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7 Attorneys for Plaintiff  
YAHOO! INC.

8  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 YAHOO! INC.,

13 Plaintiff,

14 v.

15 KUDELSKI SA, and OPENTV, INC.,

16 Defendants.

Case No. 5:16-cv-00349

**YAHOO! INC.'S COMPLAINT FOR  
DECLARATORY JUDGMENT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Yahoo! Inc. (“Yahoo”), for its Complaint for Declaratory Judgment against Defendants  
2 Kudelski SA (“Kudelski”), and OpenTV, Inc. (“OpenTV”) (each a “Defendant” and collectively  
3 “Defendants”), alleges as follows:

4 **NATURE OF THE ACTION**

5 1. This is an action for declaratory judgment under the Declaratory Judgment Act, 28 U.S.C.  
6 § 2201 *et seq.* and the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* Yahoo seeks a declaration  
7 of non-infringement for each of United States Patent Nos. 7,409,437 (the “437 Patent”), 6,233,736 (the  
8 “736 Patent”), 7,055,169 (the “169 Patent”), 7,028,327 (the “327 Patent”) 7,752,642 (the “642  
9 Patent”) and 6,758,754 (the “754 Patent”). In addition, Yahoo seeks a declaration that United States  
10 Patent No. 6,148,081 (the “081 Patent”) is invalid for lacking patent-eligible subject matter. Taken  
11 together the foregoing patents are referred to herein as the “Patents-in-Suit.”

12 **PARTIES**

13 2. Yahoo is a company organized and existing under the laws of the Delaware with its  
14 principal place of business at 701 First Avenue, Sunnyvale, California 94089.

15 3. Upon information and belief, Kudelski is a Swiss company with a principal place of  
16 business at Route de Genève 22, 1033 Cheseaux-sur-Lausanne, Switzerland.

17 4. OpenTV is a corporation organized and existing under the laws of Delaware with its  
18 principal place of business at 275 Sacramento Street, San Francisco, California 94111. Upon information  
19 and belief, OpenTV is a wholly-owned subsidiary of Kudelski.

20 **JURISDICTION AND VENUE**

21 5. This action arises under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et*  
22 *seq.* and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court has subject matter  
23 jurisdiction over the action under 28 U.S.C. § 1331 and § 1338, based on the existence of an actual  
24 controversy between Yahoo, on the one hand, and Defendants, on the other hand, for claims under the  
25 Patent Laws. In particular, there is an active case or controversy about whether or not Yahoo infringes  
26 any claims of each of the Patents-in-Suit. The existence of this controversy is demonstrated by, for  
27 example, the December 22, 2015 letter (attached hereto as Exhibit A) which Yahoo received from  
28 Kudelski and which purports to provide “notice of infringement” of each of the Patents-in-Suit. On

1 information and belief, each of the Patents-in-Suit are owned by Kudelski's subsidiary OpenTV.

2 6. This Court has personal jurisdiction over Defendants pursuant to the laws of the State of  
3 California, including California's long-arm statute, and California Code of Civil Procedure § 410.10.  
4 First, the Court has jurisdiction over OpenTV (which is, on information and belief, the direct owner of  
5 each of the Patents-in-Suit) because OpenTV maintains its principal place of business in this district at  
6 275 Sacramento Street, San Francisco, California 94111 and because OpenTV is registered with the  
7 California Secretary of State to do business in California.

8 7. The Court also has personal jurisdiction over each of the Defendants because each of the  
9 Defendants has purposely conducted its patent enforcement activities in this district and towards  
10 residents of this District. In particular, and on information and belief, Defendants' enforcement efforts  
11 have included: (a) hiring counsel who reside and practice in this District (such as John Edwards at  
12 Kirkland & Ellis who was counsel of record for OpenTV in *OpenTV, Inc v. Netflix, Inc.*, N.D. Cal. Case  
13 No. 3:14-cv-01525 and for both OpenTV and another Kudelski subsidiary in *OpenTV, Inc. and Nagra*  
14 *France SAS v. Netflix, Inc.*, N.D. Cal. Case No. 3:14-cv-01723 and Robert F. McCauley from Finnegan,  
15 Henderson who is counsel for OpenTV and two other Kudelski subsidiaries in *OpenTV, Inc.*,  
16 *Nagravision S.A. and Nagra France S.A.S. v. Apple, Inc.*, N.D. Cal. Case No. 3:15-cv-02008) for the  
17 express purpose of enforcing their patent rights—including rights in several of the Patents-in-Suit; (b)  
18 filing lawsuits and/or causing lawsuits to be filed in this District to enforce patent rights, including rights  
19 in several of the Patents-in-Suit (*see e.g. OpenTV, Inc. and Nagravision SA. v. Apple Inc.*, N.D. Cal. Case  
20 No. 3:14-cv-01622 and *OpenTV, Inc., Nagravision S.A. and Nagra France S.A.S. v Apple, Inc.*, N.D. Cal.  
21 Case No. 3:15-cv-02008); (c) prosecuting (and/or causing to be prosecuted) an action to enforce patents  
22 including several of the Patents-in-Suit (namely the '437, '169, and '736 Patents) against Netflix in a  
23 case that was originally filed in Delaware and then transferred to this District (*see OpenTV, Inc v. Netflix*  
24 *Inc.*, N.D. Cal. Case No. 3:14-cv-01525) and (d) undertaking extra-judicial enforcement efforts of the  
25 Patents-in-Suit against Yahoo—including through the enforcement meetings described in the letter  
26 attached hereto as Exhibit A—a letter in which Kudelski demands payment from Yahoo while asserting  
27 that it “*remains* committed to *enforcing* its intellectual property rights.” (emphasis added). Notably, the  
28 meetings described in the attached letter took place at Yahoo's headquarters in this District, and involved

1 attempts by Kudelski to acquire patents from Yahoo.

