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OpenTV, Inc. and NagraVision, SA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OPENTV, INC., AND NAGRAVISION,
SA

Plaintiffs,

v.

APPLE, INC.,

Defendant.

CASE NO. 3:14-cv-01622-JST

**THIRD AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiffs OpenTV, Inc. (“OpenTV”) and NagraVision, SA (“NagraVision”) for their Third
 2 Amended Complaint against Defendant Apple, Inc. (“Apple”), allege as follows:

3 1. OpenTV and NagraVision, members of The Kudelski Group of companies, bring this
 4 patent infringement action to stop Apple from continuing its wrongful and unlicensed use of
 5 OpenTV’s and NagraVision’s patented technologies for, among other things, storing, managing,
 6 delivering, securing, playing, and viewing interactive content on smartphones, tablets, computers,
 7 digital televisions, and other devices.

8 2. The Kudelski Group and its subsidiaries OpenTV and NagraVision have a long and
 9 distinguished history of innovation, and today these companies design and manufacture widely used,
 10 critically acclaimed, and award winning digital media technologies, employ hundreds of employees
 11 in the United States and thousands worldwide, and protect their research and development
 12 investment with a robust patent portfolio comprising thousands of patents reflecting the efforts of
 13 years of innovation and effort by numerous inventors and engineers. OpenTV and NagraVision
 14 encourage innovation by licensing their intellectual property portfolio, but enforce their patent rights
 15 when necessary to protect their research investment and protect the fruits of the efforts of their
 16 employees from unauthorized use.

17 3. Apple’s products and services, including its iOS-based mobile devices (e.g., the
 18 iPhone, iPad and iPod Touch), its Apple TV, iTunes, App Store, iRadio, iAd and Safari products and
 19 services, and its OS X-based computers, make pervasive use of OpenTV’s and NagraVision’s
 20 patented technology and infringe one or more of the following five United States patents (the
 21 “Asserted Patents”):

- 22 • 5,689,799 titled “Method And Apparatus For Routing Confidential Information” (“the
 23 ’799 Patent”) (Exhibit A attached hereto);
- 24 • 5,884,033 titled “Internet Filtering System For Filtering Data Transferred Over the
 25 Internet Utilizing Immediate And Deferred Filtering Actions” (“the ’033 Patent”)
 26 (Exhibit B attached hereto);
- 27 • 5,566,287 titled “Method For Asynchronously Maintaining An Image On A Display
 28 Device” (“the ’287 Patent”) (Exhibit C attached hereto);

- 1 • 6,985,586 titled “Distributed Information and Storage System” (“the ’586 Patent”)
- 2 (Exhibit D attached hereto); and
- 3 • 7,900,229 titled “Convergence of Interactive Television and Wireless Technologies”
- 4 (“the ’229 Patent”) (Exhibit E attached hereto).

5 4. OpenTV and NagraVision seek damages in an amount adequate to compensate
 6 OpenTV and NagraVision for Apple’s infringement, including trebled damages based on Apple’s
 7 willful infringement of the Asserted Patents, a permanent injunction barring Apple from continuing
 8 to infringe OpenTV’s and NagraVision’s patents, and OpenTV’s and NagraVision’s attorneys’ fees
 9 and costs associated with this action.

10 **JURISDICTION AND VENUE**

11 5. This lawsuit is a civil action for patent infringement arising under the patent laws of
 12 the United States, 35 U.S.C. § 101 et seq. This Court has subject-matter jurisdiction pursuant to 28
 13 U.S.C. §§ 1331 and 1338(a).

14 6. This Court has personal jurisdiction over Apple because Apple resides and has its
 15 primary place of business in Cupertino, California, within this District. This Court also has personal
 16 jurisdiction over Apple because Apple has committed, contributed to, and induced acts of patent
 17 infringement and has regularly and systematically conducted and solicited business in this District
 18 by and through at least its sales and offers for sale of Apple products and services, and other
 19 contractual arrangements with Apple subscribers, customers, developers, distributors and third-party
 20 service providers using Apple products and services located in and/or doing business in this District.

21 7. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and 1400(b) because
 22 Apple resides in this District, has a regular and established place of business in this District, and has
 23 committed acts of infringement in this District.

24 **INTRADISTRICT ASSIGNMENT**

25 8. This action for patent infringement is assigned on a district-wide basis under Civil
 26 L.R. 3-2(c).

THE PARTIES

A. Plaintiffs OpenTV, Inc. and Nagravision, SA

9. OpenTV is a Delaware corporation whose principal place of business in the United States is located in San Francisco, California.

10. Nagravision is a Switzerland corporation whose principal place of business is located in Cheseaux, Switzerland.

11. OpenTV and Nagravision are subsidiaries of Kudelski SA. Kudelski SA and its subsidiaries, including OpenTV and Nagravision, make up the various companies of The Kudelski Group. The history of The Kudelski Group is one highlighted by over 60 years of innovation, award winning products, and loyal, long-term customers who entrust The Kudelski Group with their business. Today, The Kudelski Group is a major employer in the United States, Europe, Asia, and elsewhere, providing jobs in manufacturing, engineering, research and development, marketing, sales, and many other specialties with over 3,000 employees worldwide.

12. In 1951, Stefan Kudelski created the first company in what became The Kudelski Group and launched the now legendary “Nagra” line of portable recording devices for cinema, TV and radio recording. Stefan Kudelski’s recording devices, and the inventions in them, were considered revolutionary throughout the movie industry. The Nagra devices allowed precise synchronization of audio tape with film, providing filmmakers with studio sound quality during on-location filming.

13. Throughout his career, Stefan Kudelski received numerous awards and honors for his technological achievements, including four Academy Awards, two Emmy Awards, and Gold Medals from the Society of Motion Picture & Television Engineers, the Audio Engineering Society, Lyra, and Eurotechnica. Mr. Kudelski also was recognized by the FBI for his technology contribution in audio recording. After Mr. Kudelski’s death in 2013, he was honored in the “in memoriam” presentation during the 86th Annual Academy Awards in March 2014, described by a single word: Inventor.

