

Joshua M. Masur (*pro hac vice*)
masur@turnerboyd.com
Karen I. Boyd (*pro hac vice*)
boyd@turnerboyd.com
TURNER BOYD, LLP
2625 Middlefield Road #675
Palo Alto, California 94306
Telephone: (650) 529-1575
Facsimile: (650) 472-8028

John Whipple
jwhipple@pashmanstein.com
Jennifer Castranova
jcastranova@pashmanstein.com
PASHMAN STEIN, P.C.
Court Plaza South
21 Main Street, Suite 100
Hackensack, NJ 07601
Telephone: (201) 488-8200
Facsimile: (201) 488-5556

Attorneys for Defendant
FINELITE, INC.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

LEDALITE ARCHITECTURAL
PRODUCTS,

Plaintiff,

v.

FINELITE, INC.,

Defendant.

Civil Action No. 2-09-cv-06155

JURY TRIAL DEMANDED

**DECLARATION OF TERRY CLARK IN SUPPORT OF
DEFENDANT FINELITE, INC.'S MOTION TO TRANSFER VENUE TO THE
NORTHERN DISTRICT OF CALIFORNIA PURSUANT TO 28 U.S.C. § 1404(A)**

I, Terry Clark, declare:

1. I founded Finelite, Inc., the defendant in the above action, in 1991 and currently serve as its Chief Executive Officer. Finelite develops innovative, attractive, high-performance,

and environmentally sustainable lighting systems, builds them in the United States, and sells them at affordable prices throughout the United States and Canada. I make this declaration of my own personal knowledge and could and would testify to the facts contained in this Declaration.

2. Finelite is incorporated under the laws of California and has its principal place of business at its corporate headquarters, located at 30500 Whipple Road, Union City, California 94587.

3. All decisions regarding the development, testing, research and production, marketing and sale of the allegedly infringing products at issue in this action occurred at Finelite's corporate headquarters in Union City, California.

4. Finelite has no corporate presence or employees in the State of New Jersey.

5. All shipments of allegedly infringing products at issue in this action to purchasers in New Jersey were shipped F.O.B. Union City. A true and correct copy of the purchase order, order acknowledgment, and invoice, with financial information redacted, for a sale of products that I understand were installed in New Jersey is attached hereto as Exhibit A.

6. Fewer than one-eighth of the accused HPR-series products sold as of April 21, 2010 appear to have been delivered to customers in New Jersey. Larger deliveries were made to customers for installation in Texas and Colorado, and comparable quantities were delivered to purchasers for installation in California and New York. A true and correct copy of a sales report categorized by shipping destination, with unit sales redacted, is attached hereto as Exhibit B.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 10, 2010, at Union City, California

Terry Clark



Exhibit A

***** PURCHASE ORDER *****

PO NUMBER PAGE

WARSHAUER ELECTRIC-TECH CENTER
800 SHREWSBURY AVENUE
TINTON FALLS NJ 07724

PHONE: (732) 741-6400
FAX: (732) 741-3866

712961-DIR-2611980 1

PO DATE SHIP VIA DUE DATE
04/27/09 04/27/09

FINELITE INC
31265 SAN CLEMENTE STREET
HAYWARD CA 94544

SHIP TO >>> AL KAY OF CENTURY ELECTRIC
C/O VERIZON WEISBOWER PLAZA
290 WEST MT PLEASANT AVE
LIVINGSTON NJ 07039
LOAD DOCK IN REAR OF BLDG 1

