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18 OpenTV, Inc. and Nagravision, SA

19 IN THE UNITED STATES DISTRICT COURT
20 FOR THE NORTHERN DISTRICT OF CALIFORNIA
21

22 OPENTV, INC., AND NAGRAVISION, SA

23 Plaintiffs and
24 Counterdefendants,

25 v.

26 APPLE, INC.,

27 Defendant and
28 Counterplaintiff.

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

**JOINT CLAIM CONSTRUCTION AND
PREHEARING STATEMENT
PURSUANT TO PATENT L.R. 4-2**

I. Introduction

Pursuant to Patent L.R. 4-3, Plaintiffs and Counterdefendants OpenTV Inc. and NagraVision, SA (“Plaintiffs”) and Defendant and Counterplaintiff Apple Inc. (“Defendant”) submit this Joint Claim Construction and Prehearing Statement with respect to Plaintiffs’ U.S. Patent Nos. 5,566,287, 5,689,799, 5,884,033, 6,985,586, and 7,900,229 (collectively, “the patents-in-suit”).

II. Agreed Claim Constructions

Term	Agreed Construction
“a programming signal” (’229 patent)	“a signal containing television programming”
“Internet sites” (’033 patent)	“resources available over the Internet”
“the authorization” (’586 patent)	“at least one key or right that is necessary to decrypt the product”

III. Identification of Top Ten Terms for Construction Pursuant to Patent Local Rule 4-3(c)

Pursuant to Patent Local Rule 4-3(c), the parties identify the following ten terms “whose construction will be most significant to the resolution of the case”:

’799 Patent

1 “a response collector component for storing the application identifier and
2 vendor routing information, associating the application identifier with the
3 vendor routing information, receiving the application identifier and user
4 response information from the reception component, and transmitting the
5 user response information to the vendor associated with the application
6 identifier received” (799)

2 Whether the preambles of claims 1 and 3 are limiting in the 799 patent
(799)

’287 Patent

3 “drawing request” (287)

4 “image update request” (287)

5 “requesting that respective graphic objects be redrawn if any portion of the
6 graphic object lies within the drawing area represented by the retrieved
7 entry” (287)

8 **’033 Patent**

9 6 “filters specifying deferred action” (033)

10 7 “filters specifying immediate action” (033)

11 **’229 Patent**

12 8 “activity [related/unrelated] to television programming” (229)

13 9 “broadcast station” (229)

14 10 “set-top box” (229)

15 The parties dispute fourteen additional claim terms, included in the Joint Claim Construction
16 Statement chart. The ten terms above are identified in **bold**. *See* Exhibit A, attached. The Court’s
17 Scheduling Order provides that the Court “will construe only the terms the parties identify in their
18 Joint Claim Construction and Prehearing Statement as ‘most significant to the resolution of the case
19 up to a maximum of 10,’” citing Patent Local Rule 4-3(c). ECF No. 59 at 3:5-7. The parties are
20 continuing to discuss the disputed terms.

21 **A. Statement by OpenTV**

22 OpenTV believes that the parties’ briefing should be limited to the ten terms identified under
23 Patent Local Rule 4-3(c), absent compelling circumstances and permission from the Court. OpenTV
24 understands that Apple intends to submit claim construction briefing on the fourteen additional
25 disputed terms in addition to the ten terms jointly identified by the parties as “most significant to the
26 resolution of the case.” OpenTV may seek clarification from the Court whether leave is required for
27 the parties to submit briefing on terms in excess of the identified ten terms, and if so under what
28 conditions.

29 **B. Statement by Apple**

Apple believes construction of additional terms beyond the ten terms identified above will be necessary, particularly given that disputes for most remaining terms center around means-plus-function treatment or indefiniteness issues that are resolved through claim construction. Apple believes the parties should address all disputed terms in claim construction briefing, as parties have done in past cases, such as *Symantec Corp. v. Acronis, Inc.*, No. 3:12-cv-05331-JST and *Emblaze Ltd. v. Microsoft Corp.*, 3:12-cv-5422-JST. Absent other guidance from the Court, Apple intends to brief all disputed terms, and Apple will be prepared to address disputed terms at the Court's claim construction hearing or at such other time as the Court directs. Apple will continue to discuss with OpenTV in an attempt to reach agreement regarding briefing.

IV. Proposed Constructions of Disputed Terms

The Joint Claim Construction Statement chart attached as Exhibit A presents the parties' proposed constructions for the ten terms identified by the parties under Patent Local Rule 4-3(c) and the remaining fourteen disputed terms with intrinsic and extrinsic evidence supporting such constructions. Each party reserves the right to use evidence identified or relied upon by any other party and to use any portion of documents identified in the attached charts, not just those portions expressly cited.

V. Length of Claim Construction Hearing

The Court has set the Claim Construction Hearing for March 23, 2015, starting at 2:00 pm. The parties anticipate the hearing will take the full 2 and a half hours the Court has allotted for claim construction. *See* ECF No. 59. The parties will divide this time evenly, with 1.25 hours for each side.

VI. Anticipated Witnesses at the Claim Construction Hearing

The parties do not anticipate calling witnesses at the Claim Construction Hearing.

By her signature below, counsel for Plaintiffs attests that counsel for Defendants concur in the filing of this document.

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