

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

VISTA PEAK VENTURES, LLC,	§	
Plaintiff,	§	JURY TRIAL DEMANDED
	§	
v.	§	
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AU OPTRONICS CORP.,	§	
Defendant.	§	CIVIL ACTION NO. 2:18-cv-00276-JRG (LEAD CASE)
	§	
<hr/>		
AU OPTRONICS CORP.,	§	
Defendant.	§	CIVIL ACTION NO. 2:18-cv-00278-JRG
	§	
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**PLAINTIFF’S COMPLAINT FOR PATENT INFRINGEMENT
(CIVIL ACTION NO. 2:18-cv-00278-JRG)**

Plaintiff Vista Peak Ventures, LLC (“VPV”) files this Complaint against AU Optronics Corp. (“AUO”) for infringement of U.S. Patent No. 7,046,327 (“the ’327 patent”), the “Asserted Patent.”

THE PARTIES

1. Vista Peak Ventures, LLC is a Texas limited liability company, located at 1400 Preston Rd, Suite 472, Plano, TX 75093.

2. Upon information and belief, AUO was founded on August 12, 1996. AUO was listed on the Taiwan Stock Exchange Corporation (the “TSEC”) in September 2000 and its American Depositary Shares (“ADSs”) were listed on the New York Stock Exchange (“NYSE”) in May 2002. AUO merged with Unipac Optoelectronics Corp. on September 1, 2001, with AUO as the surviving entity. AUO further merged with Quanta Display Inc. (“QDI”) on October 1, 2006,

with AUO as the surviving entity. AUO further merged Taiwan CFI Co., Ltd. (“CFI”) on October 1, 2016, with AUO as the surviving entity.

3. On information and belief, AUO is a multi-national corporation organized under the laws of the Republic of China, with its principal place of business located at No. 1, Li-Hsin Road 2, Hsinchu Science Park, Hsinchu, Taiwan, R.O.C. AUO does business in the State of Texas and in the Eastern District of Texas.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c). AUO is a foreign entity and may be sued in any judicial district under 28 U.S.C. § 1391(c)(3).

7. On information and belief, AUO is subject to this Court’s specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this State and judicial district, including: (A) at least part of its infringing activities alleged herein; and (B) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods sold and services provided to Texas residents. For example, “AUO generated NT\$329 billion in sales revenue in 2016 (US\$10.2 billion) and now houses a staff of more than 43,000 throughout its global operations spreading across Taiwan, Mainland China, Japan, Singapore, South Korea, the United States, and Europe. https://www.auo.com/en-global/About_AUO/index) (emphasis added). AUO designs, develops, manufactures, assembles and markets flat panel displays and most of its products are

TFT-LCD panels. SEC Form 20-F, AU Optronics Corp. (2018) at 32 (*available at* <https://seekingalpha.com/filings/pdf/12654022.pdf>). AUO sells primarily to companies that design and assemble products based on their customers' specifications, commonly known as original equipment manufacturing service providers, and to brand customers. *Id.* Its original equipment manufacturing service provider customers, most of whose production operations are located in Taiwan or the PRC, use its panels in the products that they manufacture on a contract basis for brand companies worldwide. *Id.* (emphasis added).

8. This Court has personal jurisdiction over AUO, directly or through intermediaries, including its wholly-owned subsidiary, AU Optronics Corporation America (1525 McCarthy Blvd. Suite 218 Milpitas, CA 95035) because it has committed acts within Texas giving rise to this action and/or has established minimum contacts with Texas such that personal jurisdiction over AUO would not offend traditional notions of fair play and substantial justice.

9. Upon information and belief, AUO controls the wholly-owned subsidiary listed above, as well as many other subsidiaries. https://www.auo.com/en-global/Financial_Results/download/1551 ("March 31, 2018 Report") at 16-19. And the subsidiary above gives AUO substantially the business advantages that it would have enjoyed if it conducted its business through its own offices or paid agents in the state.

