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12 Attorneys for Defendant and Counterclaimant,  
 BLOCKBUSTER INC.

13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA

15 NETFLIX, INC., a Delaware corporation,  
 16 Plaintiff,  
 17 v.  
 18 BLOCKBUSTER, INC., a Delaware  
 corporation, DOES 1-50,  
 19 Defendant.

Case No. C 06 2361 WHA (JCS)

**DECLARATION OF WILLIAM J. O'BRIEN**

Hearing Date: TBD  
 Time: 9:30 A.M.  
 Courtroom: A, 15th Floor  
 Magistrate Judge: Joseph C. Spero

Complaint Filed: April 4, 2006

20 AND RELATED COUNTERCLAIMS  
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1 I, William J. O'Brien, declare as follows:

2 I am a partner in the law firm of Alschuler Grossman LLP and an attorney of record for  
3 Defendant and Counterclaimant, Blockbuster Inc. ("Blockbuster"), in this action. I have  
4 personal knowledge of each of the facts stated in this declaration.

5 1. Have you ever expressed any opinion on the validity of either the '450 patent or  
6 '381 patent at issue in this case?

7 **Answer:** I have not expressed any opinion that either patent is valid. I do not recall  
8 whether I have expressed an opinion that either patent is invalid.

9 2. Have you ever mentioned the opinion letter written by Baker & Botts as to the  
10 validity of the '450 patent to anyone at Blockbuster?

11 **Answer:** Yes

12 • How often?

13 **Answer:** I do not recall.

14 • When?

15 **Answer:** At various times during my work on the defense of Blockbuster  
16 in this case between April or May 2006 and this week.

17 • To whom?

18 **Answer:** The applicable Blockbuster personnel I recall are John Antioco,  
19 Shane Evangelist, Judy Norris, and Bryan Stevenson.

20 • Was that comment expressed orally or in writing?

21 **Answer:** I only recall oral mentions.

22 3. Have you mentioned the opinion letter written by Blakely Sokoloff Taylor &  
23 Zafman as to the validity of the '381 patent to anyone at Blockbuster?

24 **Answer:** Yes

25 • How often?

26 **Answer:** I do not recall.

27 • When?

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1                   **Answer:** Beginning in the first quarter of 2007 and continuing into this  
2 week.

3                   • To whom?

4                   **Answer:** The applicable Blockbuster personnel I recall are John Antioco,  
5 Shane Evangelist, and Bryan Stevenson.

6                   • Was that comment expressed orally or in writing?

7                   **Answer:** I only recall oral mentions.

8                   4. Have you ever discussed with anyone at Blockbuster the general subject matter of  
9 the validity of the '381 patent?

10                  **Answer:** Yes

11                  • How often?

12                  **Answer:** I do not recall

13                  • When?

14                  **Answer:** At various times during my work on the defense of Blockbuster  
15 in this case between April or May 2006 and this week.

16                  • To whom?

17                  **Answer:** The Blockbuster applicable personnel I recall are John Antioco,  
18 Shane Evangelist, Judy Norris, and Bryan Stevenson

19                  • Was that discussion oral or in writing?

20                  **Answer:** My communications with persons at Blockbuster having to do  
21 with the general subject matter of validity of the '381 patent have been both oral  
22 and in writing.

23                  • If in writing, was the writing preserved?

24                  **Answer:** Yes.

25                  5. Have you ever discussed with anyone at Blockbuster the general subject matter of  
26 the validity of the '450 patent?

27                  **Answer:** Yes

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- How often?

**Answer:** I do not recall.

- When?

**Answer:** At various times during my work on the defense of Blockbuster in this case between April or May 2006 and this week.

- To whom?

**Answer:** The applicable Blockbuster personnel I recall are John Antioco, Shane Evangelist, Judy Norris, and Bryan Stevenson.

- Was that discussion oral or in writing?

