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3:06-CV-01346 DEI HEADQUARTERS INC V. OMEGA RESEARCH

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9 DEI Headquarters, Inc.

FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *TC* DEPUTY

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 DEI HEADQUARTERS, INC., fka DIRECTED
13 ELECTRONICS, INC. and dba DIRECTED
14 ELECTRONICS, a Florida corporation,

15 Plaintiff,

16 v.

17 OMEGA RESEARCH AND DEVELOPMENT,
18 INC., a Georgia corporation; KENNETH
19 FLICK, an individual resident of Georgia; and
20 DOES 1 through 10, inclusive,

21 Defendants.

) Case No.

) **'06 CV 1346 L FOR**

) **COMPLAINT FOR BREACH OF
CONTRACT**

) **(Diversity Jurisdiction: 28 U.S. C. § 1332)**

) **DEMAND FOR JURY TRIAL**

ORIGINAL

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1 Plaintiff DEI Headquarters, Inc., fka Directed Electronics, Inc. and dba Directed
2 Electronics, ("Directed" or "Plaintiff") alleges as follows:

3 **THE PARTIES**

4 1. Plaintiff is a Florida corporation with its principal place of business at One Viper
5 Way, Vista, California 92083 . In 1999, Plaintiff was a California corporation known as Directed
6 Electronics, Inc.

7 2. Plaintiff is informed and believes, and thereon alleges, that defendant Omega
8 Research and Development, Inc. ("Omega") is a Georgia corporation with its principal place of
9 business at 5326 Presley Place, Douglasville, Georgia 30135.

10 3. Plaintiff is informed and believes, and thereon alleges, that defendant Kenneth Flick
11 is the owner and sole officer and employee of Omega and that he is a resident of the State of
12 Georgia.

13 4. Plaintiff is informed and believes, and thereon alleges, that Omega Patents LLC is a
14 Georgia limited liability company owned and fully controlled by defendant Omega such that the
15 actions of Omega Patents LLC are done at the direction and for the benefit of defendant Omega
16 and its owner defendant Flick. Plaintiff is further informed and believes, and thereon alleges, that
17 Omega Patents LLC is the agent and/or alter ego of defendant Omega and/or defendant Flick.

18 5. The true names or capacities, whether individual, corporate, associate, or otherwise,
19 of the defendants herein named as DOES 1 through 10, inclusive, are unknown to Plaintiff who
20 therefore sues said defendants by such fictitious names. Plaintiff is informed and believes that such
21 DOE defendants are employers or were the agents, partners, of named defendant, and at the times
22 alleged herein, were acting in such capacity and contributing to the actions of the named defendant.
23 Plaintiff will seek leave of this Court to amend this Complaint to show their true names and
24 capacities when the same have been ascertained.

25 **VENUE AND JURISDICTION**

26 6. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(a) because a
27 substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

28 7. Pursuant to 28 U.S.C. § 1332, this Court has jurisdiction in this matter.

1 8. By contract, Plaintiff and defendants have stipulated to the exclusive jurisdiction
2 and venue in the United States District Court for the Southern District of California.

3 **GENERAL ALLEGATIONS**

4 9. Plaintiff is in the business of manufacturing and distributing vehicle security
5 devices.

6 10. Defendants are in the business of obtaining patents related to vehicle security
7 devices and trying to enforce such patents to obtain royalty payments.

8 11. As a result of litigation, in May 1999, Plaintiff and defendants entered into a
9 Settlement Agreement, Mutual Release and Crosslicense ("Agreement"). A true and correct copy
10 of the Agreement is attached hereto as Exhibit A and incorporated by this reference as though fully
11 set forth herein.

12 12. The Agreement provides a paid-up license to Plaintiff for all patents owned by
13 defendants, including U.S. Patent No. 5,719,551, and represents that defendants have no patent
14 rights other than those identified in the Agreement.

15 13. To the extent it can be considered an entity separate from defendants, Omega
16 Patents LLC is the successor owner of the '551 Patent and its progeny, including U.S. Patent Nos.
17 6,243,004; 6,529,124; 6,249,216; 6,696,927; 6,812,829; 6,275,147; 6,011,460; 6,756,885
18 (collectively, "Flick Patents").

