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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 CISCO SYSTEMS, INC.
13 CISCO TECHNOLOGY, INC.
14 NDS AMERICAS INC.
SCIENTIFIC ATLANTA LLC
Plaintiffs,

15 v.

16 OPENTV INC.
17 NAGRA USA, INC.
Defendants.

ORIGINAL FILED

JAN 18 2013

Richard W. Wicking
Clerk, U.S. District Court
Northern District of California
San Jose

COPY

Case No.
CV 13- 0282

JCS

**COMPLAINT FOR DECLARATORY
JUDGMENT AND PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

1 Cisco Systems, Inc. and its subsidiaries Cisco Technology, Inc., NDS America
2 Inc., and Scientific Atlanta LLC (collectively "Plaintiffs" or "Cisco") for their Complaint against
3 Defendants Open TV Inc. and Nagra USA, Inc. (collectively "Defendant"), allege as follows:

4 INTRODUCTION

5 Cisco brings this complaint to protect its customers from OpenTV's unwarranted
6 claims that Cisco products and services infringe OpenTV patents when it is OpenTV that is
7 infringing Cisco's patents. As its business has declined, OpenTV has turned to patent
8 enforcement as a revenue source. In the last year, OpenTV and its parent entity the Kudelski
9 Group have hired senior offices who were previously employed by known patent assertion
10 entities Intellectual Ventures and InterDigital Communications as part of a stated effort to
11 monetize the Kudelski Group's patent portfolio. Since then, OpenTV has asserted its patents
12 against numerous entities including threatening Cisco's customers with patent infringement suits
13 for their use of Cisco products. This apparently is an effort to scare these customers away from
14 purchasing Cisco products and to bolster OpenTV's revenue one way or the other (either by
15 winning business from customers it has threatened or by obtaining licensing revenue from them).
16 OpenTV has also had direct communications with Cisco regarding alleged patent infringement.

17 As set forth below, Cisco brings its claims for declaratory relief to free its
18 customers, its product line, and itself from these unwarranted allegations of infringement. Cisco
19 brings its claims for patent infringement to protect its innovation and intellectual property in the
20 fields of cable television, telecommunications and broadband equipment from infringement by
21 OpenTV and Nagra USA through their products and services relating to conditional access,
22 broadcast delivery and media access technologies, among others.

23 NATURE OF THIS ACTION

24 1. This action arises under 28 U.S.C. §§ 1331, 2201 and 2202, and the United
25 States Patent Act, 35 U.S.C. § 100 *et seq.*

26 2. Cisco brings this action for a declaration that the claims of OpenTV's U.S.
27 Patent Nos. 5,585,858; 5,724,091; 5,761,606; 7,882,533; 7,900,233; and 7,961,743 ("the OpenTV
28 Patents") are invalid and not infringed.

3. Cisco brings this action to halt OpenTV's infringement of Cisco's rights under the Patent Laws of the United States, 35 U.S.C. § 1, *et. seq.* via its infringement of U.S. Patent Nos. 6,252,964; 6,744,892; and 7,505,592 ("the Cisco Patents").

PARTIES

4. Cisco Systems, Inc. is the world leader in networking equipment and solutions. Founded in the early 1980s by a husband and wife team who originally worked at Stanford University, Cisco has grown to employ over 65,000 people globally. Throughout its growth, Cisco has remained at the forefront of technology through its significant investment in research and development, human capital and intellectual property, and through the acquisition of innovative companies, including their technology, talent and intellectual property. Cisco's products and services have expanded to cover all aspects of personal and small and large enterprise networking solutions including but not limited to storage systems and services, telepresence and video conference solutions, routing services, and security related equipment and services, among many others. In the field of cable television and digital television space, telecommunications and broadband equipment, Cisco has become a market leader through its internal development efforts, as well as its 2005 acquisition of Scientific Atlanta and its 2012 acquisition of NDS Group.

5. Scientific Atlanta was founded in the early 1950s by a group of Georgia Institute of Technology graduates. From its early days, Scientific Atlanta was a pioneer in the set-top box technology market. Its products include set-top boxes, cable distribution systems, cable modems, and IPTV hardware. As a result of its early innovation in these product categories, Scientific Atlanta developed one of the earliest and most robust patent portfolios in the space. In fact, its inventions and innovations are at the core of the cable television, telecommunications and broadband equipment infrastructure used throughout the United States and abroad. Since its acquisition by Cisco, Scientific Atlanta's products and services have been integrated with Cisco's products and services, and marketed to both small and large customers.

6. NDS America Inc. is the U.S. subsidiary of NDS Group, a global pioneer in the pay TV industry. NDS was established in 1988 in Israel and acquired by News

1 Corporation in 1992. Over the years, NDS has grown through internal research and development
2 and through several acquisitions. NDS has expansive product and service offerings for the pay
3 TV industry. Since its acquisition by Cisco in 2012, NDS has remained at the forefront of
4 interactive and integrated solutions, and its products and services have been integrated into the
5 broader Cisco family of products and services.