14. The success of the products that The Kudelski Group manufactured and sold in its early years allowed the company to grow and expand. In 1989, The Kudelski Group expanded the

1 scope of its technological innovation by launching its first conditional access systems for pay TV.
2 Over the next decade, The Kudelski Group continued to expand its technology development in the
3 digital television domain, providing global, universally compatible solutions to manage, organize,
4 enhance, market, and secure digital content, regardless of whether it was transmitted over managed
5 or unmanaged networks, broadcast linearly, or on-demand.

6 15. Today, digital television is The Kudelski Group's core business. The Kudelski Group
7 has become a world leader in digital security and convergent media solutions for the delivery of
8 digital and interactive content. The Kudelski Group's innovations are continuously contributing to
9 the evolution of the digital television ecosystem, enabling operators to extend their multimedia
10 offerings across the entire digital ecosystem to numerous client devices through traditional managed
11 networks as well as Internet delivery.

12 16. Within The Kudelski Group, the principal operating company responsible for
13 developing and implementing innovative solutions for securing digital television content is
14 NagraVision. NagraVision provides innovative solutions for accessing interactive television content
15 and creates innovative security and access control solutions that provide optimal levels of protection
16 throughout the content distribution chain, from creation to consumption. NagraVision products and
17 services include open conditional access systems, digital rights management, and integrated on-
18 demand solutions for content providers and digital television operators over broadcast, broadband,
19 and mobile platforms. NagraVision's technologies are used by over 120 pay-television operators in
20 the United States and internationally to deliver secure television content to a wide range of devices.
21 In particular, NagraVision has been an industry leader in recent years in the development of
22 technologies to secure delivery of paid content to mobile devices or to multiple devices connected by
23 a local wired or wireless network.

24 17. The Kudelski Group has also grown as a leader in the digital television domain
25 through acquisitions of pioneering technology companies, including such notable companies as
26 Lysis, Livewire, MediaGuard, SmarDTV, OpenTV, and most recently, Conax, a global provider of
27 content protection for digital TV services over broadcast, broadband, and connected devices.
28

1 18. OpenTV was founded in 1996 as Thomson Sun Interactive, LLC, a joint venture of
2 Thomson Multimedia SA and Sun Microsystems, Inc. In 1997, Thomson Sun Interactive LLC was
3 converted into a newly-formed corporation—OpenTV, Inc. From its inception, OpenTV has been
4 dedicated to developing and commercializing cutting-edge, patented technology required for the
5 delivery of television and other media content to consumers through cable, satellite, and terrestrial
6 networks, and other managed and unmanaged networks.

7 19. OpenTV has a long history of innovation in the field of software for set-top boxes for
8 television sets. Within four years of its creation, OpenTV became the first interactive television
9 middleware provider to integrate its middleware technology in more than 10 million set-top boxes
10 worldwide—more than all other industry competitors combined. OpenTV also partnered with
11 EchoStar’s DISH Network, which was the first satellite company to provide interactive television
12 services in the United States. OpenTV’s set-top box middleware technologies were key to the
13 successful growth of DISH Network. Today, OpenTV has partnerships with companies worldwide,
14 and OpenTV’s middleware has now been incorporated into over 200 million set-top boxes.

15 20. In addition to its industry-leading set-top box middleware solutions, OpenTV has
16 been an innovator in web-based content delivery.

17 21. From 2002-2004, OpenTV continued to expand its worldwide presence by acquiring
18 other innovative content delivery technology companies such as Wink Communications, ACTV,
19 Inc., and Spyglass, Inc., the first company to offer commercially a web browser.

20 22. As a result of its ongoing commitment to interactive television and web-based content
21 delivery, by 2004-2006, OpenTV led the industry in integrating browser software into television
22 sets, built the first interactive shopping application for DISH Network, successfully launched real-
23 time two-way interactive television shopping services on QVC, and provided the technology for
24 CNN Enhanced TV, among other notable achievements. All of these innovations helped to pave the
25 way for the growing revolution in how media content is delivered and enjoyed, including over the
26 Internet.

27 23. In addition to these achievements, OpenTV also developed complementary
28 technology related, for example, to personal video recording (“PVR”), video-on-demand (“VOD”),

1 television home networking, advanced advertising methodologies, and tools for recommending
2 content to viewers. The industry has also long recognized OpenTV's technology contributions. For
3 example, OpenTV's PVR was named as one of the best in its field by Seagate Technology in 2009.

4 24. Today, OpenTV develops software that enables intuitive and personalized viewing
5 experiences for consumers. OpenTV's software solutions provide a variety of advanced and
6 interactive services for television, including advanced user interfaces, VOD, PVR, high-definition
7 ("HD"), interactive, and addressable advertising, and a variety of enhanced television applications.

8 25. OpenTV and NagraVision products that are integrated with the OpenTV platform
9 have won numerous industry awards, including "Best New Technology" at the 2009 DISH Network
10 Interactive Awards for OpenTV, "Best Content Protection Technology" for NagraVision's PRM
11 solution at the International Broadcasting Convention (IBC) trade show in 2010, a TV Innovation
12 Award in the category of "Advanced User Interface" for OpenTV's cross-device user experience in
13 2010, an IPTV World Forum Award for "Best Multiscreen Solution/Service" for Nagra Multiscreen
14 in 2012, and "Best IPTV Technology" for Nagra MediaLive and "Best Middleware" for OpenTV at
15 IBC 2012. Most recently, NagraVision's Gravity user interface, which relies on OpenTV's next
16 generation middleware software, known as OpenTV5, was widely praised following the 2013
17 International Broadcasting Convention trade show as a stand-out product for showing "how the user
18 interface and the overall user experience can be enhanced with 4K screens," "bring[ing] the HTML5
19 user experience and 4K to a new level," and for providing a "stunning" and "compelling" user
20 interface.

21 26. OpenTV became a part of The Kudelski Group in 2007 through The Kudelski
22 Group's acquisition of a controlling stake in the company. OpenTV became a wholly-owned
23 subsidiary of Kudelski SA in 2010.

24 27. OpenTV's integration into The Kudelski Group has allowed for commercial and
25 technological synergies between other Kudelski Group companies, such as NagraVision, and
26 continued innovation in the delivery of digital content. For example, in 2013 The Kudelski Group
27 introduced JoinIn, a connected home solution that allows users to seamlessly deliver secured
28 premium content across multiple devices within a home, including multiple TV screens and mobile

1 devices such as smartphones and tablets. JoinIn integrates OpenTV5 middleware with NagraVision's
2 security and access control technology.

