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Attorneys for Plaintiff, Counter-Defendant,
 and Counter-Claimant, NETFLIX, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA—OAKLAND DIVISION

NETFLIX, INC.,

Plaintiff, Counter-Defendant,
 and Counter-Claimant

v.

ROVI CORPORATION; ROVI
 TECHNOLOGIES CORPORATION; ROVI
 GUIDES, INC. (f/k/a GEMSTAR-TV
 GUIDE INTERNATIONAL); and UNITED
 VIDEO PROPERTIES, INC.,

Defendants;

ROVI CORPORATION; ROVI
 TECHNOLOGIES CORPORATION; ROVI
 GUIDES, INC. (f/k/a GEMSTAR-TV
 GUIDE INTERNATIONAL); UNITED
 VIDEO PROPERTIES, INC.; APTIV
 DIGITAL, INC.; and STARSIGHT
 TELECAST, INC.,

Counter-Claimants; and

ROVI CORPORATION; UNITED VIDEO
 PROPERTIES, INC.; APTIV DIGITAL,
 INC.; and STARSIGHT TELECAST, INC.,

Counter-Defendants.

Case No. 4:11-CV-6591 PJH

**DECLARATION OF MICHAEL S. KWUN
 IN SUPPORT OF NETFLIX, INC.'S
 REPLY IN SUPPORT OF ITS MOTION
 FOR SUMMARY JUDGMENT OF
 INVALIDITY UNDER 35 U.S.C. § 101**

Date: March 25, 2015
 Time: 9:00 a.m.
 Dept.: Courtroom 3, 3rd Floor
 Judge: Hon. Phyllis J. Hamilton

Complaint Filed: December 21, 2011

Trial Date: None

1 I, MICHAEL S. KWUN, declare and state:

2 1. I am an attorney licensed to practice law in the State of California and am of
3 counsel to the law firm of Keker & Van Nest LLP, attorneys for plaintiff Netflix, Inc. in the
4 above-captioned action.

5 2. I have knowledge of the facts set forth herein, and if called upon as a witness, I
6 could testify to them competently under oath.

7 3. On December 15, 2014, I electronically signed a declaration in support of Netflix's
8 Motion for Summary Judgment of Invalidity Under 35 U.S.C. § 101. That declaration included
9 **Exhibits A-H.**

10 4. Attached hereto as **Exhibit I** is a true and correct copy of the relevant excerpts of
11 Defendants' Disclosure of Asserted Claims and Infringement Contentions, served on August 28,
12 2014.

13 Executed this 18th day of February, 2015 at San Francisco, California.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct.

16
17 /s Michael S. Kwun
MICHAEL S. KWUN

EXHIBIT I

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ROVI CORPORATION, ROVI TECHNOLOGIES
CORPORATION, ROVI GUIDES, INC. (F/K/A
GEMSTAR-TV GUIDE INTERNATIONAL), and
UNITED VIDEO PROPERTIES, INC., and
Counterclaimants
APTIV DIGITAL, INC. and STARSIGHT
TELECAST, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

NETFLIX, INC.,
Plaintiff,

v.

ROVI CORPORATION, ROVI
TECHNOLOGIES CORPORATION,
ROVI GUIDES, INC. (f/k/a GEMSTAR-
TV GUIDE INTERNATIONAL), and
UNITED VIDEO PROPERTIES, INC.
Defendants,

and

ROVI CORPORATION, ROVI
TECHNOLOGIES CORPORATION,
ROVI GUIDES, INC. (f/k/a GEMSTAR-
TV GUIDE INTERNATIONAL) UNITED
VIDEO PROPERTIES, INC., APTIV
DIGITAL, INC., and STARSIGHT
TELECAST, INC.

Counterclaimants,

v.

NETFLIX, INC.,
Counterdefendant.