6 7. Cisco Systems, Inc. is a corporation organized and existing under the laws
7 of the State of California with its principal place of business at 170 West Tasman Drive, San Jose,
8 California 95134-1706.

9 8. Cisco Technology, Inc. is a corporation organized and existing under the
10 laws of the State of California with its principal place of business at 2730 Gateway Oaks Drive,
11 Sacramento, CA 95833.

12 9. NDS Americas Inc. is a corporation organized and existing under the laws
13 of the State of Delaware with its principal place of business at 3500 Hyland Avenue, Costa Mesa,
14 CA 92626.

15 10. Scientific Atlanta LLC is a limited liability company organized and
16 existing under the laws of the State of Georgia with its principal place of business at 5030
17 Sugarloaf Parkway, Lawrenceville, GA 30044-2869

18 11. On information and belief, OpenTV and Nagra USA are subsidiaries of the
19 Kudelski Group, a Swiss conglomerate whose business relates to digital television.

20 12. On information and belief, the Kudelski Group's business has been
21 declining in recent years. In its 2011 Annual Report, the Kudelski Group reported that its 2011
22 revenue was down 17.7% from 2010, and that the company went from being profitable in 2010 to
23 losing money in 2011. In the same Annual Report, the Kudelski Group's Chairman, André
24 Kudelski, identified "[m]onetizing [the Kudelski Group's] intellectual property" as one of its
25 priorities for 2012 and beyond, noting that the Kudelski Group sees "exciting revenue potential in
26 our patent portfolio." Consistent with those priorities, the Kudelski Group and OpenTV have
27 hired a team of patent licensing and assertion professionals formerly with patent assertion entities
28 such as Intellectual Ventures and InterDigital Communications.

1 13. On information and belief, Open TV, Inc. is a company organized and
2 existing under the laws of Delaware with a principal place of business at 275 Sacramento Street,
3 San Francisco, CA 94111.

4 14. On information and belief, Nagra USA, Inc. is a company organized and
5 existing under the laws of New York with a principal place of business at 841 Apollo Street, Suite
6 300, El Segundo, CA 90245 and headquarters for the Americas at 275 Sacramento Street, San
7 Francisco, CA 94111.

8 **PERSONAL JURISDICTION**

9 15. On information and belief, Defendants have, and have had, continuous and
10 systematic contacts within the State of California, including this District. On information and
11 belief, Defendants have purposefully directed a broad range of business activities at this district
12 and residents of this District have used services and products offered or sold by Defendants.

13 **SUBJECT MATTER JURISDICTION**

14 16. This action arises under the Patent Laws of the United States of America,
15 35 U.S.C. § 1 et seq. This Court has subject matter jurisdiction over Cisco's declaratory
16 judgment claims pursuant to 28 U.S.C. §§ 2201 and 2202 because an immediate and substantial
17 controversy exists between Cisco and OpenTV with respect to invalidity and noninfringement of
18 the OpenTV Patents. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and
19 1338(a) because this is a civil action arising under the Patent Act.

20 17. With respect to Cisco's declaratory judgment claims, there is an actual and
21 justiciable controversy between Cisco and OpenTV as to the OpenTV Patents based on
22 OpenTV's threats against customers of Cisco's products and solutions of infringement on
23 European patents that are related to and substantively similar in scope to the OpenTV Patents, and
24 the course of dealing, and direct communications, between Cisco and OpenTV.

25 18. On December 19, 2012, OpenTV filed an action for patent infringement
26 against Netflix, Inc. in the United States District Court for the District of Delaware. In its
27 Complaint, OpenTV averred that "OpenTV vigorously protects its intellectual property" and
28 touted its "robust" patent portfolio. OpenTV's Complaint alleged willful infringement by Netflix

1 of seven U.S. patents, two of which are related to European patents OpenTV has accused Cisco's
2 customers of infringing. According to the allegations, at about the same time OpenTV began to
3 assert infringement by Cisco's customers, OpenTV contacted Netflix to begin licensing
4 discussions with them. OpenTV stated that William Goldman (one of the same individuals who
5 has had discussions with Cisco) and Senior Vice President of Intellectual Property at the Kudelski
6 Group, Joseph Chernesky, met with Netflix on several occasions prior to OpenTV filing suit.
7 When Netflix supposedly failed "to compensate OpenTV for Netflix's [alleged] ongoing patent
8 infringement" as a result of those discussions, OpenTV filed suit against Netflix. A true and
9 correct copy of the OpenTV complaint against Netflix is attached hereto as Exhibit 1.