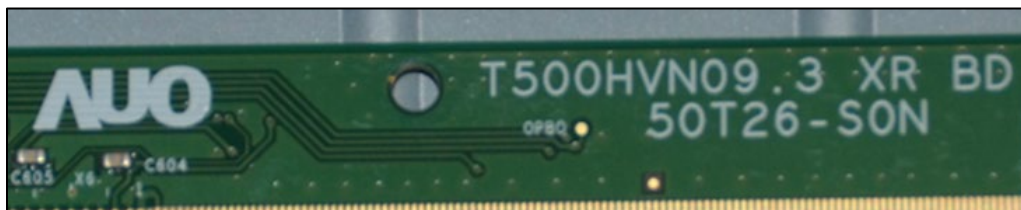
10. Upon information and belief, AUO has placed and continues to place infringing TFT-LCD panels into the stream of commerce via an established distribution channel with the knowledge and/or intent that those products were sold and continue to be sold in the United States and Texas, including in this District.

11. On information and belief, AUO has significant ties to, and presence in, the State of Texas and the Eastern District of Texas, making venue in this judicial district both proper and convenient for this action.

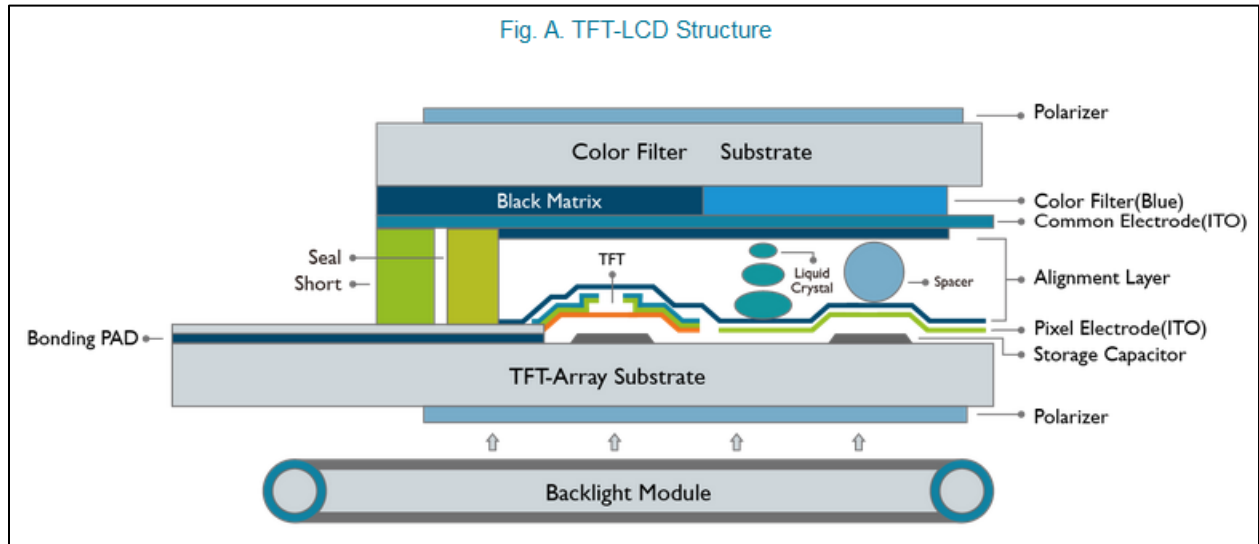
THE ASSERTED PATENT AND TECHNOLOGY

12. Upon information and belief, AUO's main activities are the research, development, production and sale of thin film transistor liquid crystal displays ("TFT-LCDs") and other flat panel displays used in a wide variety of applications. https://www.auo.com/en-global/Financial_Results/download/1551.

