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Owner of OpenTV slaps Netflix with patent lawsuit

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By [Alistair Barr](#)

(Reuters) - The owner of interactive television pioneer OpenTV sued Netflix Inc on Wednesday, alleging the company infringed on patents that cover technology underpinning the fast-growing Internet video sector.

Switzerland-based Kudelski SA, which owns OpenTV, said in its lawsuit that Netflix infringed on seven U.S. patents covering aspects of over-the-top TV technology (OTT), including: the use of viewer information to make recommendations; digital rights management; and video playback.

Kudelski tried for about a year to encourage Netflix to discuss licensing its patents, but the video streaming company has so far not played ball, according to the lawsuit, which was filed on Wednesday in the U.S. District Court for the District of Delaware, a common venue for patent cases.

"Companies like Netflix have, in essence, stood on the shoulders of giants, largely focusing their R&D efforts on aggregating these previously patented technologies and using them to provide a rich customer experience," Kudelski said in the complaint.

Netflix spokesman Joris Evers declined to comment.

Netflix shares fell 1.7 percent to close at \$93.9785 on Wednesday.

The suit comes amid a boom in digital TV shows and movies delivered over the Internet to smart TVs, tablets and smart phones. Netflix, whose iconic red envelopes have come to symbolize the DVD delivery-by-mail market, introduced video streaming in 2007, 10 years after the company was founded, and quickly grew into a market leader.

But the market is getting crowded, and Netflix is being chased by Amazon.com Inc and Wal-Mart Stores Inc's Vudu service, as well as streaming video website Hulu, which is owned by Walt Disney Co, News Corp and Comcast Corp.

Apple Inc, the world's largest computer maker by market value, is also widely expected to enter the smart TV market, spurring further growth.

The Internet TV sector shares some attributes of the smartphone business, with over a decade of innovation and patents produced by companies that are no longer dominant.

Grant Moss, CEO of patent broker and advisory firm Adapt IP Ventures, expects a repeat of the recent smartphone patent wars, but on a smaller scale.

"The frequency of these cases will increase dramatically" because of recent, high-profile Internet video content distribution deals, new ways of making money in the sector and new entrants," Moss said.

"But I don't see the financial value of the individual cases being as significant as those in the smartphone market," he added.

Kudelski, which has developed and acquired a range of movie and digital TV technologies over several decades, generates more than \$700 million in annual revenue and employs about 3,000 people worldwide. The company is a player in streaming video by virtue of its 2010 acquisition of San Francisco-based OpenTV.

OpenTV, which began in 1996 as a joint venture between Thomson Multimedia and Sun Microsystems, develops software that helps run more than 200 million TV set-top boxes. It competes with NDS, which was acquired by Cisco Systems Inc for \$5 billion in July.

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In May, Kudelski hired Joe Chernesky from Intellectual Ventures, a patent investment firm, to run an intellectual property unit managing a portfolio of more than 3,000 of the company's patents. OpenTV owns more than 800 of these patents.

"We have been developing technologies for over 20 years to enable the delivery of video content and have an early and broad patent portfolio in the field," said Chernesky. "We intend to aggressively defend our patents."

NETFLIX PATENTS

Netflix owns 14 patents that focus mostly on technology supporting its DVD-by-mail business, such as online ordering and assembling an online movie queue. The company has one U.S. patent with claims related to video streaming, while Amazon has 22 U.S. patents with claims related to multimedia streaming, according to an early November review conducted by patent advisory and research firm Envision IP.

It usually takes several years to win approval for patents to support new technology, which is why Netflix currently has more intellectual property backing its older business, according to Envision IP founder Maulin Shah.

Shah said Netflix has 32 pending patent applications that cover technologies to improve on-demand streaming video delivery. Netflix



earlier this year also hired T.J. Angioletti, Oracle Corp's chief intellectual property counsel, to help with its patent push.

Still, pending patents are usually of limited use in patent litigation and it is unclear whether Netflix's applications will be approved, Shah added.

"It doesn't really help them in lawsuits because they can't use pending patents to counter-sue and fight back," Shah said.

The lawsuit follows a string of negative news surrounding Netflix over the last year, including missed subscriber growth targets, an ill-fated attempt to split the DVD and streaming operations and a swooning stock price.

However, Netflix shares jumped earlier in December after the company unveiled a first-of-its-kind movie deal with Disney.

(Reporting By Alistair Barr; Editing by Peter Lauria, Leslie Gevirtz and Dan Grebler)

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