10 19. In view of the above circumstances—including OpenTV's infringement
11 allegations against Cisco's products and services; OpenTV's publicly stated commitment to
12 enforce its patents through licensing and litigation; the Kudelski Group and OpenTV's hiring of
13 several individuals whose goals include developing "patent/product heat maps versus various
14 licensing targets to properly and accurately size infringed revenue" and "[g]uid[ing] the team on
15 building a commanding patent case versus those targets"; its comments during discussions with
16 Cisco; its patent lawsuit against Netflix in circumstances roughly paralleling those here; and the
17 course of dealings between Cisco and OpenTV—there is a threat of actual and imminent injury to
18 Cisco that can be redressed by judicial relief, and that injury is sufficiently immediate and real to
19 warrant the issuance of a declaratory judgment. Such injury includes, among other things,
20 uncertainty as to whether the development, use, and sale of Cisco products and services will be
21 free from infringement claims based on the OpenTV Patents (which are related to and
22 substantively similar in scope to the European patents that have been asserted against products
23 and services), the injury to Cisco's efforts to market and sell its products and services, and the
24 threat that other customer's will be sued or will receive threats of suit, and the possible
25 obligations flowing from claims for indemnity. Absent a declaration of noninfringement and/or
26 invalidity, OpenTV will wrongfully assert the OpenTV Patents against Cisco's products and
27 services, and will thereby cause Cisco irreparable injury and damage. Thus, an actual and
28 justiciable controversy exists between Cisco and OpenTV as to the OpenTV Patents.

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1 Cisco products and services, claims priority to U.S. Patent Application No. 08/815,168, which
2 was a continuation-in-part to U.S. Patent Application No. 08/598,382, which was a continuation-
3 in-part of the application that matured into the '091 patent, U.S. Patent Application No.
4 08/443,607. The EP0965227 and '091 patents include substantially similar claims.

5 **U.S. Patent No. 5,761,606 ("the '606 patent")**

6 26. The '606 patent is entitled "Media Online Services Access Via Address
7 Embedded In Video Or Audio Program." A copy of the '606 patent is attached hereto as Exhibit
8 4. The '606 patent states on its face that it was issued to Thomas R. Wolzien.

9 27. The application that issued as the '606 patent was filed on February 8,
10 1996, and the United States Patent and Trademark Office issued the '606 patent on June 2, 1998.
11 EP0879534, which has been identified by OpenTV as a patent infringed by Cisco customers using
12 Cisco products and services, claims priority directly to the patent application that matured into the
13 '606 patent, U.S. Patent Application No. 08/597,432, and includes substantially similar claims.

14 **U.S. Patent No. 7,882,533 ("the '533 patent")**

15 28. The '533 patent is entitled "Digital Television Application Protocol For
16 Interactive Television." A copy of the '533 patent is attached hereto as Exhibit 5. The '533
17 patent states on its face that it was issued to Rachad Alao, Alain Delpuch, Vincent Dureau, Jose
18 Henrard, Matthew Huntington, and Waiman Lam.

19 29. The application that issued as the '533 patent was filed on February 9,
20 2009, and the United States Patent and Trademark Office issued the '533 patent on February 1,
21 2011. The '533 patent is continuation of U.S. Patent Application No. 10/061,769, filed on
22 February 1, 2002, which is a continuation-in-part of U.S. Patent Application No. 09/858,379,
23 filed on May 16, 2001, which claims priority from Provisional Patent Application No.
24 60/265,986, filed on Feb. 2, 2001, Provisional Patent Application No. 60/266,210, filed on Feb. 2,
25 2001, Provisional Patent Application No. 60/267,876, filed on Feb. 9, 2001, Provisional Patent
26 Application No. 60/269,261, filed on Feb. 15, 2001, and Provisional Patent Application
27 No.60/279,543, filed on Mar. 28, 2001. EP 1364511, which has been identified by OpenTV as a
28 patent relevant to Cisco customers using Cisco products and services, and '533 patent both claim

1 priority to the following Provisional Patent Application Nos. 60/265,986; 60/266,210;
2 60/267,876; 60/269,261; and 60/279,543. In other words, both stem directly from common
3 provisional applications. The EP1364511 and '533 patents include substantially similar claims.

4 **U.S. Patent No. 7,900,233 ("the '233 patent")**

5 30. The '233 patent is entitled "Process And System For Displaying Video
6 Programs On Demand." A copy of the '233 patent is attached hereto as Exhibit 6. The '233
7 patent states on its face that it was issued to Thierry Godin.

8 31. The application that issued as the '233 patent was filed on January 18,
9 2000, and the United States Patent and Trademark Office issued the '233 patent on March 1,
10 2011. The '233 patent stems from International Application No. PCT/IB00/00112, filed on
11 January 18, 2000, which entered the United States national phase on February 28, 2003.
12 EP1249128, which has been identified by OpenTV as a patent relevant to Cisco customers using
13 Cisco products and services, and '233 patent both stem directly from International Application
14 No. PCT/IB00/00112, and thus the EP1249128 and '233 patents are the result of that same
15 application entering the national phase in respective jurisdictions. The EP1249128 and '233
16 patents include substantially similar claims.

