#### Case5:12-cv-02884-LHK Document38 Filed10/24/12 Page1 of 7 GARTEISER HONEA, P.C. 1 Randall T. Garteiser (SBN 231821) Christopher A. Honea (SBN 232473) 2 44 North San Pedro Road San Rafael, California 94903 3 [Tel.] (415) 785-3762 4 [Fax] (415) 785-3805 randall.garteiser@sftrialattorneys.com 5 chris.honea@sftrialattorneys.com 6 NELSON BUMGARDNER CASTO, P.C. 7 Barry J. Bumgardner (*Pro Hac Vice*) Steven W. Hartsell (Pro Hac Vice) 8 3131 West 7<sup>th</sup> Street, Suite 300 Fort Worth, Texas 76107 9 [Tel.] (817) 377-9111 [Fax] (817) 377-3485 10 barry@nbclaw.net 11 shartsell@nbclaw.net 12 **BURNS & LEVINSON LLP** Howard J. Susser (*Pro Hac Vice*) 13 Paul T. Muniz (Pro Hac Vice) Zachary R. Gates (*Pro Hac Vice*) 14 Alexandra Capachietti (Pro Hac Vice) 15 125 Summer Street Boston, Massachusetts 02110-1624 16 [Tel.] (617) 345-3000 [Fax] (617) 345-3299 17 hsusser@burnslev.com pmuniz@burnlev.com 18 zgates@burnslev.com 19 acapachietti@burnslev.com 20 ATTORNEYS FOR PLAINTIFF GPNE CORP. 21 22 23

24

25

26

27

28

### Case5:12-cv-02884-LHK Document38 Filed10/24/12 Page2 of 7

# IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION

3	GPNE CORP.,	
4	Plaintiff,	No. 4:12-CV-02884-LHK
5	VS.	JURY TRIAL DEMANDED
6	BARNES & NOBLE, INC.,	
7		
8	Defendant.	
U		

## FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Pursuant to the Court's Case Management Order (Dkt. No. 36), Plaintiff GPNE Corp. submits this First Amended Complaint as follows:

#### **PARTIES**

- 1. Plaintiff GPNE is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in Honolulu, Hawai'i.
- 2. Defendant Barnes & Noble, Inc. ("B&N" or "Defendant") is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in New York, New York. B&N has been served with process and has appeared.
- 3. On information and belief, this Court has personal jurisdiction over B&N because B&N has committed, and continues to commit, acts of infringement in this judicial district, has conducted business in this judicial district and/or has engaged in continuous and systematic activities in this judicial district. B&N's e-reader products are sold and offered for sale throughout this judicial district.

### JURISDICTION AND VENUE

- 4. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).
- 5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendant is deemed to reside in this judicial district, has

5

3

8

13 14

15 16

17 18

19

20

21

22

23

24 25

26

27

28

committed acts of infringement in this judicial district, has purposely transacted business in this judicial district and/or has regular and established places of business in this judicial district.

6. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the California 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 and, accordingly, deriving substantial revenue from goods and services provided to California residents.

# FACTUAL BACKGROUND AND ALLEGATIONS

- 7. On June 30, 2009, United States Patent No. 7,555,267 ("the '267 patent") was duly and legally issued for a "Network Communication System Wherein A Node Obtains Resources For Transmitting Data By Transmitting Two Reservation Requests." A true and correct copy of the '267 patent is attached hereto as Exhibit "A."
- 8. The '267 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.
- 9. On August 4, 2009, United States Patent No. 7,570,954 ("the '954 patent") was duly and legally issued for a "Communication System Wherein A Clocking Signal From A Controller, A Request From A Node, Acknowledgement Of The Request, And Data Transferred From The Node Are All Provided On Different Frequencies, Enabling Simultaneous Transmission Of These Signals." A true and correct copy of the '954 patent is attached hereto as Exhibit "B."
- 10. The '954 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.
- 11. On September 7, 2010, United States Patent No. 7,792,492 ("the '492 patent") was duly and legally issued for a "Network Communication System With An Alignment Signal To Allow A Controller To Provide Messages To Nodes And Transmission Of The Messages Over Four Independent Frequencies." A true and correct copy of the '492 patent is attached hereto as Exhibit "C."

1	12.	The '492 patent is valid, enforceable and was duly issued in full compliance with		
2	Title 35 of the	e United States Code.		
3	13.	GPNE owns all right, title, and interest in and to the '267, '954, and '492 patents		
4	(collectively,	"the Asserted Patents"), including the right to prosecute this action and recover		
5	damages for t	he infringements alleged herein.		
6		BARNES & NOBLE PRODUCTS		
7	14.	B&N's Nook is advertised as having the ability to operate with General Packet		
8	Radio Service ("GPRS") networks.			
9	15.	B&N's Nook can transmit and receive data over GPRS networks, such as those		
10	operated by A	T&T or T-Mobile in the United States.		
11		COUNT ONE		
12		(INFRINGEMENT OF THE '267 PATENT)		
13	16.	GPNE incorporates paragraphs 1 through 15 herein by reference.		
14	17.	This cause of action arises under the patent laws of the United States, and in		
15	particular, 35 U.S.C. §§ 271, et seq.			
16	18.	On information and belief, Defendant is directly infringing one or more claims of		
17	the '267 patent in this judicial district and elsewhere in the United States, including at least			
18	claims 1, 4, 8-9, 11-14, 18-23, 30-32, 39-42, and 45, by, among other things, making, using,			
19	offering for sa	ale, selling and/or importing e-readers with the ability to send and receive data via		
20	GPRS includi	ng, without limitation, the Nook, to customers.		
21	19.	GPNE has been damaged as a result of Defendant's infringing conduct described		
22	in this Count.	Defendant is, thus, liable to GPNE in an amount that adequately compensates it for		
23	Defendant's i	nfringements, which, by law, cannot be less than a reasonable royalty, together with		
24	interest and co	osts as fixed by this Court under 35 U.S.C. § 284.		
25		COUNT TWO		
26		(INFRINGEMENT OF THE '954 PATENT)		
27	20.	GPNE incorporates paragraphs 1 through 19 herein by reference.		
28				

