

1 David S. Bloch (SBN: 184530)  
dbloch@winston.com  
2 WINSTON & STRAWN LLP  
101 California Street  
3 San Francisco, CA 94111-5840  
Telephone: (415) 591-1000  
4 Facsimile: (415) 591-1400

5 Michael Brody (*Pro Hac Vice to be submitted*)  
mbrody@winston.com  
6 WINSTON & STRAWN LLP  
275 Middlefield Rd., Suite 205  
7 Menlo Park, CA 94025  
Telephone: (650) 858-6500  
8 Facsimile: (650) 858-6550

9 Krishnan Padmanabhan (*Pro Hac Vice to be submitted*)  
kpadmanabhan@winston.com  
10 WINSTON & STRAWN LLP  
200 Park Avenue  
11 New York, NY 10166-4193  
Telephone: (212) 294-6700  
12 Facsimile: (212) 294-4700

13 Joshua L. Collins (*Pro Hac Vice to be submitted*)  
jllcollins@winston.com  
14 WINSTON & STRAWN LLP  
1111 Louisiana, 25th Floor  
15 Houston, TX 77002-5242  
Telephone: (713) 651-2600  
16 Facsimile: (713) 651-2700

17 Attorneys for Plaintiff  
TIME WARNER CABLE INC.

18

19 **UNITED STATES DISTRICT COURT**  
20 **NORTHERN DISTRICT OF CALIFORNIA**

21

TIME WARNER CABLE INC.,

22

Plaintiff,

23

v.

24

25 OPENTV, INC., NAGRAVISION SA, and  
KUDELSKI SA,

26

Defendants.

27

28

**Case No. 3:16-cv-02433**

**TIME WARNER CABLE INC.'S  
COMPLAINT FOR DECLARATORY  
JUDGMENT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Time Warner Cable Inc. (“TWC”), for its Complaint for Declaratory Judgment  
2 against Defendants OpenTV, Inc. (“OpenTV”), NagraVision SA (“NagraVision”), and Kudelski SA  
3 (“Kudelski”) (each a “Defendant” and collectively, “Defendants”), alleges as follows:

4 **NATURE OF THE ACTION**

5 1. This is an action for declaratory judgment under the Declaratory Judgment Act, 28  
6 U.S.C. § 2201 *et seq.*, and the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* TWC seeks a  
7 declaration of non-infringement for each of United States Patent Nos. 5,907,322 (the “’322 Patent”),  
8 6,530,082 (the “’082 Patent”), 6,678,463 (the “’463 Patent”), 6,895,595 (the “’595 Patent”),  
9 6,985,586 (the “’586 Patent”), 7,055,169 (the “’169 Patent”), 7,243,139 (the “’139 Patent”),  
10 7,536,704 (the “’704 Patent”) and 7,669,212 (the “’212 Patent”). Taken together, the foregoing  
11 patents are referred to herein as the “Patents-in-Suit.”

12 **THE PARTIES**

13 2. TWC is a company organized and existing under the laws of Delaware with its  
14 principal place of business at 60 Columbus Circle, New York, New York 10023.

15 3. OpenTV is a corporation organized and existing under the laws of Delaware with its  
16 principal place of business at 275 Sacramento Street, San Francisco, California 94111. Upon  
17 information and belief, OpenTV is, directly or indirectly, a wholly owned subsidiary of Kudelski.

18 4. Upon information and belief, NagraVision is a Swiss company with a principal place  
19 of business at Route de Genève 22, 1033 Cheseaux-sur-Lausanne, Switzerland. Upon information  
20 and belief, NagraVision is, directly or indirectly, a wholly owned subsidiary of Kudelski.

21 5. Upon information and belief, Kudelski is a Swiss company with a principal place of  
22 business at Route de Genève 22, 1033 Cheseaux-sur-Lausanne, Switzerland.

