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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NETFLIX, INC.  
Petitioner

v.

OPENTV, INC.  
Patent Owner

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Case IPR2014-00267  
Patent 7,409,437

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**Patent Owner's Preliminary Response  
to Petition for *Inter Partes* Review  
of U.S. Patent No. 7,409,437**

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## I. Preliminary Statement

The patented technology at issue relates to Over-the-Top delivery of content (such as movies, television, and other media) over the Internet, which forms a foundation for Patent Owner OpenTV's highly successful digital television business. That business includes over 200 million digital set-top boxes and televisions shipped to consumers with OpenTV software, and 80 worldwide customers that run OpenTV solutions. Indeed, The Kudelski Group, of which OpenTV is a subsidiary, has been innovating in the content industry for more than 60 years, and its founder, Stefan Kudelski, has received numerous awards for his innovations in the industry, including recently being honored in memoriam as an inventor by the Academy of Motion Picture Arts and Sciences at the 86<sup>th</sup> Annual Academy Awards in March, 2014.

OpenTV formally notified Petitioner Netflix, Inc. that it was using OpenTV's patented technology in its streaming video service, and on December 19, 2012, after nearly 12 months of Netflix ignoring OpenTV's repeated requests for a license, OpenTV reluctantly filed a patent infringement lawsuit against Netflix in Delaware. *See* OPENTV Exhibit 2002, Complaint in *OpenTV, Inc., v. Netflix, Inc.* Netflix could no longer ignore OpenTV's patents, but instead of addressing the matter directly, Netflix continued its delay tactics, waiting until the very last moment to file a flawed and incomplete petition for *inter partes* review of

U.S. Patent No. 7,409,437, hoping to side-step liability from its continuing use of OpenTV's patented technology.

Netflix's petition fails because, among other things, it fails to support its proposed grounds of unpatentability with reasoning required by the statute and the Board's rules, with multiple fatal flaws in the proposed obviousness grounds for every claim.

A petition for *inter partes* review "may be considered only if . . . the petition identifies, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim." 35 U.S.C. § 312. To ensure that this statutory requirement is met, the Board's rules specify detailed requirements for a petition, including an identification of how each challenged claim is to be construed, how each construed claim is unpatentable, and where each element of the claim is found in the prior art. 37 C.F.R. § 42.104(b); *see also* 37 C.F.R. § 42.22(a)(2) (requiring a full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence including material facts, and the governing law, rules, and precedent). Here, the petition's analysis is incomplete for these and other reasons, and such an incomplete analysis cannot establish a reasonable likelihood of prevailing for any claim.

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