3 28. Through its dedication to developing innovative technologies, OpenTV's and
4 NagraVision's technologies have contributed to the explosive growth of content delivery and
5 consumption across all broadband networks, including increased consumption of Internet content by
6 users.

7 29. OpenTV employs more than 200 people in the United States, while The Kudelski
8 Group as a whole, including NagraVision, employs nearly 400 people within the United States.

9 30. The Kudelski Group, including its OpenTV and NagraVision subsidiaries, devotes
10 substantial resources to research and development. In fact, The Kudelski Group companies have
11 invested over \$3 billion in R&D in the past 20 years.

12 31. To protect their investment in R&D, OpenTV, NagraVision, and the other Kudelski
13 Group companies have garnered a robust international portfolio of over 4,400 worldwide pending
14 and issued patents, including many related to the delivery of end-to-end secure media solutions for
15 digital content, and continue to substantially grow their worldwide patent positions in this and other
16 complementary technology areas. Over 1,000 of these patents and applications worldwide belong to
17 OpenTV, and over 1,900 belong to NagraVision.

18 32. These patents include key technologies related to content management and delivery
19 systems, content recommendation engines and targeted content delivery, subscriber management
20 systems and tools, DRM and other content access control techniques, billing and payment systems,
21 user interfaces, digital video recorder ("DVR") content storage and scheduling, end-to-end digital
22 content security, including securing digital content within the home network, VOD content selection,
23 advanced advertising techniques, and many others.

24 33. Companies worldwide have acknowledged the commercial importance of The
25 Kudelski Group's patent portfolio, taking licenses to OpenTV, NagraVision, and other Kudelski
26 Group patents relevant to their businesses. Notably, Cisco Systems, Inc. just recently licensed The
27 Kudelski Group's patent portfolio.

B. Apple, Inc.

34. Apple is a California corporation with a principal place of business in Cupertino, California.

35. Apple is a major designer and manufacturer of computer technologies, including personal computers, mobile communications devices, portable digital music and video players, and related software. Apple was formerly known as “Apple Computer, Inc.,” but changed its name in 2007 to reflect a broadened focus on mobile computing devices, computing services, and content delivery as well as personal computers.

36. The company’s products and services include:

- mobile devices such as the iPhone, iPod Touch, and iPad, which use Apple’s iOS operating systems;
- personal computers, including desktop computers and laptops such as the “MacBook” line that use Apple’s OS X operating system;
- products to support access to streaming content, such as Apple TV;
- a portfolio of consumer and professional software applications, including iTunes, the iTunes Store and the Mac Store, the Safari web-browser, the iOS and OS X operating systems; and
- a variety of accessory, service, and support offerings.

37. Apple first introduced the iPod line of portable media players in 2001, along with the iTunes music service. There are four current versions of the iPod—the ultra-compact iPod Shuffle, the compact iPod Nano, the touchscreen iPod Touch, and the hard drive-based iPod Classic.

38. Apple iTunes is a media player, media library, and mobile device management application and service developed and operated by Apple. Apple iTunes includes an application installed on personal computers or mobile computing devices, as well as an online service operated by Apple. It is used to play, download, and organize digital audio and video on a variety of Apple devices, including Apple personal computers, mobile computing devices based on iOS, and Apple TV. Apple also makes iTunes available for download for users of a wide variety of computing devices, including computing devices made by companies other than Apple. For example, Apple has

1 offered several versions of iTunes that operate in the Microsoft Windows operating system, and
2 generates additional revenue from purchases made within iTunes by iTunes Windows users.
3 Additionally, Apple has periodically added new features to iTunes and offers new versions of the
4 software to existing iTunes users, in some cases through automatic updates. Through the iTunes
5 Store, users can purchase and download a variety of content such as music, music videos, television
6 shows, audiobooks, podcasts, movies, movie rentals, and ringtones. Apple has consistently
7 advertised the interaction between iTunes and its other computing and media products, including
8 Apple computers, the iPod, Apple's mobile computing devices, and more recently Apple TV.

9 39. The iPhone is a line of smartphones designed and marketed by Apple, first introduced
10 in 2007. The iPhone runs an operating system specifically designed for mobile devices, originally
11 designated by Apple as iPhone OS and since renamed iOS. Since releasing the iPhone, Apple has
12 expanded its line of devices running Apple's iOS mobile operating system to include several
13 additional iterations of the iPhone (most recently the iPhone 5C and 5S, introduced in 2013), the
14 iPad line of tablet computers first released in 2010, and multiple versions of its iPod line of portable
15 media players designated under the iPod Touch brand name and operating iOS. Since Apple first
16 introduced the iPhone, Apple has sold the vast majority if not all of its iOS-based products with
17 iTunes pre-installed on the devices.

18 40. Although Apple dropped the word "computer" from its name in 2007, Apple
19 continues to be a major manufacturer of computers, including both desktop and laptop computers.
20 Apple frequently brands its desktop computers with variants of the "Mac" tradename (for example,
21 Mac Mini, iMac, and Mac Pro), while Apple designates its laptop computers and other portable
22 computers as "MacBooks," such as the MacBook Pro and MacBook Air. Apple's current line of
23 computer products includes desktops and portable computers running Apple's OS X operating
24 system.

25 41. Apple TV is a digital media player developed and first sold by Apple in 2007. It is a
26 small form factor network appliance designed to play digital content from the iTunes Store, as well
27 as third-party applications, on an enhanced-definition or high-definition widescreen television.
28 Apple generates significant revenue from the sale of Apple TV devices as well as content purchased

1 through Apple TV. At a recent Apple shareholder's meeting, Apple Chief Executive Officer Tim
2 Cook noted that Apple had generated significant revenue from Apple TV over the last year,
3 admitting that today, "it's a little bit harder to call it a hobby."

4 42. Apple's App Store is a digital distribution platform for mobile apps that run on iOS
5 compatible devices that was developed and maintained by Apple. Apps can be downloaded directly
6 to an iOS device, or onto a personal computer via iTunes. The App Store allows users to browse and
7 download applications that were developed with Apple's iOS Software Development Kit ("SDK").
8 Apple's SDK allows developers to create applications that natively run on the iPhone, iPod Touch,
9 and iPad. Apple provides technical instructions that teach developers methods for designing their
10 apps to interact with the functions of Apple devices and Apple's revenue-generating services. Apps
11 may be downloaded from the App Store for free or for a set cost. Many apps generate revenue
12 through advertising or purchases launched from the app. On information and belief, Apple receives
13 approximately 30 percent of all revenue generated through apps, while the remaining 70 percent
14 goes to the app publisher.

