

EXHIBIT D

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February 6, 2013

VIA E-MAIL [CKAUFMAN@FTKLAW.COM]

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Re: *B.E. Technology, LLC v. Barnes & Noble, Inc.* (Case No. 2:12-cv-282-JPM, W.D. Tenn.)

Dear Mr. Kaufman:

I write to request that B.E. Technology, LLC (“B.E.”) rectify several deficiencies in B.E.’s Infringement Contentions pursuant to Local Patent Rule (“LPR”) 3.1 served on January 7, 2013 (“Contentions”).

LPR 3.1 is clear in its requirement that plaintiff identify, “[s]eparately for each asserted claim, each Accused Instrumentality that [it] contends infringes, including the name or model number,” and serve therewith a “chart identifying specifically where each limitation of each asserted claim is found within each Accused Instrumentality.” (LPR 3.1(b)-(c).) B.E. does specifically and separately accuse, and identify by model, eight of Barnes & Noble’s Nook products.¹ However, B.E. also universally accuses “all of Defendants’ products and/or services with the following programs, features, software,

¹ The eight products identified are: (1) Nook Color; (2) Nook First Edition 3G + WiFi; (3) Nook First Edition Wi-Fi; (4) Nook HD; (5) Nook HD+; (6) Nook Simple Touch with Glowlight; (7) Nook Simple Touch; and (8) Nook Tablet (collectively, “Accused Products”).

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firmware, or applications of infringing the Asserted Claims of the '290 patent: Nook Store, Netflix, and Hulu Plus.” (Contentions at 3.) While such a generic accusation appears deficient even under a generous standard, B.E. fails to provide a corresponding claim chart for such unidentified products in violation of the Local Rules. Absent supplementation, it is Barnes & Noble’s understanding that any product beyond those eight specifically identified – and charted – products are not properly at issue in this case.

Even with respect to those eight products, however, B.E.’s corresponding claim charts pursuant to LPR 3.1(c) fail to provide, as required by Local Rule, any meaningful contention as to “where each limitation of each asserted claim is found.” Each chart is composed primarily of device screenshots coupled with a recitation of the claim language. (*See, e.g.*, Appendix A, claims 2[b]-[d], all Accused Products.) Notably absent is any meaningful explanation of how a given product feature reads onto an asserted claim element. (*See generally id.*) Even further, the contentions for claim 3 do not contain a single reference to a specific product or feature and merely state:

The infringing programs as set forth above are operable upon execution and in response to selection by a user of one of said items to access the associated information resource over the network using a browser.

This recitation of the claim itself, along with the deficiencies outlined above with respect to claim 2 of the infringement charts, fail to satisfy the standard set forth under LPR 3.1.

Similarly, for every claim limitation following the last stand-alone screenshot of each Accused Product, B.E. includes the following boilerplate language related to the doctrine of equivalents:

To the extent this element is not literally met, it is met under the doctrine of equivalents because they perform substantially the same function, in substantially the same way, to achieve substantially the same result. To the extent that any differences are alleged to exist between the claim element and Defendant’s Accused Instrumentalities, products and/or services, such differences are insubstantial.

This non-specific recitation of the law is not tied to any particular Accused Product or product feature(s), and more significantly, does not provide Barnes & Noble any indication of B.E.’s alleged factual basis for its claim of infringement under the doctrine of equivalents. This too is inadequate under the Local Rules, which require B.E. to

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identify specifically, on an element-by-element basis, where in each Accused Product each limitation supposedly is present by an equivalent. This deficiency, along with the deficiencies outlined above, severely handicaps Barnes & Noble's ability to formulate responsive non-infringement contentions under LPR 3.3.

In light of at least these shortcomings, please indicate by February 15, 2013 whether B.E. will supplement its Contentions and when it will do so. In the meantime, we are available to meet and confer about any issue raised herein.

Very truly yours,



James S. Blackburn

Turner, Gloria

From: Turner, Gloria
Sent: Wednesday, February 06, 2013 4:25 PM
To: 'ckaufman@ftklaw.com'
Cc: Blackburn, James S.
Subject: B.E. Technology, LLC v. Barnes & Noble, Inc. (Case No. 2:12-cv-282-JPM, W.D. Tenn.)
Attachments: 02-06-2013 Ltr. to Craig R. Kaufman.pdf

Dear Mr. Kaufman,

Please see the attached letter from James Blackburn.

Regards,

*Gloria Turner
Legal Assistant for
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Nicholas Kennedy
Jeanna M. Beck*

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