13. The Asserted Patent covers AUO's TFT-LCDs, their components, and processes related to the same. An example AUO TFT-LCD is model no. T500HVN09, which is used in end-user products such as Samsung monitor model no. UN50J6300AF. That monitor and the label for its AUO TFT-LCD panel are shown below:

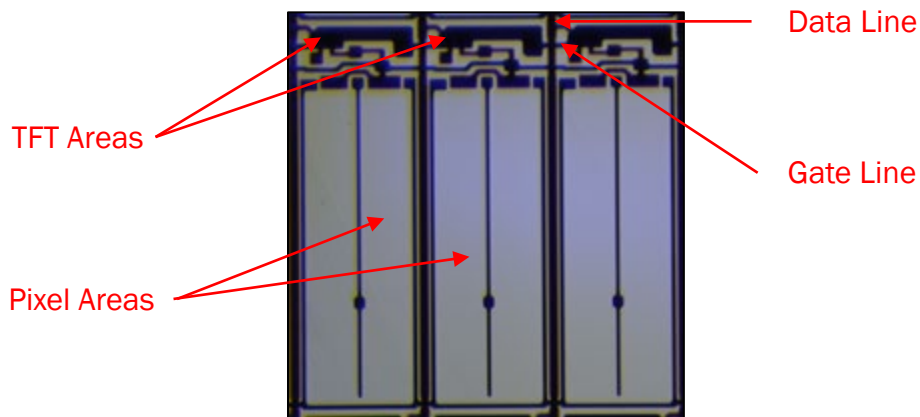


14. AUO publishes a diagram of the structure of its TFT-LCDs as follows:



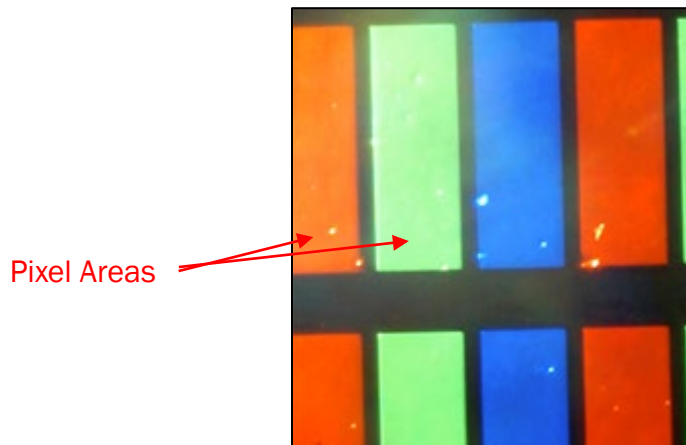
https://www.auo.com/en-global/TFT-LCD_Introduction/index/TFT_LCD_Process

15. As shown in the diagram above, the TFT-LCD panel contains a TFT array substrate, with one of the TFTs in the array illustrated above it. A teardown image below from the AUO TFT-LCD model no. T500HVN09 shows a sampling of TFTs and their accompanying circuitry lines, with larger rectangular areas associated with the pixels.

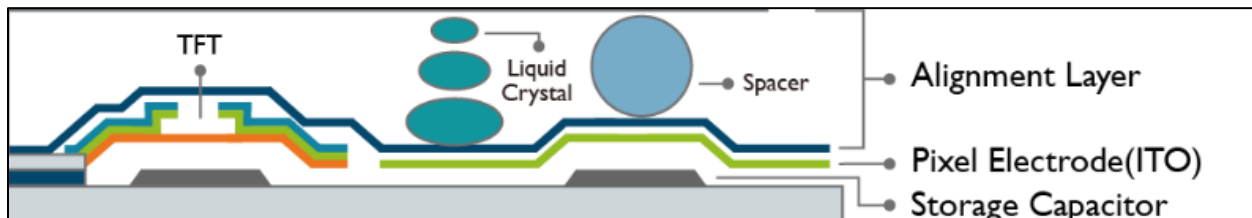


16. A TFT acts as a switch that operates its respective individual pixels using the circuitry lines. In that way, the pixels can be turned on and off to create an image on an LCD by

allowing or preventing light to pass through. The individual pixels are more apparent when a color filter layer overlays the circuits as shown in the image below for the T500HVN09.

