

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

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6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA  
8 SAN FRANCISCO DIVISION  
9

10 TECHNOLOGY PROPERTIES LIMITED  
11 LLC, et al.,

12 Plaintiffs,

13 vs.

14 BARNES & NOBLE, INC.,

15 Defendant.

CASE NO. 12-cv-03863-VC

DEFENDANT BARNES & NOBLE, INC.'S  
MOTION FOR ADMINISTRATIVE RELIEF  
FOR PERMISSION TO FILE REPLY BRIEF  
IN SUPPORT OF MOTION FOR DE NOVO  
DETERMINATION OF DISPOSITIVE  
MATTER REFERRED TO MAGISTRATE  
JUDGE

16 Date: July 23, 2015

17 Time: 10:00 am

18 Place: Courtroom 4 - 17th Floor

19 Judge: Hon. Vince Chhabria

1 **PRELIMINARY STATEMENT**

2 Pursuant to Civil Local Rule 7-11, Barnes & Noble seeks leave to file a reply brief in  
3 support of its motion for de novo determination of dispositive matter referred to the Magistrate  
4 Judge because two new cases have been decided that bear on the question at issue here. The reply  
5 brief would address only these new cases, as well as one erroneous and misleading citation in the  
6 brief of Plaintiffs Technology Properties Limited (“TPL”), Phoenix Digital Solutions (“PDS”),  
7 and Patriot Scientific Corporation (“PSC”). The proposed reply brief is attached hereto. Barnes &  
8 Noble sought Plaintiffs’ stipulation to the filing of the reply, but PDS declined to consent and TPL  
9 and PSC did not yet respond to the request. (Declaration of David Eiseman in Support of Barnes  
10 & Noble’s Motion for Leave to File Reply, submitted herewith.)

11 **ARGUMENT**

12 After Barnes & Noble submitted its opening brief, two cases were decided addressing the  
13 *Kessler* doctrine. One of those cases directly addresses the question at issue here: whether  
14 *Kessler* applies to a finding of non-infringement by the ITC that is not appealed. *See Technology*  
15 *Properties Limited LLC v. Canon, Inc.*, Case No. 4:14-CV-3640, Dkt. No. 302 (N.D. Cal. June 24,  
16 2015). Plaintiffs discussed this case extensively in its opposition (Opp. at 9-10, 12, 15), and  
17 Barnes & Noble should have the opportunity to do so, as well.

18 Furthermore, the Federal Circuit less than one week ago decided a case addressing the  
19 scope of the *Kessler* doctrine. *See SpeedTrack, Inc. v. Office Depot, Inc.*, --- F.3d ---, No. 2014-  
20 1475, 2015 WL 3953688, at \*2 (Fed. Cir. June 30, 2015). For the reasons stated in Barnes &  
21 Noble’s proposed reply brief, this case demonstrates that much of the reasoning in Plaintiffs’  
22 opposition brief and Magistrate Judge Grewal’s Report and Recommendation – which seek to  
23 limit *Kessler* as much as possible – is erroneous.

24 Finally, Barnes & Noble should have the opportunity to file a reply brief because Plaintiffs  
25 erroneously cited a statute in its brief when quoting something that is not in the statute at all.  
26 Barnes & Noble does not believe that this mistake was intentional, but as discussed in the  
27 proposed reply, this mistake could be misleading if not clarified by the proposed reply.

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**CONCLUSION**

For the foregoing reasons, Barnes & Noble, Inc. respectfully requests that the Court grant this motion for administrative relief and consider the reply brief attached hereto.

DATED: July 6, 2015

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By /s/ David Eiseman  
David Eiseman  
Attorney for Defendant Barnes & Noble, Inc.

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**CERTIFICATE OF SERVICE**

I hereby certify that, on July 6, 2015, I caused the foregoing document to be served on counsel of record via the Court's CM/ECF system.

Dated: July 6, 2015

By /s/ David Eiseman

David Eiseman

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10 TECHNOLOGY PROPERTIES LIMITED  
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13 vs.

14 BARNES & NOBLE, INC.,

15 Defendant.

CASE NO. 12-cv-03863-VC

DECLARATION OF DAVID EISEMAN IN  
SUPPORT OF BARNES & NOBLE, INC.'S  
MOTION FOR ADMINISTRATIVE RELIEF  
FOR PERMISSION TO FILE REPLY BRIEF  
IN SUPPORT OF MOTION FOR DE NOVO  
DETERMINATION OF DISPOSITIVE  
MATTER REFERRED TO MAGISTRATE  
JUDGE

16  
17 Date: July 23, 2015  
18 Time: 10:00 am  
19 Place: Courtroom 4 - 17th Floor  
20 Judge: Hon. Vince Chhabria

1 I, David Eiseman, declare:

2 1. I am a member of the State Bar of California, admitted to practice before this  
3 Court, and a partner at the law firm of Quinn Emanuel Urquhart & Sullivan, LLP (“Quinn  
4 Emanuel”), attorneys for Barnes & Noble, Inc. (“Barnes & Noble”). I make this declaration on  
5 personal, first-hand knowledge, and if called and sworn as a witness, I could and would testify as  
6 set forth below.

7 2. On Sunday, July 5, 2015, Quinn Emanuel asked counsel for Plaintiff Phoenix  
8 Digital Solutions (“PDS”) whether it would consent to Barnes & Noble’s Motion for  
9 Administrative Relief to file a reply regarding the motion for de novo determination of dispositive  
10 matter referred to the magistrate judge. PDS’s counsel informed me it would not consent. On  
11 Monday, July 6, 2015, Quinn Emanuel asked counsel for Technology Properties Limited and  
12 Patriot Scientific Corporation whether they would consent, but, at the time of this filing, they had  
13 not yet responded to this request.

14 I declare under penalty of perjury that the foregoing is true and correct. Executed on July  
15 6, 2015.

16  
17 By /s/ David Eiseman  
18 David Eiseman  
19 Attorney for Defendant Barnes & Noble, Inc.  
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10 TECHNOLOGY PROPERTIES LIMITED  
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13 vs.

14 BARNES & NOBLE, INC.,

15 Defendant.

CASE NO. 12-cv-03863-VC

[PROPOSED] ORDER GRANTING  
BARNES & NOBLE, INC.'S MOTION FOR  
ADMINISTRATIVE RELIEF FOR  
PERMISSION TO FILE REPLY BRIEF IN  
SUPPORT OF MOTION FOR DE NOVO  
DETERMINATION OF DISPOSITIVE  
MATTER REFERRED TO MAGISTRATE  
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16  
17 Date: July 23, 2015  
18 Time: 10:00 am  
19 Place: Courtroom 4 - 17th Floor  
20 Judge: Hon. Vince Chhabria  
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1 Barnes & Noble, Inc. (“Barnes & Noble”) has filed a Motion for Administrative Relief for  
2 Permission to File Reply Brief in Support of Motion for De Novo Determination of Dispositive  
3 Matter Referred to Magistrate Judge.

4 Having considered the arguments of the parties and the papers submitted, and good cause  
5 having been shown, the Court hereby GRANTS Barnes & Noble’s Motion for Administrative  
6 Relief for Permission to File Reply Brief in Support of Motion for De Novo Determination of  
7 Dispositive Matter Referred to Magistrate Judge.

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9 **IT IS SO ORDERED.**

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11 DATED: July \_\_\_\_, 2015

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HONORABLE VINCE CHHABRIA  
United States District Judge

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