SUPERIOR COURT
OF THE
STATE OF DELAWARE

JOSEPH R. SLIGHTS, III
JUDGE

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October 15, 2009

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Re: ***Rembrandt Technologies, LP v. Harris Corporation***
C.A. No. 07C-09-059-JRS
Upon Harris Corporation's Motion for Reargument. DENIED.

Dear Counsel:

Defendant, Harris Corporation ("Harris"), has moved for reargument of the Court's decision of August 14, 2009, granting plaintiff, Rembrandt Technologies, LP's ("Rembrandt") Motion for Relief from Judgment. For the reasons stated below,

Harris' motion is **DENIED.**

This case involves the parties' contractual rights regarding the use of technology covered by a patent relating to high definition television technology, referred to in this litigation as the '627 patent. The facts have been outlined in detail in previous opinions in this matter,[1] and the Court will not reiterate them here. Harris seeks reargument of the Court's Memorandum Opinion of August 14, 2009, in which the Court granted Rembrandt's Motion for Relief from Judgment pursuant to Delaware Superior Court Civil Rule 60(b)(6). Harris argues that the Court misapprehended certain facts and failed to consider relevant case law on the issue. Not surprisingly, Rembrandt maintains that the Court's order granting Rembrandt relief from judgment was proper.

This case has been marked by both parties' frequent shifts in position in response to the most recent or anticipated rulings in the parallel federal multi-district litigation regarding the '627 patent (the "MDL"). In response to the most recent shift, the Court granted Harris' motion to stay pending certain ruling(s) in the MDL, and thereafter granted Rembrandt's Motion for Relief from Judgment. The latter decision, in effect, vacated the Court's earlier grant of partial summary judgment in

[1] *See Rembrandt v. Harris*, 2009 WL 402332, at *1 (Del. Super. Feb. 12, 2009) (detailing the procedural and factual history); *Rembrandt v. Harris*, 2008 WL 4824066, at *1 (Del. Super. Oct. 31, 2008) (same).

Harris' favor. Harris' principal assertion in favor of reargument is that Rule 60(b)(6) allows relief only from final judgments and partial summary judgment is not a final judgment.

The Court agrees that an order granting partial summary judgment is not a final order for purposes of Rule 60.[2] Even without Rule 60, however, the Court still retains plenary power to "vacate, modify or set aside judgments or orders" where "reasonably necessary to ensure the proper administration of justice."[3]

After reviewing Harris' motion, the Court is satisfied that its decision to vacate partial summary judgment in Harris' favor was appropriate for the reasons set forth in its August 14, 2009, opinion. While the Court may have strayed from the correct procedural path, the Court remains satisfied that it ultimately reached the correct result. Independent of Rule 60, the Court's power to vacate its own orders and opinions is well established.[4] As previously explained, the Court based its decision to grant partial summary judgment on assumptions and positions taken by the parties

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[2] *See, e.g.*, *McKenzie v. City of Rehoboth*, 755 A.2d 389, 2000 WL 724708, at *1 (Del. May 23, 2000) (TABLE) (noting that an order granting partial summary judgment is not a final order).

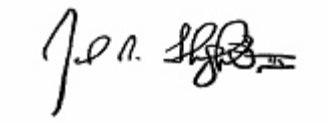
[3] *State v. Guthman*, 619 A.2d 1175, 1178 (Del. 1993); *Tyndall v. Tyndall*, 214 A.2d 124, 125 (Del. 1965).

[4] *Guthman*, 619 A.2d at 1178 ("It is a basic principle of jurisprudence that courts are generally afforded inherent powers to undertake whatever action is reasonably necessary to ensure the proper administration of justice."); *Lyons v. Delaware Liquor Comm'n*, 58 A.2d 889, 895 (Del. Ct. Gen. Sess. 1948) ("It is an inherent power of Courts of record to vacate their judgments or orders under proper circumstances. . . .").

that no longer are valid or credible. The interests of justice dictate that Harris' entitlement to a license be litigated anew after the *Markman* issues are finally litigated in the MDL. Should the licensing issue remain at that time, the parties may return to the Court and relitigate the cross motions for summary judgement. Harris' Motion for Reargument is **DENIED**.

IT IS SO ORDERED.

Very truly yours,



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