23 **JURISDICTION AND VENUE**

24 6. This action arises under the Patent Laws of the United States of America, 35 U.S.C.  
25 § 1 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* This Court has subject  
26 matter jurisdiction over the action under 28 U.S.C. §§ 1331 and 1338, based on the existence of an  
27 actual controversy between TWC, on the one hand, and Defendants, on the other hand, for claims  
28 under the Patent Laws. In particular, there is an active case or controversy about whether or not

1 TWC infringes any claims of each of the Patents-in-Suit. The existence of this controversy is  
2 demonstrated by, for example, Defendants' meetings with representatives of TWC on January 8,  
3 2016, March 22, 2016, and April 26, 2016, during which Defendants alleged infringement of each of  
4 the Patents-in-Suit in an attempt to force TWC to license its patent portfolio and threatened litigation  
5 if a license was not agreed upon. See Exhibit A (Jan. 14, 2016 correspondence); Exhibit B (Mar. 22,  
6 2016 correspondence); Exhibit C (Apr. 12, 2016 correspondence). On information and belief, all of  
7 the Patents-in-Suit are owned by Kudelski subsidiary OpenTV, with the exception of the '586  
8 Patent, which is owned by Kudelski subsidiary Nagravision.

9 7. This Court has personal jurisdiction over Defendants pursuant to the laws of the State  
10 of California, including California's Long Arm Statute, California Code of Civil Procedure § 410.10.

11 8. The Court also has personal jurisdiction over each of the Defendants because each of  
12 the Defendants have purposely conducted their patent enforcement activities in this District and  
13 towards residents of this District, and purposely submitted themselves to the jurisdiction of, or  
14 purposely availed themselves of, the Courts in this District. In particular, on information and belief,  
15 Defendants' enforcement efforts have included: (a) hiring counsel who reside and practice in this  
16 District (such as Ian Feinberg of Feinberg Day Alberti & Thompson LLP, with respect to the  
17 licensing negotiations between TWC and Defendants; Robert F. McCauley from Finnegan,  
18 Henderson, who is counsel for OpenTV, Nagravision, and another Kudelski subsidiary in *OpenTV*,  
19 *Inc.*, *Nagravision S.A.* and *Nagra France S.A.S. v. Apple, Inc.*, N.D. Cal. Case No. 3:15-cv-02008, as  
20 well as for OpenTV and Nagravision in *OpenTV, Inc. and Nagravision S.A. v. Apple, Inc.*, N.D. Cal  
21 Case No. 3:14-cv-01622; and John Edwards at Kirkland & Ellis, who was counsel of record for  
22 OpenTV in *OpenTV, Inc. v. Netflix, Inc.*, N.D. Cal. Case No. 3:14-cv-01525, and for both OpenTV  
23 and another Kudelski subsidiary in *OpenTV, Inc. and Nagra France SAS v. Netflix, Inc.*, N.D. Cal.  
24 Case No. 3:14-cv-01723) for the express purpose of enforcing their patent rights; (b) filing lawsuits  
25 and/or causing lawsuits to be filed in this District to enforce patent rights, including enforcement of  
26 the '169 Patent and '565 Patent asserted against TWC (*see, e.g., OpenTV, Inc. and Nagravison SA. v.*  
27 *Apple Inc.*, N.D. Cal. Case No. 3:14-cv-01622 and *OpenTV, Inc., Nagravision S.A. and Nagra*  
28 *France S.A.S. v Apple, Inc.*, N.D. Cal. Case No. 3:15-cv-02008); and (c) prosecuting (and/or causing

1 to be prosecuted) an action to enforce patents, including at least the '169 Patent asserted against  
2 TWC, against Netflix in a case that was originally filed in Delaware and then transferred to this  
3 District (*see OpenTV, Inc. v. Netflix Inc.*, N.D. Cal. Case No. 3:14-cv-01525).

