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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VOLTERRA SEMICONDUCTOR CORPORATION,

Case No. C-08-05129 JCS

Plaintiff,

v.

PRIMARION, INC., ET AL.,

Defendants.

ORDER STRIKING INTERVENING RIGHTS DEFENSE FROM DEFENDANTS' SECOND AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

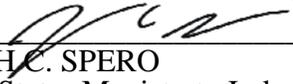
United States District Court
For the Northern District of California

On December 22, 2011, the Court granted in part Defendants' motion to amend their answer to assert an intervening rights affirmative defense. See Docket No. 1649 (Defendants' Motion for Leave (1) to Amend Their Answer to Assert a Defense of Intervening Rights, (2) to Move for Summary Judgment on Their Intervening Rights Defense, and (3) to Move to Set Aside the Parties' Stipulations and for Reconsideration of Summary Judgment of Infringement), Docket No. 1681 (minute order of December 22, 2011 hearing). On the record, the Court explained that it was permitting Defendants to amend their answer at this late stage of the case only because of a change in the law, namely, the Federal Circuit's decision in *Marine Polymer Techs., Inc. v. Hemcon, Inc.*, --- F.3d ---, No. 2010-1548, 2011 WL 4435986 (Fed. Cir. Sept. 26, 2011). Subsequently, the Federal Circuit, sitting *en banc*, reversed the panel decision in the *Marine Polymer* case. See Docket No. 1728. Therefore, the Court **STRIKES** Defendants' intervening rights defense (asserted as

1 Defendants' Ninth Affirmative Defense in the Second Amended Answer, Affirmative Defenses, and
2 Counterclaims, docket no. 1693).

3 IT IS SO ORDERED.

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5 Dated: April 3, 2012

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10 JOSEPH C. SPERO
11 United States Magistrate Judge
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