AO 120 (Rev. 08/10)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	**REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK**

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court for the District of Delaware on the following

☐ Trademarks or ☑ Patents. (☐ the patent action involves 35 U.S.C. § 292.):

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
1:13-cv-01231-LPS	7/12/2013	for the District of Delaware

PLAINTIFF	DEFENDANT
RESEARCH FRONTIERS INCORPORATED	E INK CORPORATION; E INK HOLDINGS INC. (f/k/a PRIME VIEW INTERNATIONAL CO., LTD.); AMAZON.COM, INC.; SONY ELECTRONICS INC.; SONY CORPORATION; BARNES & NOBLE, INC.; and BARNESANDNOBLE.COM LLC

	PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1	6,606,185	8/12/2003	RESEARCH FRONTIERS INCORPORATED
2	5,463,491	10/31/1995	RESEARCH FRONTIERS INCORPORATED
3			
4			
5			

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY ☐ Amendment ☐ Answer ☐ Cross Bill ☐ Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,271,956	8/7/2001	RESEARCH FRONTIERS INCORPORATED
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

Stipulated Final Judgment

CLERK	(BY) DEPUTY CLERK	DATE
John A. Cerino		2-2-2017

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RESEARCH FRONTIERS INCORPORATED, **Plaintiff,** **v.** **E INK CORPORATION;** **E INK HOLDINGS INC. (f/k/a PRIME VIEW INTERNATIONAL CO., LTD.);** **AMAZON.COM, INC.;** **SONY ELECTRONICS INC.;** **SONY CORPORATION;** **BARNES & NOBLE, INC.; and** **BARNESANDNOBLE.COM LLC,** **Defendants.**	**Civil Action No. 13-01231-LPS**

[PROPOSED] STIPULATED FINAL JUDGMENT OF NON-INFRINGEMENT
TO ENABLE IMMEDIATE APPEAL

WHEREAS, this is a patent infringement action brought by Plaintiff Research Frontiers Incorporated ("RFI") against Defendants E Ink Corporation ("EIC") and E Ink Holdings Inc. ("EIH") (collectively, "E Ink"), Amazon.com, Inc. ("Amazon"), Sony Electronics Inc. and Sony Corporation (collectively, "Sony"), and Barnes & Noble, Inc., and barnesandnoble.com, LLC (collectively, "B&N") (collectively, the "Defendants");

WHEREAS, RFI intends to immediately appeal to the United States Court of Appeals for the Federal Circuit this Stipulated Final Judgment of Non-Infringement, which appeal is based on this Court's claim construction order (D.I. 171);

WHEREAS, this Court has jurisdiction over the claims and counterclaims in this action pursuant to 28 U.S.C. §§ 1331, 1338, and 2202;

WHEREAS, RFI has asserted that Defendants have infringed claims 1, 3, 5 and 9 of United States Patent No. 5,463,491 ("the '491 Patent"); claims 1-4, 9, 12, and 14 of United States Patent No. 6,606,185 ("the '185 Patent"); and claims 1-4, 7-11, and 14 of United States Patent No. 6,271,956, ("the '956 Patent") (collectively, the "Asserted Claims");

WHEREAS, RFI accused of infringement products and methods using E Ink's display films (the "Accused Instrumentalities"[1]).

WHEREAS, in their responsive pleadings, EIC and EIH denied infringement and asserted affirmative defenses of invalidity, and EIC counterclaimed for declaratory judgments of non-infringement and invalidity with respect to each of the Asserted Patents[2];

WHEREAS, on March 24, 2016, Magistrate Judge Christopher J. Burke entered a Report and Recommendation in which the Court:

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[1] RFI accused the following products of infringement: E Ink's front plane laminates ("FPLs") internally referred to by E Ink as the V100 series, V200 series, V300 series, and E4 FPL, including but not limited to V100, V110, V120, V160, V200, V220, V230, V250, V320, and E4; E Ink monochrome active matrix products, including all modules using the market names Vizplex, Pearl, and Carta and FPL internally referred to by E Ink as V100 series, V200 series, and V300 series FPL; E Ink color active matrix products, including all modules using the market names Spectra and Triton and FPL internally referred to by E Ink as E4 and V250; E Ink flexible active matrix products, including all modules using the market name Mobius and FPL internally referred to by E Ink as V220, V230, and V320; E Ink flexible display segmented solutions, including all modules using the market name Surf and one or more of the FPLs internally referred to by E Ink as V100 series, V200 series, V300 series, or E4 FPL; E Ink active matrix electronic shelf label products, including all modules using the market name Aurora and FPL internally referred to by E Ink as V110 and V230; E Ink Fina EPD modules, including all modules using the market name Fina and one or more of the FPLs internally referred to by E Ink as V100 series, V200 series, V300 series, or E4 FPLs; E Ink Ink-in-Motion; E Ink Prism; and products of Amazon, Sony, and B&N incorporating same, including but not limited to the Amazon Kindle, Sony Reader, and B&N Nook product lines.

