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12 Defendant *SAGE Electrochromics, Inc.*

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

17 SAGE ELECTROCHROMICS, INC., a New
18 Jersey Corporation,

18 Plaintiff,

19 v.

20 VIEW, INC., a Delaware Corporation,

21 Defendant.

22 LEYBOLD OPTICS., GMBH, a German
23 Company,

24 Plaintiff,

25 v.

26 VIEW, INC., a Delaware Corporation,

27 Defendant.

Case No. 12-6441-JST

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT
AND INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff SAGE Electrochromics, Inc. (“SAGE”), for its Complaint against Defendant
2 View, Inc. (“View”), alleges as follows:

3 **THE PARTIES**

4 1. SAGE is a New Jersey corporation located at One SAGE Way in Faribault,
5 Minnesota. SAGE is a wholly owned subsidiary of Saint-Gobain Glass Corporation.

6 2. Upon information and belief, Defendant is a Delaware corporation, having its
7 corporate headquarters and principal place of business at 195 S. Milpitas Blvd., Milpitas,
8 California. Defendant does business in the Northern District of California,

9 3. Defendant was formerly known as Soladigm, Inc., which also did business in the
10 Northern District of California.

11 **JURISDICTION AND VENUE**

12 4. This is an action for patent infringement arising under the patent laws of the
13 United States, Title 35 of the United States Code. Jurisdiction is conferred on this Court by
14 28 U.S.C. §§ 1331 and 1338(a).

15 5. This Court has personal jurisdiction over Defendant.

16 6. Defendant, directly or through its intermediaries, makes, distributes, offers for sale
17 or license, sells or licenses, and advertises its products and services in the United States, the State
18 of California, and the Northern District of California. Defendant has conducted and does conduct
19 business within the State of California and within this judicial district, including but not limited to
20 Defendant’s announcement on or about November 12, 2012 that its View Dynamic Glass was
21 installed and publicly in use in the W San Francisco Hotel located at 181 3rd Street,
22 San Francisco, California.

23 7. Venue is proper in the Northern District of California under 28 U.S.C. §§ 1391 and
24 1400(b).

25 **INTRADISTRICT ASSIGNMENT**

26 8. This is an Intellectual Property Action to be assigned on a district-wide basis
27 pursuant to Civil Local Rule 3-2(c).

BACKGROUND

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2 9. On March 3, 1998, United States Patent No. 5,724,177 (“the ’177 patent”), entitled
3 “Electrochromic Devices and Methods,” was duly and legally issued to Sun Active Glass
4 Electrochromics, Inc., as assignee of the inventors, by the United States Patent and Trademark
5 Office. A true and correct copy of the ’177 patent is attached as Exhibit A to this Complaint.

6 10. SAGE is the owner of the entire right, title, and interest in and to the ’177 patent.
7 SAGE has the legal right to enforce the ’177 patent, sue for infringement, and seek equitable
8 relief and damages.

9 11. On May 13, 2008, United States Patent No. 7,372,610 B2 (“the ’610 patent”),
10 entitled “Electrochromic Devices and Methods,” was duly and legally issued to SAGE
11 Electrochromics, Inc., as assignee of the inventors, by the United States Patent and Trademark
12 Office. A true and correct copy of the ’610 patent is attached as Exhibit B to this Complaint.

13 12. SAGE is the owner of the entire right, title, and interest in and to the ’610 patent.
14 SAGE has the legal right to enforce the ’610 patent, sue for infringement, and seek equitable
15 relief and damages.

16 13. On November 3, 1998, United States Patent No. 5,830,336 (“the ’336 patent”),
17 entitled “Sputtering of Lithium,” was duly and legally issued to Minnesota Mining and
18 Manufacturing Company, as assignee of the inventor, by the United States Patent and Trademark
19 Office. A true and correct copy of the ’336 patent is attached as Exhibit C to this Complaint.

20 14. By assignment, SAGE is the owner of the entire right, title, and interest in and to
21 the ’336 patent. SAGE has the legal right to enforce the ’336 patent, sue for infringement, and
22 seek equitable relief and damages.