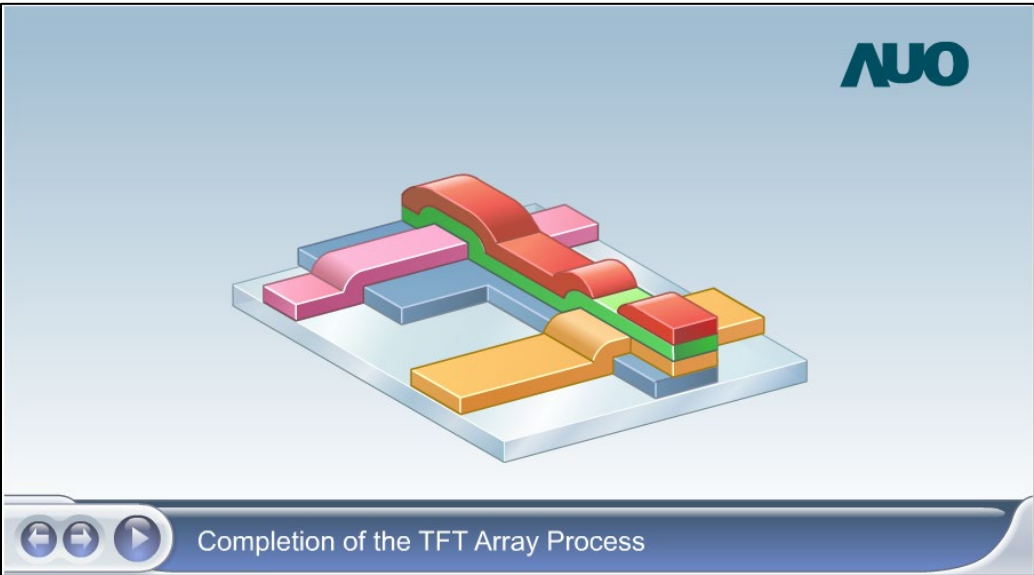
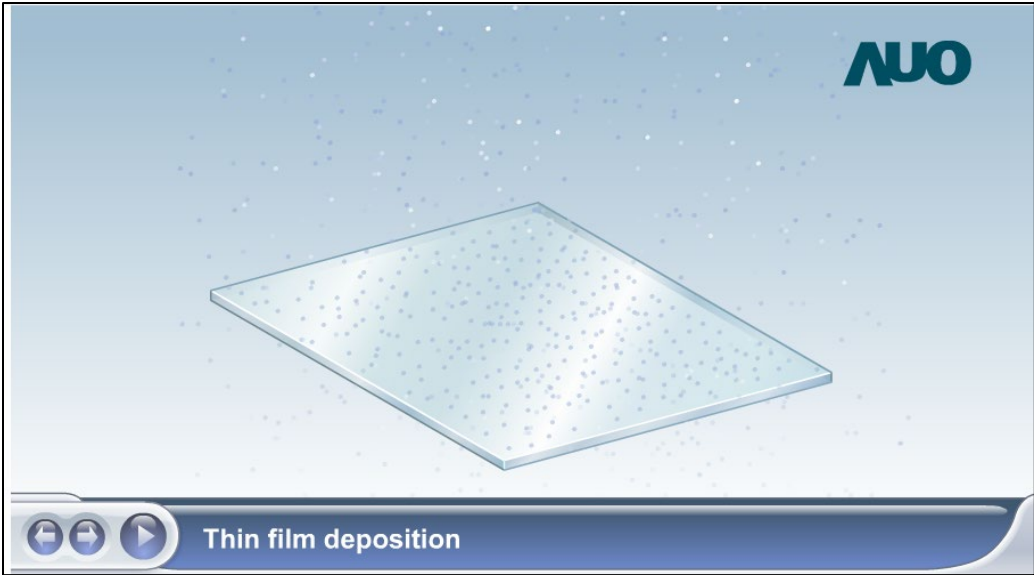


