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12 Attorneys for Defendants  
13 KUDELSKI SA and OPENTV, INC.

14  
15 UNITED STATES DISTRICT COURT  
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
17 SAN JOSE DIVISION

18  
19 YAHOO! INC.

20 Plaintiff,

21 v.

22 KUDELSKI SA, and OPENTV, INC.

23 Defendants.  
24

Civil Case No.: 5:16-cv-00349

**DEFENDANTS' ANSWER AND  
COUNTERCLAIMS**

25  
26 Defendants Kudelski SA ("Kudelski") and OpenTV, Inc. ("OpenTV") (collectively,  
27 "Defendants") hereby answer Yahoo! Inc.'s Complaint for Declaratory Judgment and Demand for Jury  
28 Trial ("Complaint") filed by Plaintiff Yahoo! Inc. ("Yahoo") and counterclaim as follows:

1 **GENERAL DENIAL**

2 Unless expressly admitted below, Defendants deny each and every allegation Yahoo has  
3 set forth in its Complaint.

4 **NATURE OF THE ACTION**

5 1. Defendants admit that this action purports to be one for declaratory judgment brought  
6 under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* and the Patent Laws of the United States,  
7 35 U.S.C. § 1 *et seq.* Defendants admit that Plaintiff Yahoo seeks a declaration of non-infringement for  
8 each of United States Patent Nos. 7,409,437 (the “437 Patent”), 6,233,736 (the “736 Patent”),  
9 7,055,169 (the “169 Patent”), 7,028,327 (the “327 Patent”) 7,752,642 (the “642 Patent”) and  
10 6,758,754 (the “754 Patent”). Defendants admit that Yahoo also seeks a declaration that United States  
11 Patent No. 6,148,081 (the “081 Patent”) is invalid for lacking patent-eligible subject matter. Defendants  
12 deny that Yahoo is entitled to any relief.

13 **PARTIES**

14 2. Defendants lack knowledge or information sufficient to form a belief about the truth of  
15 the allegations contained in Paragraph 2 and on that basis deny them.

16 3. Kudelski admits that it is a Swiss company with a principal place of business at Route de  
17 Genève 22, 1033 Cheseaux-sur-Lausanne, Switzerland.

18 4. OpenTV admits that it is a corporation organized and existing under the laws of Delaware  
19 with its principal place of business at 275 Sacramento Street, San Francisco, California 94111. OpenTV  
20 admits that it is a wholly-owned subsidiary of a company that is a wholly-owned subsidiary of Kudelski.

21 **JURISDICTION AND VENUE**

22 5. Defendants admit that this action purports to arise under the patent law of the United  
23 States and that this Court has subject matter jurisdiction over this action. Defendants admit that each of  
24 the Patents-in-Suit are owned by OpenTV. Defendants deny that Kudelski is a proper party in this  
25 litigation and deny that an actual controversy exists between Yahoo and Kudelski, as Kudelski is not the  
26 owner of any patent discussed with Yahoo or asserted in Counterclaims herein. Defendants deny that  
27 Yahoo is entitled to any relief.  
28

1 6. Defendants state that the allegations in Paragraph 6 contain legal conclusions that require  
2 no answer. To the extent an answer is required, Defendants admit that OpenTV is subject to personal  
3 jurisdiction for the purposes of this action only. OpenTV admits that it is the owner of each of the  
4 Patents-in-Suit, and that it maintains its principle place of business at 275 Sacramento Street, San  
5 Francisco, CA 94111. OpenTV admits it is registered to do business with the California Secretary of  
6 State to do business in California. Defendants deny that this Court has personal jurisdiction over  
7 Kudelski and deny that Kudelski is a proper party in this litigation, as Kudelski is not the owner of any  
8 patent discussed with Yahoo or asserted in Counterclaims herein.

9 7. Defendants state that the allegations in Paragraph 7 contain legal conclusions that require  
10 no answer. To the extent an answer is required, OpenTV admits that it is subject to personal jurisdiction  
11 for the purposes of this action only. Defendants deny that this Court has personal jurisdiction over  
12 Kudelski and deny that Kudelski is a proper party in this litigation, as Kudelski is not the owner of any  
13 patent discussed with Yahoo or asserted in Counterclaims herein.

14 8. Defendants state that the allegations in Paragraph 8 contain legal conclusions that require  
15 no answer. To the extent an answer is required, Defendants do not contest that venue is proper in this  
16 Court for purposes of this action.

17 **THE PATENTS IN SUIT**

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

19 9. Defendants admit that attached to the Complaint as Exhibit B is what appears to be a  
20 copy of U.S. Patent No. 7,409,437, and that the attached copy states on its face that it was issued to  
21 Craig Ullman, Jack D. Hidary, and Nova T. Spivack.