**Answer:** My communications with persons at Blockbuster having to do with the general subject matter of validity of the '381 patent have been both oral and in writing.

- If in writing, was the writing preserved?

**Answer:** Yes.

6. Have you made any comment to anyone at Blockbuster about the evidence concerning the validity of the '381 patent?

**Answer:** Yes.

- How often?

**Answer:** I do not recall.

- When?

**Answer:** At various times during my work on the defense of Blockbuster in this case between April or May 2006 and this week.

- To whom?

**Answer:** The Blockbuster personnel to whom I recall mentioning evidence concerning the validity of the '381 patent are John Antioco, Shane Evangelist, Judy Norris, and Bryan Stevenson.

- Was that comment made orally or in writing?

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**Answer:** My communications with persons at Blockbuster having to do with evidence concerning the validity of the '381 patent have been both oral and in writing.

- If in writing, was the writing preserved?

**Answer:** Yes.

7. Have you made any comment to anyone at Blockbuster about the evidence concerning the validity of the '450 patent?

**Answer:** Yes.

- How often?

**Answer:** I do not recall.

- When?

**Answer:** At various times during my work on the defense of Blockbuster in this case between April or May 2006 and this week.

- To whom?

**Answer:** The Blockbuster personnel to whom I recall I recall mentioning evidence concerning the validity of the '450 patent are John Antioco, Shane Evangelist, Judy Norris, and Bryan Stevenson.

- Was that comment made orally or in writing?

**Answer:** My communications with persons at Blockbuster having to do with evidence concerning the validity of the '450 patent have been both oral and in writing.

- If in writing, was the writing preserved?

**Answer:** Yes.

8. Have you had any communications with anyone in your office commenting on conversations with Blockbuster that in any way related to the validity of the '381 patent?

**Answer:** Yes.

- How often?

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**Answer:** I recall at least two occasions.

- When?

**Answer:** In April or May 2006 and possibly at other times during my work on the defense of Blockbuster in this case.

- To whom?

**Answer:** The applicable persons in my office that I recall are Marshall Grossman and Tony Chen.

- Was that communication oral or in writing?

**Answer:** I recall only oral communications.

9. Have you had any communications with anyone in your office commenting on conversations with Blockbuster that in any way related to the validity of the '450 patent?

**Answer:** Yes.

- How often?

**Answer:** I recall at least two occasions.

- When?

**Answer:** In April or May 2006 and possibly at other times during my work on the defense of Blockbuster in this case.

- To whom?

**Answer:** The applicable persons in my office that I recall are Marshall Grossman and Tony Chen.

- Was that communication oral or in writing?

**Answer:** I recall only oral communications.

10. Have you ever discussed the likelihood that either the '450 patent or the '381 patent will be found to be valid?

**Answer:** I have never stated it is likely that either the '450 patent or the '381 patent will be found to be valid. I do not recall whether I have otherwise discussed the likelihood that either the '450 patent or the '381 patent will be found to be valid.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s William J. O'Brien  
William J. O'Brien

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PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in the County of Los Angeles, California at 355 South Grand Avenue, Suite 4400, Los Angeles, California 90071-3106. I am readily familiar with the practice of this office for collection and processing via electronic transmission that same day in the ordinary course of business.

Today I served the attached:

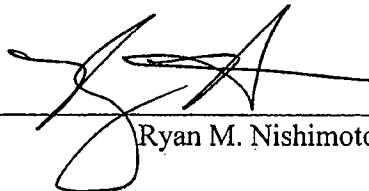
**DECLARATION OF WILLIAM J. O'BRIEN**

(BY ELECTRONIC TRANSMISSION) This document was transmitted, without exhibits, by electronic transmission from ryan.nishimoto@bingham.com and the transmission was reported as complete and without error. I then caused the transmitting e-mail account to properly issue a report confirming the electronic transmission.

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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that this declaration was executed on April 27, 2007.

  
\_\_\_\_\_  
Ryan M. Nishimoto