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12
13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
15

16
17 VIASAT, INC.
18

19 Plaintiff,

20 v.

21 SPACE SYSTEMS/LORAL INC.,
22 LORAL SPACE &
COMMUNICATIONS INC.,

23 Defendants/
24 Counterclaim Plaintiffs.

Case No. 3:12-cv-00260-H-WVG

Hon. Marilyn L. Huff

**DECLARATION OF
DR. CHRISTINE MEYER IN
SUPPORT OF DEFENDANT
SPACE SYSTEMS/LORAL, LLC'S
OPPOSITION TO MOTION FOR
PERMANENT INJUNCTION**

I, Dr. Christine Meyer, declare as follows:

A. Conditional Submission.

1. This declaration responds to the Declaration of Daniel J. Slottje filed in support of ViaSat's Motion for Permanent Injunction ("Slottje Declaration"). I understand that Defendant Space Systems/Loral, Inc. ("SS/L") has moved to strike the Slottje Declaration. I offer the following opinions in response to the Slottje Declaration in the event the Court denies Defendants' Motion to Strike and considers the Slottje Declaration.

B. Qualifications.

2. I was retained by counsel for Defendants in this matter to conduct analyses and to provide expert testimony regarding certain damages issues in this matter. I submitted a report on November 25, 2013 regarding the damages suffered by ViaSat, Inc. ("ViaSat") as a result of alleged infringement by SS/L and/or Loral of ViaSat's U.S. Patent Nos. 8,010,043; 8,068,827; and 8,107,875 (collectively, the "asserted patents"); and/or the damages due to Defendants' alleged breach of the Non-Disclosure Agreement between ViaSat and SS/L dated March 8, 2006, as amended, as well as the Contract between ViaSat and Space Systems/Loral, Inc. for the ViaSat Satellite Program dated January 7, 2008.

3. My deposition in this matter was taken on December 3-4, 2013. I submitted a supplemental expert report regarding damages in this matter on January 20, 2014. I testified at the trial of this matter on April 9, 2014.

4. On June 13, 2014, following the trial, ViaSat filed a Motion for Permanent Injunction against SS/L. ViaSat submitted the Slottje Declaration in support of that Motion. Counsel for Defendants has asked me to review the Slottje Declaration and to provide my response to the opinions expressed by Dr. Slottje.

C. Opinions.

5. In his declaration, Dr. Slottje expresses the opinion that ViaSat has suffered irreparable injury attributable to the infringement of the asserted patents by

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2 SS/L. See Slottje Declaration ¶¶ 6-15. He asserts that as a result of that
3 infringement, ViaSat lost customers to its competitor Hughes Network Systems
4 (“Hughes”) and that “the loss of these subscribers also represents lost market share,
5 which has value beyond the profits from these specific customers.” See Slottje
6 Declaration ¶ 12. Dr. Slottje further opines, in a conclusory fashion, “greater
7 market share can enable increasing economies of scale, increased brand
8 recognition, and long-term customer relationships. . . . This harm to ViaSat would
9 be difficult, if not impossible, to quantify or to compensate retroactively, as the
10 opportunity for prolonged market leadership is now lost.” *Id.*

11 6. In preparing my rebuttal reports and trial testimony, I thoroughly
12 reviewed the two expert reports submitted by Dr. Slottje prior to trial. I also was in
13 attendance at trial when Dr. Slottje testified on damages. The opinions he now
14 expresses in his declaration were not set forth in any of his expert reports or in his
15 trial testimony. To the contrary, Dr. Slottje testified at trial that monetary damages
16 would put ViaSat in the same position it would have occupied had there been no
17 infringement by SS/L. See Trial Trans. 1760:24 – 1761:8. In other words, Dr.
18 Slottje’s opinion was that monetary damages would make ViaSat whole.

19 7. I disagree with Dr. Slottje’s new and inconsistent opinions. Lost
20 profits and lost market share can be quantified in damages. Dr. Slottje asserted this
21 and quantified these damages at trial.

22 8. In a conclusory fashion, Dr. Slottje now states that the loss of
23 customers prevented ViaSat from “fully achieving” “increasing economies of scale,
24 increased brand recognition, and long-term customer relationships.” See Slottje
25 Declaration ¶12. However, he provides no support or evidence for this statement.

