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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

COMCAST CABLE COMMUNICATIONS, LLC,

Plaintiff,

v.

OPENTV, INC., and NAGRAVISION SA,

Defendants.

Case No. 3:16-cv-6180-WHA

SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT OF PATENT NONINFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiff Comcast Cable Communications, LLC ("Plaintiff" or "Comcast") alleges for its Complaint against Defendants OpenTV, Inc., and Nagravision SA ("Defendants") as follows:

NATURE OF THE ACTION

1. This action arises under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

2. Comcast brings this action for a declaration that it does not infringe any claim of Defendants' U.S. Patent Nos. 7,900,229 (the "'229 Patent"); 6,895,595 (the "'595 Patent"); 6,725,461 (the "'461 Patent"); 5,907,322 (the "'322 Patent"); 6,985,586 (the "'586 Patent"); 6,345,389 (the "'389 Patent"); 6,799,328 (the "'328 Patent"); 7,028,327 (the "'327 Patent"); 7,243,139 (the "'139 Patent"); and 6,530,082 (the "'082 Patent") (collectively "the Asserted Patents").

PARTIES

3. Comcast Cable Communications, LLC is a Limited Liability Company organized and existing under the laws of the State of Delaware with its principal place of business in Philadelphia, Pennsylvania. Comcast provides video, high-speed Internet, and voice services to residential and business customers under the XFINITY brand, including in this judicial district.

4. On information and belief, OpenTV, Inc. ("OpenTV"), is a Delaware corporation with its principal place of business and headquarters at 275 Sacramento Street, San Francisco, California.

5. On information and belief, Nagravision SA ("Nagravision") is a Swiss corporation with its headquarters and principal place of business in Cheseaux-sur-Lausanne, Switzerland. Upon information and belief, Nagravision's principal place of business in the United States is in El Segundo, California.

6. On information and belief, OpenTV and Nagravision are subsidiaries of Kudelski SA, a Swiss conglomerate. On information and belief, Nagra USA, Inc. ("Nagra USA"), is a New York corporation with its principal place of business and headquarters in San Francisco, California, and is also a subsidiary of Kudelski SA. Kudelski SA and its subsidiaries are referred to as the "Kudelski Group."

7. The Kudelski Group has identified monetizing its intellectual property as one of its priorities and has made repeated use of the courts of this district to attempt to enforce its patents.

JURISDICTION

8. This is an action for declaratory relief under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq*.

9. This Court has personal jurisdiction because, on information and belief, Defendants have, and have had, continuous and systematic contacts within the State of California, including this district. On information and belief, the headquarters and principal place of business of OpenTV is located in San Francisco, California and Nagravision's principal place of business in the United States is located in El Segundo, California. Further, on information and belief, Defendants have purposefully directed business activities at this district and residents of this district have used services and products offered or sold by Defendants.

10. For example, on information and belief, Defendants' enforcement efforts have included hiring counsel who reside and practice in this district (such as Ian Feinberg of Feinberg Day Alberti & Thompson LLP, with respect to licensing negotiations between Time Warner Cable, Inc., and Defendants; Robert F. McCauley from Finnegan, Henderson, who is counsel for OpenTV, Nagravision, and another Kudelski subsidiary in *OpenTV, Inc., Nagravision S.A. and Nagra France S.A.S. v. Apple, Inc.*, N.D. Cal. Case No. 3:15-cv-02008, as well as for OpenTV and Nagravision in *OpenTV, Inc. and Nagravision S.A. v. Apple, Inc.*, N.D. Cal Case No. 3:14-cv-01622; and John Edwards at Kirkland & Ellis, who was counsel of record for OpenTV in *OpenTV, Inc. v. Netflix, Inc.*, N.D. Cal. Case No. 3:14-cv-01525, and for both OpenTV and another Kudelski subsidiary in *OpenTV, Inc. and Nagra France SAS v. Netflix, Inc.*, N.D. Cal. Case No. 3:14-cv-01723) for the express purpose of enforcing their patent rights.

11. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because this is a civil action arising under the Patent Act. This Court has subject matter jurisdiction over Comcast's declaratory judgment claims pursuant to 28 U.S.C. §§ 2201 and 2202 because an immediate and substantial controversy exists between Comcast and Defendants

with respect to whether the Asserted Patents cover Comcast's activities based on Defendants' communications with Comcast asserting nine of the Asserted Patents as well as Defendants' patent portfolio as a whole, including among other things, Conditional Access Systems, Defendants' pattern of intellectual property assertion against others, and Defendants' assertion that Comcast infringes U.S. Patent No. 7,725,740 (the "'740 Patent"), U.S. Patent No. 7,725,720 (the "'720 Patent"), and U.S. Patent No. 8,356,188 (the "'188 Patent") in the U.S. District Court for the Eastern District of Texas—*Nagravision SA v. Comcast Corp. et al.*, Case No. 2:16-cv-1362 (E.D. Tex. Dec. 5, 2016) ("EDTX Complaint").

12. On December 19, 2012, OpenTV filed an action for patent infringement against Netflix, Inc., in the United States District Court for the District of Delaware. OpenTV's complaint alleged willful infringement by Netflix of seven U.S. patents. In support of its willful infringement allegation, OpenTV averred that it had notified Netflix of the OpenTV patent portfolio as well as several specific patents that it asserted may be relevant to Netflix's services.

13. On March 31, 2014, the District Court for the District of Delaware transferred OpenTV's action against Netflix to this judicial district.

14. On April 9, 2014, OpenTV and Nagravision filed an action for patent infringement against Apple Inc., in this district and alleged willful infringement of a number of patents, including the '229 Patent. OpenTV, Nagravision, and Nagra France S.A.S. filed a second action against Apple Inc., in this district on May 5, 2015, alleging willful infringement of five additional patents, including the '740 Patent.

15. On October 30, 2015, OpenTV and Nagra France S.A.S. filed an action for patent infringement against Verizon Communications, Inc., asserting willful infringement by Verizon of a number of patents, including the '139 Patent and the '229 Patent. In support of its willful infringement allegation, OpenTV and Nagra France averred that they had contacted Verizon regarding a license to the patents and presented Verizon with details of its alleged infringement.

16. On January 21, 2016, Yahoo! Inc. filed an action for declaratory judgment of noninfringement in this district against Kudelski SA and OpenTV, Inc., alleging that those

parties threatened litigation against Yahoo! and accused it of infringement of a number of patents, including the '327 patent also at issue here.

17. Similarly, on May 4, 2016, Time Warner Cable, Inc. ("TWC"), filed an action in this district for declaratory judgment of noninfringement against OpenTV, Inc., Nagravision SA, and Kudelski SA, alleging the same pattern of threatened litigation against TWC, including accusations of infringement of nine patents, including the '322, '082, '595, '586, and '139 patents also at issue here.

18. On October 1, 2015, Clay Gaetje, who identified himself as Vice President for Licensing at Nagra/Kudelski, e-mailed David Marcus, Comcast's Chief Patent Counsel. Mr. Gaetje used an "@nagra.com" email address and, on information and belief, Mr. Gaetje's LinkedIn profile identifies his current position as "VP – IP Licensing at Nagra."

19. In his October 1, 2015, email, Mr. Gaetje asserted that "we have attempted to contact you to start a dialogue about the licensing of Kudelski's patent portfolio to certain aspects of Comcast's pay television and over-the-top video services." Mr. Gaetje stated that "there is another company with whom we will soon either conclude an agreement or litigate" and that "if Comcast meaningfully engages with us beforehand, we can maintain Comcast's status as an early licensee. If not, then any deal we strike with Comcast will be largely dictated by the other license or the litigation."

20. On November 3, 2015, following a response from Mr. Marcus, Mr. Gaetje stated that Kudelski Group's "goal" was to enter into discussions toward a "patent cross license between the companies," and offered to demonstrate the alleged "applicability of a representative set of our patents to Comcast's pay television service (particularly as implemented with respect to set-top boxes provided by Pace), TV Everywhere services such as XFINITY TV Go, NBC Universal streaming services, and other services," including by providing "detailed claim charts." The email also stated that Nagra recently filed litigation against Verizon and enclosed that complaint.

21. On November 12, 2015, Mr. Gaetje emailed Mr. Marcus and attached a presentation for Mr. Marcus' review. In the email Mr. Gaetje asserted that the presentation

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