

No. 23-2134

IN THE
United States Court of Appeals for the Federal Circuit

CLEARPLAY, INC.,

Plaintiff-Appellant,

v.

DISH NETWORK L.L.C.; ECHOSTAR TECHNOLOGIES LLC,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Utah

No. 2:14-cv-00191-DN, Hon. David Nuffer

**APPELLEES' OPPOSITION TO APPELLANT'S MOTION FOR
LEAVE TO FILE REHEARING PETITION OUT OF TIME**

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Pursuant to Fed. R. App. P. 27(a)(3) and Fed. Cir. R. 27(b), Appellees DISH Network L.L.C. and EchoStar Technologies LLC (collectively, DISH) respectfully request that the Court deny Appellant ClearPlay, Inc.’s motion to file a petition for rehearing or rehearing en banc out of time (Dkt. 90). This litigation has been pending since ClearPlay first sued DISH in 2014, Dkt. 87 at 3, and ClearPlay’s motion provides no justification for prolonging the case any further. A rehearing petition may be filed after the deadline only in “extraordinary circumstances,” regardless of whether a party would be prejudiced by the untimely filing. Fed. Cir. R. 26(b)(1). ClearPlay does not come close to meeting that demanding standard.

ClearPlay purports to need extra time because it is “in the process of concluding [its] engagement with principal counsel, the Knobbe Martens firm” and “the need to obtain additional and new counsel wasn’t fully apparent until the afternoon of June 25, 2026.” Dkt. 90 at 8. But Knobbe Martens is not ClearPlay’s only counsel. Three other law firms represent ClearPlay on appeal: Foley & Lardner LLP; Williams Blackhurst Terhune, PLLC; and Ray Quinney & Nebeker P.C. See Dkts. 33, 43, 87. ClearPlay does not even try to explain why those

firms could not have filed a timely petition—or, at the least, a timely extension request. And hiring “additional” counsel is not an “extraordinary circumstance[]” justifying an untimely extension request. *Contra* Dkt. 90 at 8.

Excusing ClearPlay’s delay would also serve no purpose, as ClearPlay’s proposed petition (Dkt. 91) is meritless. The Court’s decision affirming the judgment of noninfringement in this case is correct and nonprecedential, and it neither articulates any new legal principle nor presents any question of exceptional importance. *See* Dkt. 87. Instead, the decision is simply a fact-bound application of settled law on the doctrine of equivalents (and other issues not raised in ClearPlay’s petition). *See id.* at 8-9.

CONCLUSION

The Court should deny ClearPlay’s motion to file a petition for panel rehearing or rehearing en banc out of time.

June 29, 2026

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Respectfully submitted,

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FORM 9. Certificate of Interest

Form 9 (p. 1)
March 2023

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 23-2134

Short Case Caption Clearplay, Inc. v. DISH Network L.L.C.

Filing Party/Entity DISH Network L.L.C.; EchoStar Technologies LLC

Instructions:

1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
3. In answering Sections 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance.
4. Please do not duplicate entries within Section 5.
5. Counsel must file an amended Certificate of Interest within seven days after any information on this form changes. Fed. Cir. R. 47.4(c).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 06/29/2026

Signature: /s/ Eric A. Shumsky

Name: Eric A. Shumsky

FORM 9. Certificate of Interest

Form 9 (p. 2)
March 2023

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. ☒ None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. ☐ None/Not Applicable
DISH Network L.L.C.		DISH DBS Corporation, DISH Orbital Corporation, DISH Network Corporation, Echostar Corporation
EchoStar Technologies LLC (n/k/a DISH Technologies L.L.C.)		DISH Technologies Holding Corporation, DISH Network L.L.C., DISH DBS Corporation, DISH Orbital Corporation, DISH Network Corporation, Echostar Corporation

☐ Additional pages attached

FORM 9. Certificate of Interest

Form 9 (p. 3)
March 2023

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable☒ Additional pages attached

See Attached

5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

☒ Yes (file separate notice; see below) ☐ No ☐ N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☒ None/Not Applicable☐ Additional pages attached

Attachment

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

Orrick, Herrington & Sutcliffe LLP: Alyssa M. Caridis; Alex V. Chachkes; Briggs M. Wright; Frances S. Cheever; I. Neel Chatterjee

Baker Botts L.L.P.: Robert L. Maier; Bethany Salpietra; Eric Faragi; Thomas B. Carter, Jr.

Hatch Law Group, PC: Dillon P. Olson; Lara A. Swensen; Shaunda McNeill; Tyler V. Snow

CERTIFICATE OF COMPLIANCE

I hereby certify that this response complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A). The response is printed in Century Schoolbook 14-point font, and it contains 337 words, excluding the items listed in Federal Rule of Appellate Procedure 27(a)(2)(B).

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ *Eric A. Shumsky*

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Counsel for Appellees