17 **U.S. Patent No. 7,961,743 ("the '743 patent")**

18 32. The '743 patent is entitled "Service Gateway For Interactive Television."
19 A copy of the '743 patent is attached hereto as Exhibit 7. The '743 patent states on its face that it
20 was issued to Rachad Alao, Alain Delpuch, Vincent Dureau, Jose Henrard, Matthew Huntington,
21 and Waiman Lam.

22 33. The application that issued as the '743 patent was filed on December 3,
23 2007, and the United States Patent and Trademark Office issued the '743 patent on June 14, 2011.
24 The '743 patent is a continuation of U.S. Patent Application No. 09/858,436, filed on May 16,
25 2001, which claims priority from Provisional Patent Application No. 60/265,986, filed on Feb. 2,
26 2001, Provisional Patent Application No. 60/266,210, filed on Feb. 2, 2001, Provisional Patent
27 Application No. 60/267,876, filed on Feb. 9, 2001, Provisional Patent Application No.
28 60/269,261, filed on Feb. 15, 2001, and Provisional Patent Application No. 60/279,543, filed on

1 Mar. 28, 2001. EP 1364511 patent, which has been identified by OpenTV as a patent relevant to
2 Cisco customers using Cisco products and services, and '743 patent both claim priority to the
3 following Provisional Patent Application Nos. 60/265,986; 60/266,210; 60/267,876; 60/269,261;
4 and 60/279,543. In other words, both stem directly from common provisional applications. The
5 EP1364511 and '743 patents include substantially similar claims.

6 **GENERAL ALLEGATIONS – THE CISCO PATENTS**

7 34. Since their start, Cisco and its subsidiaries, including Scientific Atlanta and
8 NDS, have developed a broad and deep intellectual property portfolio in the fields of cable
9 television, telecommunications and broadband equipment. Among its many patents and patent
10 applications in that space are the Cisco Patents that subject of this suit.

11 **U.S. Patent No. 6,252,964 (“the ’964 patent”)**

12 35. The '964 patent is entitled “Authorization Of Services In A Conditional
13 Access System.” A true and correct copy of the '964 patent is attached hereto as Exhibit 8. The
14 '964 patent was duly and legally issued to Anthony J. Wasilewski, Howard G. Pinder, Glendon L.
15 Akins III, and Robert O. Banker.

16 36. The application that issued as the '964 patent was filed on January 20,
17 2000, and the United States Patent and Trademark Office duly and legally issued the '964 patent
18 on June 26, 2001. The '964 patent is a continuation of U.S. Patent Application No. 09/127,352,
19 filed on Jul. 31, 1998, which claims the benefit of U.S. Provisional Application No. 60/054,575,
20 filed Aug. 1, 1997, and is a continuation-in-part of U.S. Application No. 09/111,958, filed on Jul.
21 8, 1998, which claims the benefit of U.S. Provisional Application No. 60/054,578, filed on Aug.
22 1, 1997, and is a continuation-in-part of Application No. 08/767,535, filed on Dec. 16, 1996, and
23 is a continuation-in-part of U.S. Application No. 08/580,759, filed on Dec. 29, 1995, which
24 claims the benefit of U.S. Provisional Application No. 60/007,962, filed on Dec. 4, 1995, and is a
25 continuation-in-part of Application No. 08/415,617, filed on Apr. 3, 1995.

26 **U.S. Patent No. 6,744,892 (“the ’892 patent”)**

27 37. The '892 patent is entitled “Method And Apparatus For Geographically
28 Limiting Service In A Conditional Access System.” A true and correct copy of the '892 patent is

1 attached hereto as Exhibit 9. The '892 patent was duly and legally issued to named inventors
2 Glendon L. Akins III, Howard G. Pinder, and Anthony J. Wasilewski.

3 38. The application that issued as the '892 patent was filed on March 3, 2003,
4 and the United States Patent and Trademark Office duly and legally issued the '892 patent on
5 June 1, 2004. The '892 patent is a continuation of U.S. Patent Application No. 09/493,409, filed
6 on Jan. 28, 2000, which is a continuation of U.S. Patent Application No. 09/127,273, filed on Jul.
7 31, 1998, which claims the benefit of U.S. Provisional Application No. 60/054,575, filed on Aug.
8 1, 1997, and is a continuation-in-part of U.S. Patent Application No. 09/111,958, filed on Jul. 8,
9 1998, which claims the benefit of U.S. Provisional Application No. 60/054,578, filed on Aug. 1,
10 1997, and is a continuation-in-part of U.S. Patent Application No. 08/767,535, filed on Dec. 16,
11 1996, and is a continuation-in-part of U.S. Patent Application No. 08/580,759, filed on Dec. 29,
12 1995, which claims the benefit of U.S. Provisional Application No. 60/007,962, filed on Dec. 4,
13 1995, and is a continuation-in-part of U.S. Patent Application No. 08/415,617, filed on Apr. 3,
14 1995.