19 14. In December 2005, Omega Patents LLC, acting under the direction and control of
20 defendants, sued Plaintiff in the United States District Court for the Middle District of Florida
21 alleging infringement of the Flick Patents. This case is presently pending and known as *Omega*
22 *Patents LLC v. Fortin Auto Radio, Inc. et al.*, United States District Court, Middle District of
23 Florida, Case No. 6:05-CV-01113-ORL-22-DAB.

24 15. Paragraph 21 of the Agreement expressly states "Parties shall provide written notice
25 of a claim of infringement under any presently owned or later acquired patent to the other party and
26 provide the other six months to cure before taking legal action. This paragraph is limited to the
27 products that each of the parties presently sells or has sold in the past."

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1 16. Plaintiff received no notice or opportunity to cure prior to defendants' filing of the
2 *Omega v. Fortin* case.

3 17. Paragraph 11 of the Agreement between Plaintiff and defendants expressly states
4 "Omega and Flick and each of them, further agree and covenant not to sue or assert any cause of
5 action including without limitation patent infringement....[for] any product made, used or sold
6 under the theory of patent infringement of any patent owned in the past, presently owned and/or
7 later acquired,... on the basis of any feature, product or element currently or in the past embodied
8 in [Plaintiff's] products...."

9 18. Through their agent in the *Omega v. Fortin* case, defendants have sued Plaintiff
10 claiming that products, features and elements made, used or sold, within the meaning of 35 U.S.C.
11 § 271, by Plaintiff as of the date of the Agreement infringe the Flick Patents.

12
13 **FIRST CAUSE OF ACTION**
14 **BREACH OF WRITTEN CONTRACT**
 (Against All Defendants)

15 19. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 14 of
16 this Complaint as though set forth in full herein.

17 20. Plaintiff and defendants are parties to the written contract attached hereto as Exhibit
18 A and incorporated herein by this reference.

19 21. Defendants have breached the Agreement, including by suing Plaintiff for patent
20 infringement without providing prior notice and an opportunity to cure.

21 22. Defendants have breached the Agreement, including by suing Plaintiff for patent
22 infringement of products, elements and features made, used or sold by Plaintiff as of the date of the
23 Agreement.

24 23. Defendants' breaches were material and not excused.

25 24. Plaintiff has performed its obligations to defendants under the Agreement.

26 25. As a result of defendants' conduct alleged herein, Plaintiff has been damaged in an
27 amount to be proved at trial, but believed to be in excess of \$80,000.00.

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PRAYER

WHEREFORE, Plaintiff prays for relief as follows:

26. For monetary damages in an amount according to proof;

27. For an order requiring defendants to indemnify Plaintiff as to all future costs, fees and losses suffered as a result of its being a party in the case entitled *Omega Patents LLC vs. Fortin Auto Radio, Inc. et al.*, United States District Court, Middle District of Florida, Case No. 6:05-CV-01113-ORL-22-DAB;

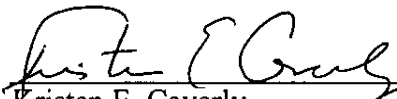
28. For costs, including reasonable attorneys' fees;

29. For prejudgment interest where applicable; and

30. For such other and further relief as the Court deems proper.

DATED: June 29, 2006

HENDERSON & CAVERLY LLP


By: 
Kristen E. Caverly
Attorneys for Plaintiff DEI Headquarters,
Inc.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all claims for which such right attaches.

DATED: June 29, 2006

HENDERSON & CAVERLY LLP

By: 
Kristen E. Caverly
Attorneys for Plaintiff DEI Headquarters,
Inc.

SETTLEMENT AGREEMENT, MUTUAL RELEASE AND CROSSLICENSE

This Settlement Agreement (hereafter "Agreement") is entered into between Omega Research and Development, Inc, a Georgia corporation (hereafter "Omega") and Kenneth Flick, an individual (hereafter "Flick"), and Directed Electronics, Inc., a California corporation, (hereafter "DEI"), and is effective upon its full execution by all parties.

