

# EXHIBIT 4

DECLARATION OF MELODY DRUMMOND HANSEN  
IN SUPPORT OF DEFENDANT APPLE INC.'S MOTION  
TO PRECLUDE RELIANCE ON CERTAIN  
INVENTION DATES AND TO STRIKE CERTAIN ALLEGATIONS



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February 2, 2016

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**Re: OpenTV, Inc. et al. v. Apple Inc., No. 5:15-cv-02008-EJD**

Dear Elizabeth:

We write regarding deficiencies in OpenTV's objections and responses to Apple's First Set of Interrogatories (Nos. 1-16) and First Set of Requests for Production (Nos. 1-153), served November 23, 2015. Apple's review of OpenTV's objections and responses remains ongoing, and this is not an exhaustive list. Apple reserves the right to address other deficiencies at a later time.

**OpenTV's Responses to Interrogatory Nos. 8, 9, and 13**

Apple's Interrogatory No. 8 seeks information regarding the circumstances surrounding the conception and reduction to practice of the inventions claimed in each OpenTV Asserted Patent, including acts of diligence in reducing the claimed inventions to practice. OpenTV refers to documents numbered OPENTV2008-00008615 - OPENTV2008-00009148 for "additional information regarding the conception of the asserted claims." Please confirm that these documents represent a complete production of all evidence that OpenTV intends to rely on to support the alleged conception dates of the OpenTV Asserted Patents.

OpenTV's response to Apple's Interrogatory No. 8 is deficient for at least the following reasons.<sup>1</sup> First, OpenTV states that the claimed invention of the '736 patent was constructively

<sup>1</sup> Because the Court has dismissed all asserted claims of the '081 and '429 patents (Dkt. No. 72), we are not including in this letter the deficiencies in OpenTV's responses with respect to those patents, but Apple reserves all rights to address such deficiencies at a later time if needed.

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reduced to practice by February 8, 1996, which is the filing date of the application to which the '736 patent claims priority. But OpenTV does not include any information about a conception date or actual reduction to practice, and does not describe any diligence in reducing the claimed invention to practice. Please confirm that OpenTV does not allege any conception date for the '736 patent earlier than February 8, 1996, and does not allege any actual reduction to practice of the claimed invention. Please also confirm that OpenTV is not withholding any information related to conception or diligence on the basis of privilege.

Second, OpenTV states that the claimed invention of the '169 patent was conceived at least as early as June 2001, and was constructively reduced to practice by April 19, 2002, which is the filing date of the provisional application to which the '169 patent claims priority. However, OpenTV describes no circumstances nor identifies any documents relating to diligence in reducing the claimed invention to practice between June 2001 and April 19, 2002. Please confirm that OpenTV will supplement its response to provide a description of any diligence and identify by production number any documents OpenTV contends relate to conception or diligence for the claimed invention of the '169 patent. Please also confirm that OpenTV is not withholding any information related to conception or diligence on the basis of privilege.

Third, OpenTV states that the claimed invention of the '740 patent was constructively reduced to practice by May 28, 2003, which is the filing date of the Swiss application to which the '429 claims priority. But OpenTV does not include any information about a conception date or any actual reduction to practice, and does not describe any diligence in reducing the claimed invention to practice. Please confirm that OpenTV does not allege any conception date for the '740 patent earlier than May 28, 2003, and does not allege any actual reduction to practice of the claimed invention. Please also confirm that OpenTV is not withholding any information related to conception or diligence on the basis of privilege.

Interrogatory No. 9 seeks information concerning objective evidence and secondary considerations that OpenTV may rely on to show that the claimed inventions are not obvious under 35 U.S.C. § 103. In response, OpenTV merely recites the presumption of non-obviousness, and states that Apple's accused products have enjoyed commercial success. If OpenTV currently has in its possession evidence on which it intends to rely regarding objective evidence and secondary consideration of non-obviousness, OpenTV must provide that evidence now and cannot wait until the deadlines for expert reports. Please confirm that OpenTV has produced all evidence of secondary considerations or objective evidence of non-obviousness currently in OpenTV's possession, including any evidence that rebuts such secondary considerations.

Interrogatory No. 13 seeks information regarding license agreements relating to the OpenTV Asserted Patents and all other license agreements OpenTV considers comparable. OpenTV's response fails to identify any agreements and instead invokes FRCP 33(d). This is improper where, as here, OpenTV has produced no license agreements or other documents responsive to this request and where OpenTV has not agreed to produce documents in response to Apple's related document requests. For example, in response to Apple's Request for Production No. 15 seeking documents identifying third parties who have licensed the OpenTV

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Asserted Patents and Related Patents, OpenTV states only that it will “meet and confer with Apple to determine the proper scope, if any, for a search of documents responsive to this request.” Please confirm that OpenTV will supplement its response to this interrogatory to identify all licenses relating to the Asserted Patents and Related Patents and all third parties who have licensed the Asserted Patents and Related Patents.

OpenTV's Responses to Requests for Production

OpenTV's objections to Apple's Requests for Production Nos. 1-153 are deficient at least because they do not comply with Fed. R. Civ. P. 34(b)(2)(C), which requires that “[a]n objection must state whether any responsive materials are being withheld on the basis of that objection.” None of OpenTV's objections state whether any responsive materials are being withheld. Please confirm that OpenTV will immediately supplement its objections and responses to Apple's Requests for Production Nos. 1-153 to comply with Fed. R. Civ. P. 34(b)(2)(C).

OpenTV refuses to search for or produce documents responsive to Apple's Requests for Production Nos. 27, 31, 35, 137, and 141, which seek documents related to the Kudelski Group. The documents requested are relevant to the claims and defenses at issue in this action at least because OpenTV devotes numerous paragraphs of its complaint to alleging facts regarding the Kudelski Group and alleges that “Apple would be aware of a prominent portfolio such as that of The Kudelski Group, as this portfolio is well-known in the industry.” *See, e.g.*, Complaint at 4-8, 11, 14, 17, 19, 21, 23. Please confirm that OpenTV will produce documents responsive to Apple's Requests for Production Nos. 27, 31, 35, 137, and 141.

In response to Apple's Requests for Production Nos. 15-17, 24-26, 28-30, 32-34, 45, 74, 80, 88, 96, 104, 112, 128-136, 138-140, 142-144, and 149, OpenTV responds that it will meet and confer with Apple to determine the proper scope for a search of responsive documents. OpenTV's objections that these requests are overly broad and unduly burdensome because they seek information that is irrelevant, immaterial, not related to any claim or defense, and/or not reasonably calculated to lead to the discovery of admissible evidence are without merit. The documents requested are relevant to the claims and defenses at issue in this action, including at least OpenTV's requests for damages and an injunction and Apple's potential defenses.

Please provide your availability for a telephonic meet and confer on Monday, February 8, through Thursday, February 11, regarding OpenTV's responses and the deficiencies identified above.

Sincerely,

/s/ Jay Choi

Jay Choi

for O'Melveny & Myers