15 **U.S. Patent No. 7,505,592 ("the '592 patent")**

16 39. The '592 patent is entitled "Apparatus For Entitling And Transmitting
17 Service Instances To Remote Client Devices." A true and correct copy of the '592 patent is
18 attached hereto as Exhibit 10. The '592 patent was duly and legally issued to Samuel H. Russ,
19 Michael A. Gaul, Anthony J. Wasilewski, and Howard G. Pinder.

20 40. The application that issued as the '592 patent was filed on February 6,
21 2007, and the United States Patent and Trademark Office duly and legally issued the '592 patent
22 on March 17, 2009. The '592 patent is a continuation-in-part of U.S. Application No.
23 10/382,944, filed on March 6, 2003, which is a continuation-in-part of U.S. Application No.
24 10/154,495, filed on May 24, 2002.

25 **CLAIMS FOR RELIEF**

26 **COUNT I**

27 **(Declaratory Judgment of Non-Infringement and Invalidity of U.S. Patent No. 5,585,858)**
28 **(against OpenTV)**

41. Cisco re-alleges and incorporates by this reference the allegations contained in paragraphs 1 through 40 above as relevant to this count.

42. On information and belief, OpenTV is the current assignee of the '858 patent.

43. No claim of the '858 patent has been or is infringed, either directly or indirectly, literally or under the doctrine of equivalents, by Cisco or its customers through their activities in conjunction with Cisco's products and services.

44. The claims of the '858 patent are invalid for failure to comply with the requirements of the Patent Laws of the United States, including but not limited to the provisions of 35 U.S.C. §§ 102, 103, and/or 112.

45. As set forth above, an actual controversy exists between Cisco and OpenTV as to infringement and invalidity of the '858 patent. Cisco desires a judicial determination and declaration of the respective rights and duties of the parties herein. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties and for the reasons set forth above.

COUNT II

(Declaratory Judgment of Non-Infringement and Invalidity of U.S. Patent No. 5,724,091)

(against OpenTV)

46. Cisco re-alleges and incorporates by this reference the allegations contained in paragraphs 1 through 40 above as relevant to this count.

47. On information and belief, OpenTV is the current assignee of the '091 patent.

48. No claim of the '091 patent has been or is infringed, either directly or indirectly, literally or under the doctrine of equivalents, by Cisco or its customers through their activities in conjunction with Cisco's products and services.

49. The claims of the '091 patent are invalid for failure to comply with the requirements of the Patent Laws of the United States, including but not limited to the provisions of 35 U.S.C. §§ 102, 103, and/or 112.

50. As set forth above, an actual controversy exists between Cisco and OpenTV as to infringement and invalidity of the '091 patent. Cisco desires a judicial determination and declaration of the respective rights and duties of the parties herein. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties and for the reasons set forth above.

COUNT III

(Declaratory Judgment of Non-Infringement and Invalidity of U.S. Patent No. 5,761,606)

(against OpenTV)

51. Cisco re-alleges and incorporates by this reference the allegations contained in paragraphs 1 through 40 above as relevant to this count.

52. On information and belief, OpenTV is the current assignee of the '606 patent.

53. No claim of the '606 patent has been or is infringed, either directly or indirectly, literally or under the doctrine of equivalents, by Cisco or its customers through their activities in conjunction with Cisco's products and services.

54. The claims of the '606 patent are invalid for failure to comply with the requirements of the Patent Laws of the United States, including but not limited to the provisions of 35 U.S.C. §§ 102, 103, and/or 112.

55. As set forth above, an actual controversy exists between Cisco and OpenTV as to infringement and invalidity of the '606 patent. Cisco desires a judicial determination and declaration of the respective rights and duties of the parties herein. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties and for the reasons set forth above.

COUNT IV

(Declaratory Judgment of Non-Infringement and Invalidity of U.S. Patent No. 7,882,533)

(against OpenTV)

56. Cisco re-alleges and incorporates by this reference the allegations contained in paragraphs 1 through 40 above as relevant to this count.

57. On information and belief, OpenTV is the current assignee of the '533 patent.

58. No claim of the '533 patent has been or is infringed, either directly or indirectly, literally or under the doctrine of equivalents, by Cisco or its customers through their activities in conjunction with Cisco's products and services.