CASE NO. 4:11-cv-06591-PJH

DISCLOSURE OF ASSERTED CLAIMS
AND INFRINGEMENT CONTENTIONS

1 Pursuant to Patent Local Rules (“P.R.”) 3-1 and 3-2, Counterclaimants Rovi Corporation,
2 Rovi Technologies Corporation, Rovi Guides, Inc. (f/k/a Gemstar-TV Guide International),
3 United Video Properties, Inc., Aptiv Digital, Inc., and StarSight Telecast, Inc. (collectively
4 “Rovi”), serve their Disclosure of Asserted Claims and Preliminary Infringement Contentions
5 (the “Disclosure”) regarding infringement of U.S. Patent Nos.; 7,945,929 (“the ‘929 Patent”);
6 6,898,762 (“the ‘762 Patent”); 7,103,906 (“the ‘906 Patent”); 7,974,962 (“the ‘962 Patent”); and
7 7,065,709 (“the ‘709 Patent”) (collectively, “the Patents-in-suit”).

8 Rovi bases this Disclosure on its current knowledge, understanding, and belief as to the
9 facts and information available as of the date of this Disclosure. Rovi has not yet completed its
10 investigation, collection of information, discovery, or analysis relating to this action, and
11 additional discovery may require Rovi to amend, revise and/or supplement this Disclosure or any
12 accompanying exhibits. Rovi thus specifically reserves the right to amend, revise and/or
13 supplement this Disclosure and/or any accompanying exhibits in accordance with this Court’s
14 Scheduling Order and/or any other Orders of record in this matter, P.R. 3-6, and/or Federal Rules
15 of Civil Procedure 26(e) as additional documents and information become available, including
16 documents that were previously produced in the related International Trade Commission matter,
17 and as discovery and investigation proceed. Rovi further reserves its right to supplement this
18 Disclosure and exhibits based on claim construction positions taken by Plaintiff and Counter-
19 defendant Netflix, Inc. (“Netflix”) following any *Markman* Order by the Court. This Disclosure
20 is made without prejudice to any position Rovi may take with respect to claim construction. Rovi
21 further reserves the right to introduce and use such supplemental materials at trial.

22 Rovi provides the information below and in the preliminary infringement charts attached
23 as **Exhibits A-E** as well as the accompanying documents, in order to comply with P.R. 3-1 and 3-
24 2 only. As with the rest of this Disclosure, Rovi’s claim charts are preliminary and exemplary in
25 nature, and Rovi reserves the right to supplement these Exhibits to allege other theories of
26 infringement based on Rovi’s continuing investigation during the course of discovery. The
27 information provided shall not be deemed an admission regarding the scope of any claims or the
28 proper construction of those claims or any terms contained therein. The production of documents

that have been identified in this Disclosure shall not be deemed an admission that such documents are admissible or that Rovi has waived any objections regarding the admissibility of such documents.

I. ASSERTED CLAIMS—PATENT LOCAL RULE 3-1(A) *(each claim of each patent in suit that is allegedly infringed by each opposing party, including for each claim the applicable statutory subsections of 35 U.S.C. §271 asserted)*

Pursuant to P.R. 3-1(a), Rovi identifies the following claims of the Patents-in-suit as being infringed by Netflix:

Claims 11-14, 16, 17, 19, and 20 of the '929 Patent under 35 U.S.C. § 271(a), (b), (c), and (f) and claim 18 of the '929 Patent under 35 U.S.C. § 271(b), (c), and (f);

Claims 1 and 6 of the '762 Patent under 35 U.S.C. § 271(a), (b), and (c) and claims 13, 15 and 17 of the '762 Patent under 35 U.S.C. § 271(b), (c) and (f);

Claims 1-3, 6, and 8 and 10-11 of the '906 Patent under 35 U.S.C. § 271(a), (b), and (c);

Claims 1, 3, 5-6, 9-10, 13 of the '962 Patent under 35 U.S.C. § 271(a), (b), and (c) and claims 14, 16, 18-19, 23-24 and 26-27 of the '962 Patent under 35 U.S.C. § 271(a), (b), (c) and (f); and,

Claims 13-16 of the '709 Patent under 35 U.S.C. § 271(a), (b), and (c) and claims 17-20 of the '709 Patent under 35 U.S.C. § 271 (b), (c), and (f).

Rovi specifically reserves its right to amend, revise and/or supplement its asserted claims and applicable statutory subsections as Rovi acquires additional information about the Accused Instrumentalities (referenced below) and other products or services made, used, offered for sale, imported and/or sold by Netflix or by third parties ("Netflix Device Partners") who include software for accessing the Netflix service on their devices, and as any additional Accused Instrumentalities are identified.

