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13 UNITED STATES DISTRICT COURT  
 14  
 15 NORTHERN DISTRICT OF CALIFORNIA

16 AU OPTRONICS CORPORATION AMERICA,  
 a California corporation,

17 Plaintiff,

18 vs.

19 VISTA PEAK VENTURES, LLC

20 Defendant.  
 21  
 22

) Case No.  
 )  
 )

) **COMPLAINT FOR DECLARATORY**  
 ) **JUDGMENT AND EQUITABLE**  
 ) **RELIEF**

) **DEMAND FOR JURY TRIAL**  
 )  
 )  
 )

23  
 24 Plaintiff AU OPTRONICS CORPORATION AMERICA, for its Complaint for Declaratory  
 25 Judgment and Equitable Relief, avers and alleges as follows:

26 THE PARTIES, JURISDICTION, AND VENUE

27 1. Plaintiff AU OPTRONICS CORPORATION AMERICA (“AUO USA”) is a  
 28 corporation organized and existing under the laws of the state of California with its principal place of

1 business and center of operations located at 1525 McCarthy Blvd., Suite 218, Milpitas, California  
2 95035.

3 2. Defendant VISTA PEAK VENTURES, LLC (“Defendant”) is a limited liability  
4 company that purports to be organized and existing under the laws of the state of Texas with its  
5 business address located at 1400 Preston Rd, Suite 472, Plano, TX 75093.

6 3. Defendant has filed three separate actions in the Marshall Division of the District  
7 Court for the Eastern District of Texas accusing AUO USA’s parent company, AU Optronics  
8 Corporation (“AUO”), of infringing the following United States Patents: U.S. Patent No. 5,929,947  
9 (“the ’947 patent”), U.S. Patent No. 6,579,749 (“the ’749 patent”), U.S. Patent No. 6,674,093 (“the  
10 ’093 patent”), U.S. Patent No. 6,800,872 (“the ’872 patent”), U.S. Patent No. 6,891,196 (“the ’196  
11 patent”), U.S. Patent No. 7,088,401 (“the ’401 patent”), U.S. Patent No. 6,404,474 (“the ’474  
12 patent”), U.S. Patent No. 6,657,699 (“the ’699 patent”), U.S. Patent No. 7,009,673 (“the ’673  
13 patent”), U.S. Patent No. 7,499,119 (“the ’119 patent”), U.S. Patent No. 6,781,643 (“the ’643  
14 patent”), U.S. Patent No. 7,046,327 (“the ’327 patent”), and U.S. Patent No. 6,730,970 (“the ’970  
15 patent”), collectively, the “Asserted Patents.” *See Vista Peak Ventures, LLC v. AU Optronics Corp.*,  
16 Case Nos. 2:18-cv-00276-JRG, ¶¶ 10, 22, 34, 46, 57, 68, 80; 2:18-cv-00278-JRG, ¶¶ 10, 33, 44, 45,  
17 56; and 2:18-cv-00279-JRG, ¶¶ 10, 34, 45.

18 4. In an effort to manufacture personal jurisdiction over AUO, Defendant further alleged  
19 in each of these complaints that AUO controls AUO USA and that AUO USA “has committed acts  
20 within Texas giving rise to this action and/or has established minimum contacts with Texas such that  
21 personal jurisdiction over AUO would not offend traditional notions of fair play and substantial  
22 justice.” *See Vista Peak Ventures, LLC v. AU Optronics Corp.*, Case Nos. 2:18-cv-00276-JRG, ¶¶ 8-  
23 9; 2:18-cv-00278-JRG, ¶¶ 8-9; and 2:18-cv-00279-JRG, ¶¶ 8-9.

24 5. In *ad damnum* clause in each of its complaints, Defendant requests the court, *inter*  
25 *alia*, to enjoin AUO USA from “making, using, selling, offering to sell, or importing any products  
26 that infringe the Asserted Patents, and any other injunctive relief the Court deems just and  
27 equitable.” *See Vista Peak Ventures, LLC v. AU Optronics Corp.*, Case Nos. 2:18-cv-00276-JRG,  
28 pp. 28-29; 2:18-cv-00278-JRG, pp. 22; and 2:18-cv-00279-JRG, pp. 19-20.

1           6.       Consequently, this action arises under the patent laws of the United States, namely 35  
2 U.S.C. §§ 271, 281, and 284-285, among others.

3           7.       Jurisdiction: This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331  
4 and 1338(a).

5           8.       Intradistrict Assignment: Pursuant to Civil Local Rule 3-5(b), this case is properly  
6 assigned to the San Jose division.

7           9.       Defendant is subject to this Court's specific personal jurisdiction pursuant to due  
8 process and/or the California Long Arm Statute, due at least to Defendant's substantial business in  
9 this State and judicial district, including its engagement of Ascenda Law Group of 333 W. San  
10 Carlos Street, Suite 200, San Jose, California 95110 as counsel to acquire the Asserted Patents, *see*  
11 Assignment Reel/Frame No. 045469/0023 from Getner Foundation LLC to Vista Peak Ventures,  
12 LLC (attached hereto as Exhibit A), and, upon information and belief, authorizing that Firm's filing  
13 of powers of attorney to act on behalf of Defendant before the United States Patent and Trademark  
14 Office with respect to at least some of the Asserted Patents after their acquisition.