22 10. Defendants admit that Exhibit B states on its face that the application that issued as the  
23 '437 Patent was filed on November 18, 2002, and the United States Patent and Trademark Office issued  
24 the '437 Patent on August 5, 2008.

25 11. Defendants admit that Kudelski, on behalf of OpenTV, the owner of the '437 Patent, has  
26 conveyed to Yahoo information regarding infringement of Claim 4 of the '437 Patent, including  
27 infringement by the interactive video advertising functionality in Yahoo's streaming video delivery  
28 services available through yahoo.com and Yahoo's branded mobile applications available on Android or

1 iOS devices and Yahoo's Connected TV platform. Accordingly, OpenTV herein asserts Counterclaims  
2 against Yahoo for infringement of the '437 Patent. Defendants deny that Kudelski is a proper party in  
3 this litigation, as it is not the owner of the '437 Patent or any patent discussed with Yahoo or asserted in  
4 Counterclaims herein.

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

6 12. Defendants admit that attached to the Complaint as Exhibit C is what appears to be a  
7 copy of U.S. Patent No. 6,233,736, and that the attached copy states on its face that it was issued to  
8 Thomas R. Wolzien.

9 13. Defendants admit that Exhibit C states on its face that the application that issued as the  
10 '736 Patent was filed on April 3, 1998, and the United States Patent and Trademark Office issued the  
11 '736 Patent on May 15, 2001.

12 14. Defendants admit that Kudelski, on behalf of OpenTV, the owner of the '736 Patent, has  
13 conveyed to Yahoo information regarding infringement of Claims 1-3, and 7-12 of the '736 Patent,  
14 including infringement by the interactive video advertising functionality in Yahoo's streaming video  
15 delivery services available through yahoo.com and Yahoo's branded mobile applications available on  
16 Android or iOS devices and Yahoo's Connected TV platform. Accordingly, OpenTV herein asserts  
17 Counterclaims against Yahoo for infringement of the '736 Patent. Defendants deny that Kudelski is a  
18 proper party in this litigation, as it is not the owner of the '736 Patent or any patent discussed with  
19 Yahoo or asserted in Counterclaims herein.

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

21 15. Defendants admit that attached to the Complaint as Exhibit D is what appears to be a  
22 copy of U.S. Patent No. 7,055,169, and that the attached copy states on its face that it was issued to  
23 Alain Delpuch, James Whitledge, Jean-Rene Menand, Emmanuel Barbier, Kevin Hausman, Debra  
24 Hensgen, and Dongmin Su.

25 16. Defendants admit that Exhibit D states on its face that the application that issued as the  
26 '169 Patent was filed on April 21, 2003, and the United States Patent and Trademark Office issued the  
27 '169 Patent on May 30, 2006.

28

1           17. Defendants admit that Kudelski, on behalf of OpenTV, the owner of the '169 Patent, has  
2 conveyed to Yahoo information regarding infringement of Claims 1–2, and 22–23 of the '169 Patent,  
3 including infringement by the adaptive streaming and resource management functionality in Yahoo's  
4 Connected TV platform. Accordingly, OpenTV herein asserts Counterclaims against Yahoo for  
5 infringement of the '169 Patent. Defendants deny that Kudelski is a proper party in this litigation, as it is  
6 not the owner of the '169 Patent or any patent discussed with Yahoo or asserted in Counterclaims  
7 herein.

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

9           18. Defendants admit that attached to the Complaint as Exhibit E is what appears to be a  
10 copy of U.S. Patent No. 7,028,327, and that the attached copy states on its face that it was issued to  
11 Brian P. Dougherty and C. Leo Meier.

12           19. Defendants admit that Exhibit E states on its face that the application that issued as the  
13 '327 Patent was filed on March 29, 2000, and the United States Patent and Trademark Office issued the  
14 '327 Patent on April 11, 2006.

15           20. Defendants admit that Kudelski, on behalf of OpenTV, the owner of the '327 Patent, has  
16 conveyed to Yahoo information regarding infringement of Claims 13–15, 17–19, 22, 29–30, and 36 of  
17 the '327 Patent, including infringement by the interactive video advertising functionality in Yahoo's  
18 streaming video delivery services available through yahoo.com and Yahoo's branded mobile  
19 applications available on Android or iOS devices and Yahoo's Connected TV platform. Accordingly,  
20 OpenTV herein asserts Counterclaims against Yahoo for infringement of the '327 Patent. Defendants  
21 deny that Kudelski is a proper party in this litigation, as it is not the owner of the '327 Patent or any  
22 patent discussed with Yahoo or asserted in Counterclaims herein.

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

24           21. Defendants admit that attached to the Complaint as Exhibit F is what appears to be a copy  
25 of U.S. Patent No. 7,752,642, and that the attached copy states on its face that it was issued to Thomas  
26 Lemmons.

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