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17

18   **UNITED STATES DISTRICT COURT**

                     NORTHERN DISTRICT OF CALIFORNIA

19   **SAN JOSE**

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21

22 OpenTV, Inc., Nagravision, SA, and Nagra   Case No. 5:15-CV-02008-EJD
   France S.A.S.,
23   **DEFENDANT'S MOTION TO**
                            Plaintiffs,   **PRECLUDE RELIANCE ON CERTAIN**
                                                  INVENTION DATES AND TO STRIKE
24 v.   **CERTAIN ALLEGATIONS**

25 Apple Inc.,   Judge: Honorable Edward J. Davila
                                                  Hearing Time: 9:00 a.m.
26   *Defendant*.   Hearing Date: Thursday, Sept. 15, 2016
                                                  Courtroom: San Jose Courtroom 4
27

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NOTICE OF MOTION

2

PLEASE TAKE NOTICE THAT on September 15, 2016 at 9:00 a.m. in Courtroom 4

3

before the Honorable Edward J. Davila, Defendant Apple, Inc. ("Apple") requests the Court grant

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the following motion.

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Apple moves to preclude OpenTV, Inc., Nagravision, SA, and Nagra France S.A.S.

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(collectively, "OpenTV") from asserting conception and reduction to practice dates earlier than

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those identified in its Patent L.R. 3-1(f) and 3-2(b) disclosures, including striking all qualifying

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language from that disclosure (*e.g.*, "at least as early as") and all interrogatory responses asserting

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such earlier invention dates. This motion relates to the three remaining patents-in-suit,[1] U.S.

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Patent Nos. 6,233,736 ("the '736 Patent"), 7,055,169 ("the '169 Patent"), and 7,725,740 ("the

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'740 Patent") (collectively, the "asserted patents").

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The Scheduling Order in this case directs that "any disputes with respect to discovery or

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disclosure are referred to the assigned Magistrate Judge. Any disputes regarding any party's

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Patent Disclosures—including any request to amend pursuant to Patent L.R. 3-6—are likewise

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referred to the assigned Magistrate Judge." Dkt. 58 at 1. This motion does not seek additional

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discovery or disclosures from OpenTV, and does not seek permission to amend pursuant to Patent

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L.R. 3-6, but rather seeks a preclusionary sanction under Fed. R. Civ. P. 16(f). *See, e.g.*, Order

18

Re Defendant's Discovery Letter, *Harvatek Corp. v. Cree, Inc.*, No. 14-5353, Dkt. 50 at 1 (N.D.

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Cal. June 9, 2015) (deeming discovery letter seeking order precluding patentee from asserting a

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certain conception date appropriate for resolution before the district judge rather than the

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magistrate), attached to the accompanying Declaration of Melody Drummond Hansen

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("Drummond Hansen Decl.") as Exhibit 9. If the Court deems this motion to be more appropriate

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for resolution before the Magistrate Judge, then Apple requests the Court refer the motion to the

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Magistrate Judge.

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[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

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reserves the right to bring this motion with respect to those patents as well, if the Court's finding

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of invalidity is reversed on appeal.

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