WHEREAS, there is a civil action pending between DEI and Omega in the United States District Court for the Southern District of California, case number 98cv1378 E (JFS) (hereafter the "Action");

WHEREAS, DEI is in the business of selling vehicle security systems and components thereof, and is the owner of United States Patent Numbers B1 4,584,569 (the "'569 patent"), 5,532,670 (the "'670 patent"), 5,646,591 (the "'591 patent") and 5,534,845 (the "'845 patent") (hereafter collectively the "DEI patents");

WHEREAS, Omega is in the business of selling vehicle security systems and components thereof;

WHEREAS, DEI has alleged that Omega without authorization has been making, marketing, using, selling and/or offering for sale vehicle security devices and products that infringe certain of the claims of the DEI patents;

WHEREAS, DEI alleges in the Action that Omega is infringing the DEI patents, engaging in unfair competition and interfering with DEI's present and prospective economic relations;

WHEREAS, DEI applied for a temporary restraining order to temporarily restrain and enjoin Al Hays and LTH Electronics, Omega's supplier of AccuSense 2.0 dual stage shock sensor.

WHEREAS, the Court entered final judgment, order and permanent injunction (attached hereto and fully incorporated herein as Exhibit A) against Al Hays and LTH Electronics enjoining each one of them from making, using, selling or offering for sale vehicle security devices including the AccuSense 2.0 dual stage shock sensors that infringe the '569 patent, the '670 patent and the '591 patent;

WHEREAS, Omega purchased approximately 3,000 AccuSense 2.0 dual stage shock sensors that infringe certain claims of the '569 patent, the '670 patent and the '591 patent prior to the entry of the above-identified injunction;

NOW THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1. The above recitals are fully incorporated herein by reference as material terms of this Agreement.
2. The parties shall honor and not disturb the judgments, orders, injunctions and decrees entered by and in the Action.
3. The parties shall honor and not disturb the judgments, orders, injunctions and decrees entered by and in the Civil Case No. 98cv1758 E (JFS) entitled Directed Electronics, Inc. v. Allen Hays and LTH Electronics, wherein Allen Hays and LTH Electronics are the manufacturer and supplier of AccuSense 2.0 shock sensors used and sold as a part of Omega's Pearson Research Group brand vehicle security systems.
4. In consideration for promises and obligations set forth in this Agreement by Omega and Flick and each one of them, DEI shall provide and hereby does provide Omega with certain licenses, rights and covenants expressly set forth below. Said licenses shall flow to the benefit of Omega. Moreover, it is the intent of the parties to include within the meaning of "Omega" its shareholders, officers, directors, employees, agents, suppliers, manufacturers, contractors, customers, heirs, assigns, successors in interest, retailers, installers, expeditors, purchasers, subsidiaries, and/or end users of products only to the extent that said licenses apply to Omega products. These licenses shall not apply to products other than products made for Omega to be sold by Omega to Omega retailers, installers, end users and expeditors.
5. In consideration for promises and obligations set forth in this Agreement by Omega and Flick, DEI shall provide and hereby does provide Omega with a covenant not to sue or assert an action for contempt against Omega for continuing to infringe the DEI patents for sales of products that are present in Omega's inventory as of the date of this Agreement, in the United States, so long as said products are sold and shipped by Omega by April 30, 2000. Thereafter Omega may sell and ship the products outside the United States.
6. Notwithstanding the above, the licenses, covenants or rights extended to Omega by DEI specifically exclude any sensors or products having sensors that produce a signal using a magnet and a coil, including without limitation the AccuSense 2.0 shock sensor that is currently in Omega's inventory. Provided, however, nothing herein shall be construed to restrict Omega's use of a speaker as a shock sensor.

In consideration of this Agreement, DEI further provides Omega with the right to sell and ship the Accusense 2.0 shock sensors to any of its customers outside of the United States, so long as Omega sells and ships said sensors on or before February 28, 2000.
7. Subject to the specific rights enumerated above, Omega shall not infringe within the meaning of 35 U.S.C. § 271 the DEI patents.