23 15. On March 21, 2000, United States Patent No. 6,039,850 (“the ’850 patent”),
24 entitled “Sputtering of Lithium,” was duly and legally issued to Minnesota Mining and
25 Manufacturing Company, as assignee of the inventor, by the United States Patent and Trademark
26 Office. A true and correct copy of the ’850 patent is attached as Exhibit D to this Complaint.

1 16. SAGE is the owner of the entire right, title, and interest in and to the '850 patent.
2 SAGE has the legal right to enforce the '850 patent, sue for infringement, and seek equitable
3 relief and damages.

4 17. On January 8, 2002, United States Patent No. 6,337,758 B1 (“the '758 patent”),
5 entitled “Method for Treating an Electrochemical Device,” was duly and legally issued to Saint-
6 Gobain Vitrage, as assignee of the inventors, by the United States Patent and Trademark Office.
7 A true and correct copy of the '758 patent is attached as Exhibit E to this Complaint.

8 18. SAGE is the owner of the entire right, title, and interest in and to the '758 patent.
9 SAGE has the legal right to enforce the '758 patent, sue for infringement, and seek equitable
10 relief and damages.

11 19. On March 20, 2007, United States Patent No.7,193,763 B2 (“the '763 patent”),
12 entitled “Electrochemical/Electrocontrollable Device Electrode,” was duly and legally issued to
13 Saint-Gobain Glass France, as assignee of the inventors, by the United States Patent and
14 Trademark Office. A true and correct copy of the '763 patent is attached as Exhibit F to this
15 Complaint.

16 20. SAGE is the owner of the entire right, title, and interest in and to the '763 patent.
17 SAGE has the legal right to enforce the '763 patent, sue for infringement, and seek equitable
18 relief and damages.

19 21. SAGE is the leading innovator and developer of dynamic glass technology and
20 materials. The term “dynamic glass” refers to glass which can change from a clear state to a
21 tinted state upon the application of an electric charge to the glass. Dynamic glass can return to a
22 clear state when the electric charge is removed. Dynamic glass is sometimes referred to as
23 electrochromic glass.

24 22. Dynamic glass, which is used in building construction, reduces energy
25 consumption by controlling the amount of unwanted heat and light that enters a building.
26 Because dynamic glass reduces unwanted heat and light by tinting the windows, it reduces the
27 need for window shades and blinds. Thus, a building’s occupants maintain a variable connection
28 to the outside environment when dynamic glass is used in the building.

1 23. SAGE's CEO and co-inventor of the '177 patent, John Van Dine, has devoted the
2 last 26 years to developing and commercializing new electrochromic materials and thin-film
3 processing technologies for the glass industry. Mr. Van Dine founded SAGE in 1989 in Valley
4 Cottage, New York.

5 24. After years of research, development, and financial struggle, SAGE relocated to
6 Faribault, Minnesota in 1998. Over the years, SAGE has continued to develop and advance
7 electrochromic glass technology. SAGE has advanced the field of electrochromic glass through
8 its research, development, and investment in intellectual property and has received numerous
9 awards for its innovations.

10 25. After years of continued research, development, and lean financial times, SAGE
11 attracted the interest of Compagnie de Saint-Gobain ("Saint-Gobain"), one of the world's
12 leading industrial and materials corporations. As the market for electrochromic glass began to
13 mature, Saint-Gobain invested in SAGE. Eventually, SAGE joined Saint-Gobain. In its own
14 right, Saint-Gobain had been innovating in the field of electrochromic glass for over 15 years and
15 advanced the field while patenting many innovations. For three years running, Saint-Gobain has
16 been named by Thomson-Reuters as a "Top 100 Global Innovator," alongside companies like
17 Apple, Boeing, and DuPont. SAGE and Saint-Gobain have merged their patent portfolios for
18 dynamic glass, and the combined portfolio now includes over 300 United States and foreign
19 patents.

20 26. Not only has SAGE advanced the field of electrochromic glass through its many
21 innovations, SAGE has created and developed a market for its dynamic glass products. SAGE
22 has been educating the market for industrial glass for over 10 years on the benefits and usability
23 of dynamic glass.

