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16 *Attorneys for Defendant Apple, Inc.*

17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**
 19 **SAN JOSE**

21 OpenTV, Inc., NagraVision, SA, and Nagra
 22 France S.A.S.,

23 *Plaintiffs,*

24 v.

25 Apple Inc.,

26 *Defendant.*

Case No. 5:15-CV-02008-EJD

**DEFENDANT'S MOTION TO
 PRECLUDE RELIANCE ON CERTAIN
 INVENTION DATES AND TO STRIKE
 CERTAIN ALLEGATIONS**

Judge: Honorable Edward J. Davila
 Hearing Time: 9:00 a.m.
 Hearing Date: Thursday, Sept. 15, 2016
 Courtroom: San Jose Courtroom 4

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II. LEGAL BACKGROUND ON PATENT PRIORITY DATES AND THE
NORTHERN DISTRICT OF CALIFORNIA’S REQUIREMENT THAT THEY
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IV. THE COURT SHOULD PRECLUDE OPENTV FROM ASSERTING
INVENTION DATES EARLIER THAN THOSE DISCLOSED IN ITS PATENT
LOCAL RULE 3-1(f) DISCLOSURES AND STRIKE ALL LATE
DISCLOSURES OF EARLIER INVENTION DATES AND ALL QUALIFYING
LANGUAGE 6

 A. OpenTV seeks to flagrantly disregard its obligations under Patent Local
 Rules 3-1(f) and 3-2(b) 6

 B. Apple relied on OpenTV’s Local Rule 3-1(f) and 3-2(b) disclosures in
 formulating its invalidity defenses and would suffer significant prejudice if
 OpenTV were allowed to rely on priority dates other than those alleged in
 its October 15, 2015 disclosure 7

 C. The appropriate remedy is to preclude OpenTV from asserting invention
 dates earlier than those disclosed in its Patent Local Rule 3-1(f) disclosures 8

 D. OpenTV cannot demonstrate good cause pursuant to Patent L.R. 3-6 to
 amend its Patent L.R. 3-1(f) and 3-2(b) disclosures, and cannot
 demonstrate good cause pursuant to Fed. R. Civ. P. 16(b) to extend the
 deadline for compliance with Patent L.R. 3-1(f) and 3-2(b) disclosures 10

 E. OpenTV’s vague alleged June, 2001 conception date for the ’169 Patent
 should be limited to June 30, 2001 at the earliest 13

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NOTICE OF MOTION

PLEASE TAKE NOTICE THAT on September 15, 2016 at 9:00 a.m. in Courtroom 4 before the Honorable Edward J. Davila, Defendant Apple, Inc. (“Apple”) requests the Court grant the following motion.

Apple moves to preclude OpenTV, Inc., Nagravision, SA, and Nagra France S.A.S. (collectively, “OpenTV”) from asserting conception and reduction to practice dates earlier than those identified in its Patent L.R. 3-1(f) and 3-2(b) disclosures, including striking all qualifying language from that disclosure (*e.g.*, “at least as early as”) and all interrogatory responses asserting such earlier invention dates. This motion relates to the three remaining patents-in-suit,¹ U.S. Patent Nos. 6,233,736 (“the ’736 Patent”), 7,055,169 (“the ’169 Patent”), and 7,725,740 (“the ’740 Patent”) (collectively, the “asserted patents”).

The Scheduling Order in this case directs that “any disputes with respect to discovery or disclosure are referred to the assigned Magistrate Judge. Any disputes regarding any party’s Patent Disclosures—including any request to amend pursuant to Patent L.R. 3-6—are likewise referred to the assigned Magistrate Judge.” Dkt. 58 at 1. This motion does not seek additional discovery or disclosures from OpenTV, and does not seek permission to amend pursuant to Patent L.R. 3-6, but rather seeks a preclusionary sanction under Fed. R. Civ. P. 16(f). *See, e.g.*, Order Re Defendant’s Discovery Letter, *Harvatek Corp. v. Cree, Inc.*, No. 14-5353, Dkt. 50 at 1 (N.D. Cal. June 9, 2015) (deeming discovery letter seeking order precluding patentee from asserting a certain conception date appropriate for resolution before the district judge rather than the magistrate), attached to the accompanying Declaration of Melody Drummond Hansen (“Drummond Hansen Decl.”) as Exhibit 9. If the Court deems this motion to be more appropriate for resolution before the Magistrate Judge, then Apple requests the Court refer the motion to the Magistrate Judge.

¹ The Court held two other patents-in-suit, U.S. Patent Nos. 6,148,081 and 7,644,429, invalid, and OpenTV has requested permission to pursue an interlocutory appeal. Dkt. 75 at 6. Apple reserves the right to bring this motion with respect to those patents as well, if the Court’s finding of invalidity is reversed on appeal.

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