17. AUO publishes a simplified version of a side view of its TFTs on its website as follows.

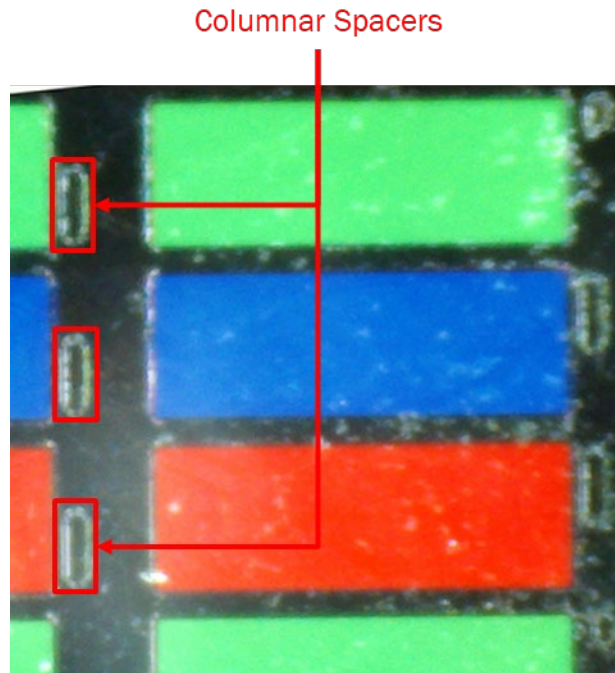


https://www.auo.com/en-global/TFT-LCD_Introduction/index/TFT_LCD_Process (excerpt).

18. The Asserted Patent also covers AUO's processes for making TFT LCDs. AUO explains the steps in the process of making its TFTs in an animation on its website at https://www.auo.com/en-global/TFT-LCD_process_animation/index/. The animations include many steps including, "Thin Film Deposition" (below) and "Completion of the TFT Array Process" (below).



19. Another teardown image of the TFT-LCD model no. T500HVN09 shows the black matrix and color filter layers referred to in the AUO diagram above. This image shows columnar spacers as annotated.



20. To the extent any of the infringing activity alleged herein is subject to a valid license covering one or more of the Asserted Patents, VPV is only seeking damages against the Defendant for unlicensed acts of infringement. Defendant bears the burden of proof on affirmative defenses, such as a license defense (*see e.g., Bandag, Inc. v. Al Bolser's Tire Stores, Inc.*, 750 F.2d 903, 924 (Fed.Cir.1984)). However, VPV expressly provides that it is only seeking damages for unlicensed acts of infringement.

AUO'S RELATIONSHIPS

21. AUO controls or otherwise directs and authorizes all activities of AU Optronics Corporation America (AUOA), including AUOA's using, offering for sale, selling, and/or importing TFT-LCD panels, their components, and/or products containing same that incorporate the fundamental technologies covered by the Asserted Patents.

22. For example, upon information and belief AUOA is a wholly owned subsidiary of AUO. See https://www.auo.com/en-global/Financial_Results/download/1921 at 22. Furthermore, AUO describes AUOA as "the US Headquarters of AUO." <https://www.linkedin.com/company/au-optronics-corporation-america/about/>. AUO likewise advertises that contacting AUOA is "doing display business with AUO." See https://www.auo.com/en-global/Contact_AUO/index.

23. Furthermore, AUO represents to its shareholders that it maintains a 100% ownership interest in AUOA, which AUO equates to maintaining "control" of the subsidiary. See https://www.auo.com/en-global/Financial_Results/download/1921 at 24. Indeed, AUOA's primary purpose is to conduct sales and sales support on behalf of AUO. *Id.* at 22. On information and belief, AUO compensates AUOA for its sales support services in the United States. As such, AUO has a direct financial interest in AUOA, and vice versa.

24. On information and belief, AUOA is authorized to sell and offer for sale the accused products on behalf of AUO. For example, AUO dictates the pricing of the accused products and other terms of sale and directs AUOA to sell and offer for sale the accused products in the United States. See *United States v. Hui Hsiung*, 778 F.3d 738, 743 (9th Cir. 2015). AUOA is authorized to offer for sale the accused products on behalf of AUO.

25. On information and belief, AUO sells and offers for sale the accused products directly to AUOA in the United States. On information and belief, AUO supplies the accused products to AUOA by importing, or having imported through a third party, the accused products into the United States. On information and belief, a significant portion of the profits from products sold by AUOA in the United States flow to AUO.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 7,046,327)

26. Plaintiff incorporates paragraphs 1 through 25 herein by reference.

27. VPV is the assignee of the '327 patent, entitled "Liquid crystal display device including columnar spacer above gate line," with ownership of all substantial rights in the '327 patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringements.