26 9. To start with, Dr. Slottje does not describe exactly how ViaSat would
27 have benefited from economies of scale or how SS/L’s infringement prevented
28 ViaSat from reaping such benefits from economies of scale. Even if SS/L’s
infringement did impact ViaSat’s ability to benefit from economies of scale, such

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2 harm is typically in the form of lost cost savings, which is both quantifiable and
3 reparable. I note that ViaSat-1 has a maximum capacity of 1.1 million customers
4 and is expected to reach maximum capacity in the middle of 2016. See Trial Trans.
5 1773:1-8, 1828:6-11. As such, ViaSat will not gain any additional benefits from
6 economies of scale once ViaSat-1 reaches maximum capacity, and the harm
7 suffered by ViaSat, if any, could be quantified by analyzing the delay in obtaining
8 any cost savings from economies of scale.

9 10. Similarly, Dr. Slottje provides no evidence that ViaSat has suffered –
10 or will suffer – a decrease in brand recognition due to SS/L’s infringement. First,
11 Dr. Slottje does not even identify what brand would have suffered a decrease in
12 brand recognition. Because his assertion is so conclusory, it is unclear if he is
13 referring to ViaSat’s brand as related to satellite ground equipment, the brand of its
14 Exede satellite internet service, or some other brand. In any event, Dr. Slottje has
15 cited no evidence to support his opinion.

16 11. Furthermore, there is no evidence that SS/L’s infringement damaged
17 long-term customer relationships or that the damage to long-term customer
18 relationships irreparably harmed ViaSat. Again, Dr. Slottje does not indicate what
19 customers he is referring to: customers for ViaSat’s Exede Internet service or
20 customers such as Dish Network that rebrands ViaSat’s internet services.
21 Regardless of what Dr. Slottje may have had in mind, he cites no evidence of
22 irreparable harm from damaged long-term customer relationships.

23 12. Dr. Slottje further opines that the profits that ViaSat has foregone due
24 to its loss of customers “cannot be reinvested in further research and development.”
25 See Slottje Declaration ¶ 13. However, Dr. Slottje provides no evidence supporting
26 his statement and does not describe what research and development ViaSat was
27 unable to undertake. In fact, according to ViaSat’s Annual Report, expenditures on
28 independent research and development, which “comprises research and
development not directly funded by a third party,” increased from \$25.0 million in

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2 fiscal year 2012 to \$35.4 million and \$60.7 million in fiscal years 2013 and 2014,
3 respectively. See ViaSat Form 10-K Annual Report, Filed May 27, 2014, p. 9.
4 Additionally, the amount of independent research and development pales in
5 comparison with the amount of research and development funded by government
6 and commercial customers. ViaSat received \$228.2 million and \$286.4 million in
7 research expenses funded by government and commercial customers in fiscal years
8 2012 and 2013, respectively. See ViaSat Form 10-K Annual Report, Filed May 24,
9 2013, p. 9.

10 13. Dr. Slottje also seems to imply that ViaSat-2 has been delayed two
11 years due to Jupiter-1, but he cites no evidence to support such an implication, and
12 there was no evidence of such provided in his reports. See Slottje Declaration ¶ 13.

13 14. Dr. Slottje next takes the position that “[a]lthough the consequences I
14 have described above flowed from the manufacture and sale of the infringing
15 Jupiter-1 satellite, such consequences are likely to recur if SS/L is permitted to sell
16 other satellites not colorably different from the Jupiter-1 satellite.” See Slottje
17 Declaration ¶ 14. That is unsupported speculation. Dr. Slottje cannot predict the
18 future market landscape of the changing satellite internet industry or the larger
19 broadband internet industry.

20 15. Dr. Slottje further takes the position that ViaSat is attempting to enter
21 the satellite design market to compete with SSL. See Slottje Declaration ¶ 15. He
22 bases this statement on “ViaSat’s efforts to design a satellite solution for NBN,”
23 and cites his October 25, 2013 expert report at pages 13-14. Those pages of Mr.
24 Slottje’s expert report discuss an instance in which NBN solicited bids for the
25 design of a satellite broadband system including both ground and space
26 components. According to Mr. Slottje’s expert report, ViaSat submitted a bid
27 according to which ViaSat would provide “long term ground network support and
28 satellite services,” and would partner with satellite manufacturer Astrium to
construct the satellite. This anecdote does not support Mr. Slottje’s argument that

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2 ViaSat and SSL now compete in the satellite design market or that such
3 “competition” weighs in favor of a finding of irreparable harm.

4 I declare under penalty of perjury under the laws of the United States that the
5 foregoing is true and correct.
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7 Executed this 11th day of July, 2014 at White Plains, New York.
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Christine Meyer
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