24 27. As a result of SAGE's many years of work to develop state of the art technology
25 and to create and develop the market, SAGE's SageGlass® is now deployed in hundreds of
26 buildings worldwide. In 2013, SAGE celebrated the tenth year of its commercial shipment of its
27 advanced dynamic glass. This milestone reflects a decade of working closely with customers to
28

1 create and optimize electrochromic glass to ensure SAGE's success in the marketplace. Analysts
2 estimate that the market for dynamic glass could range from \$700 million to \$2 billion by 2020.

3 28. In order to meet the demand for this expanding market of electrochromic glass,
4 SAGE has built the largest and most technologically advanced electrochromic glass plant in the
5 world. This plant is located in Faribault, Minnesota. SAGE invested substantial economic
6 resources into the construction of this new glass plant. This plant will produce dynamic glass that
7 practices many of SAGE's patented innovations.

8 29. In 2006, 17 years after SAGE was established, View, which was then known as
9 Soladigm, was founded. View's mission was and is to attempt to engage in the dynamic glass
10 design and manufacture business pioneered by SAGE. On or about November 12, 2012, View
11 announced that its large-scale electrochromic dynamic glass product was ready for global
12 deployment.

13 30. View's dynamic glass product directly competes with SAGE's dynamic glass
14 product in the market that SAGE created.

15 31. On information and belief, View plans to unfairly compete in the marketplace by
16 using SAGE's patented technology and to market and sell products that infringe SAGE's
17 intellectual property.

18 **COUNT 1**

19 **(Infringement of the '177 patent)**

20 32. SAGE hereby restates and realleges the allegations set forth in paragraphs 1
21 through 23 above and incorporates them by reference.

22 33. View has been and is now infringing one or more claims of the '177 patent
23 through at least the acts of making, using, offering for sale, and/or importing View's infringing
24 dynamic glass products that practice one or more claims of the '177 patent.

25 34. On information and belief, View has been and is now inducing infringement, and
26 contributing to the infringement of one or more claims of the '177 patent through at least the acts
27 of making, using, offering for sale, and/or importing View's infringing dynamic glass products
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1 that practice one or more claims of the '177 patent, and/or contributing to or inducing the same by
2 third parties.

3 35. View's acts of infringement have injured and damaged SAGE.

4 36. View's wrongful conduct has caused and will continue to cause SAGE to suffer
5 irreparable harm resulting from the loss of its lawful patent rights to exclude others from making,
6 using, selling, offering to sell, and/or importing SAGE's patented inventions. On information and
7 belief, View will continue to do so unless preliminarily and permanently enjoined by this Court.

8 37. On information and belief, View had knowledge of the '177 patent prior to the
9 filing of this Complaint for Patent Infringement and Injunctive Relief at least as a result of the
10 numerous rounds of financing obtained by View and the attendant due diligence accompanying
11 such financings.

12 38. View's acts of infringement have been and continue to be willful, deliberate, and
13 in reckless disregard of SAGE's patent rights.

14 **COUNT 2**

15 **(Infringement of the '610 patent)**

16 39. SAGE hereby restates and realleges the allegations set forth in paragraphs 1
17 through 30 above and incorporates them by reference.

18 40. View has been and is now infringing one or more claims of the '610 patent
19 through at least the acts of making, using, offering for sale, and/or importing View's infringing
20 dynamic glass products that practice one or more claims of the '610 patent.

21 41. On information and belief, View has been and is now inducing infringement, and
22 contributing to the infringement of one or more claims of the '610 patent through at least the acts
23 of making, using, offering for sale, and/or importing View's infringing dynamic glass products
24 that practice one or more claims of the '610 patent, and/or contributing to or inducing the same by
25 third parties.

26 42. View's acts of infringement have injured and damaged SAGE.

27 43. View's wrongful conduct has caused and will continue to cause SAGE to suffer
28 irreparable harm resulting from the loss of its lawful patent rights to exclude others from making,

1 using, selling, offering to sell, and importing SAGE's patented inventions. On information and
2 belief, View will continue to do so unless preliminarily and permanently enjoined by this Court.