15 43. Apple iAd is Apple's platform for displaying customized advertisements to users of
16 Apple products and services, including iTunes, iRadio, iOS apps, and Apple TV, across multiple
17 devices. iAd compiles various types of information regarding demographic information and user
18 interests or preferences from their patterns of using various Apple services, such as what apps from
19 the App Store the users download and use, what movies and TV shows users watch on iTunes or
20 AppleTV, and what audiobooks or music users listen to. The iAd service compiles this information
21 to create profiles of individual users, which the iAd service then uses to target advertisements to
22 specific users.

23 44. A substantial part of Apple's business strategy relies on synergies between different
24 Apple products. Apple designs and markets its products to create a branded, closed "ecosystem" that
25 encourages consumers who use one Apple product or service to use it in conjunction with other
26 Apple products and services. For example, Apple computers and mobile devices direct customers to
27 purchase content from the iTunes store and App Store, while Apple encourages Apple TV customers
28 to stream Apple TV content to their Apple mobile devices using a software feature known as

1 “AirPlay,” which can link Apple mobile devices and/or OS X-based computers to a local wireless
2 network and provide encryption methods to secure content being streamed from one Apple device to
3 another.

4 45. Notably, Apple’s recent success from its vast line of products and services has come
5 years after core technologies underlying these products and services were developed by others,
6 including, in the present case, pioneering technologies developed by OpenTV and NagraVision.

7 **BACKGROUND OF THE TECHNOLOGY**

8 46. The technology at issue in this case pertains generally to the fields of access,
9 selection, control, security, and delivery of digital content, such as movies, television, music, and
10 other media, over broadband networks to connected devices, such as smartphones, tablets, personal
11 computers, and streaming media devices.

12 47. Changes in technologies, business models, and consumer lifestyles are converging to
13 propel the rise of online video and fundamentally transform TV, advertising, and content delivery
14 methods. A major recent trend in delivery of digital online content is the development of “Over-the-
15 Top” (OTT) delivery of content (such as movies, television, and other media) over the Internet. OTT
16 delivery is done through an ordinary Internet connection that is not tied to the type of content being
17 delivered. In the OTT model, an Internet service provider is responsible only for ensuring that data
18 can be received by the consumer through a provided Internet connection. Over-the-Top services
19 bypass traditional distribution channels like cable and satellite by providing their content “over the
20 top” of broadband networks.

21 48. OTT content, including OTT content delivered by Apple, can often be viewed on a
22 myriad of connected devices, such as televisions, gaming consoles, personal computers, tablets,
23 smartphones, and many other connected devices. OTT services are the catalyst for much of the
24 growth in consumption of online video and other online digital content.

25 49. To avoid having OTT services erode potential digital media revenue, content
26 providers and viewing devices must provide ways to secure access to the content, including Digital
27 Rights Management (DRM), authentication, and parental controls. Advances in DRM have enabled
28 content owners and distributors to securely distribute online video and protect playback across

1 devices and platforms. This increased security and level of control has, in turn, helped establish
2 online video as a viable revenue source and led to the proliferation of business models, including
3 digitally delivered rentals, subscriptions, and downloads. Digital security mechanisms have thus
4 permitted the migration of video to OTT delivery.

5 50. Over the last few years, software ecosystems have been emerging as a significant part
6 of the mobile domain. The marketplaces of these software ecosystems, including the Apple “App
7 Store,” offer currently hundreds of thousands of applications or “apps” from tens of thousands of
8 developers, and the ecosystems are in a tight competition. These app stores are digital distribution
9 platforms for application software often provided as a component of an operating system on a
10 desktop, smartphone, or tablet. Users can browse through different categories and genres of
11 applications, purchase them (if necessary), and then automatically download and install the
12 application on their connected device. To protect app stores as a revenue source, applications must
13 be provided in a secure manner and verified before they are executed.

14 51. The proliferation of a wider variety of devices—such as mobile computing devices—
15 for viewing rich OTT content has created another new set of challenges relating to presentation of
16 content in a user-friendly way. For example, users now expect to be able to access a wide range of
17 TV and online content, including some premium content, through multiple platforms such as TVs,
18 personal computers, and mobile computing devices, while content providers and advertisers seek to
19 provide content across multiple platforms without compromising security and control. Additionally,
20 for services such as streaming audio, users may expect a richer presentation of information than
21 simply the audio stream alone.

22 52. Over the past 20 years, OpenTV, NagraVision, and other companies within The
23 Kudelski Group have developed many of the underlying technologies that consumer electronics
24 companies, such as Apple, are integrating into their products and services, in order to deliver high
25 quality media content and applications to a growing number of consumer devices. For example,
26 OpenTV’s and NagraVision’s portfolios include numerous patents directed to fundamental
27 technologies for video and content management, distribution, sharing, authentication, and control.

28

53. OpenTV and NagraVision have been, and remain, industry leaders in developing the technologies required to overcome the significant technical challenges to permit the tremendous growth of digital video content and consumption. Their investments in technology leadership and reputations as technology innovators are harmed by ongoing unauthorized use of their technologies.

FIRST CLAIM FOR RELIEF

Infringement of U.S. Patent No. 5,689,799

54. OpenTV incorporates by reference paragraphs 1 through 53.

55. OpenTV is the owner by assignment of all rights, title, and interest in the '799 Patent.

56. The '799 Patent is valid and enforceable.

57. Apple has infringed, and is currently infringing, the '799 Patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale, and/or importing into the United States, without authority, products, equipment, software, and/or services that practice one or more claims of the '799 Patent, including without limitation Apple's App Store, Apple's Software Development Kit (SDK), and Apple's Store Kit Framework, designed to facilitate the purchasing of content within an application ("In-App Purchase"), including without limitation In-App Purchases on iOS and Mac OS X devices.