8. Omega reserves the right to seek indemnification or assert claims against any entity that made, imported, designed or sold the infringing products to Omega.

9. In consideration for promises and obligations set forth in this Agreement by Omega, DEI shall provide and hereby does provide Omega with a retroactive, non-exclusive, paid-up, irrevocable license, without the right to sublicense, to make, use and sell methods, products and processes, including without limitation those that are and/or were offered for sale, made, used sold or imported by Omega as of the date of this Agreement that are within the scope of DEI's '670 and '591 patents and claim 15 of the '845 patent. Said licenses shall flow to the benefit of Omega and its shareholders, officers, directors, employees, agents, contractors, customers, manufacturers, heirs, assigns, successors in interest, retailers, installers, expeditors, importers, exporters, purchasers, subsidiaries, and/or end users of products only to the extent that said license applies to Omega products. This license shall not apply to products other than products made for Omega to be sold by Omega to Omega retailers, installers, end users, OEM's and expeditors.

Notwithstanding the above, the above license under the '670 patent excludes claims 8, 15 and 30; and the above license under the '591 patent excludes claims 16, 17, 28, 29, 35, 36, 50, 51, 65, 76, 93 and 94.

DEI agrees that the license under the '670 and '591 patents includes a vehicle motion or shock sensor, a vehicle field disturbance sensor, a sound discriminator sensor, an ultrasonic sensor, and a current sensor that generates a first pulse for a first threat level and which generates first and second pulses for a second threat level.

10. In consideration for promises and obligations set forth in this Agreement by DEI, Omega and Flick shall provide and hereby do provide DEI with a non-exclusive, paid-up, irrevocable license, without the right to sublicense, to make, use and sell methods, products and processes, under all of Omega's presently owned patents, including the United States Patents No. 5,818,329, 5,750,942, 5,739,748, 5,739,747, 5,729,191, 5,719,551, 5,663,704, 5,612,669, 5,612,578, D382,558, D385,878 and D406,107 for the life of these patents. In addition said license shall extend retroactively from the date of this agreement. Except for United States Patent No. 5,654,688 (the "'688 patent"), Omega and Flick represent and guaranty that as of the date of this Agreement, the above list of patents is complete and that neither Omega nor Flick has rights, title or interest in or to any other United States patents. Said license shall flow to the benefit of DEI, Darrell Issa and Katharine Issa (hereafter collectively "Issa"). Moreover, it is the intent of the parties to include, without limitation, within the meaning of "Issa" their shareholders, officers, directors, employees, agents, contractors, customers, manufacturers, heirs, assigns, successors in interest, retailers, installers, expeditors, importers, exporters, purchasers, subsidiaries, and/or end users of products, only to the extent that said license applies to Issa products. This license shall not apply to products other than products made for Issa to be sold by Issa to Issa retailers, installers, end users, OEM's and expeditors.

11. Omega and Flick and each of them, further agree and covenant not to sue or assert any cause of action, including without limitation patent infringement pursuant to 35 U.S.C. § 271 and/or unfair competition, either directly or indirectly (without regard as to when the cause of action arose or arises), against Issa. Said covenant shall be world-wide, including without limitation the United States of America, and be binding upon any product made, used or sold under the theory of patent infringement of any patent owned in the past, presently owned and/or later acquired, either directly or indirectly, by Omega, Flick or any one of them or any subsequent party in interest, on the basis of any feature, product or element currently or in the past embodied in DEI's products. It is understood by Issa, Omega and Flick and expressly agreed by and amongst them, that the covenant contained in this section extends to entities defined by Issa and said term shall be defined broadly so as to remove any and all liability assertable against Issa related to any patent in which Omega or Flick, or any one of them, had, have or later acquire an interest. It is further agreed that said covenant not to sue shall attach, be continuous and run with any and all patents that Omega or Flick or any one of them had, have or later acquire to shield Issa from liability therefrom. It shall be Omega's and Flick's joint duty to place its existing and later acquired licensees or successors in interest with notice of this covenant not to sue and the continuing benefit of said covenant.

