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17 and Everlight Americas, Inc.

18 **UNITED STATES DISTRICT COURT**  
19 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

20 DOCUMENT SECURITY  
21 SYSTEMS, INC.,

22 Plaintiff,

23 vs.

24 EVERLIGHT ELECTRONICS CO.,  
25 LTD., AND EVERLIGHT  
26 AMERICAS, INC.,

27 Defendants.

Case No.: 2:17-cv-04273-JVS-JCG

**REPLY OF EVERLIGHT  
ELECTRONICS CO., LTD AND  
EVERLIGHT AMERICAS' INC. IN  
SUPPORT OF MOTION TO DISMISS**

Hon. James V. Selna

Date: November 13, 2017  
Time: 1:30 pm  
Courtroom: 10C

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1 **I. INTRODUCTION**

2 Stripped of its diversionary arguments, the opposition of Plaintiff  
3 Document Security Systems (“DSS”) confirms that the First Amended Complaint  
4 (“FAC”) filed by DSS contains several factually-unsupported and implausible  
5 claims that must be dismissed.

6 First, as Defendants Everlight Electronics Co., Ltd. (“Everlight  
7 Electronics”) and Everlight Americas, Inc. (“Everlight Americas”) (collectively,  
8 “Defendants”) pointed out in their motion, DSS did not actually allege willful  
9 infringement but instead, in the FAC, “reserves the right to request . . . a finding  
10 [of willful infringement] at time of trial.” Motion (Dkt. 31-1) at 22. *See also*  
11 FAC ¶¶ 25, 39, 54, 67. DSS argues in its opposition that this was not actually a  
12 “reservation of rights” (despite the words used by DSS) but an allegation of  
13 willful infringement. Opp. (Dkt. 33) at 23 n.8. But if words have any meaning, a  
14 reservation of rights is not a factual allegation of willful infringement. Indeed, the  
15 Court already has recognized this same phrase, as used by DSS in the *Seoul*  
16 *Semiconductor* and *Osram* cases, to be a reservation of rights by which “DSS  
17 concedes that at this time, it cannot plead facts sufficient to state a plausible claim  
18 for willful infringement.” *See* Tentative Order Regarding Motion To Dismiss in  
19 *Document Security Systems Inc. v. Seoul Semiconductor Co., Ltd., et al.*, Case No.  
20 8:17-cv-00981-JVS-JCG, which the Court adopted as the order of the Court after  
21 oral argument on October 23, 2017. For that reason, and also because DSS  
22 concedes that it did not provide notice of its patents before filing the Complaint  
23 against Defendants in the Eastern District of Texas (which it then dismissed and  
24 immediately refiled in this District to avoid a venue challenge), the allegation of  
25 willful infringement must be dismissed, consistent with the Court’s rulings in the  
26 *Seoul Semiconductor* and *Osram* cases.

27 Second, the FAC tried to introduce a new theory of inducing infringement  
28 into this case based on “Defendants” collectively having made sales “overseas” to

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