4 9. On information and belief, OpenTV employs more than 200 people in the United  
5 States. The Kudelski Group website identifies each of OpenTV's United States Offices as residing  
6 within this district. In addition, the Kudelski Group as a whole, including Nagravision, employs  
7 nearly 400 people within the United States. The Kudelski Group website identifies only four United  
8 States offices, of which three offices are in California and two are within this District.

9 10. On information and belief, Defendants have engaged in licensing negotiations with  
10 numerous companies located in this District and have extended licenses to Cisco Systems, Inc., in  
11 January 2014, and Google Inc., in April 2015, both of which reside within this District.

12 11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because OpenTV  
13 resides in this District and is subject to the Court's personal jurisdiction. In addition, venue is proper  
14 in this Court pursuant to 28 U.S.C. § 1391(c) because Kudelski SA and Nagravision SA are foreign  
15 corporations that may be sued in any jurisdiction where the action may be brought with respect to  
16 OpenTV.

### 17 **THE PATENTS-IN-SUIT**

#### 18 **A. U.S. Patent No. 5,907,322**

19 12. The '322 Patent is entitled "Television event marking system." A copy of the '322  
20 Patent is attached hereto as Exhibit D. The '322 Patent states on its face that it was issued to Gregory  
21 H. Kelly, Kenneth Y. Goldberg, John S. Gee, Philip D. Levinson, and Scott Fullam. The original  
22 assignee is listed as Catch TV Acquisition Corp. The U.S. Patent and Trademark Office lists  
23 OpenTV, Inc. as the current assignee.

24 13. The application that issued as the '322 Patent was filed on October 16, 1996, and the  
25 United States Patent and Trademark Office issued the '322 Patent on May 25, 1999.

26 14. Defendants have alleged that at least Claim 7 of the '322 Patent is infringed by  
27 TWC's Remote DVR Manager that purportedly provides an Internet (web) interface for viewing  
28 iconic representations of recorded content.

1           **B. U.S. Patent No. 6,530,082**

2           15. The '082 Patent is entitled "Configurable monitoring of program viewership and  
3 usage of interactive applications." A copy of the '082 Patent is attached hereto as Exhibit E. The  
4 '082 Patent states on its face that it was issued to Eric E. Del Sesto, Timothy V. Travaille,  
5 Christopher J. Michel, and Jana J. Paquette. The original Assignee is listed as Wink  
6 Communications, Inc. The U.S. Patent and Trademark Office lists OpenTV, Inc. as the current  
7 assignee.

8           16. The application that issued as the '082 Patent was filed on April 30, 1998, and the  
9 United States Patent and Trademark Office issued the '082 Patent on March 4, 2003.

10          17. Defendants have alleged that at least Claim 27 of the '082 Patent is infringed by  
11 selective polling of customer premises equipment used in association with TWC's purported  
12 audience panel measurement functionality.

13           **C. U.S. Patent No. 6,678,463**

14          18. The '463 Patent is entitled "System and method for incorporating previously  
15 broadcast content into program recording." A copy of the '463 Patent is attached hereto as Exhibit F.  
16 The '463 Patent states on its face that it was issued to Ludovic Pierre and Debra Hensgen. The  
17 original assignee is listed as OpenTV Corp. The U.S. Patent and Trademark Office lists OpenTV,  
18 Inc. as the current assignee.

19          19. The application that issued as the '463 Patent was filed on August 2, 2000, and the  
20 United States Patent and Trademark Office issued the '463 Patent on January 13, 2004.

21          20. Defendants have alleged that at least Claim 11 of the '463 Patent is infringed by  
22 TWC digital video recorder ("DVR") set-top boxes that, purportedly, upon receiving a request to  
23 record a program while already buffering that program, determine whether they have available space  
24 to store the recording.

25           **D. U.S. Patent No. 6,895,595**

26          21. The '595 Patent is entitled "Module manager for interactive television system." A  
27 copy of the '595 Patent is attached hereto as Exhibit G. The '595 Patent states on its face that it was  
28 issued to Andrew Goodman and Jean Rene Menand. The original assignee is listed as OpenTV, Inc.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.