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14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA

16 The CALIFORNIA INSTITUTE OF
TECHNOLOGY, a California
17 corporation,

18 Plaintiff,

19 v.

20 HUGHES COMMUNICATIONS, INC.,
a Delaware corporation, HUGHES
21 NETWORK SYSTEMS, LLC, a
Delaware limited liability company,
22 DISH NETWORK CORPORATION, a
Nevada corporation, DISH NETWORK
23 L.L.C., a Colorado limited liability
company, and DISHNET SATELLITE
24 BROADBAND L.L.C., a Colorado
limited liability company,

25 Defendants.
26

CASE NO. 2:13-CV-07245-MRP
(JEMx)

**PLAINTIFF CALIFORNIA
INSTITUTE OF TECHNOLOGY'S
MOTION FOR LEAVE TO
AMEND THE COMPLAINT**

Hon. Mariana R. Pfaelzer

28

CALTECH EXHIBIT 0004

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Hurn v. Ret. Fund Trust of Plumbing,
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Islamic Republic of Iran v. Boeing Co.,
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3 *Sierra Club v. Union Oil Co. of Cal.*,
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6 *Tourgeman v. Collins Fin. Servs, Inc.*,
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1 **I. INTRODUCTION**

2 Caltech seeks leave to amend its Complaint to name EchoStar Corporation,
3 EchoStar Technologies LLC, and EchoStar Satellite Services LLC. These entities
4 are within the same corporate family as the named Hughes Defendants¹, and they
5 provide set-top box receivers or satellite services to certain of the named Dish
6 Defendants². Caltech further seeks to amend its Complaint to identify additional
7 set-top box receivers³ based on Caltech's already-identified infringement theories.⁴

8 There is a strong presumption favoring liberal amendment of claims created
9 by the Federal Rules and embraced by the Ninth Circuit. Caltech's amendments do
10 not expand the scope of this case to new corporate families or types of products.
11 Nor do the amendments allege new and distinct infringement theories. Rather, as
12 with the previously accused products, all claims are based on the encoding and/or
13 decoding of DVB-S2 compliant signals. For these and other reasons set forth
14 below, Defendants cannot credibly claim any prejudice arising from Caltech's
15 amendment.

16
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18
19 ¹ "Hughes Defendants" include Hughes Communications, Inc. and Hughes
20 Network Systems, LLC.

21 ² "Dish Defendants" include Dish Network Corporation, Dish Network L.L.C.,
22 and dishNET Satellite Broadband L.L.C.

23 ³ Caltech seeks to amend its Complaint to identify the following set-top box
24 receivers: the ViP922, ViP722k, ViP622, ViP612c, ViP612, ViP222k, ViP211z, and
25 ViP211k.

26 ⁴ To avoid confusion, Caltech inserted additional clarifications in its proposed
27 Second Amended Complaint and clarified the factual bases for its claims. In
28 particular, to avoid any confusion over the term "implement the DVB-S2
standard," Caltech revised these assertions to more clearly allege that Defendants'
products and services "encode signals in accord with the DVB-S2 standard and/or
decode such signals."

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