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 NETFLIX, INC.
 6

7 UNITED STATES DISTRICT COURT
 8 NORTHERN DISTRICT OF CALIFORNIA

9 NETFLIX, INC., a Delaware corporation,
 10 Plaintiff,
 11 v.

Case No. C 06 2361 WHA

**FIRST AMENDED COMPLAINT FOR
 PATENT INFRINGEMENT AND
 DEMAND FOR JURY TRIAL**

12 BLOCKBUSTER, INC., a Delaware
 corporation, DOES 1-50,
 13 Defendant.
 14

Complaint filed: April 4, 2006

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 16 Plaintiff Netflix, Inc. (Netflix) for its First Amended Complaint for patent infringement
 17 against Defendant Blockbuster, Inc. (Blockbuster) alleges upon knowledge with respect to its
 18 own acts, and upon information and belief as to other matters, as follows:

19 **THE PARTIES**

20 1. Netflix is a Delaware corporation with its principal place of business in Los
 21 Gatos, California. Netflix has rented out DVDs on a subscription basis through its website,
 22 www.netflix.com, since 1999.

23 2. Defendant Blockbuster is a Delaware corporation with its principal place of
 24 business in Dallas, Texas. Blockbuster may be served with a Summons and this Complaint
 25 through its registered agent, Corporation Service Company, 2711 Centerville Road, Wilmington,
 26 Delaware 19808. Blockbuster launched Blockbuster Online, which it describes as its "U.S.
 27 online subscription program," in 2004. Defendant Blockbuster has, at all times material hereto,
 28 been registered to do business and has conducted business in the State of California and this

1 District.

2 **JURISDICTION AND VENUE**

3 3. This is an action arising under the laws of the United States, including 35 U.S.C.
4 § 101 *et seq.* (patent laws). This Court has subject-matter jurisdiction over this action under 28
5 U.S.C. §§ 1331 and 1338(a).

6 4. This Court has personal jurisdiction over Blockbuster because Blockbuster
7 regularly conducts business in this District and/or because Blockbuster has committed acts of
8 patent infringement in this District.

9 5. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and/or
10 1400(b) because Blockbuster regularly conducts business in this District and/or because
11 Blockbuster has committed acts of patent infringement in this District.

12 **INTRADISTRICT ASSIGNMENT**

13 6. This is an Intellectual Property Action subject to district-wide assignment under
14 Local Rule 3-2(c).

15 **FIRST CAUSE OF ACTION**

16 **(Infringement of U.S. Patent No. 7,024,381)**

17 7. Netflix is the sole and exclusive owner of U.S. Patent No. 7,024,381 (the “381
18 Patent” attached as Exhibit A), entitled “Approach for Renting Items to Customers” issued on
19 April 4, 2006. Among other things, the Patent covers a method for subscription-based online
20 DVD rental that allows subscribers to keep the DVDs they rent for as long as they wish without
21 incurring any late fees, to obtain new DVDs upon return of those they have already watched
22 without incurring additional charges, and to prioritize and reprioritize their own personal list—a
23 dynamic queue—of DVDs to be rented.

24 8. In violation of 35 U.S.C. § 271(a), Blockbuster has sold and/or offered for sale in
25 the United States a service that infringes one or more claims of the ‘381 Patent, by copying
26 Netflix’s patented business method, including but not limited to copying Netflix’s dynamic
27 queue; copying Netflix’s method of sending DVDs to subscribers based on ranked order of titles
28 in their queue; and copying Netflix’s method of allowing subscribers to update and reorder their

1 queue among other acts of infringement.

2 9. Blockbuster has also actively induced and/or contributed to others' infringement
3 of the '381 Patent in violation of 35 U.S.C. §§ 271(b) and (c).

4 10. Blockbuster has had actual or constructive knowledge of the '381 Patent, and
5 Blockbuster's infringement of the '381 Patent has been and is willful and deliberate. Netflix has
6 suffered and will continue to suffer irreparable injury unless Blockbuster's infringement of the
7 '381 Patent is enjoined by this Court.

8 **SECOND CAUSE OF ACTION**

9 **(Infringement of U.S. Patent No. 6,584,450)**

10 11. Netflix's incorporates paragraphs 1-10 above by reference.

11 12. Netflix is the sole and exclusive owner of U.S. Patent No. 6,584,450 (the "'450
12 Patent," attached as Exhibit B), entitled "Method and Apparatus for Renting Items," issued on
13 June 24, 2003.

14 13. In violation of 35 U.S.C. § 271(a), Blockbuster has sold and/or offered for sale in
15 the United States a service that infringes one or more claims of the '450 Patent.

16 14. Blockbuster has also actively induced and/or contributed to others' infringement
17 of the '450 Patent in violation of 35 U.S.C. §§ 271(b) and (c).

18 15. Blockbuster has had actual or constructive knowledge of the '450 Patent, and
19 Blockbuster's infringement of the '450 Patent has been and is willful and deliberate. Netflix has
20 suffered and will continue to suffer irreparable injury unless Blockbuster's infringement of the
21 '450 Patent is enjoined by this Court.

22 **PRAYER FOR RELIEF**

23 Netflix respectfully requests the following relief:

24 1. A judgment that Blockbuster has infringed the asserted patents in violation of 35
25 U.S.C. §§ 271 (a), (b) and (c);

26 2. A judgment that Blockbuster's infringement of the '381 and '450 patents has been
27 willful and deliberate;

28 3. Preliminary and permanent injunction, pursuant to 35 U.S.C. § 283, enjoining

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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

- Netflix, Inc.
- Blockbuster, Inc.

Dated: July 26, 2006

KEKER & VAN NEST, LLP

By: /s/ Jeffrey R. Chanin
JEFFREY R. CHANIN
Attorneys for Plaintiff
NETFLIX, INC.