Notwithstanding the above, said covenant not to sue extends only to products, features and elements made, used or sold, within the meaning of 35 U.S.C. § 271, by Issa as of the date of this Agreement

12. Omega acknowledges, stipulates and admits to the following, which shall be construed as Findings of Fact:
- a) Omega is not an authorized licensee under the DEI patents or each one of them;
 - b) without DEI's authorization or consent, Omega has been making, using, selling, and offering for sale devices including, but not limited to the AccuSense 2.0 shock sensor and associated systems, that at a minimum infringe Claim 1 of the '569 patent;
 - c) without DEI's authorization or consent, Omega has been making, using, selling, and offering for sale devices including, but not limited to the AL-1000ATV, that at a minimum infringe Claims 2, 3, 15 and 24 of the '845 patent;
 - d) without DEI's authorization or consent, Omega has been making, using, selling, and offering for sale devices including, but not limited to the AU-84TP shock sensor, that at a minimum infringe Claims 1-7, 17, 18, 19, 29, 31-34, 37, 38, 66, 67, 77-84 of the '591 patent;
 - e) without DEI's authorization or consent, Omega has been making, using, selling, and offering for sale devices including, but not limited to the AU-84TP shock sensor, that at a minimum infringe Claims 1-6, 12, 13, 16, 17, 19-22 and 25 of the '670 patent;
 - f) The claims at issue and as noted above of the '569 patent are valid, enforceable and infringed;

- g) The claims at issue and as noted above of the '670 patent are valid, enforceable and infringed;
- h) The claims at issue and as noted above of the '591 patent are valid, enforceable and infringed;
- i) The claims at issue and as noted above of the '845 patent are valid, enforceable and infringed;
- j) DEI and Omega sell to the same or substantially the same market, which market is defined as dealers and retailers of automotive accessories and new and used car dealers;
- k) A reasonable royalty to practice under each of the claims of the DEI patents is seven percent and in the aggregate, the total royalty shall not exceed the lower of DEI's lost profits or twenty-eight percent.

13. To the extent that any Omega product infringes any claims of the DEI patents other than those asserted in paragraph 10 of this Agreement, and subject to paragraph 20 of this Agreement, DEI waives any and all damages accrued to the date of this Agreement.

14. Omega further agrees that from the date this Agreement is executed through the duration of each of the DEI patents, Omega, its affiliates, subsidiaries, divisions, officers, agents, servants, employees, manufacturers, suppliers, Kenneth Flick and all persons controlled by Omega, or acting in concert or participation with Omega shall be permanently enjoined and restrained from engaging in the following activities (the "Proscribed Activities"):

Making, using, selling, and/or offering for sale within the scope of 35 U.S.C. § 271, including without limitation, making, using, marketing, selling, distributing, circulating, brokering, offering for sale, advertising, promoting or displaying any product that infringes, either literally or under the doctrine of equivalents, the '569 patent and/or the '845 patent (excluding claim 15 of the '845 patent), or that is merely a colorable difference or variant thereof.

15. Contemporaneously with this Agreement, Omega shall deliver to DEI an executed Stipulation to Entry of Final Judgment, Permanent Injunction and Order Thereon (the "Stipulated Judgment" attached hereto as Exhibit B), which Stipulated Judgment requests that the United States District Court for the Southern District of California enter final judgment and permanent injunction that, among other things prohibits Omega from engaging in the Proscribed Activities set forth above. The Stipulated Judgment is fully incorporated herein and made a part hereof by reference. Omega agrees to cooperate in good faith with DEI to obtain the Court's entry of the Stipulated Judgment and shall take all actions reasonably necessary to achieve the result, including but not limited to, assisting with the preparation of necessary court pleadings and attending any required court hearings or conferences. In the event that the Court refuses to enter the Stipulated Judgment despite the request and stipulation of the parties, Omega and DEI shall remain bound by the terms and conditions of this Agreement.

