

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**VAPOR POINT LLC, ET AL.,**

**Plaintiffs,**

**vs.**

**MOORHEAD, ET AL.,**

**Defendants.**

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**Civil Action No. 4:11-CV-4639**

**ORDER AND AMENDED FINAL JUDGMENT**

Pending before the Court is Defendants’ Motion for New Trial filed on April 3, 2015 (Instrument No. 330), Defendants’ Second Motion for New Trial filed on April 10, 2015 (Instrument No. 332), Defendants’ Third Motion for New Trial filed on July 6, 2015 (Instrument No. 351), Plaintiffs’ Motion for Determination of Exceptional Case Entitling Them to Attorneys’ Fees (Instrument No. 347), Plaintiffs’ Motion for Attorneys’ Fees (Instrument No. 349), and Plaintiffs’ Motion to Dismiss Infringement Claim and Motion for Entry of Judgment (Instrument No. 335).

I.

Defendants’ duplicative motions for new trial object to the Court’s closing of the case without allowing a trial on their affirmative defenses of laches, estoppel, quasi-estoppel, statute of limitations, and obligations to assign inventions, pleaded in Defendants’ Original Answer to Plaintiffs’ First Amended Complaint (Instrument No. 155). However, the parties stipulated of their own volition on August 5, 2014 to dismiss Counts III – VIII of Plaintiffs’ First Amended Complaint with prejudice in order to have the Court determine the issue of inventorship at an

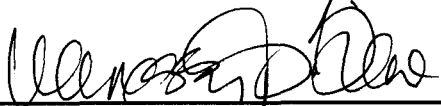
evidentiary hearing, which the Court held on November 3-6, 2014. All parties understood that the evidentiary hearing would resolve the issue of inventorship and would be dispositive of the remaining infringement claim in the case. Despite being given the opportunity to do so by the Court, Defendants failed to raise or address any affirmative defenses during the evidentiary hearing on inventorship. Furthermore, Defendants' affirmative defenses are specifically their defenses to Plaintiffs' inventorship claim. As such, Defendants' Motion for New Trial (**Instrument No. 330**), Defendant's Second Motion for New Trial (**Instrument No. 332**), and Defendants' Third Motion for New Trial (**Instrument No. 351**) are **DENIED**.

Plaintiffs' Motion for Determination of Exceptional Case Entitling Them to Attorneys' Fees (**Instrument No. 347**), and Plaintiffs' Motion for Attorneys' Fees (**Instrument No. 349**) are **DENIED**. Plaintiffs' Motion to Dismiss Counter-Plaintiffs' Infringement Claim and Motion for Entry of Judgment is **GRANTED**. (Instrument No. 335). For the reasons stated in the Court's Order denying Defendants' Motion for Correction of Inventorship of Vapor Point Patents (Instrument No. 271), denying Defendants' Motion for Correction of Inventorship (Instrument No. 272), and granting Plaintiffs' Motion for Correction of Inventorship (Instrument No. 273), signed on March 13, 2015 (Instrument No. 321), Counter-Plaintiffs' infringement claim is **DISMISSED** with prejudice.

**THIS IS A FINAL JUDGMENT.**

The Clerk shall enter this Order and provide a copy to all parties.

**SIGNED** on this the 24<sup>th</sup> day of August, 2015, at Houston, Texas.

  
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**VANESSA D. GILMORE**  
**UNITED STATES DISTRICT JUDGE**