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APPLE INC.

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

20 OpenTV, Inc., Nagravision, SA, and Nagra
France S.A.S.,

21 Plaintiffs,

22 v.

24 Apple Inc.,

25 Defendant.

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

**DEFENDANT'S UNOPPOSED
MOTION TO CHANGE DATE OF
HEARING ON MOTION TO STAY
PENDING COMPLETION OF USPTO
PROCEEDINGS (CIVIL L.R. 6-3);**

SUPPORTING DECLARATION;

~~PROPOSED~~ ORDER

Judge: Honorable Edward J. Davila
Courtroom: 4

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2 **I. UNOPPOSED MOTION TO CHANGE HEARING DATE ON MOTION TO STAY**
3 **PENDING COMPLETION OF USPTO PROCEEDINGS (CIVIL L.R. 6-3)**

4 Defendant Apple Inc. respectfully makes this unopposed request to advance the hearing
5 date for Apple's Motion to Stay Pending Completion of USPTO Proceedings (Dkt. No. 92, the
6 "Motion to Stay").¹ In April and May of 2016, Apple filed petitions for *inter partes* review
7 ("IPR") or covered business method review ("CBM") before the United States Patent and
8 Trademark Office ("USPTO") for all remaining patents-in-suit. Apple then filed a Motion to Stay
9 this action pending completion of the USPTO proceedings.² Apple respectfully requests
10 advancing the hearing date for Apple's Motion to Stay from September 15, 2016 to June 9, 2016
11 (37 days after the Motion was filed). An earlier hearing date for the Motion to Stay has the
12 potential to conserve the Court's and the parties' time and resources, promote judicial economy,
13 and eliminate unnecessary litigation costs.

14 As explained in Apple's Motion to Stay, the pending reviews by the USPTO will likely
15 invalidate or alter the scope of the patents-in-suit.³ Given the time-consuming and burdensome
16 claim construction, fact discovery, and expert discovery activities that the Court and parties must
17 undertake before September 15, Apple respectfully requests that the Court advance the hearing
18 date for Apple's Motion to Stay. By resolving the Motion to Stay earlier, the Court can avoid the
19 unnecessary expenditures of time and resources by the Court, Magistrate Judge Cousins, who has
20 been assigned to the case for discovery and scheduling issues, and the parties.

21 Significant work on this case is scheduled to be completed before the currently-scheduled
22 hearing date for Apple's Motion to Stay. The Court is expected to issue a Claim Construction
23 Order after the May 12, 2016 technology tutorial and claim construction hearing. Magistrate
24 Judge Cousins is scheduled to hear a discovery dispute regarding compliance with the patent local

24
25 ¹ On March 2, 2016, counsel for Apple (Luann Simmons) conferred with counsel for Plaintiffs
(Robert McCauley), who confirmed that Plaintiffs do not oppose Apple's request to advance the
hearing date.

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27 ² A few days before Apple's Tuesday, May 3, 2016 filing of the Motion to Stay, Apple's counsel
emailed the Court's Deputy Clerk to reserve a hearing date, and was advised that the first
available hearing date for the Motion was September 15, 2016.

28 ³ Further, Apple filed another petition for *inter partes* review on one of the three remaining
patents-in-suit after the filing of the Motion to Stay. (*See* IPR2016-01004.)

1 rules on June 1, 2016. A trial setting conference and hearing on OpenTV's Motion for Rule 54(b)
2 Certification are scheduled before this Court on July 21 and August 18, 2016, respectively. Fact
3 discovery is ongoing, and the current case schedule requires the parties to serve expert reports on
4 August 18 and September 15, 2016. (*See* Dkt. No. 58.) Thus, the Court and the parties are
5 scheduled to expend significant resources over the next four months, most of which could be
6 rendered unnecessary by an early resolution of Apple's Motion to Stay.

7 **II. CONCLUSION**

8 For the foregoing reasons, Apple respectfully requests that the Court advance the hearing
9 date on Apple's Motion to Stay to June 9, 2016 (or as soon as permitted by the Court's schedule).

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11 Dated: May 6, 2016

O'MELVENY & MYERS LLP

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13 By: /s/ Luann L. Simmons

14 Attorneys for Defendant APPLE INC.
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SUPPORTING DECLARATION OF LUANN L. SIMMONS

I, Luann L. Simmons, declare:

1. I am a partner with the law firm of O’Melveny & Myers LLP, counsel for defendant Apple Inc. (“Apple”) in the above-captioned litigation.

2. I submit this declaration in support of Apple’s Unopposed Motion to Change Date of Hearing on Motion to Stay Pending Completion of USPTO Proceedings (Civil L.R. 6-3). I have personal knowledge of the facts set forth in this declaration and, if called to testify as a witness, could and would do so competently.

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

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

5. 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).

I declare under penalty of perjury under the laws of the United States of America that the

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foregoing is true and correct. Executed this 6th day of May, 2016, in San Francisco, California.

/s/ Luann L. Simmons

Luann L. Simmons

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