16. Notwithstanding the above, DEI agrees that the below products shall be viewed by DEI and considered by the Court as safe harbors for Omega and Flick for which no claim may be asserted against Omega and Flick. DEI covenants not to sue Omega or Flick for patent infringement and/or to bring an action for contempt against Omega or Flick if Omega or Flick makes, uses, sells or offers for sale the following devices:

- (a) Under claims 3, 14, 29 and 30 of the '845 patent, a device having a selective valet or service mode (temporary disabling of passive arming) feature, which feature is capable of being activated from the remote transmitter, wherein the valet or service mode function is controllable or selectable using a dedicated button on the transmitter or only a single remote transmitter button not in combination with any other button.
- (b) Under claims 2 and 13 of the '845 patent, a device having a selective chirp elimination feature from the remote transmitter wherein the audible chirp or signal is eliminated during arm/disarm by pressing a single remote transmitter button a predetermined number of times and not in combination with any other button.
- (c) Under claims 6, 7, 8, 9, 18, 19, 20, and 21 of the '845 patent, a device bypassing a sensor when it would otherwise be triggering an alarm and readmitting the bypassed sensor each time and immediately upon said sensor returning to a non-triggered state. Also under claims 9 and 21, such a device with the noted bypassing features and including a non-volatile memory.
- (d) Under claim 24, a device for remote starting that does not lock the vehicle doors, if the system is in the disarm mode, coincident with the starting routine.

17. Notwithstanding the above, Omega agrees that DEI's current products, including without limitation the products that employ personal computer interface and/or DEI's Bitwriter™ programmer shall be viewed by Omega and considered by the Court, as against Issa, as safe harbors for Issa under Omega's '688 patent.

18. DEI shall dismiss all other claims in the Action with prejudice.

19. Parties consent to the exclusive jurisdiction and venue in the United States District Court for the Southern District of California and waive their rights to object on those grounds.

20. In the event that Omega violates the terms of this Agreement or the Judgment and Permanent Injunction, DEI shall have all of its legal and equitable rights and remedies including, without limitation, the right to enforce the permanent injunction, the right to collect damages for past unfair competition, infringement and willful infringement, including its attorney fees under 35 U.S.C. § 285 and the right to bring an action for contempt and

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damages it suffers as a result of breach of this Agreement and the Judgment dating back to the grant date of each of the DEI patents.

21. Parties shall provide written notice of a claim of infringement under any presently owned or later acquired patent to the other party and provide the other six months to cure before taking legal action. This paragraph is limited to the products that each of the parties presently sells or has sold in the past.
22. In consideration of this Agreement, Omega and Flick hereby unconditionally covenant to release, waive any action, and not to sue DE , Darrell Issa and Katharine Issa, including its/their assigns, subsidiaries, alter egos if any, administrators, successors, attorneys, agents, insurers and reinsurers, officers, directors, employees and shareholders from any and all actions, demands or claims related to or arising out of the Action or any act, omission or commission up to and including the date of execution of this Agreement. Any reference to Darrell Issa or Katharine Issa shall further include their spouses, heirs and executors. Omega's covenant to release, waive any action and not to sue shall apply to any forum, including without limitation, federal courts of law or equity, state courts of law or equity, or administrative courts of law or equity (including without limitation the International Trade Commission).
23. The terms herein shall be binding, final, and made without any future recourse whatsoever, including without limitation the right to offset and/or adjustment of any kind, and shall not be rescinded and/or diminished and/or revoked on the grounds of mistake of law or fact or circumstance, whether in the past, present or future and whether material or not.
24. Omega and Kenneth Flick warrant and guarantee that it/he are the sole and absolute owner(s) of the Omega patents and that said patents are free of any encumbrances or liens.
25. DEI warrants that it is the owner of the claims made by it in the Action and represents that it has not assigned or otherwise transferred to any other individual or entity such claims or any interest therein. DEI warrants it is the owner of the DEI patents with full authority to enter into this Agreement and that Omega has no rights, including rights as a licensee as to the DEI patents, under any other agreement with DEI.
26. Each party to this Agreement represents, warrants, and agrees with each party, as follows:
 - a. Each party either has received or has elected to waive the right to receive independent legal advice from its attorneys with respect to the advisability of making the settlement provided herein, with respect to the advisability of executing this Agreement.