3 44. On information and belief, View had knowledge of the '610 patent prior to the
4 filing of this Complaint for Patent Infringement and Injunctive Relief at least as result of the
5 numerous rounds of financing obtained by View and the attendant due diligence accompanying
6 such financings.

7 45. View's acts of infringement have been and continue to be willful, deliberate, and
8 in reckless disregard of SAGE's patent rights.

9 **COUNT 3**

10 **(Infringement of the '850 patent)**

11 46. SAGE hereby restates and realleges the allegations set forth in paragraphs 1
12 through 45 above and incorporates them by reference.

13 47. View has been and is now infringing one or more claims of the '850 patent
14 through at least the acts of making, using, offering for sale, and/or importing View's infringing
15 dynamic glass products that practice one or more claims of the '850 patent.

16 48. On information and belief, View has been and is now inducing infringement, and
17 contributing to the infringement of one or more claims of the '850 patent through at least the acts
18 of making, using, offering for sale, and/or importing View's infringing dynamic glass products
19 that practice one or more claims of the '850 patent, and/or contributing to or inducing the same by
20 third parties.

21 49. View's acts of infringement have injured and damaged SAGE.

22 50. View's wrongful conduct has caused and will continue to cause SAGE to suffer
23 irreparable harm resulting from the loss of its lawful patent rights to exclude others from making,
24 using, selling, offering to sell, and/or importing SAGE's patented inventions. On information and
25 belief, View will continue to do so unless preliminarily and permanently enjoined by this Court.

26 51. On information and belief, View had knowledge of the '850 patent prior to the
27 filing of this Complaint for Patent Infringement and Injunctive Relief at least as a result of the
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1 numerous rounds of financing obtained by View and the attendant due diligence accompanying
2 such financings.

3 52. View's acts of infringement have been and continue to be willful, deliberate, and
4 in reckless disregard of SAGE's patent rights.

5 **COUNT 4**

6 **(Infringement of the '336 patent)**

7 53. SAGE hereby restates and realleges the allegations set forth in paragraphs 1
8 through 52 above and incorporates them by reference.

9 54. View has been and is now infringing one or more claims of the '336 patent
10 through at least the acts of making, using, offering for sale, and/or importing View's infringing
11 dynamic glass products that practice one or more claims of the '336 patent.

12 55. On information and belief, View has been and is now inducing infringement, and
13 contributing to the infringement of one or more claims of the '336 patent through at least the acts
14 of making, using, offering for sale, and/or importing View's infringing dynamic glass products
15 that practice one or more claims of the '336 patent, and/or contributing to or inducing the same by
16 third parties.

17 56. View's acts of infringement have injured and damaged SAGE.

18 57. View's wrongful conduct has caused and will continue to cause SAGE to suffer
19 irreparable harm resulting from the loss of its lawful patent rights to exclude others from making,
20 using, selling, offering to sell, and/or importing SAGE's patented inventions. On information and
21 belief, View will continue to do so unless preliminarily and permanently enjoined by this Court.

22 58. On information and belief, View had knowledge of the '336 patent prior to the
23 filing of this Complaint for Patent Infringement and Injunctive Relief at least as a result of the
24 numerous rounds of financing obtained by View and the attendant due diligence accompanying
25 such financings.

26 59. View's acts of infringement have been and continue to be willful, deliberate, and
27 in reckless disregard of SAGE's patent rights.

COUNT 5

(Infringement of the '758 patent)

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3 60. SAGE hereby restates and realleges the allegations set forth in paragraphs 1
4 through 59 above and incorporates them by reference.

5 61. View has been and is now infringing one or more claims of the '758 patent
6 through at least the acts of making, using, offering for sale, and/or importing View's infringing
7 dynamic glass products that practice one or more claims of the '758 patent.

8 62. On information and belief, View has been and is now inducing infringement, and
9 contributing to the infringement of one or more claims of the '758 patent through at least the acts
10 of making, using, offering for sale, and/or importing View's infringing dynamic glass products
11 that practice one or more claims of the '758 patent, and/or contributing to or inducing the same by
12 third parties.

13 63. View's acts of infringement have injured and damaged SAGE.