58. Apple has knowledge of the '799 Patent and Apple's infringement of the '799 Patent since at least, and through, the filing and service of the original, First Amended, Second Amended, and Third Amended Complaints and despite this knowledge continues to infringe. Apple was publicly touting its participation in the interactive television market at least in 2010 and had entered the market at least by 2007. Apple would be aware of a prominent portfolio such as that of the Kudelski Group, which includes OpenTV and NagraVision, as this portfolio is well-known in the industry. OpenTV has asserted patents from its portfolio where appropriate against infringers. For example, in January 2014, OpenTV and Cisco Systems, Inc. successfully ended litigation when the Kudelski Group and Cisco entered a well-publicized license agreement. Apple would be aware of the Kudelski Group's portfolio at least by virtue of its role in the market and the impact of the Kudelski Group's portfolio on Apple's products.

59. Apple induces third-parties, including customers and app developers of iOS and Mac OS X devices, to infringe the '799 Patent in violation of 35 U.S.C. § 271(b) by encouraging and facilitating them to perform actions that Apple knows to be acts of infringement of the '799 Patent. Upon information and belief, Apple knows that the use of its software designed to facilitate In-App Purchases constitutes infringement of the '799 Patent. Upon information and belief, Apple publishes specifications and promotional literature encouraging customers and app developers of iOS and Mac OS X devices to operate the infringing In-App Purchase functionality in its accused devices and its Store Kit SDK, creates and/or distributes user manuals for the accused devices and the Store Kit SDK that provide instruction and/or encourage infringing use, and offers support and/or technical assistance to its customers and app developers that provide instructions on and/or encourage infringing use. For example, Apple publishes online documentation at developer.apple.com, including a “store kit guide” and “in-app purchase programming guide” that encourage developers to design applications for the iOS and OS X platform, which infringe the '799 Patent when operated on an accused product.¹ Customers and app developers then each directly infringe the '799 Patent.

60. Apple also contributes to the infringement of the '799 Patent in violation of 35 U.S.C. § 271(c). Apple contributes to infringement of the '799 Patent by making, using, selling, offering to sell, and/or importing software components incorporated with third-party applications installed and executed on one or more Apple iOS and Mac OS X devices to facilitate the purchase of content within an application. Apple knows that the Store Kit Framework and Store Kit SDK are especially made or especially adapted for use in infringement of the '799 Patent. The accused software components constitute a material part of the invention claimed by the '799 Patent at least because such software components working in conjunction with Apple's Store Kit Framework are specifically programmed to operate in a manner that infringes the '799 Patent by allowing content to be purchased within apps installed and executed on one or more Apple iOS and/or Mac OS X devices. The accused software components are separable from Apple's products and are not staple

¹ See, e.g.

<https://developer.apple.com/library/mac/documentation/NetworkingInternet/Conceptual/StoreKitGuide/Introduction.html>.

1 articles or commodities of commerce suitable for substantial non-infringing use because these
 2 software components necessarily operate in a manner that infringes the '799 Patent. Moreover,
 3 Apple publishes information about infringing aspects of its Store Kit that are practiced using the
 4 software components that Apple provides. Therefore, Apple is also contributing to the direct
 5 infringement of the '799 Patent by customers and app developers of these products.

6 61. Apple had actual knowledge of the '799 Patent by April 9, 2014, upon the filing of
 7 Plaintiffs' Complaint for Patent Infringement. On information and belief, Apple also had knowledge
 8 of the '799 Patent prior to the filing of Plaintiffs' Complaint for Patent Infringement by virtue of the
 9 Kudelski Group's role in the market and the impact of the Kudelski Group's portfolio on Apple's
 10 products, as indicated above. Despite this knowledge, on information and belief, Apple continued its
 11 infringing activities despite an objectively high likelihood that its activities constituted infringement
 12 of a valid patent, and this risk was either known or so obvious that it should have been known to
 13 Apple. Thus, on information and belief, Apple's infringement has been, and continues to be, willful
 14 and deliberate.

15 62. OpenTV has suffered and continues to suffer damages and irreparable harm as a
 16 result of Apple's past and ongoing infringement.

17 63. Unless Apple's infringement is permanently enjoined, OpenTV will continue to be
 18 damaged and irreparably harmed.

19 **SECOND CLAIM FOR RELIEF**

20 **Infringement of U.S. Patent No. 5,884,033**

21 64. OpenTV incorporates by reference paragraphs 1 through 53.

22 65. OpenTV is the owner by assignment of all rights, title, and interest in the '033 Patent.

23 66. The '033 Patent is valid and enforceable.

24 67. Apple has infringed, and is currently infringing, the '033 Patent in violation of 35
 25 U.S.C. § 271(a) by making, using, selling, offering for sale, and/or importing into the United States,
 26 without authority, products, equipment, software and/or services that practice one or more claims of
 27 the '033 Patent through at least the incorporation of parental control and/or firewall functionality in
 28

1 its iOS devices, Apple TV, and other computing devices using the OS X operating system software
2 in conjunction with the Safari web browser.

3 68. Apple has had knowledge of and notice of the '033 Patent and Apple's infringement
4 of the '033 Patent since at least, and through, the filing and service of the original, First Amended,
5 Second Amended, and Third Amended Complaints and despite this knowledge continues to infringe.
6 Apple was publicly touting its participation in the interactive television market at least in 2010 and
7 had entered the market at least by 2007. Apple would be aware of a prominent portfolio such as that
8 of the Kudelski Group, which includes OpenTV and NagraVision, as this portfolio is well-known in
9 the industry. OpenTV has asserted patents from its portfolio where appropriate against infringers.
10 For example, in January 2014, OpenTV and Cisco Systems, Inc. successfully ended litigation when
11 the Kudelski Group and Cisco entered a well-publicized license agreement. Apple would be aware
12 of the Kudelski Group's portfolio at least by virtue of its role in the market and the impact of the
13 Kudelski Group's portfolio on Apple's products. Moreover, Apple has knowledge of the '033 Patent
14 at least since this patent was identified to Apple during prosecution of each of U.S. Patent Nos.
15 7,849,141 and 7,640,305 assigned to Apple.

