Filed on behalf of: OpenTV Inc..

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.
Petitioner

v.

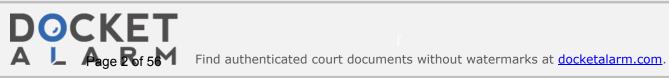OPENTV, INC.
Patent Owner

Case IPR2014-00252

Patent 8,107,786

DECLARATION OF DR. CHARLES A. ELDERING

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I, Dr. Charles A. Eldering, declare as follows:

I.   INTRODUCTION

1.   I have been retained by OpenTV, Inc. ("OpenTV" or "Patent Owner") as an independent expert consultant in this proceeding before the United States Patent and Trademark Office. Although I am being compensated at my usual rate of $425.00 per hour for the time I spend on this matter, no part of my compensation depends on the outcome of this proceeding, and I have no other interest in this proceeding.

2.   I understand that this proceeding involves U.S. Patent No. 8,107,786 ("the '786 patent") (Ex. 1001). I understand that the application for the '786 patent was filed on August 31, 2006, as U.S. Patent Application No. 11/469,195 ("the '195 application"), and the patent issued on January 31, 2012. Ex. 1001. I also understand that the '786 patent is assigned to OpenTV.

3.   I have been asked to consider whether certain references disclose or suggest the features recited in the claims of the '786 patent.

4.   I have also been asked to consider the state of the art and the prior art available as of August 31, 2006. In particular, I have been asked to consider the systems and methods in the '786 patent for modifying the playout or playback of primary content and compare these systems and methods to the prior art available as of August 31, 2006. I have also compared the systems and methods of proposed

substitute claims 8-14 in Patent Owner's Contingent Motion to Amend to the prior art as of that same date. My opinions are provided below.

II.   QUALIFICATIONS

5.   I received a B.S. from Carnegie Mellon University in Physics, a M.S. from Syracuse University in Solid State Science and Technology, and a Ph.D in Electrical Engineering. My curriculum vitae, which includes a more detailed summary of my background, experience, patents and publications, is attached as Appendix A.

6.   I have been involved in fiber optic and cable based telecommunications systems for over 20 years. As detailed below, based on my experience at Telecom Partners Limited, a company that I founded where I developed a comprehensive system design for a television targeted advertising system; my experience at Expanse Networks, Inc., another company that I founded where I worked extensively on developing initial system prototypes and products for targeted television advertising which included head-end equipment for inserting ads, subscriber profiling equipment in the set-top box, and features for providing alternative advertisements when users attempted to fast-forward through an advertisement from 2000-2003; and my experiences at General Instrument, where I was involved in CATV system design and development, all of which were prior to

the August 31, 2006 priority date of the '786 patent, I meet the requirements for a hypothetical person of ordinary skill in the art.

7.   I am not an attorney and offer no legal opinions, but in the course of my work, including my work as a patent agent, I have had experience studying and analyzing patents and patent claims from the perspective of a person skilled in the art, and have developed patent portfolios. I have previously served as a patent analyst and research consultant and am a named inventor on at least 20 patents in the general area of areas of targeted advertising and presenting alternative advertisements upon fast forwarding, with others pending.

III.   MATERIALS REVIEWED

8.   In forming my opinions, I have reviewed the '786 patent, the prosecution history of the '786 patent, and the documents listed in Appendix B.

IV.   OVERVIEW OF THE TECHNOLOGY

A. Technology Background

9.   Before the '786 patent, the prior art recognized digital video recording technology as a disruptive technology that gave program content viewers the ability to fast forward or skip advertisements in a recorded program. Ex. 1003 (Plotnick), Ex. 2010 (Unger), Ex. 2007 (Barton). The prior art combatted this disruptive technology by providing systems in which digital video recorders ("DVRs") stored advertisements that could be displayed to a user instead of an

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