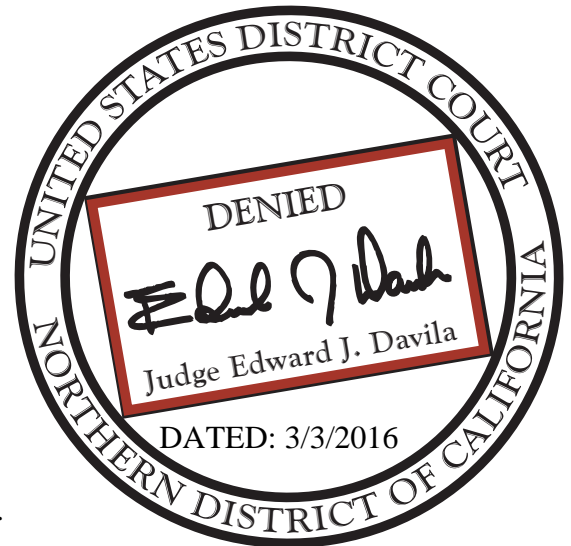


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18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN JOSE DIVISION

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

23 Plaintiffs,

24 v.

25 APPLE INC.,

26 Defendant.

Case No. 5:15-cv-02008-EJD (NMC)

**PLAINTIFFS' UNOPPOSED MOTION
TO CHANGE DATE OF HEARING ON
MOTION FOR RULE 54(b)
CERTIFICATION (CIVIL L.R. 6-3);**

SUPPORTING DECLARATION;

[PROPOSED] ORDER

Courtroom: 4, 5th Floor
Judge: Honorable Edward J. Davila

1 **I. UNOPPOSED MOTION TO CHANGE DATE ON MOTION FOR RULE 54(B)**
2 **CERTIFICATION (CIVIL L.R. 6-3)**

3 Plaintiffs OpenTV, Inc., Nagravision S.A., and Nagra France S.A.S. respectfully make this
4 unopposed request to advance the hearing date for OpenTV's and Nagra France's Motion for Rule
5 54(b) Certification (Dkt. No. 75, the "Motion"). A few days before Plaintiffs filed that Motion on
6 Thursday, February 25, 2016, Plaintiffs' counsel called the Court's Deputy Clerk to reserve a
7 hearing date, and was advised that the first available hearing date for the Motion was August 18,
8 2016. Plaintiffs respectfully request that the hearing date be advanced to **March 31, 2016** (35 days
9 after the Motion was filed). As discussed in more detail below, the Motion seeking interlocutory
10 appeal is, itself, a time-sensitive matter, so it follows that an earlier hearing date will also serve those
11 same issues of time-sensitivity. And given the relatively narrow issue presented in the Motion,
12 Plaintiffs submit that the Court's ability to consider the Motion's merits will not be compromised by
13 the requested earlier hearing date.

14 On February 25, 26, and 29, 2016, counsel for Plaintiffs (Robert McCauley) communicated
15 with counsel for Defendant Apple Inc. (Luann Simmons) and asked whether Apple would agree to
16 not oppose Plaintiffs' planned administrative motion to advance the hearing date. On March 2, 2016,
17 Ms. Simmons confirmed that Apple does not oppose Plaintiffs' request to advance the hearing date.

18 Plaintiffs' Motion sets forth a discrete issue, unencumbered by a voluminous record or thorny
19 legal issues, that is ripe for resolution—whether to certify for interlocutory appeal this Court's Order
20 granting Apple's motion to dismiss because the asserted claims of U.S. Patent Nos. 6,148,081 and
21 7,644,429 are invalid under 35 U.S.C. § 101 as directed to ineligible subject matter (Dkt. No. 72). A
22 chief reason for filing the Motion and pursuing an immediate appeal is to find out, as quickly as
23 possible, whether that threshold invalidity decision was correct, since the answer to that question
24 could significantly impact the future dynamics of this litigation. As the Motion explains in more
25 detail, determining whether those two patents were correctly dismissed from the case now, rather
26 than at the end of the litigation, can result in judicial efficiencies. For example, if this Court grants
27 the Motion and allows OpenTV and Nagra France to appeal, and the Federal Circuit subsequently
28 reverses this Court's Order before a jury trial on the remaining patents has occurred, this Court could

