network L.L.C.*,
No. 19-1283, 19-1284; Notice of Supplemental Authority

Dear Mr. Marksteiner,

O.F. Mossberg & Sons, Inc. v. Timney Triggers, LLC, No. 2019-1134, 2020 U.S. App. LEXIS 11516 (Fed. Cir. April 13, 2020), shows that the district court's order determining the Appellants not to be "prevailing parties" should be affirmed.

Mossberg confirms that "prevailing party" status is not available in the absence of a "court decision" that satisfies the *CRST*/*Buckhannon* standard. *See* Appellees' Brief 40-43. *Mossberg*, 2020 U.S. App. LEXIS 11516, at *5-*6 (quoting *CRST Van Expedited, Inc. v. E.E.O.C.*, 136 S. Ct. 1642, 1651 (2016) ("a 'defendant has . . . fulfilled its primary objective whenever the plaintiff's challenge is rebuffed, irrespective of the precise reason *for the court's decision*,' and that a 'defendant may prevail even if *the court's final judgment* rejects the plaintiff's claim for a nonmerits reason'") (emphases added by this Court)).

Under *CRST*, the "decision" must accomplish a "material alteration of the legal relationship of the parties," *CRST*, 136 S. Ct. at 1646, still the "touchstone" of the prevailing party inquiry. *See id*. For a defendant to be the prevailing party, the decision must "resolve" the case "in the defendant's favor." *See id*. at 1652, 1653. Moot cases are not "resolved." *See* Appellees' Brief 38-39. Mootness means the court has lost the power to "decide." *See, e.g., Preiser v. Newkirk*,

422 U.S. 395, 401 (1975); *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90 (2013). A mootness termination "has no effect on the parties' legal relationship." *Rice Services Ltd. v. United States*, 405 F.3d 1017, 1028 n.6 (Fed. Cir. 2005); Appellees' Brief 2.

The district court made no "decision" that altered the legal relationship between Dragon and the Appellants. *See* Appellees' Brief 40-43. "The district court vacated the judgments entered in the DISH and Sirius cases. The cases thus came to an end without a 'decision,' and without any action by the district court altering the legal relationships between Dragon and the appellants." *Id.* 43; 24.

After vacatur, as required by the rule of *United States v. Munsingwear, Inc.*, 340 U.S. 36, 40 (1950), there was neither a "decision" nor a possibility of a "decision."

Very truly yours,

Robert E. Freitas

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2020, I filed or caused to be filed the foregoing with the Clerk of the United States Court of Appeals for the Federal Circuit via the CM/ECF system and served or caused to be served a copy on all counsel of record by the CM/ECF system.

/s/Robert E. Freitas
Robert E. Freitas