28. The '327 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code. The '327 patent issued from U.S. Patent Application No. 10/833,318.

29. AUO has and continues to directly and/or indirectly infringe (by inducing infringement) one or more claims of the '327 patent in this judicial district and elsewhere in Texas and the United States.

30. AUO designs, develops, manufactures, assembles and markets flat panel displays and most of its products are TFT-LCD panels. SEC Form 20-F, AU Optronics Corp. (2018) at 32 (*available at* <https://seekingalpha.com/filings/pdf/12654022.pdf>).

31. AUO directly infringes the '327 patent via 35 U.S.C. § 271(a) by making, offering for sale, selling, and/or importing those TFT-LCD panels, their components, and/or products

containing same that incorporate the fundamental technologies covered by the '327 patent to, for example, its distributors, importers, customers, subsidiaries and/or consumers. Furthermore, upon information and belief, AUO sells and makes TFT-LCD panels outside of the United States, delivers those products to its customers, distributors, and/or subsidiaries in the United States, or in the case that it delivers the accused products outside of the United States it does so intending and/or knowing that those panels are destined for the United States and/or designing those products for sale in the United States, thereby directly infringing the '327 patent. *See, e.g., Lake Cherokee Hard Drive Techs., L.L.C. v. Marvell Semiconductor, Inc.*, 964 F. Supp. 2d 653, 658 (E.D. Tex. 2013). Furthermore, AUO directly infringes the '327 patent through its direct involvement in the activities of its subsidiaries, including AUOA, including by selling and offering for sale the accused products directly to AUOA and importing the accused products into the United States for AUOA. Upon information and belief, AUOA conducts activities that constitutes direct infringement of the '327 patent under 35 U.S.C. § 271(a) by making, offering for sale, selling, and/or importing those TFT-LCD panels. AUO is vicariously liable for this infringing conduct of AUOA (under both the alter ego and agency theories) because, as an example and on information and belief, AUO and AUOA are essentially the same company, and AUO has the right and ability to control AUOA's infringing acts and receives a direct financial benefit from AUOA's infringement.

32. For example, AUO infringes claim 1 of the '327 patent via its LCD panel model no. T500HVN09. That product includes a "liquid crystal display device including" each of the limitations of claim 1. The technology discussion above and the example accused TFT-LCD panel (T500HVN09) provide context for Plaintiff's allegations that each of those limitations are met. For example, the T500HVN09 includes a first substrate, a second substrate, and a liquid crystal layer sandwiched between the first and second substrates, the device comprising, on the first

substrate: a gate line; a common line parallel to the gate line; a data line intersecting the gate line while sandwiching a gate insulating film on the gate line therebetween; a first interlayer insulating film coating the data line; and a first orientation film coating the first interlayer insulating film, and the device comprising, on the second substrate: a light shielding film opposite to the gate line; a second interlayer insulating film coating the light shielding film; a columnar spacer located above the gate line apart from an intersection of the gate line and the data line and provided on the second interlayer insulating film; and a second orientation film coating the second interlayer insulating film and the columnar spacer, wherein a center of a top of the columnar spacer is shifted from above a widthwise center of the gate line toward above the common line, and the top of the columnar spacer partially overruns from above the gate line toward above the common line when viewed from the above, the top being directed to the first substrate.

33. At a minimum, AUO has known of the '327 patent at least as early as the filing date of the complaint. In addition, AUO has known of the '327 patent since May 16, 2018, when AUO was provided access to a data room containing claim charts, including for the '327 patent.