59. The claims of the '533 patent are invalid for failure to comply with the requirements of the Patent Laws of the United States, including but not limited to the provisions of 35 U.S.C. §§ 102, 103, and/or 112.

60. As set forth above, an actual controversy exists between Cisco and OpenTV as to infringement and invalidity of the '533 patent. Cisco desires a judicial determination and declaration of the respective rights and duties of the parties herein. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties and for the reasons set forth above.

COUNT V

(Declaratory Judgment of Non-Infringement and Invalidity of U.S. Patent No. 7,900,233)

(against OpenTV)

61. Cisco re-alleges and incorporates by this reference the allegations contained in paragraphs 1 through 40 above as relevant to this count.

62. On information and belief, OpenTV is the current assignee of the '233 patent.

63. No claim of the '233 patent has been or is infringed, either directly or indirectly, literally or under the doctrine of equivalents, by Cisco or its customers through their activities in conjunction with Cisco's products and services.

64. The claims of the '233 patent are invalid for failure to comply with the requirements of the Patent Laws of the United States, including but not limited to the provisions of 35 U.S.C. §§ 102, 103, and/or 112.

65. As set forth above, an actual controversy exists between Cisco and OpenTV as to infringement and invalidity of the '233 patent. Cisco desires a judicial

1 determination and declaration of the respective rights and duties of the parties herein. Such a
2 determination and declaration is necessary and appropriate at this time in order that the parties
3 may ascertain their respective rights and duties and for the reasons set forth above.

4 **COUNT VI**

5 **(Declaratory Judgment of Non-Infringement and Invalidity of U.S. Patent No. 7,961,743)**
6 **(against OpenTV)**

7 66. Cisco re-alleges and incorporates by this reference the allegations
8 contained in paragraphs 1 through 40 above as relevant to this count.

9 67. On information and belief, OpenTV is the current assignee of the '743
10 patent.

11 68. No claim of the '743 patent has been or is infringed, either directly or
12 indirectly, literally or under the doctrine of equivalents, by Cisco or its customers through their
13 activities in conjunction with Cisco's products and services.

14 69. The claims of the '743 patent are invalid for failure to comply with the
15 requirements of the Patent Laws of the United States, including but not limited to the provisions
16 of 35 U.S.C. §§ 102, 103, and/or 112.

17 70. As set forth above, an actual controversy exists between Cisco and
18 OpenTV as to infringement and invalidity of the '743 patent. Cisco desires a judicial
19 determination and declaration of the respective rights and duties of the parties herein. Such a
20 determination and declaration is necessary and appropriate at this time in order that the parties
21 may ascertain their respective rights and duties and for the reasons set forth above.

22 **COUNT VII**

23 **(Infringement of U.S. Patent No. 6,252,964)**

24 **(against OpenTV and Nagra USA)**

25 71. Cisco re-alleges and incorporates by this reference the allegations
26 contained in paragraphs 1 through 40 above as relevant to this count.

27 72. On June 26, 2001, the United States Patent and Trademark Office duly and
28 legally issued U.S. Patent No. 6,252,964, entitled "Authorization of Services In A Conditional

1 Access System.”

2 73. Cisco owns all right, title, and interest in the '964 patent, and has owned all
3 right, title, and interest throughout the period of the infringement complained of herein.

4 74. On information and belief, OpenTV has directly and/or indirectly infringed
5 (by inducement and/or contributory infringement), and is continuing to infringe, directly and/or
6 indirectly, at least Claim 1 of the '964 patent by making, using, selling, offering to sell, and/or
7 importing in or into the United States, without authority, conditional access apparatuses,
8 including without limitation its OpenTV middleware, for use in cable television networks in the
9 United States. Through its activities in conjunction with selling, provisioning and supporting
10 conditional access apparatuses, including without limitation its OpenTV middleware, OpenTV
11 has induced and continues to induce cable television provider and/or end-users to directly infringe
12 at least one claim of the '964 patent. For example, on information and belief, OpenTV actively
13 supports the operation of its conditional access apparatuses, including in the validation,
14 deployment, and continual operation of receiving content and entitlement information, such that
15 cable providers and/or end-users use its conditional access apparatuses for, e.g.,
16 encrypting/decrypting and providing/watching premium content, in a manner that infringes the
17 '964 patent. OpenTV indirectly infringes one or more claims of each of the patents-in-suit by
18 contributory infringement. By providing the conditional access apparatuses above, OpenTV
19 contributes to the direct infringement of cable television providers and/or end-users. On
20 information and belief, OpenTV's middleware is the conditional access apparatus of cable
21 providers and end-users set-top boxes and is especially made for use as a conditional apparatus
22 for, e.g., encrypting/decrypting and providing/watching premium content, that infringes the '964
23 patent.