WM	VENDOR	TELEPHONE	TERMS	FOB
40	993500	510-441-1100	NET 30	FREIGHT ALLOWED

LN	QTY	ITEM/DCI/VEND-ITEM	DESCRIPTION	UNIT PRICE	U/M	EXT PRICE
1		** COMMENT **	RELEASE FOR IMMEDIATE SHIPMENT VIA TRUCK ONLY, WITH 48 HRS PRIOR NOTICE TO AL KAY AT 973 390 5792 OR ME 201 6130717			
2		** COMMENT **	NO UPS, FEDEX OR = ALLOWED PLEASE MARK EACH LABEL WITH THE LISTED TYPE LETTER IN ADD- ITION TO THE FULL CAT NUMBER			
3		FIN*HPR12X42T8DC08	FINELITE HPR 1 2X4 2T8 DCO SC 277 C1 .08 LP835 3100L LAMPS TYPE B		E	
4		FIN*HPR12X4D100BD	FINELITE HPR 1 2X4 2T8 DCO SC 277 C1 D10 10V 08D LP835 3100L LAMPS TYPE B1		E	
5		FIN*HPR12X22T8DC0	FINELITE HPR 1 2X2 2T8 DCO SC 277 C1 .08 LP835 TYPE F		E	
6		** COMMENT **	ALL FINELITE WILL BE PER JANE LETTER OF 4/17/09 AND PRELAMP- ED, SHRINKWRAPPED, MINIMAL CARDBOARD, PALLETIZED, SINGLE			

*** CONTINUED ON NEXT FORM ***

***** PURCHASE ORDER *****

PO NUMBER 712961-DIR-2611980 PAGE 2

WARSHAUER ELECTRIC-TECH CENTER
500 SHREWSBURY AVENUE

PHONE: (732) 741-6400
FAX: (732) 741-3866

TINTON FALLS NJ 07724

PO DATE 04/27/09 SHIP VIA _____ DUE DATE 04/27/09

FINELITE INC
31285 SAN CLEMENTE STREET

SHIP TO >>>> AL KAY OF CENTURY ELECTRIC
C/O VERIZON WEISENHOWER PLAZA
290 WEST MT PLEASANT AVE
LIVINGSTON NJ 07039
LOAD DOCK IN REAR OF BLDG 1

HAYWARD CA 94544

WH	VENDOR	TELEPHONE	TERMS	FOB
40	993500	510-441-1100	NET 30	FREIGHT ALLOWED

LN	QTY	ITEM/DCI/VEND-ITEM	DESCRIPTION	UNIT PRICE U/M	EXT PRICE
7		** COMMENT **	LEVEL LOADING PLEASE NOTE THE FOLLOWING ADD & SEND ME THE PRICING. ASSUMIN 30 PER CASE-REVISE TO 2 CASES		
8		** COMMENT **	IF NOT 30 PER		
9		FIN*3100L835LAMPS	FINELITE 835, 3100L LAMPS AS SPARES		

██████████ E ██████████

BUYER: CAROL A FERNANDEZ

TOTAL ██████████

FINELITE

Order Acknowledgement

A46541

Customer Information	Project Information	Shipping Information
Name: Warshauer Electric Supply Address: 800 Shrewsbury Ave. Tinton Falls, NJ 07724 Freight: Paid by Finelite Terms: Net 30 FOB Union City	Name: Verizon Customer PO#: 712961DIR2611980 Finelite Job #: A46541 Primary rep: Liberty Lighting Group, Inc Prepared by: Alicia Hernandez Order Date: 4/27/09 Revision Date: 4/30/09 Project Status: RELEASED	Name: Al Kay of Century Electric Address: c/o Verizon @ Eisenhower Plaza 290 West Mt Pleasant Ave Rte 10 Livingston, NJ 07039 United States Special Instructions: Deliver to load dock in rear of bldg #1. Requires Job Pack (no ctns), Shrink wrapped & Palletized. Single stack. Alt# Carol Fernandez (201)213-0717. Call: 48 hours before Al Kay At: (973) 390-5792 Ship Via: Best Way Packaging: Job Pack

Type B1 requires FD-301 Sensor w/Power Pack installed (OBD). Type F use standard ECO 835 T8. lamps.