II. “ACCUSED INSTRUMENTALITIES”—PATENT LOCAL RULE 3-1(B)

(separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality (“Accused Instrumentality”) of each opposing party of which the party is aware. This identification shall be as specific as possible. Each product, device, and apparatus shall be identified by name or model number, if known. Each method or process shall be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process)

Pursuant to P.R. 3-1(b), Rovi identifies the following Accused Instrumentalities that it currently believes infringe the Patents-in-suit. As used below, “Netflix Hardware” refers to any processor, computer, server, server farm, cloud platform, or other equipment relating to the Netflix service (*e.g.*, hardware controlled, used, or supplied by Netflix for accessing, providing, or interacting with or otherwise using the Netflix service). “Netflix Software” refers to any software relating to the Netflix service (*e.g.*, software developed, used or supplied by Netflix for accessing, providing, or interacting with or using the Netflix service), including application(s) (an “Application” or “App”), website software, cloud service, or server software (“Netflix Server Software”), whether located on or in communication with Netflix Hardware or a client device, such as, but not limited to, television(s), media device(s), computer(s), tablet(s) or handheld device(s).

A. The ‘929 Patent

As shown in Exhibit A, at least the following Accused Instrumentalities infringe the claims of the ‘929 Patent identified above pursuant to P.R. 3-1(a):

- Netflix Hardware/Software as evidenced by accessing the Netflix service from the following exemplary platforms:
 - o Netflix’s webpages
 - o Netflix Ready Devices using the Unified UI, including but not limited to smart TVs and Blu-ray players, video game consoles (*e.g.*, Xbox 360, PlayStation 3, PlayStation 4), and other connected-media devices (*e.g.*, Roku 3, TiVo Roamio)

- o Netflix Ready Devices using the Plus UI, including but not limited to smart TVs and Blu-ray players and connected-media devices (*e.g.*, WDTV Play, Boxee)
- o Netflix Ready Devices using the Gigabrowser UI, including but not limited to smart TVs, Blu-ray players, and other connected-media devices
- o Netflix Ready Devices using the Special UI, including but not limited to smart TVs and Blu-ray players and other connected-media devices
- o Android smartphones
- o Android tablets
- o Any other devices using the Android operating system
- o Apple iPhones
- o Apple iPads
- o Any other devices using the Apple iOS operating system
- o Apple TV
- o Microsoft Windows 8 devices
- o Microsoft Xbox One
- o Sony PlayStation Vita
- o Nintendo Wii, Wii U, and 3DS & 2DS
- All Netflix Hardware/Software for use with any device (including Netflix Ready Devices) that provides the feature of generating combination categories, or that provide any similar functionality as described by the asserted claims of the '929 patent as shown in Exhibit A.

B. The '762 Patent

As shown in Exhibit B, at least the following Accused Instrumentalities infringe claims 1, 6, 13, 15, and 17 of the '762 Patent identified above pursuant to P.R. 3-1(a):

- Netflix Hardware/Software as evidenced by accessing the Netflix service from the following exemplary platforms:
 - o Netflix's webpages

- o Netflix Ready Devices using the Unified UI, including but not limited to smart TVs and Blu-ray players, video game consoles (*e.g.*, Xbox 360, PlayStation 3, PlayStation 4), and connected-media devices (*e.g.*, Roku 3, TiVo Roamio)
- o Netflix Ready Devices using the Plus UI, including but not limited to smart TVs and Blu-ray players and connected-media devices (*e.g.*, WDTV Play, Boxee)
- o Netflix Ready Devices using the Gigabrowser UI, including but not limited to smart TVs, Blu-ray players, and connected-media devices
- o Netflix Ready Devices using the Special UI, including but not limited to smart TVs and Blu-ray players and connected-media devices
- o Android smartphone
- o Android tablet
- o Any other devices using the Android operating system
- o Apple iPhone
- o Apple iPad
- o Any other devices using the Apple iOS operating system
- o Microsoft Windows 8 devices
- o Windows Phone devices
- o Microsoft Xbox One
- o Sony PlayStation Vita
- o Nintendo Wii, Wii U, and 3DS & 2DS
- All Netflix Hardware/Software for use with any device (including Netflix Ready Devices) that provides the feature of tracking viewer history and visually distinguishing previously viewed programs, or that provide any similar functionality as described by the asserted claims of the '762 patent, for example, as shown in Exhibit B.