34. Upon information and belief, since at least the above-mentioned date when AUO was on notice of its infringement, AUO has actively induced, under U.S.C. § 271(b), unlicensed distributors, importers, customers, subsidiaries and/or consumers that import, purchase or sell TFT-LCD panels that include all of the limitations of one or more claims of the '327 patent to directly infringe one or more claims of the '327 patent by using, offering for sale, selling, and/or importing the TFT-LCD panels. Since at least the notice provided on the above-mentioned date, AUO does so with knowledge, or with willful blindness of the fact, that the induced acts constitute infringement of the '327 patent. Upon information and belief, AUO intends to cause, and has taken affirmative steps to induce, infringement by the unlicensed distributors, importers, customers,

subsidiaries and/or consumers by, inter alia, creating advertisements that promote the infringing use of the TFT-LCD panels (*see, e.g.*, <https://www.auo.com/en-global/Events/index> (showing AUO's participation in SID Display Week 2017)), creating established distribution channels for the TFT-LCD panels into and within the United States, manufacturing the TFT-LCD panels in conformity with U.S. laws and regulations, distributing or making available instructions or manuals for these products to purchasers and prospective buyers, and/or providing technical support, replacement parts, or services for these products to these purchasers in the United States.

35. On information and belief, despite having knowledge of the '327 patent and knowledge that it is directly and/or indirectly infringing one or more claims of the '327 patent, AUO has nevertheless continued its infringing conduct and disregarded an objectively high likelihood of infringement. AUO's infringing activities relative to the '327 patent have been, and continue to be, willful, wanton, malicious, in bad-faith, deliberate, consciously wrongful, flagrant, characteristic of a pirate, and an egregious case of misconduct beyond typical infringement such that Plaintiff is entitled under 35 U.S.C. § 284 to enhanced damages up to three times the amount found or assessed.

36. VPV has been damaged as a result of AUO's infringing conduct described in this Count. AUO is, thus, liable to VPV in an amount that adequately compensates VPV for AUO's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

INJUNCTIVE RELIEF

37. Plaintiff seeks preliminary and permanent injunctions as a result of AUO's infringement of the Asserted Patent. Plaintiff is likely to succeed in showing that AUO infringes the Asserted Patent. Because of that infringement, Plaintiff has suffered an irreparable injury, and

the remedies available at law, such as monetary damages, are inadequate to compensate for that injury. For example, if Plaintiff must enforce a judgment against AUO in China, Plaintiff will face a historically challenging burden in persuading a Chinese court to enforce a judgment from a U.S. court, likely preventing Plaintiff from obtaining any monetary damages from AUO. Considering the balance of hardships between the Plaintiff and AUO, a remedy in equity is warranted; and the public interest would not be disserved by a permanent or preliminary injunction.

CONCLUSION

38. Plaintiff is entitled to recover from AUO the damages sustained by Plaintiff as a result of AUO's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court.

39. Plaintiff has incurred and will incur attorneys' fees, costs, and expenses in the prosecution of this action. The circumstances of this dispute may give rise to an exceptional case within the meaning of 35 U.S.C. § 285, and Plaintiff is entitled to recover its reasonable and necessary attorneys' fees, costs, and expenses.

JURY DEMAND

40. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

41. Plaintiff respectfully requests that the Court find in its favor and against AUO, and that the Court grant Plaintiff the following relief:

1. A judgment that AUO has infringed the Asserted Patent as alleged herein, directly and/or indirectly by way of inducing infringement of such patents;

2. A judgment for an accounting of all damages sustained by Plaintiff as a result of the acts of infringement by AUO;
3. A preliminary and permanent injunction against AUO, its subsidiaries, or anyone acting on its behalf from making, using, selling, offering to sell, or importing any products that infringe the Asserted Patent, and any other injunctive relief the Court deems just and equitable;
4. A judgment and order requiring AUO to pay Plaintiff damages under 35 U.S.C. § 284, including up to treble damages as provided by 35 U.S.C. § 284, and any royalties determined to be appropriate;
5. A judgment and order requiring AUO to pay Plaintiff pre-judgment and post-judgment interest on the damages awarded;
6. A judgment and order finding this to be an exceptional case and requiring AUO to pay the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285; and
7. Such other and further relief as the Court deems just and equitable.

Dated: August 15, 2019

Respectfully submitted,

/s/ Patrick J. Conroy

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**ATTORNEYS VISTA PEAK
VENTURES, LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on August 15, 2019. As of this date all counsel of record have consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A).

/s/ Patrick J. Conroy