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19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA  
21 SAN FRANCISCO DIVISION

22 OPENTV, INC., NAGRAVISION S.A., and  
NAGRA FRANCE S.A.S.

23 Plaintiffs,

24 v.

25 APPLE INC.,

26 Defendant.

CASE NO. 5:15-cv-02008-EJD (NMC)

**DECLARATION OF JACOB A.  
SCHROEDER IN SUPPORT OF  
PLAINTIFFS' OPP. TO DEFENDANT  
APPLE INC.'S MOTION TO STAY  
PENDING COMPLETION OF USPTO  
PROCEEDINGS**

Date: September 15, 2016  
Time: 9:00 am  
Judge: Hon. Edward J. Davila  
Courtroom 4, 5th Floor

1 I, Jacob A. Schroeder, declare as follows:

2 1. I am an attorney licensed to practice in the State of California and admitted before  
3 this Honorable Court. I am an attorney with Finnegan, Henderson, Farabow, Garrett & Dunner, LLP,  
4 counsel of record for OpenTV, Inc., Nagravision S.A., and Nagra France S.A.S. (collectively  
5 “OpenTV”) in the above-titled action. I have personal knowledge of the facts contained in this  
6 Declaration, and if called upon to do so, I could and would testify competently thereto.

7 2. I submit this Declaration in support of Plaintiffs’ Opposition to Defendant Apple  
8 Inc.’s Motion to Stay Pending Completion of USPTO Proceedings.

9 3. Attached as Exhibit 1 is a true and correct copy the “Patent Trial and Appeal Board  
10 Motion to Amend Study” dated April 30, 2016, *available at*  
11 <http://www.uspto.gov/sites/default/files/documents/2016-04-30%20PTAB%20MTA%20study.pdf>.

12 4. Attached as Exhibit 2 is a true and correct copy the decision in *Redfin Corp. v.*  
13 *CoreLogic Solutions, LLC*, CBM2014-00027, Paper 14 (P.T.A.B. April 25, 2014).

14 5. Attached as Exhibit 3 is a true and correct copy the decision in *Dell Inc. v.*  
15 *Disposition Services, LLC*, CBM2013-00040, Paper 9 (P.T.A.B. February 12, 2014).

16 6. Apple is in the business of distributing media to consumers. Apple sells products that  
17 enable consumers to receive music, movies, and other media by streaming or downloading the  
18 media. Indeed, many view AppleTV, as well as other Apple products and services (*e.g.*, iTunes), as  
19 an alternative to traditional broadband cable and satellite. While OpenTV and Apple may not market  
20 their products and services to the same customers, they nevertheless compete with one another in the  
21 media-distribution space.

22 7. OpenTV sued Apple for patent infringement on April 9, 2014, alleging infringement  
23 of five U.S. Patents. Case No. 3:14-cv-01622-HSG (KAW) (*Apple I*), ECF No. 1. About a year into  
24 that case, Apple filed IPRs on four of OpenTV’s patents (the fifth patent having been held invalid  
25 under 35 U.S.C. § 101) and eventually moved to stay that litigation. *Apple I*, ECF Nos. 194, 207,  
26 209. The Court granted Apple’s motion to stay (*Apple I*, ECF No. 217, 222), and the IPRs are on  
27 schedule to be argued this June (*Apple I*, ECF No. 223). OpenTV anticipates that most, if not all,

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1 claims from each patent will survive Apple's IPRs, and expects the case OpenTV filed in April 2014  
2 will resume by the end of 2016.

3 8. On May 5, 2015, OpenTV filed the instant case against Apple, alleging the  
4 infringement of five patents, including U.S. Patent Nos. 7,725,740 ("the '740 patent"), 7,055,169  
5 ("the '169 patent"), and 6,233,736 ("the '736 patent"). ECF No. 1. Apple filed a motion to dismiss  
6 two patents (U.S. Patent Nos. 7,644,429 ("the '429 patent") and U.S. Patent No. 6,148,081 ("the  
7 '081 patent")) as invalid under 35 U.S.C. § 101. ECF No. 33. The Court issued its order on Apple's  
8 motion to dismiss in January 2016, holding those patents invalid as a matter of law. ECF No. 72.  
9 OpenTV filed a motion for entry of partial final judgment and Rule 54(b) certification of the Court's  
10 Order with respect to the '429 and '081 patents (ECF No. 75), which is set for argument on August  
11 18, 2016. ECF No. 78.

12 9. As shown in the table below, OpenTV has asserted infringement by at least some of  
13 Apple's products across each asserted patent, making it unlikely that the scope of discovery would  
14 be significantly reduced, absent cancellation of every asserted claim.

<b>Patents Asserted Against Apple Accused Products</b>			
<b>Accused Products</b>	<b>'740</b>	<b>'169</b>	<b>'736</b>
iOS Products	X	X	X
Mac OS Products		X	X
AppleTV Products	X	X	X

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23 10. To date, the parties have exchanged initial disclosures, exchanged Patent Local Rule  
24 disclosures, served detailed infringement and invalidity contentions, and exchanged extensive  
25 discovery requests. Regarding discovery requests, the parties have issued and responded to over 200  
26 requests for production and agreed that nearly all discovery exchanged in *Apple I* (currently stayed)  
27 may be used in this case, meaning over 100,000 pages of documents have also already been

1 with the Patent Local Rules (ECF Nos. 85, 91, 93) and finished claim construction briefing. Further,  
2 on May 12, the parties presented to the Court and the Court prepared for and presided over a 5 hour  
3 technology tutorial and claim construction hearing. ECF No. 58, 99.

4 11. Nearly one year after the filing of this case, Apple filed IPR petitions against the '736  
5 and '740 patents and a CBM petition against the '169 patent. Apple then filed this motion for stay.  
6 ECF No. 92. After filing its stay motion, Apple filed an IPR petition against the '169 patent. The  
7 PTAB has not issued a decision on whether or not to institute any of Apple's IPR or CBM petitions,  
8 and I understand the deadline for the PTAB to issue such a decision is November 2, 2016. ECF No.  
9 92 at 3.

10 12. Significant deadlines in this case are only a matter of months away. For example, this  
11 case is scheduled for a Trial Setting Conference on July, exchange of expert reports in August and  
12 September, and close of expert discovery is set for October. ECF No. 58. Each of these deadlines is  
13 set to occur before the November 2 deadline for the PTAB to decide whether or not to institute  
14 review of the patents-in-suit. ECF No. 92 at 9. This deadline for the PTAB's decision comes just one  
15 week before the dispositive motion deadline in this case. ECF No. 58. Although the Court indicated  
16 it may reset these dates, OpenTV continues to work diligently to prepare for eventual trial.

17 13. Although a trial date has not yet been set, the schedule is proceeding apace and  
18 significant progress is expected before the PTAB decides whether to institute any of Apple's  
19 petitions.

20 14. On December 18, 2013, Netflix filed an IPR petition seeking review of some of the  
21 claims of the '736 patent. *See* IPR2014-00269. In response to Netflix's petition, OpenTV filed a  
22 detailed opposition with the PTAB describing how the petition failed to address all the elements of  
23 the claims and failed to provide any persuasive reason why the PTAB should cancel the challenged  
24 claims. Two months later, Netflix withdrew its petition.

25 15. I declare under penalty of perjury under the laws of the United States that the  
26 foregoing is true and correct. Executed this 17th day of May, 2016.

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By: /s/ Jacob A. Schroeder