1 **C. The ‘906 Patent**

2 As shown in Exhibit C, at least the following Accused Instrumentalities infringe the
3 claims of the ‘906 Patent identified above pursuant to P.R. 3-1(a):

- 4 • Netflix Hardware/Software as evidenced by accessing the Netflix service from the
5 following exemplary platforms:
- 6 o Netflix’s websites
 - 7 o Apple iPhones
 - 8 o Apple iPads
 - 9 o Any other devices using the Apple iOS operating system
 - 10 o Apple TV
 - 11 o Netflix Ready Devices using the Unified UI, including but not limited to smart
12 TVs and Blu-ray players, video game consoles (*e.g.*, Xbox 360, PlayStation 3,
13 PlayStation 4), and connected-media devices (*e.g.*, Roku 3, TiVo Roamio)
 - 14 o Netflix Ready Devices using the Plus UI, including but not limited to smart
15 TVs and Blu-ray players and connected-media devices (*e.g.*, WDTV Play,
16 Boxee)
 - 17 o Netflix Ready Devices using the Gigabrowser UI, including but not limited to
18 smart TVs, Blu-ray players, and connected-media devices
 - 19 o Netflix Ready Devices using the Special UI, including but not limited to smart
20 TVs and Blu-ray players and connected-media devices
 - 21 o Microsoft Xbox One
 - 22 o Android smartphones
 - 23 o Android tablets
 - 24 o Any other devices using the Android operating system
 - 25 o Nintendo products including Wii, Wii U, and 3DS & 2DS
 - 26 o Sony PlayStation Vita
 - 27 o Microsoft Windows 8 devices
 - 28 o Windows Phones devices

- All Netflix Hardware/Software for use with any device (including Netflix Ready Devices) that provide the feature of bookmarking video playback on a first device and resuming playback on a second device, or that provide any similar functionality as described by the asserted claims of the '906 patent as shown in Exhibit C.

D. The '962 Patent

As shown in Exhibit D, at least the following Accused Instrumentalities infringe claims 1, 3, 5, 9-10, 13, 14, 16, 18, 23-24 and 26-27 of the '962 Patent identified above pursuant to P.R. 3-1(a):

- Netflix Hardware/Software for accessing Netflix from the following exemplary platforms:
 - o Apple iPad
 - o Netflix's webpages
 - o Microsoft Windows 8 devices
- Netflix Software for accessing Netflix from the following exemplary platforms:
 - o Apple iPad
 - o Netflix's webpages
 - o Microsoft Windows 8 devices
- All Netflix Software alone or in combination with Netflix Hardware for use with any device (including Netflix Ready Devices) that provide the feature of searching for program categories, or that provide any similar functionality as described by the asserted claims of the '962 patent as shown in Exhibit D.

As shown in Exhibit D, at least the following Accused Instrumentalities infringe claims 1, 3, 5-6, 10, 13, 14, 16, 18-19, 24 and 26-27 of the '962 Patent identified above pursuant to P.R. 3-1(a):

- Netflix Hardware/Software for accessing Netflix from the following exemplary platforms:

- o Netflix Ready Devices using the Unified UI, including but not limited to smart TVs and Blu-ray players, video game consoles (*e.g.*, Xbox 360, PlayStation 3, PlayStation 4), and connected-media devices (*e.g.*, Roku 3, TiVo Roamio)
- o Netflix Ready Devices using the Plus UI, including but not limited to smart TVs and Blu-ray players and connected-media devices (*e.g.*, WDTV Play, Boxee)
- o Netflix Ready Devices using the Gigabrowser UI, including but not limited to smart TVs, Blu-ray players, and connected-media devices
- o Netflix Ready Devices using the Special UI, including but not limited to smart TVs and Blu-ray players and connected-media devices
- o Apple TV
- o Microsoft Xbox One
- Netflix Software for accessing Netflix from the following exemplary platforms:
 - o Netflix Ready Devices using the Unified UI, including but not limited to smart TVs and Blu-ray players, video game consoles (*e.g.*, Xbox 360, PlayStation 3, PlayStation 4), and connected-media devices (*e.g.*, Roku 3, TiVo Roamio)
 - o Netflix Ready Devices using the Plus UI, including but not limited to smart TVs and Blu-ray players and connected-media devices (*e.g.*, WDTV Play, Boxee)
 - o Netflix Ready Devices using the Gigabrowser UI, including but not limited to smart TVs, Blu-ray players, and connected-media devices
 - o Netflix Ready Devices using the Special UI, including but not limited to smart TVs and Blu-ray players and connected-media devices
 - o Apple TV
 - o Microsoft Xbox One
- All Netflix Software alone or in combination with Netflix Hardware for use with any device (including Netflix Ready Devices) that provide the feature of searching for

program categories, or that provide any similar functionality as described by the asserted claims of the '962 patent as shown in Exhibit D.

E. The '709 Patent

As shown in Exhibit E, at least the following Accused Instrumentalities infringe claims 13-16 and 17-20 of the '709 Patent identified above pursuant to P.R. 3-1(a):

- Netflix Hardware/Software for accessing Netflix from the following exemplary platforms:
 - o Netflix's websites
 - o Apple iPhones
 - o Apple iPads
 - o Any other devices using the Apple iOS operating system
 - o Netflix Ready Devices using the Unified UI, including but not limited to smart TVs and Blu-ray players, video game consoles (*e.g.*, Xbox 360, PlayStation 3, PlayStation 4), and connected-media devices (*e.g.*, Roku 3, TiVo Roamio)
 - o Netflix Ready Devices using the Plus UI, including but not limited to smart TVs and Blu-ray players and connected-media devices (*e.g.*, WDTV Play, Boxee)
 - o Netflix Ready Devices using the Gigabrowser UI, including but not limited to smart TVs, Blu-ray players, and connected-media devices
 - o Netflix Ready Devices using the Special UI, including but not limited to smart TVs and Blu-ray players and connected-media devices
 - o Microsoft Xbox One
 - o Microsoft Windows 8 devices
 - o Android smartphones
 - o Android tablets
 - o Any other devices using the Android operating system
 - o Sony PlayStation Vita
 - o Nintendo Wii, Wii U, and 2DS & 3DS

- All Netflix Hardware/Software for use with any device (including Netflix Ready Devices) that provides the feature of generating and delivering program recommendations, or that provide any similar functionality as described by the asserted claims of the '709 patent as shown in Exhibit E.

III. CLAIM CHARTS—PATENT LOCAL RULE 3-1(C) *(a chart identifying specifically where each limitation of each asserted claim is found within each accused instrumentality, including for each limitation that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the accused instrumentality that performs the claimed function)*

Rovi identifies infringement of each asserted claim for each Accused Instrumentality in the preliminary infringement charts attached as **Exhibits A-E**, which are organized as follows:

Exhibit A: The '929 Patent against the Accused Instrumentalities identified above pursuant to P.R. 3-1(b);

Exhibit B: The '762 Patent against the Accused Instrumentalities identified above pursuant to P.R. 3-1(b);

Exhibit C: The '906 Patent against the Accused Instrumentalities identified above pursuant to P.R. 3-1(b);

Exhibit D: The '962 Patent against the Accused Instrumentalities identified above pursuant to P.R. 3-1(b); and

Exhibit E: The '709 Patent against the Accused Instrumentalities identified above pursuant to P.R. 3-1(b).

Rovi explicitly reserves the right to supplement, modify, and/or amend its contentions as discovery proceeds, in particular, once Rovi receives Netflix's nonpublic information about the Accused Instrumentalities, including but not limited to its documents to be produced pursuant to Patent Local Rule 3-4(a).

document production at RVNF00003569-RVNF00003621; RVNF00003698-RVNF00003877;
RVNF00003891-RVNF00003908; RVNF00003912-RVNF00003930.

Dated: August 28, 2014

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

By: /s/ Yar R. Chaikovsky
Yar R. Chaikovsky

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ROVI CORPORATION, ROVI
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