b. No party has made any statement or representation to any other party regarding any fact relied upon in entering into this Agreement, and each party does not rely upon any statement, representation or promise of any other party in executing this Agreement and/or in making the settlement provided for herein, except as expressly stated in this Agreement.

c. Each party to this Agreement has made such independent investigation of the facts pertaining to this settlement and this Agreement, and of all the matters pertaining to it, as it deems necessary.

d. Each party has read this Agreement and understands the contents thereof. Each of the persons executing this Agreement on behalf of Omega and DEI represents that he/she is empowered to do so and thereby binds such party.

e. The parties shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.

27. Each party to this Agreement shall dismiss with prejudice any and all other pending case/cases, in United States or anywhere in the world, involving any other party to this Agreement, which has/have been filed, even if not served, in any court or the International Trade Commission. These actions include, but are not limited to case number 1:99-cv-1158 filed in the Northern District of Georgia.

28. No party shall be bound by any modification of this Agreement unless the modification is in writing, is subsequent to the date of this Agreement, and is signed by a duly authorized representative of the party to be bound thereby.

29. No party shall be bound by any waiver of any terms, rights, conditions, obligations, duties or the like of this Agreement unless the waiver is in writing, is subsequent to the date of this Agreement, and is signed by a duly authorized representative of the party to be bound thereby.

30. In consideration of and subject to the compliance with the terms of this Agreement, DEI releases and discharges Omega from any and all actions, claims, demands and damages, including costs and attorneys' fees, arising out of the Action without prejudice. Notwithstanding the above, except as provided herein, this release and discharge by DEI excludes, shall not reach and shall not effect persons or entities other than Omega and are not assignable.

31. In consideration of and subject to the compliance with the terms of this Agreement, Omega and Flick and each one of them, including heirs, successors, spouses and assigns, with prejudice, generally, fully and unconditionally forever release and discharge DEI.

1/1/06

Darrell Issa and Katharine Issa from any and all actions, claims, demands and damages, including costs and attorneys fees, arising out of and related to the Action.

32. Upon advice of counsel or waiver of the same, DEI hereby waives its rights under section 1542 of the California Civil Code, which section has been duly explained to it by its legal counsel or otherwise waived and provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

30. Upon advice of counsel or waiver of the same, Omega and Kenneth Flick hereby waive any and all rights under section 1542 of the California Civil Code, which section has been duly explained to each of them by their legal counsel or otherwise waived and provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

33. Each party, including without limitation Omega, Flick and Issa has been provided with an opportunity to participate in the drafting and preparation of this Agreement and the Stipulated Judgment and Permanent Injunction. Hence, any ambiguity in or construction to be made of this Agreement and/or Stipulated Judgment, shall not be construed against any party.

34. In the event any provision contained in this Agreement is held to be invalid, illegal or unenforceable for any reason, the invalidity, illegality or unenforceability will not affect any other provision of this Agreement, it being understood and agreed that (i) such invalid, illegal or unenforceable provision shall be deemed to be modified to the extent necessary to render it valid, legal and enforceable without altering the intent thereof or (ii) if such modification is not possible, this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

35. Each party or responsible officer thereof has read this Agreement and understands the contents hereof. Each of the officers executing this Agreement on behalf of their respective corporations is empowered to do so and thereby binds such respective corporation.

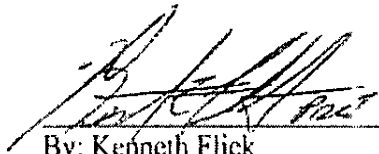
36. This Agreement constitutes the entire agreement between the parties, and supersedes

any and all prior agreements or understandings, written or oral between them relating to the subject matter of the dispute. No other promises or agreements shall be binding upon the parties and the undersigned with respect to this subject matter unless contained in this Agreement or separately agreed to in writing and signed by an authorized representative of each party and the undersigned.