1 conduct a single trial on all patents at issue instead of the multiple trials that might occur if the
2 Federal Circuit reverses this Court's Order later. If the Federal Circuit affirms this Court's Order, the
3 Court and parties could then proceed to trial, or evaluate the prospects of settlement, without the
4 specter of another trial on the '081 and '429 patents.

5 By the same token, hearing the Motion as early as possible maximizes the opportunity to
6 achieve those efficiencies. Advancing the hearing date to March 31, 2016 (35 days after the Motion
7 was filed) could provide OpenTV's and Nagra France's appeal an additional four and one half
8 months to work its way through the appellate process as compared to waiting until an August 18,
9 2016 hearing date. That potential four and one half month savings is significant, given that an appeal
10 on the isolated § 101 ruling may only take between a year and 18 months.

11 **II. CONCLUSION**

12 For the foregoing reasons, Plaintiffs respectfully request to advance the hearing date on
13 OpenTV's and Nagra France's Motion by four and half months to March 31, 2016 (35 days after the
14 Motion was filed), from August 18, 2016 (the date set by the Court's Deputy Clerk), in order to
15 obtain an earlier resolution of their motion.

16 Respectfully submitted,

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1 Dated: March 2, 2016

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

2
3 By: /s/ Robert F. McCauley

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Attorneys for Plaintiffs
OpenTV, Inc., Nagravision S.A., and Nagra France
S.A.S.

SUPPORTING DECLARATION OF ROBERT F. MCCAULEY

I, ROBERT F. MCCAULEY, declare as follows:

1. I am an attorney licensed to practice before this Court and all courts of the State of California, and am a partner with Finnegan, Henderson, Farabow, Garrett & Dunner LLP, counsel for Plaintiffs OpenTV, Inc., Nagravision S.A., and Nagra France S.A.S. in the above-titled action. I submit this declaration in support of Plaintiffs' Motion to Change Date for Plaintiffs' Motion for Rule 54(b) Certification. The matters stated herein are based upon my personal knowledge, and, if called as a witness, I would testify as to the following statements.

2. The factual statements included in the above Motion to advance the hearing date are true, including the fact that counsel for Apple advised that Apple does not oppose this motion to change time.

3. The requested time modification will not affect any date set by the Court in this matter.

4. The previous time modifications in this case made pursuant to the listed Stipulations, Court Orders, and Clerk's Notices are as follows:

- Clerk's Notice of Impending Reassignment to a U.S. District Court Judge vacating hearing dates scheduled before magistrate judge (Dkt. No. 16);
- Order of Recusal vacating all pending dates of motions, pretrial conferences and trial (Dkt. No. 18);
- Order assigning case to the Honorable Edward J. Davila vacating dates presently scheduled (Dkt. No. 19);
- Joint Stipulation to Extend Time for Apple Inc. to Respond to Complaint to June 26, 2015 (Dkt. No. 22);
- Clerk's Notice Resetting Case Management Conference Following Reassignment from Magistrate Judge resetting due date for Case Management Statement to September 10, 2015, resetting Case Management Conference to September 17, 2015, and adjusting any deadlines associated with the Initial Case Management Conference accordingly (Dkt. No. 32);
- Order (Dkt. No. 46) granting Joint Stipulation Regarding Briefing Schedule for Apple's Motion to Dismiss resetting the due date for OpenTV's opposition to Apple's motion to July 17, 2015, and resetting Apple's reply to OpenTV's opposition to July 29, 2015 (Dkt. No. 44); and
- ADR Phone Conference Re-Scheduling Notice resetting ADR Phone Conference to October 27, 2015 (Dkt. No. 56).

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