2 8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400 because OpenTV  
3 resides in the Northern District of California and a substantial portion of the events giving rise to this  
4 action, including the development of the accused instrumentalities, took place here.

5 **THE PATENTS-IN-SUIT**

6 **A. U.S. Patent No. 7,409,437**

7 9. The '437 Patent is entitled "Enhanced Video Programming System and Method for  
8 Incorporating and Displaying Retrieved Integrated Internet Information Segments." A copy of the '437  
9 Patent is attached hereto as Exhibit B. The '437 Patent states on its face that it was issued to Craig  
10 Ullman, Jack D. Hidary, and Nova T. Spivack.

11 10. The application that issued as the '437 Patent was filed on November 18, 2002, and the  
12 United States Patent and Trademark Office issued the '437 Patent on August 5, 2008.

13 11. Kudelski has alleged that Claim 4 of the '437 Patent is infringed by the interactive video  
14 advertising functionality employed by Yahoo's streaming video delivery services available through  
15 yahoo.com and Yahoo's branded mobile applications available on Android or iOS devices and Yahoo's  
16 Connected TV platform.

17 **B. U.S. Patent No. 6,233,736**

18 12. The '736 Patent is entitled "Media Online Service Access System and Method." A copy  
19 of the '736 Patent is attached as Exhibit C. The '736 Patent states on its face that it was issued to  
20 Thomas R. Wolzien.

21 13. The application that issued as the '736 Patent was filed on April 3, 1998, and the United  
22 States Patent and Trademark Office issued the '736 Patent on May 15, 2001.

23 14. Kudelski has alleged that Claims 1–3, and 7–12 of the '736 Patent are infringed by the  
24 interactive video advertising functionality employed by Yahoo's streaming video delivery services  
25 available through yahoo.com and Yahoo's branded mobile applications available on Android or iOS  
26 devices and Yahoo's Connected TV platform.

27 **C. U.S Patent No. 7,055,169**

28 15. The '169 Patent is entitled "Supporting Common Interactive Television Functionality

1 Through Presentation Engine Syntax.” A copy of the ’169 Patent is attached as Exhibit D. The ’169  
2 Patent states on its face that it was issued to Alain Depulch, James Whitledge, Jean-Rene Menand,  
3 Emmanuel Barbier, Kevin Hausman, Debra Hensgen, and Dongmin Su.

4 16. The application that issued as the ’169 Patent was filed on April 21, 2003, and the United  
5 States Patent and Trademark Office issued the ’169 Patent on May 30, 2006.

6 17. Kudelski has alleged that Claims 1–2, and 22–23 of the ’169 Patent are infringed by the  
7 adaptive streaming and resource management functionality employed by Yahoo’s Connected TV  
8 platform.

9 **D. U.S. Patent No. 7,028,327**

10 18. The ’327 Patent is entitled “Using the Electronic Program Guide to Synchronize  
11 Interactivity with Broadcast Programs.” A copy of the ’327 Patent is attached as Exhibit E. The ’327  
12 Patent states on its fact that it was issued to Brian P. Dougherty and C. Leo Meier.

13 19. The application that issued as the ’327 Patent was filed on March 29, 2000, and the United  
14 States Patent and Trademark Office issued the ’327 Patent on April 11, 2006.

15 20. Kudelski has alleged that Claims 13–15, 17–19, 22, 29–30, and 36 of the ’327 Patent are  
16 infringed by the interactive video advertising functionality employed by Yahoo’s streaming video  
17 delivery services available through yahoo.com and Yahoo’s branded mobile applications available on  
18 Android or iOS devices and Yahoo’s Connected TV platform.

19 **E. U.S. Patent No. 7,752,642**

20 21. The ’642 Patent is entitled “Post Production Visual Alterations.” A copy of the ’642  
21 Patent is attached as Exhibit F. The ’642 Patent states on its face that it was issued to Thomas Lemmons.

22 22. The application that issued as the ’642 Patent was filed on October 22, 2008, and the  
23 United States Patent and Trademark Office issued the ’642 Patent on July 6, 2010.

24 23. Kudelski has alleged that Claims 1, and 8–9 of the ’642 Patent are infringed by the  
25 interactive video advertising functionality employed by Yahoo’s streaming video delivery services  
26 available through yahoo.com and Yahoo’s branded mobile applications available on Android or iOS  
27 devices and Yahoo’s Connected TV platform.

28

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