16 69. Apple induces customers to infringe the '033 Patent in violation of 35 U.S.C. §
17 271(b) by encouraging and facilitating them to perform actions that Apple knows to be acts of
18 infringement of the '033 Patent. Upon information and belief, Apple designs the parental control
19 and/or firewall features in iOS devices, Mac OS X devices, Apple TV, and/or Safari software to
20 operate in a manner which infringes the '033 Patent and is aware that these features operate in a
21 manner that directly infringes the '033 Patent. Upon information and belief, Apple advertises the
22 infringing parental control and/or firewall functionality in the accused iOS devices, Apple TV, Mac
23 OS X devices, and Safari software, publishes specifications and promotional literature (including
24 without limitation online promotional materials) describing the operation of and encouraging
25 customers to use the parental control and/or firewall features of the accused iOS devices, Apple TV,
26 Mac OS X devices and Safari software, creates and/or distributes user manuals that encourage users
27 to use the parental control and/or firewall features of the accused iOS devices, Apple TV, Mac OS X
28 devices, and Safari software, and offers support and/or technical assistance to its customers. For

1 example, Apple publishes online documentation at support.apple.com, including guides that
 2 encourage consumers of these products to activate parental control and/or firewall features of these
 3 products or services that, when operated on an accused product or service, infringe the '033 patent.²
 4 Customers of these products or services then infringe the '033 Patent.

5 70. Apple had actual knowledge of the '033 Patent by May 23, 2006, when the '033
 6 Patent was identified by Apple to the USPTO during prosecution of the application that led to U.S.
 7 Patent No. 7,640,305, which is assigned to Apple. Apple further had actual knowledge of the '033
 8 Patent by April 9, 2014, upon the filing of Plaintiffs' Complaint for Patent Infringement. Despite this
 9 knowledge, on information and belief, Apple continued its infringing activities despite an objectively
 10 high likelihood that its activities constituted infringement of a valid patent, and this risk was either
 11 known or so obvious that it should have been known to Apple. Thus, on information and belief,
 12 Apple's infringement has been, and continues to be, willful and deliberate.

13 71. OpenTV has suffered and continues to suffer damages and irreparable harm as a
 14 result of Apple's past and ongoing infringement.

15 72. Unless Apple's infringement is permanently enjoined, OpenTV will continue to be
 16 damaged and irreparably harmed.

17 **THIRD CLAIM FOR RELIEF**

18 **Infringement of U.S. Patent No. 5,566,287**

19 73. OpenTV incorporates by reference paragraphs 1 through 53.

20 74. OpenTV is the owner by assignment of all rights, title, and interest in the '287 Patent.

21 75. The '287 Patent is valid and enforceable.

22 76. Apple has infringed, and is currently infringing, the '287 Patent in violation of 35
 23 U.S.C. § 271(a) by making, using, selling, offering for sale, and/or importing into the United States,
 24 without authority, products, equipment, software, and/or services that practice one or more claims of

25
 26 ² See, e.g. <http://support.apple.com/kb/ht4213>; <http://support.apple.com/kb/ht1904>;
 27 <http://support.apple.com/kb/ht4213>; <http://support.apple.com/kb/VI28>;
 28 <http://support.apple.com/kb/ht2900>; <http://support.apple.com/kb/PH14414>;
<http://support.apple.com/kb/PH11471>; http://support.apple.com/kb/PH11054?viewlocale=en_US;
<http://support.apple.com/kb/HT6123>.

1 the '287 Patent through at least the incorporation of the view and window architecture employed in
2 Apple iOS devices including, but not limited to, the iPhone, iPad, and iPod Touch.

3 77. Apple has had knowledge and notice of the '287 Patent and Apple's infringement of
4 the '287 Patent since at least the filing and service of the original, First Amended, Second Amended,
5 and Third Amended Complaints and despite this knowledge continues to infringe. Apple was
6 publicly touting its participation in the interactive television market at least in 2010 and had entered
7 the market at least by 2007. Apple would be aware of a prominent portfolio such as that of the
8 Kudelski Group, which includes OpenTV and NagraVision, as this portfolio is well-known in the
9 industry. OpenTV has asserted patents from its portfolio where appropriate against infringers. For
10 example, in January 2014, OpenTV and Cisco Systems, Inc. successfully ended litigation when the
11 Kudelski Group and Cisco entered a well-publicized license agreement. Apple would be aware of
12 the Kudelski Group's portfolio at least by virtue of its role in the market and the impact of the
13 Kudelski Group's portfolio on Apple's products.

14 78. Apple induces third-parties, including customers and app developers to infringe the
15 '287 Patent in violation of 35 U.S.C. § 271(b) by encouraging and facilitating them to perform
16 actions that Apple knows to be acts of infringement of the '287 Patent. Upon information and belief,
17 Apple is aware that the Apple iOS devices operate in a manner that infringes the '287 Patent at least
18 due to its development and inclusion of software elements for drawing objects and views in the user
19 interface of the accused iOS devices and/or of apps executing on these devices. These software
20 elements provided by Apple infringe the '287 Patent during normal operation by the accused
21 devices. Upon information and belief, Apple advertises, encourages, and promotes the infringing
22 functionality in the accused iOS devices, publishes specifications and promotional literature
23 describing the operation of the accused iOS devices and encouraging Apple's customers to operate
24 the accused products in an infringing manner, creates and/or distributes user manuals for the accused
25 iOS devices that encourage Apple's customers to operate the accused products in an infringing
26 manner, and offers support and/or technical assistance to its customers encouraging its customers to
27 use the infringing functionality. For example, Apple publishes online documentation at
28 developer.apple.com, including a "view programming guide," "view controller programming guide,"

1 “drawing and printing guide,” and “class reference” guides, which encourage developers to design
 2 applications for the iOS devices that, when operated on an accused product, infringe the ’287 Patent
 3 through their use of software elements for drawing objects and views in the user interface.³ Each of
 4 consumers and app developers of these products then directly infringe the ’287 Patent. Apple further
 5 induces infringement of the ’287 Patent by providing technical documentation, such as the technical
 6 documentation listed above and published at developer.apple.com encouraging app developers to
 7 design and distribute apps for the accused products that operate in a manner that infringes the ’287
 8 Patent.