15          10.       Defendant is also subject to this Court's specific personal jurisdiction pursuant to due  
16 process and/or the California Long Arm Statute due at least to Defendant's targeting of specific  
17 residents of this State and judicial district, including AUO USA, against whom Defendant seeks  
18 injunctive relief in its complaints filed in the Eastern District of Texas based upon its assertions that  
19 AUO USA both infringes the Asserted Patents and aids in AUO's alleged infringement of the  
20 Asserted Patents. *See Vista Peak Ventures, LLC v. AU Optronics Corp.*, Case Nos. 2:18-cv-00276-  
21 JRG, ¶¶ 8-9; 2:18-cv-00278-JRG, ¶¶ 8-9; and 2:18-cv-00279-JRG, ¶¶ 8-9. Had Defendant included  
22 AUO USA as a party defendant in its complaints against AUO, 28 U.S.C. §§ 1391(c)(3) and 1400(b)  
23 would require those complaints to have been filed in this District. Defendant's failure to name AUO  
24 USA as a party defendant in its complaints notwithstanding Defendant's claim for injunctive relief  
25 against AUO USA for alleged infringement of the Asserted Patents is tantamount to depriving AUO  
26 USA of its procedural rights to defend such claims in the legally appropriate venue, namely, this  
27 District.

28          11.       Venue is appropriate pursuant to 28 U.S.C. § 1391(b) because this District is the

1 location where a substantial portion of the events at issue in this suit occurred.

2 FACTUAL BACKGROUND

3 12. Each of the Asserted Patents was issued between July 27, 1999, and March 3, 2009,  
4 to NEC Corporation or its affiliates (collectively, “NEC”).

5 13. Since at least 2001, AUO and AUO USA have been and continue to be engaged in  
6 the business of thin film transistor liquid crystal displays (“TFT-LCDs”) and other flat panel displays  
7 used in a wide variety of applications.

8 14. Since at least 2003, NEC has been a customer of AUO, purchasing its TFT-LCD  
9 display products. *See* [https://www.auo.com/en-global/New\\_Archive/detail/news\\_Product\\_20030120](https://www.auo.com/en-global/New_Archive/detail/news_Product_20030120).

10 15. Upon information and belief, NEC has been aware of the TFT-LCD technology of  
11 AUO that Defendant accuses of infringement in its complaints since at least 2003.

12 16. NEC assigned the Asserted Patents to Getner Foundation LLC (“Getner”) in April  
13 2011. *See* Assignment Reel Frame No. 026312/0213 from NEC Corporation to Getner Foundation  
14 LLC (attached hereto as Exhibit B) and Assignment Reel Frame No. 026254/0400 from NEC  
15 Corporation to Getner Foundation LLC (attached hereto as Exhibit C). Getner assigned the Asserted  
16 Patents to Defendant in February 2018. *See* Exhibit A.

17 17. For each Asserted Patent, Defendant has accused AUO of patent infringement under  
18 35 U.S.C. § 271(a) by “making, offering for sale, selling, and/or importing those TFT-LCD panels,  
19 their components, and/or products containing same that incorporate the fundamental technologies  
20 covered by [one of the Asserted Patents], or by having [AUO USA] do the same.” *See Vista Peak*  
21 *Ventures, LLC v. AU Optronics Corp.*, Case Nos. 2:18-cv-00276-JRG, ¶¶ 24, 36, 48, 59, 70, 82;  
22 2:18-cv-00278-JRG, ¶¶ 24, 35, 47, 58; and 2:18-cv-00279-JRG, ¶¶ 25, 36, 47.

23 18. Defendant is seeking from the District Court in the Eastern District of Texas:  
24 (i) damages sustained as a result of the alleged infringements, including up to treble damages; and  
25 (ii) “[a] preliminary and permanent injunction against AUO, [AUO USA], or anyone acting on its  
26 behalf from making, using, selling, offering to sell, or importing any products that infringe the  
27 Asserted Patents, and any other injunctive relief the Court deems just and equitable... .” *See Vista*

1 *Peak Ventures, LLC v. AU Optronics Corp.*, Case Nos. 2:18-cv-00276-JRG, ¶ 93; 2:18-cv-00278-  
2 JRG, ¶69; and 2:18-cv-00279-JRG, ¶ 57.

3 FIRST CAUSE OF ACTION:

4 DECLARATORY JUDGMENT OF

5 NON-INFRINGEMENT OF EACH OF THE ASSERTED PATENTS

6 19. AUO USA hereby incorporates by reference Paragraphs 1 through 18, above, as if  
7 fully set forth herein.

8 20. On July 10, 2018, AUO USA received notice of three separate lawsuits Defendant  
9 filed against AUO in which Defendant, *inter alia*, also accused AUO USA of engaging in conduct  
10 constituting direct and indirect infringement of the Asserted Patents in the United States and aiding  
11 AUO in such infringement.

12 21. AUO USA denies that it has directly infringed any valid claim of the Asserted Patents  
13 and further denies that it has induced the infringement or contributed to the infringement of any valid  
14 claim of the Asserted Patents, either individually or in concert with AUO.

15 22. By virtue of the foregoing, an actual and justifiable controversy has arisen and now  
16 exists between AUO USA and Defendant, within the jurisdiction of the Court, regarding whether  
17 AUO USA infringes one or more of the Asserted Patents.

18 23. Declaratory relief is both appropriate and necessary in light of the conflicting  
19 positions of the parties. AUO USA desires a judicial determination of the parties' respective rights  
20 and obligations in connection with each of the Asserted Patents.

21 24. For the reasons set forth above, AUO USA respectfully requests that this Court  
22 declare that, for each claim in the Asserted Patents for which Defendant claims infringement by  
23 AUO USA, AUO USA has not directly infringed each one of the Asserted Patents, either literally or  
24 under the doctrine of equivalents, and has neither induced the infringement nor contributed to the  
25 infringement, of such claims either individually or in concert with AUO. Specifically, AUO USA  
26 respectfully requests that this Court issue a judicial declaration to the effect that (*inter alia*, without  
27 limitation) AUO USA's:

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