Fixtures

Item	Qty	Fixture Type	Description
1		B	HPR-1-STD-DCO-4-2T8-SYL835-96-277-SC-GENIS10-.875--96 LG
2		F	HPR-1-STD-DCO-2-2T8-FC835-96-277-SC-GENIS10-.875--96 LG
3		B1	HPR-1-STD-DCO-4-2T8-SYL835-96-277-SC-OSRDIM10-.875--96 LG-OBD

Additional Parts

Item	Qty	Type	Part #	Description
1			93390	Lamp Syl/XPS/Eco T8 835 4

Order Date: 4/27/09

Scheduled Ship Date: 5/11/09

TERMS AND CONDITIONS:

1. The phrase "Per Plans and Specifications" is not acceptable to Finelite. Finelite builds fixtures per the attached drawings.
2. Terms are full payment prior to shipment unless credit has been pre-approved. Once credit has been approved, payment terms are Net 30.
3. Product is FOB Finelite's factory. Freight damage claims are the responsibility of the customer.
4. Freight on this order is Allowed. If you have any questions please contact your Finelite representative.
5. Ballasts, lamps, control systems, and battery back-up systems are warranted by the manufacturer. Contact the manufacturer directly to determine the proper method of repair or replacement.
6. Finelite guarantees material and workmanship for a period of five years from the date of shipment. Any implied warranty for fitness for any particular use is expressly disclaimed. Finelite will limit its actions to furnishing new parts, free of charge, in exchange for parts proven to be defective and does not include any other costs of removal, installation, or other project charges. **Finelite will not allow unauthorized back charges or payment discounts.** You must call Finelite prior to proceeding with any modifications to the fixtures.
7. Finelite shall not be liable for any costs associated with job schedules due to missed delivery commitments or fulfillment or performance of this contract.

INTERNAL COPY INVOICE A46541

FINELITE

Better Lighting for a Better Workplace
 30500 Whipple Road
 Union City, CA 94587

Phone: 510/441-1100
 Fax: 510/441-2973

Invoice Date: 05/26/2009

Job Name: Verizon

Shipping Company: NORTH AMERICAN TRANSPORTATION

Customer PO: 712961DIR2611980

Bill To: Warshauer Electric Supply
 800 Shrewsbury Ave.
 Tinton Falls, NJ 07724

Ship To: Al Kay of Century Electric
 c/o Verizon @ Eisenhower Plaza
 290 West Mt Pleasant Ave Rte 10
 Livingston, NJ 07039

Rep Company
 Liberty Lighting Group, Inc

Base Commission	Bonus Commission
[REDACTED]	[REDACTED]

Order for Individual Parts

Quantity	Description
60	Lamp Syl/XPS/Eco T8 835 4

Order for Fixture Runs.

Qty	Mark	Ser	Perf	Lgth	X-C	Lmp	Brnd	Ref	Volt	CKT	Ball	Cap	Color	EM/NL	Opts	Sens	Susp	Lgth
	B1	HPR-1	STD	4	2	T8	Syl	96LG	277	SC	OS		96 LG			FD-3	None	0
	F	HPR-1	STD	2	2	T8	FC	96LG	277	SC	Gen		96 LG				None	0
	B	HPR-1	STD	4	2	T8	Syl	96LG	277	SC	Gen		96 LG				None	0

Terms: Net 30
 All product is shipped FOB Union City, CA
 Freight on this order is Allowed. If you have any questions please contact your Finelite representative.

Subtotal:	[REDACTED]
Sales Tax:	[REDACTED]
Freight:	[REDACTED]
Total Due:	[REDACTED] USD

Thank you for your business

Exhibit B

Ship to	Total Units shipped	% of Total Units shipped
TX	██████████	17.80%
CO	██████████	12.95%
NJ	██████████	12.49%
CA	██████████	11.78%
NY	██████████	10.86%
CT	██████████	9.64%
PA	██████████	7.65%
IN	██████████	6.66%
MD	██████████	2.55%
MA	██████████	2.00%
WI	██████████	0.85%
MI	██████████	0.83%
NC	██████████	0.79%
IA	██████████	0.51%
WA	██████████	0.42%
VA	██████████	0.40%
FL	██████████	0.34%
MT	██████████	0.30%
ME	██████████	0.21%
KY	██████████	0.19%
Canada	██████████	0.17%
MO	██████████	0.16%
ONT	██████████	0.16%
WV	██████████	0.09%
UT	██████████	0.08%
SC	██████████	0.07%
TN	██████████	0.05%
VT	██████████	0.05%
DC	██████████	0.05%
DE	██████████	0.02%
OH	██████████	0.02%
MN	██████████	0.01%
Total excluding Canada	██████████	1