9 79. Apple had actual knowledge of the ’287 Patent by April 9, 2014, upon the filing of
 10 Plaintiffs’ Complaint for Patent Infringement. On information and belief, Apple also had knowledge
 11 of the ’287 Patent prior to the filing of Plaintiffs’ Complaint for Patent Infringement by virtue of the
 12 Kudelski Group’s role in the market and the impact of the Kudelski Group’s portfolio on Apple’s
 13 products, as indicated above. Despite this knowledge, on information and belief, Apple continued its
 14 infringing activities despite an objectively high likelihood that its activities constituted infringement
 15 of a valid patent, and this risk was either known or so obvious that it should have been known to
 16 Apple. Thus, on information and belief, Apple’s infringement has been, and continues to be, willful
 17 and deliberate.

18 80. OpenTV has suffered and continues to suffer damages and irreparable harm as a
 19 result of Apple’s past and ongoing infringement.

20 81. Unless Apple’s infringement is permanently enjoined, OpenTV will continue to be
 21 damaged and irreparably harmed.

22 **FOURTH CLAIM FOR RELIEF**

23 **Infringement of U.S. Patent No. 6,985,586**

24 82. NagraVision incorporates by reference paragraphs 1 through 53.

27 ³ See, e.g.

28 https://developer.apple.com/library/ios/documentation/WindowsViews/Conceptual/ViewPG_iPhoneOS/Introduction/Introduction.html.

1 83. Nagravision is the owner by assignment of all rights, title, and interest in the '586
2 Patent.

3 84. The '586 Patent is valid and enforceable.

4 85. Apple has infringed, and is currently infringing, the '586 Patent in violation of 35
5 U.S.C. § 271(a) by making, using, selling, offering for sale, and/or importing into the United States,
6 without authority, products, equipment, software and/or services that practice one or more claims of
7 the '586 Patent through at least the incorporation of Apple's AirPlay, FairPlay, and/or Home Sharing
8 technology employed by Apple iOS devices (including but not limited to the iPhone, iPad, and iPod
9 Touch), Apple TV, and Mac OS X devices natively installed with iTunes, and software and/or
10 services.

11 86. Apple has had knowledge of and notice of the '586 Patent and Apple's infringement
12 of the '586 Patent since at least, and through, the filing and service of the original, First Amended,
13 Second Amended, and Third Amended Complaints and despite this knowledge continues to infringe.
14 Apple was publicly touting its participation in the interactive television market at least in 2010 and
15 had entered the market at least by 2007. Apple would be aware of a prominent portfolio such as that
16 of the Kudelski Group, which includes OpenTV and Nagravision, as this portfolio is well-known in
17 the industry. OpenTV has asserted patents from its portfolio where appropriate against infringers.
18 For example, in January 2014, OpenTV and Cisco Systems, Inc. successfully ended litigation when
19 the Kudelski Group and Cisco entered a well-publicized license agreement. Apple would be aware
20 of the Kudelski Group's portfolio at least by virtue of its role in the market and the impact of the
21 Kudelski Group's portfolio on Apple's products.

22 87. Apple induces customers to infringe the '586 Patent in violation of 35 U.S.C. §
23 271(b) by encouraging and facilitating others to perform actions that Apple knows to be acts of
24 infringement of the '586 Patent, including without limitation operation of streaming functionality in
25 the accused devices. Upon information and belief, Apple is aware that the Apple iOS devices, Apple
26 TV, and Mac OS X devices, all natively installed with iTunes and AirPlay or iTunes and Home
27 Sharing operate in a manner that infringes the '586 Patent. Apple incorporates software components
28 into iTunes software running on Apple's iOS devices, Apple TV, and Mac OS X devices that

1 infringe the '586 Patent by enabling streaming media content, including secured content, to be
2 shared between devices. Upon information and belief, Apple advertises the infringing functionality
3 in the accused iOS devices, Apple TV, and Mac OS X devices, publishes specifications and
4 promotional literature describing the operation of the accused iOS devices, Apple TV, and Mac OS
5 X devices, creates and/or distributes user manuals for the accused iOS devices, Apple TV, and Mac
6 OS X devices, and offers support and/or technical assistance to its customers that enable and cause
7 infringement of the '586 Patent by streaming media content, including secured content, between
8 separate devices. For example, Apple publishes online documentation at support.apple.com,
9 including guides that encourage consumers of these products to connect accused devices on a local
10 area network and exchange content between accused devices on the network in a manner that
11 infringes the '586 Patent. Consumers of these products then directly infringe the '586 Patent.

12 88. Apple also contributes to the infringement of the '586 Patent in violation of 35 U.S.C.
13 § 271(c). Apple knows that the accused iOS devices, Apple TV, and Mac OS X devices natively
14 installed with iTunes contain infringing software components, including without limitation AirPlay,
15 FairPlay, and Home Sharing, which are designed to allow secure content streaming between Apple
16 devices. These software components are especially made or especially adapted for use in
17 infringement of the '586 Patent. The accused products are not staple articles or commodities of
18 commerce suitable for substantial non-infringing use and constitute a material part of the invention
19 claimed by the '586 Patent at least because iTunes working in conjunction with FairPlay, AirPlay, or
20 Home Sharing, streams content between devices in a manner that infringes the '586 Patent.
21 Therefore, Apple is also contributing to the direct infringement of the '586 Patent by the users of
22 these products.

23 89. Apple had actual knowledge of the '586 Patent by April 9, 2014, upon the filing of
24 Plaintiffs' Complaint for Patent Infringement. On information and belief, Apple also had knowledge
25 of the '586 Patent prior to the filing of Plaintiffs' Complaint for Patent Infringement by virtue of the
26 Kudelski Group's role in the market and the impact of the Kudelski Group's portfolio on Apple's
27 products, as indicated above. Despite this knowledge, on information and belief, Apple continued its
28 infringing activities despite an objectively high likelihood that its activities constituted infringement

1 of a valid patent, and this risk was either known or so obvious that it should have been known to
 2 Apple. Thus, on information and belief, Apple's infringement has been, and continues to be, willful
 3 and deliberate.

4 90. NagraVision has suffered and continues to suffer damages and irreparable harm as a
 5 result of Apple's past and ongoing infringement.

6 91. Unless Apple's infringement is permanently enjoined, NagraVision will continue to
 7 be damaged and irreparably harmed.

8 **FIFTH CLAIM FOR RELIEF**

9 **Infringement of U.S. Patent No. 7,900,229**

10 92. OpenTV incorporates by reference paragraphs 1 through 53.