- 37. Each term of this Agreement is contractual and not merely a recital.
- 38. The parties shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to (a) carry out the provision of this Agreement and to (b) obtain the determination of any court or tribunal that this Agreement was entered into in good faith.
- 39. This document consists of 10 pages.

Dated: May 27, 1999
INC.

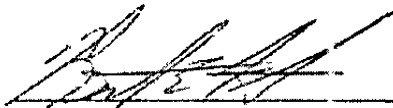
OMEGA RESEARCH AND DEVELOPMENT,



By: Kenneth Flick
Its: President

Dated: May 27, 1999

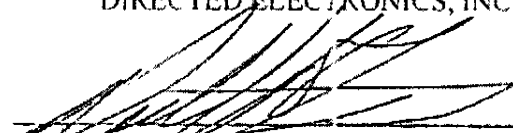
KENNETH FLICK



By: Kenneth Flick

Dated: May 31, 1999

DIRECTED ELECTRONICS, INC.



By: Darrell E. Issa
Its: President

JS44

(Rev. 07/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS **DEI Headquarters, Inc., fka Directed Electronics, Inc. and dba Directed Electronics** DEFENDANTS **Omega Research and Development, Inc.; Kenneth Flick**

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF **San Diego** COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(EXCEPT IN U.S. PLAINTIFF CASES) (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) ATTORNEYS (IF KNOWN)

Kristen Caverly, Henderson & Caverly LLP, P.O. Box 9144, Rancho Santa Fe, CA 92067; (858) 756-6342

'06 CV 1346 L POR

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

U.S. Government Plaintiff Federal Question (U.S. Government Not a Party)

U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

| | | | | | |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| | PT | DEF | | PT | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Breach of contract (license agreement); 28 U.S.C. section 1332 (diversity)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

| CONTRACT | TORTS | | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|--|---|---|--|--|
| <input type="checkbox"/> 110 Insurance | PERSONAL INJURY | PERSONAL INJURY | <input type="checkbox"/> 610 Agriculture | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 400 State Reappointment |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 362 Personal Injury-Medical Malpractice | <input type="checkbox"/> 620 Other Food & Drug | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 365 Personal Injury - Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 | PROPERTY RIGHTS | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 630 Liquor Laws | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 450 Commerce/ICC Rates/etc. |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 330 Federal Employers' Liability | PERSONAL PROPERTY | <input type="checkbox"/> 640 RR & Truck | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 650 Airline Regs | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 660 Occupational Safety/Health | SOCIAL SECURITY | <input type="checkbox"/> 810 Selective Service |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 861 HIA (13958) | <input type="checkbox"/> 850 Securities/Commodities Exchange |
| <input type="checkbox"/> 160 Stockholders Suits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 385 Property Damage Product Liability | LABOR | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 875 Customer Challenge 12 USC |
| <input checked="" type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 360 Other Personal Injury | | <input type="checkbox"/> 710 Fair Labor Standards Act | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 891 Agricultural Act |
| <input type="checkbox"/> 195 Contract Product Liability | | PRISONER PETITIONS | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 892 Economic Stabilization Act |
| REAL PROPERTY | CIVIL RIGHTS | | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 893 Environmental Matters |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 894 Energy Allocation Act |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 530 General | <input type="checkbox"/> 790 Other Labor Litigation | <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609 | <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 443 Housing/Accommodations | <input type="checkbox"/> 535 Death Penalty | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
| <input type="checkbox"/> 240 Tort to Land | <input type="checkbox"/> 444 Welfare | <input type="checkbox"/> 540 Mandamus & Other | | | <input type="checkbox"/> 950 Constitutionality of State |
| <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 550 Civil Rights | | | <input type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 290 All Other Real Property | | <input type="checkbox"/> 555 Prisoner Conditions | | | |

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

1 Original Proceeding 2 Removal from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 DEMAND \$ **80,000 plus** Check YES only if demanded in complaint: JURY DEMAND YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE _____ Docket Number _____

DATE **06-29-06** SIGNATURE OF ATTORNEY OF RECORD *Kristen Caverly*

PAID \$350 BU 6/30/06 RCAT# 126653