



SHORE CHAN
DEPUMPO LLP

Michael W. Shore
Bank of America Plaza
901 Main Street, Suite 3300
Dallas, Texas 75202 USA
214-593-9140 Telephone
214-593-9111 Facsimile
mshore@shorechan.com

January 15, 2013

Hon. Judge Patti B. Saris
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2300
Boston, MA 02210

Subject: *Trustees of Boston University v. Everlight Electronics Co., Ltd., et al;*
Consolidated Civil Action No. 12-cv-11938

Trustees of Boston University v. Epistar Corporation;
Civil Action No. 12-cv-12326

Trustees of Boston University v. Lite-On., et al.,
Civil Action No. 12-cv-12330

Trustees of Boston University v. Arrow Electronics, Inc., et al;
Civil Action No. 13-cv-11105

Dear Judge Saris:

Boston University writes to request a telephone conference with the Court as soon as possible on the pending Joint Request to Vacate Current Scheduling Order and to Set Status Conference, Dkt. Nos. 186 (Arrow) and 308 (Everlight).

Boston University is working with Defendants ComponentsMax and NRC to find a solution and obtain their dismissal. Defendant Arrow Electronics has informed Boston University that its products remaining at issue after the recent settlements are solely manufactured and sold to Arrow in the United States by Defendant Epistar. Therefore, Arrow's involvement in the case may end except as an end user entity indemnified and defended by Epistar. Boston University is also working toward settlements with other Defendants who have only recently answered the complaints against them (e.g. Kodak), and expects to be finalizing some additional settlements this week and next.

The post RPX settlement state of affairs means that the only defense counsel prepared to meaningfully participate in a January 31, 2014 *Markman* hearing is Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P. (the "Finnegan Firm"). The Finnegan Firm is subject to a Motion to Disqualify Christopher Schultz, Ming-Tao Yang, Timothy May, and Robert Yoches (Dkt. No. 244, the "Disqualification Motion"). The Disqualification Motion is not set for



January 15, 2014

Page 2

hearing until February 13, 2014, some two weeks after the current setting for the *Markman* hearing (Dkt. No. 195). It would be manifestly unfair to have the Finnegan Firm participate in the *Markman* hearing when their disqualification is squarely at issue and primarily based on their use of an ineligible claims construction expert.¹ The disqualification issues need to be decided before *Markman* or the relief sought will be effectively rendered moot. Boston University objects to the Finnegan Firm's or its expert's participation in *Markman*, and in the absence of their participation, no defense lawyers are currently prepared to argue.

Additionally, the Defendants represented by the Finnegan Firm have requested to meet with Boston University to discuss a settlement, and Boston University has agreed. The timing and logistics of that meeting are being discussed. Because of the impending Chinese New Year, the settlement meeting will not take place until after the first week of February, likely in San Francisco. All of the Parties agree that under these circumstances, the Scheduling Order should be vacated to:

- (1) allow the Parties an opportunity to assess the impact of the recent settlements on the remaining end user Defendants;
- (2) allow the Finnegan Defendants and Boston University an opportunity to mediate a settlement in February or early March after the exchange of data expressly for that purpose;
- (3) allow settlements to be finalized with other parties who have only recently answered, and if no settlement can be reached with the Finnegan Defendants, to have the issues related to the disqualification of that firm and its expert Joan Redwing decided; and
- (4) allow the parties that ultimately remain to be consolidated into a single action so all can appear and fully participate in any subsequent *Markman* hearing.

The use of time and financial resources on preparing attorneys and experts for a January 31, 2014 *Markman* hearing will be an impediment to settling the case. Resources spent on those activities, including expert depositions, are resources that will not be available to help settle the disputes. The "pressure" of a *Markman* hearing will not help the parties resolve the dispute, as no meetings can be scheduled until after Chinese New Year so pre-hearing pressure and costs will be harmful to the process.

¹ Additionally, the disqualification of the Finnegan Firm's claims construction expert Dr. Redwing, is also set for hearing on February 13, 2014 (Dkt. No. 206).



January 15, 2014

Page 3

If the Court is not presently planning to vacate the current schedule as agreed between the Parties, Boston University would appreciate an opportunity to explain the need for scheduling relief and an early ruling on the issue.

I do not mean to press the Court for a response, and I understand the Court is very busy with other matters. I simply write in the hope that the Court will allow us an opportunity to explain why the Parties' request is not meant to delay, but to create an environment where they can reach solutions, partial or total, to some of the many issues on the Court's crowded docket.

Respectfully,



Michael W. Shore

MWS:cj

cc: Hon. Judge Jennifer Boal
All Counsel