11 93. OpenTV is the owner by assignment of all rights, title, and interest in the '229 Patent.

12 94. The '229 Patent is valid and enforceable.

13 95. Apple has infringed, and is currently infringing, the '229 Patent in violation of 35
 14 U.S.C. § 271(a) by making, using, selling, offering for sale, and/or importing into the United States,
 15 without authority, products, equipment, software and/or services that practice one or more claims of
 16 the '229 Patent, including without limitation Apple's iAd service and Apple's iOS and/or Mac OS X
 17 devices that receive targeted advertising in conjunction with Apple's iAd service.

18 96. Apple has had knowledge and notice of the '229 Patent and Apple's infringement of
 19 the '229 Patent since at least the filing and service of the original, First Amended, Second Amended,
 20 and Third Amended Complaints and despite this knowledge continues to infringe. Apple was
 21 publicly touting its participation in the interactive television market at least in 2010 and had entered
 22 the market at least by 2007. Apple would be aware of a prominent portfolio such as that of the
 23 Kudelski Group, which includes OpenTV and NagraVision, as this portfolio is well-known in the
 24 industry. OpenTV has asserted patents from its portfolio where appropriate against infringers. For
 25 example, in January 2014, OpenTV and Cisco Systems, Inc. successfully ended litigation when the
 26 Kudelski Group and Cisco entered a well-publicized license agreement. Apple would be aware of
 27 the Kudelski Group's portfolio at least by virtue of its role in the market and the impact of the
 28 Kudelski Group's portfolio on Apple's products.

1 97. Apple induces customers to infringe the '229 Patent in violation of 35 U.S.C. §
2 271(b) by encouraging and facilitating others to perform actions that Apple knows to be acts of
3 infringement of the '229 Patent, including without limitation updating user profiles and targeting
4 advertisements based on user activities. Upon information and belief, Apple incorporates software
5 components in the accused devices to obtain information about user demographics and preferences
6 and displays targeted advertisements at least within apps executing on the accused devices and
7 Apple's iRadio service accessible through the iTunes application installed on Apple iOS devices,
8 Mac OS X devices, and Apple TV, which operate in conjunction with Apple's iAd service in a
9 manner that infringes the '229 Patent. Upon information and belief, Apple advertises the infringing
10 functionality in the accused iOS devices, Mac OS X devices, and Apple TV, and also advertises the
11 infringing iAd services, publishes specifications and promotional literature describing the operation
12 of the accused iOS and Mac OS X devices, Apple TV, and iAd service, creates and/or distributes
13 user manuals for the iOS devices, Mac OS X devices, Apple TV, and iAd service, and offers support
14 and/or technical assistance to its customers. For example, Apple publishes online documentation at
15 developer.apple.com, including guides that encourage developers of third-party applications to
16 integrate iAd functionality with their applications and develop advertising campaigns using Apple's
17 iAd service to deliver targeted advertising to accused devices in a manner that infringes the '229
18 Patent. Consumers of these products then directly infringe the '229 Patent.

19 98. Apple also contributes to the infringement of the '229 Patent in violation of 35 U.S.C.
20 § 271(c). Apple knows that the accused iAd service is especially made or especially adapted for use
21 with Apple's iTunes, apps executing on the accused devices, and Apple's iRadio service natively
22 installed on iOS, Mac OS X, and AppleTV devices that use the iAd service in infringement of the
23 '229 Patent. The accused iAd service is not a staple article or commodity of commerce suitable for
24 substantial non-infringing use and constitutes a material part of the invention claimed by the '229
25 Patent at least because iAd is especially made or especially adapted to be used by advertisers to
26 target advertisements to iOS, Mac OS X, and AppleTV device users based on the user's activities in
27 a manner that infringes the '229 Patent. Therefore, Apple is also contributing to the direct
28 infringement of the '229 Patent by the users of these products.

1 99. Apple had actual knowledge of the '229 Patent by April 9, 2014, upon the filing of
 2 Plaintiffs' Complaint for Patent Infringement. On information and belief, Apple also had knowledge
 3 of the '229 Patent prior to the filing of Plaintiffs' Complaint for Patent Infringement by virtue of the
 4 Kudelski Group's role in the market and the impact of the Kudelski Group's portfolio on Apple's
 5 products, as indicated above. Despite this knowledge, on information and belief, Apple continued its
 6 infringing activities despite an objectively high likelihood that its activities constituted infringement
 7 of a valid patent, and this risk was either known or so obvious that it should have been known to
 8 Apple. Thus, on information and belief, Apple's infringement has been, and continues to be, willful
 9 and deliberate.

10 100. OpenTV has suffered and continues to suffer damages and irreparable harm as a
 11 result of Apple's past and ongoing infringement.

12 101. Unless Apple's infringement is permanently enjoined, OpenTV will continue to be
 13 damaged and irreparably harmed.

14 **REQUEST FOR RELIEF**

15 OpenTV and NagraVision respectfully ask that the Court enter judgment in their favor as
 16 follows:

- 17 a) finding that Apple has infringed each of the Asserted Patents;
- 18 b) finding that Apple's infringement of the Asserted Patents has been willful;
- 19 c) finding that each of the Asserted Patents is not invalid and is enforceable;
- 20 d) awarding OpenTV and NagraVision damages adequate to compensate for Apple's
 21 infringement, but in no event less than a reasonable royalty;
- 22 e) awarding an accounting and supplemental damages for those acts of infringement
 23 committed by Apple subsequent to the discovery cut-off date in this action through
 24 the date Final Judgment is entered;
- 25 f) ordering that damages for infringement of the Asserted Patents be trebled as provided
 26 for by 35 U.S.C. § 284 for Apple's willful infringement of the Asserted Patents;
- 27 g) finding that this case is exceptional;

- 1 h) awarding OpenTV and NagraVision their attorneys' fees and costs, together with pre-
2 judgment and post-judgment interest;
- 3 i) permanently enjoining Apple and its parents, subsidiaries, affiliates, officers,
4 directors, agents, servants, employees, successors and assigns, and all others in active
5 concert or participation with any of the foregoing from any further acts of
6 infringement, including contributing to and/or inducing infringement, of the Asserted
7 Patents; and
- 8 j) awarding any other relief the Court deems to be just and proper.

1 Dated: December 16, 2014

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