24 75. On information and belief, Nagra USA has indirectly infringed (by
25 inducement), and is continuing to indirectly infringe at least Claim 1 of the '964 patent by
26 making, using, selling, offering to sell, and/or importing in or into the United States, without
27 authority, Nagra USA Media Access that supports and induces the use of conditional access
28 apparatuses for use in cable television networks in the United States. Through its activities in

1 conjunction with selling, provisioning and supporting Nagra USA Media Access that supports
2 and induces the use of conditional access apparatuses, for, e.g., encrypting/decrypting and
3 providing/watching premium content, Nagra USA has induced and continues to induce cable
4 television provider and/or end-users to directly infringe at least Claim 1 of the '964 patent.
5 Specifically, upon information and belief, Nagra USA actively supports the operation of
6 OpenTV's conditional access apparatuses, including in the design, support, validation,
7 deployment, and continual operation of the conditional access protocols that work in conjunction
8 with OpenTV's conditional access apparatuses in cable providers implementations, such that
9 cable providers and/or end-users use OpenTV's access apparatuses for, e.g.,
10 encrypting/decrypting and providing/watching premium content, in a manner that infringes the
11 '964 patent.

12 76. Defendants' infringement of the '964 patent has injured Plaintiffs in their
13 business and property rights. Plaintiffs are entitled to recover monetary damages for such injuries
14 pursuant to 35 U.S.C. § 284 in an amount to be determined at trial.

15 77. Defendants' infringement of the '964 patent has caused irreparable harm to
16 Plaintiffs and will continue to cause such harm unless and until Defendants' infringing activities
17 are enjoined by this Court.

18 COUNT IX

19 **(Infringement of U.S. Patent No. 6,744,892)**

20 **(against OpenTV and Nagra USA)**

21 78. Cisco re-alleges and incorporates by this reference the allegations
22 contained in paragraphs 1 through 40 above as relevant to this count.

23 79. On June 1, 2004, the United States Patent and Trademark Office duly and
24 legally issued U.S. Patent No. 6,744,892, entitled "Method and Apparatus for Geographically
25 Limiting Service in a Conditional Access System."

26 80. Cisco owns all right, title, and interest in the '892 patent, and has owned all
27 right, title, and interest throughout the period of the infringement complained of herein.

28 81. On information and belief, and after a reasonable opportunity for further

1 investigation or discovery it is expected to be confirmed, OpenTV has directly and/or indirectly
2 infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly
3 and/or indirectly, at least Claims 1, 12, and 20 of the '892 patent by making, using, selling,
4 offering to sell, and/or importing in or into the United States, without authority, Open TV
5 middleware that supports and induces the use of a receiver and method that selectively display a
6 service instance. Through its activities in conjunction with selling, provisioning and supporting
7 Open TV middleware that supports and induces the use of a receiver and method that selectively
8 display a service instance, OpenTV has induced and continues to induce cable television provider
9 and/or end-users to directly infringe at least one claim of the '892 patent. For example, on
10 information and belief, OpenTV actively supports the operation of its conditional access
11 apparatuses that practice a method that selectively display a service instance, including in the
12 validation, deployment, and continual operation of geographical blackout functionality, such that
13 cable providers and/or end-users use its conditional access apparatuses that practice a method that
14 selectively display a service instance in a manner that infringes the '892 patent. OpenTV
15 indirectly infringes one or more claims of each of the patents-in-suit by contributory
16 infringement. By providing Open TV middleware that supports and induces the use of a receiver
17 and method that selectively display a service instance, OpenTV contributes to the direct
18 infringement of cable television providers and/or end-users for, e.g., sending/receiving content
19 with geographic information. On information and belief, OpenTV's middleware is the
20 conditional access apparatus of the cable providers and end-users set-top boxes, and includes the
21 software that selectively displays a service instance, is especially made for use as a conditional
22 apparatus that selectively displays a service instance for, e.g., sending/receiving content with
23 geographic information, in a manner that infringes the '892 patent.

24 82. On information and belief, Nagra USA has directly and/or indirectly
25 infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly
26 and/or indirectly, at least Claims 1, 12, and 20 of the '892 patent by making, using, selling,
27 offering to sell, and/or importing in or into the United States, without authority, Nagra USA
28 Media Access that supports and induces the use of a receiver and method that selectively display

1 a service instance. Through its activities in conjunction with selling, provisioning and supporting
2 Nagra USA Media Access that supports and induces the use of a receiver and method that
3 selectively display a service instance, for, e.g., sending/receiving content with geographic
4 information, Nagra USA has induced and continues to induce cable television provider and/or
5 end-users to directly infringe at least Claims 1, 12, and 20 of the '892 patent. Nagra USA
6 indirectly infringes one or more claims of each of the patents-in-suit by contributory
7 infringement. By providing Nagra USA Media Access that supports and induces the use of a
8 receiver and method that selectively display a service instance, for, e.g., sending/receiving content
9 with geographic information, Nagra USA contributes to the direct infringement of cable
10 television providers and/or end-users.