14 64. View's wrongful conduct has caused and will continue to cause SAGE to suffer
15 irreparable harm resulting from the loss of its lawful patent rights to exclude others from making,
16 using, selling, offering to sell, and/or importing SAGE's patented inventions. On information and
17 belief, View will continue to do so unless preliminarily and permanently enjoined by this Court.

18 65. On information and belief, View had knowledge of the '758 patent prior to the
19 filing of this Complaint for Patent Infringement and Injunctive Relief at least as a result of the
20 numerous rounds of financing obtained by View and the attendant due diligence accompanying
21 such financings.

22 66. View's acts of infringement have been and continue to be willful, deliberate, and
23 in reckless disregard of SAGE's patent rights.

24 **COUNT 6**

25 **(Infringement of the '763 patent)**

26 67. SAGE hereby restates and realleges the allegations set forth in paragraphs 1
27 through 66 above and incorporates them by reference.

1 68. View has been and is now infringing one or more claims of the '763 patent
2 through at least the acts of making, using, offering for sale, and/or importing View's infringing
3 dynamic glass products that practice one or more claims of the '763 patent.

4 69. On information and belief, View has been and is now inducing infringement, and
5 contributing to the infringement of one or more claims of the '763 patent through at least the acts
6 of making, using, offering for sale, and/or importing View's infringing dynamic glass products
7 that practice one or more claims of the '763 patent, and/or contributing to or inducing the same by
8 third parties.

9 70. View's acts of infringement have injured and damaged SAGE.

10 71. View's wrongful conduct has caused and will continue to cause SAGE to suffer
11 irreparable harm resulting from the loss of its lawful patent rights to exclude others from making,
12 using, selling, offering to sell, and/or importing SAGE's patented inventions. On information and
13 belief, View will continue to do so unless preliminarily and permanently enjoined by this Court.

14 72. On information and belief, View had knowledge of the '763 patent prior to the
15 filing of this Complaint for Patent Infringement and Injunctive Relief at least as a result of the
16 numerous rounds of financing obtained by View and the attendant due diligence accompanying
17 such financings.

18 73. View's acts of infringement have been and continue to be willful, deliberate, and
19 in reckless disregard of SAGE's patent rights.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

22 A. That this Court adjudge and decree that View has infringed, contributorily
23 infringed, and induced infringement of the '177 patent.

24 B. That this Court adjudge and decree that View has infringed, contributorily
25 infringed, and induced infringement of the '610 patent.

26 C. That this Court adjudge and decree that View has infringed, contributorily
27 infringed, and induced infringement of the '850 patent.

28 D. That this Court adjudge and decree that View has infringed, contributorily

1 infringed, and induced infringement of the '336 patent.

2 E. That this Court adjudge and decree that View has infringed, contributorily
3 infringed, and induced infringement of the '758 patent.

4 F. That this Court adjudge and decree that View has infringed, contributorily
5 infringed, and induced infringement of the '763 patent.

6 G. That this Court preliminarily and permanently enjoin, View, its parents,
7 subsidiaries, affiliates, agents, servants, employees, attorneys, representatives, successors and
8 assigns, and all others in active concert or participation with View from infringing the '177
9 patent, the '610 patent, the '850 patent, the '336 patent, the '758 patent, and/or the '763 patent;

10 H. An accounting of all damages sustained by SAGE as a result of View's acts of
11 infringement of the asserted patents;

12 I. An award to SAGE of actual damages adequate to compensate SAGE for View's
13 acts of patent infringement, together with prejudgment and post-judgment interest;

14 J. An award to SAGE of enhanced damages, up to and including trebling of SAGE's
15 damages pursuant to 35 U.S.C. § 284 for View's willful infringement of the '177 patent, the
16 '610 patent, the '850 patent, the '336 patent, the '758 patent, and/or the '763 patent;

17 K. An award of SAGE's costs of suit and reasonable attorneys' fees pursuant to
18 35 U.S.C. § 285 due to the exceptional nature of this case, or as otherwise permitted by law;

19 L. Any further relief that this Court deems just and proper.

20 **JURY DEMAND**

21 Plaintiff respectfully demands a trial by jury on all claims and issues so triable.
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Dated: April 11, 2014

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