[2] The Court stayed RFI's claims against Amazon, Sony, and B&N pending resolution of RFI's claims against E Ink. Accordingly, Amazon, Sony, and B&N did not file responsive pleadings.

As to the '491 Patent

(a) construed the limitation "light[-]modulating unit" in claims 1, 3, 5 and 9 of the '491 Patent as "a unit which controls light transmission using a suspension of particles" (D.I. 162 at pp. 7-19, 45); and

(b) construed the limitation "liquid light valve suspension" in claims 1, 3, 5 and 9 of the '491 Patent as "a liquid suspension of particles opening through particle alignment and closing through Brownian movement" (D.I. 162 at pp. 21-25, 46)[3];

As to the '185 Patent

(c) construed the limitation "light modulating unit comprising a suspension" in claims 1-4, 9, 12, and 14 of the '185 Patent as "a unit which controls light transmission using a suspension of particles opening through particle alignment and closing through Brownian movement" (D.I. 162 at pp. 25-29, 46); and

(d) construed the limitation "light valve suspension" in claims 2, 4, and 9 of the '185 Patent as "a liquid suspension of particles opening through particle alignment and closing through Brownian movement" (D.I. 162 at pp. 29-31, 46);

As to the '956 Patent

(e) construed the limitation "SPD Film" in claims 1-4, 7-11, and 14 of the '956 Patent as "a film comprising a suspension of particles to control light transmission through the film, opening through particle alignment and closing through Brownian movement" (D.I. 162 at pp. 31-33, 47);

[3] "Brownian movement" is the random movement of particles suspended in a liquid.

WHEREAS, this Court's Report and Recommendation concludes that electrophoretic devices do not control light transmission by opening through particle alignment and closing through Brownian movement (*see, e.g.*, D.I. 162 at pp. 7-19);

WHEREAS, by a Memorandum Order of December 13, 2016, this Court adopted the Report and Recommendation in all respects (D.I. 171);

WHEREAS, even with limited discovery, the parties agree that the Accused Instrumentalities are all electrophoretic devices and, thus, do not "control light transmission by opening through particle alignment and closing through Brownian movement" as interpreted by this Court (*see, e.g.*, D.I. 162 at pp. 7-19);

WHEREAS, RFI concedes that, under this Court's claim constructions for the above-identified terms, it cannot prevail on the issue of infringement at least because the Accused Instrumentalities are all electrophoretic displays and, thus, do not "control light transmission by opening through particle alignment and closing through Brownian movement" as interpreted by this Court (*id.*);

WHEREAS, RFI intends to promptly appeal the entry of Final Judgment of Non-Infringement based on the Court's Orders (D.I. 162 and 171) and the constructions for the above-identified terms;

WHEREAS, EIC wishes to dismiss without prejudice its unadjudicated counterclaims, such that they may be re-asserted in the event that the Final Judgment is vacated or reversed in whole or in part;

WHEREAS, the parties reserve all issues relating to fees and costs, including any motions pursuant to 35 U.S.C. § 285 or Fed. R. Civ. P. 54(d), pending the outcome of RFI's anticipated

appeal, and the deadlines for filing such motions shall be set by the Court after a ruling by the Federal Circuit;

WHEREAS, Defendants reserve any rights they may have to appeal the Court's claim construction rulings not forming the basis for non-infringement in this Stipulated Final Judgment of Non-Infringement, in the event that the Final Judgment is vacated or reversed in whole or in part; and

WHEREAS, the parties wish to preserve the status quo on all other issues, in the event that the Final Judgment is vacated or reversed in whole or in part;

IT IS NOW HEREBY ORDERED that:

1. For the reasons described above, Final Judgment is hereby entered that the Accused Instrumentalities have not and do not infringe any claim of United States Patent Nos. 5,463,491 ("the '491 Patent"); 6,606,185 ("the '185 Patent"); or 6,271,956, ("the '956 Patent");

2. This Final Judgment is subject to the same right of appeal that RFI would have had in the event a final judgment of non-infringement had been entered following either a dispositive ruling by the Court or a jury verdict; and

3. For the reasons described above, EIC's counterclaims are dismissed without prejudice to EIC's right to re-assert them in the event of remand or other assertion by RFI under the Asserted Patents.

4. The Clerk is hereby directed to enter this Final Judgment of Non-Infringement in favor of Defendants on the docket.

January 27, 2017
Wilmington, DE

HON. LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

AGREED AS TO FORM:

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