## Case5:12-cv-02884-LHK Document38 Filed10/24/12 Page5 of 7

1 21. This cause of action arises under the patent laws of the United States, and in 2 particular, 35 U.S.C. §§ 271, et seq. 3 22. On information and belief, Defendant is directly infringing one or more claims of 4 the '954 patent in this judicial district and elsewhere in the United States, including at least 5 claims 13, 15-20, and 22-26, by, among other things, making, using, offering for sale, selling 6 and/or importing e-readers with the ability to send and receive data via GPRS including, without 7 limitation, the Nook, to customers. 8 23. GPNE has been damaged as a result of Defendant's infringing conduct described 9 in this Count. Defendant is, thus, liable to GPNE in an amount that adequately compensates it for 10 Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with 11 interest and costs as fixed by this Court under 35 U.S.C. § 284. 12 **COUNT THREE** 13 (INFRINGEMENT OF THE '492 PATENT) 14 24. GPNE incorporates paragraphs 1 through 23 herein by reference. 15 25. This cause of action arises under the patent laws of the United States, and in 16 particular, 35 U.S.C. §§ 271, et seq. 17 26. On information and belief, Defendant is directly infringing one or more claims of 18 the '492 patent in this judicial district and elsewhere in the United States, including at least 19 claims 2, 16-17, 28, 37-41, 44, 55-59, 62-63, 66-68, and 71-72, by, among other things, making, 20 using, offering for sale, selling and/or importing e-readers with the ability send and receive data 21 via GPRS including, without limitation, the Nook, to customers. 22 27. GPNE has been damaged as a result of Defendant's infringing conduct described 23 in this Count. Defendant is, thus, liable to GPNE in an amount that adequately compensates it for 24 Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with 25 interest and costs as fixed by this Court under 35 U.S.C. § 284. 26 27

28

1	PRAYER FOR RELIEF			
2	GPN	GPNE requests that the Court find in its favor and against Defendant, and that the Court		
3	grant GPNE	grant GPNE the following relief:		
4	A.	Judgment that one or more cla	aims of the '267, '954, and/or '492 patents have been	
5	infringed, ei	ther literally and/or under the doctrine of equivalents, by Defendant;		
6	B.	Judgment that Defendant acco	ount for and pay to GPNE all damages to and costs	
7	incurred by	by GPNE, including attorneys' fees, because of Defendant's infringing activities and		
8	other conduc	ther conduct complained of herein;		
9	C.	Judgment that Defendant acco	ount for and pay to GPNE a reasonable, on-going,	
10	post judgme	nt royalty because of Defendant'	s infringing activities and other conduct complained	
11	of herein;			
12	D.	That GPNE be granted pre-jud	dgment and post-judgment interest on the damages	
13	caused by Defendant's infringing activities and other conduct complained of herein; and			
14	E.	That GPNE be granted such o	ther and further relief as the Court may deem just	
15	and proper u	under the circumstances.		
16	Dated: Octo	ber 24, 2012	Respectfully Submitted,	
17				
18			GARTEISER HONEA, P.C.	
19			/s/ Randall Garteiser  Pandall T. Container (SDN 221821)	
20			Randall T. Garteiser (SBN 231821) Christopher A. Honea (SBN 232473)	
21			44 North San Pedro Road San Rafael, California 94903	
22			[Tel.] (415) 785-3762 [Fax] (415) 785-3805	
23			randall.garteiser@sftrialattorneys.com	
24			chris.honea@sftrialattorneys.com	
25				
26				
27				
28				
	i e			

1	NELSON BUMGARDNER CASTO, P.C. Barry J. Bumgardner ( <i>Pro Hac Vice</i> )		
2	Steven W. Hartsell ( <i>Pro Hac Vice</i> ) 3131 West 7 <sup>th</sup> Street, Suite 300		
3	Fort Worth, Texas 76107		
4	[Tel.] (817) 377-9111 [Fax] (817) 377-3485		
5	barry@nbclaw.net shartsell@nbclaw.net		
6	Burns & Levinson LLP		
7	Howard J. Susser (Pro Hac Vice)		
8	Paul T. Muniz ( <i>Pro Hac Vice</i> ) Zachary R. Gates ( <i>Pro Hac Vice</i> )		
9	Alexandra Capachietti ( <i>Pro Hac Vice</i> ) 125 Summer Street		
10	Boston, Massachusetts 02110-1624		
11	[Tel.] (617) 345-3000 [Fax] (617) 345-3299		
12	hsusser@burnslev.com pmuniz@burnlev.com		
13	zgates@burnslev.com		
14	acapachietti@burnslev.com		
15	ATTORNEYS FOR PLAINTIFF GPNE CORP.		
16			
17	<u>CERTIFICATE OF SERVICE</u>		
18	I hereby certify that on October 24, 2012, I electronically submitted the foregoing FIRST		
19	AMENDED COMPLAINT FOR PATENT INFRINGEMENT using the electronic case files		
20	system of the court. The electronic case files system sent a "Notice of Electronic Filing" to		
21	individuals who have consented in writing to accept this Notice as service of this document by		
22	electronic means.		
23	/s/ Randall Garteiser Randall T. Garteiser		
24			
25			
26			
27			
28			
40			