11 83. Defendants' infringement of the '892 patent has injured Plaintiffs in their
12 business and property rights. Plaintiffs are entitled to recover monetary damages for such injuries
13 pursuant to 35 U.S.C. § 284 in an amount to be determined at trial.

14 84. Defendants' infringement of the '892 patent has caused irreparable harm to
15 Plaintiffs and will continue to cause such harm unless and until Defendants' infringing activities
16 are enjoined by this Court.

17 **COUNT XI**

18 **(Infringement of U.S. Patent No. 7,505,592)**

19 **(against OpenTV)**

20 85. Cisco re-alleges and incorporates by this reference the allegations
21 contained in paragraphs 1 through 40 above as relevant to this count.

22 86. On March 17, 2009, the United States Patent and Trademark Office duly
23 and legally issued U.S. Patent No. 7,505,592, entitled "Apparatus for Entitling and Transmitting
24 Service Instances to Remote Client Devices."

25 87. Cisco owns all right, title, and interest in the '592 patent, and has owned all
26 right, title, and interest throughout the period of the infringement complained of herein.

27 88. On information and belief, and after a reasonable opportunity for further
28 investigation or discovery it is expected to be confirmed, OpenTV has directly and/or indirectly

1 infringed (by inducement and/or contributory infringement), and is continuing to infringe, directly
2 and/or indirectly, at least Claim 1 of the '592 patent by making, using, selling, offering to sell,
3 and/or importing in or into the United States, without authority, Open TV middleware that
4 practices a method that transmits a service instance to remote client devices in a local area
5 network. Through its activities in conjunction with selling, provisioning and supporting Open
6 TV middleware that practices a method that transmits a service instance to remote client devices
7 in a local area network, for, e.g., multi-room DVR functionality, OpenTV has induced and
8 continues to induce cable television provider and/or end-users to directly infringe at least one
9 claim of the '592 patent. OpenTV indirectly infringes one or more claims of each of the patents-
10 in-suit by contributory infringement. By providing OpenTV middleware that practices a method
11 that transmits a service instance to remote client devices in a local area network, for, e.g., multi-
12 room DVR functionality, OpenTV contributes to the direct infringement of cable television
13 providers and/or end-users.

14 89. Defendants' infringement of the '592 patent has injured Plaintiffs in their
15 business and property rights. Plaintiffs are entitled to recover monetary damages for such injuries
16 pursuant to 35 U.S.C. § 284 in an amount to be determined at trial.

17 90. Defendants' infringement of the '592 patent has caused irreparable harm to
18 Plaintiffs and will continue to cause such harm unless and until Defendants' infringing activities
19 are enjoined by this Court.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Cisco prays for relief as follows:

22 A. Judgment in Cisco's favor on all claims for relief;

23 B. A declaration in favor of Cisco that that its products and services do not
24 directly or indirectly infringe (whether literally or under the doctrine of equivalents) the claims of
25 U.S. Patent Nos. 5,585,858; 5,724,091; 5,761,606; 7,882,533; 7,900,233; and 7,961,743;

26 C. A declaration in favor of Cisco that the claims of U.S. Patent Nos.
27 5,585,858; 5,724,091; 5,761,606; 7,882,533; 7,900,233; and 7,961,743 are invalid for failure to
28 comply with the requirements of the Patent Laws of the United States as set forth in Title 35 of

1 the United States Code, including without limitation the provisions of §§ 102, 103, and/or 112;

2 D. Judgment that Defendants have infringed, directly and indirectly, U.S
3 Patent No. 6,252,964;

4 E. Judgment that Defendants have infringed, directly and indirectly, U.S
5 Patent No. 6,744,892;

6 F. Judgment that OpenTV has infringed, directly and indirectly, U.S Patent
7 No. 7,505,592;

8 G. An order permanently enjoining Defendants from further infringement of
9 U.S Patent Nos. 6,252,964; 6,744,892; and 7,505,592 as appropriate;

10 H. An award of damages pursuant to 35 U.S.C. § 284;

11 I. An order for an accounting of damages from Defendant's infringement;

12 J. An award to Cisco of their costs and reasonable expenses to the fullest
13 extent permitted by law;

14 K. An award of such other and further relief as the Court may deem just and
15 proper.

16 **DEMAND FOR JURY TRIAL**

17 Pursuant to Federal Rule of Civil Procedure 38(b) and Civil Local Rule 3-6(a),
18 Plaintiffs hereby demand a trial by jury on all issues so triable.

19 Dated: January 18, 2013 _____ Respectfully submitted,

21 WEIL, GOTSHAL & MANGES LLP

22
23
24 By: _____

Edward R. Reines
Attorneys for Plaintiffs