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15 *Attorneys for Plaintiffs*

16 *Pacific Scientific Energetic Materials Company*

17 *(Arizona), LLC and Pacific Scientific Energetic*

18 *Materials Company (California), LLC*

19 UNITED STATES DISTRICT COURT

20 DISTRICT OF ARIZONA

21 Pacific Scientific Energetic Materials
22 Company (Arizona), LLC and Pacific
23 Scientific Energetic Materials Company
24 (California), LLC,

25 Plaintiffs,

26 v.

27 Ensign-Bickford Aerospace & Defense Co.,

28 Defendant.

No. _____

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND TORTIOUS
INTERFERENCE**

—AND—

DEMAND FOR JURY TRIAL

1 Plaintiffs, Pacific Scientific Energetic Materials Company (Arizona), LLC and
2 Pacific Scientific Energetic Materials Company (California), LLC (collectively
3 “PSEMC”), for their Complaint against Defendant Ensign-Bickford Aerospace & Defense
4 Co. (“Ensign-Bickford”) allege as follows:

5 **PARTIES**

6 1. Plaintiff Pacific Scientific Energetic Materials Company (Arizona), LLC is
7 a Delaware corporation with its principal place of business in Chandler, Arizona. Plaintiff
8 Pacific Scientific Energetic Materials Company (California), LLC is a California
9 corporation with its principal place of business in Valencia, California.

10 2. Defendant Ensign-Bickford is a Connecticut corporation with its principal
11 place of business in Connecticut.

12 **JURISDICTION AND VENUE**

13 3. This Court has jurisdiction over the subject matter of this action pursuant to
14 28 U.S.C. §§ 2201-2202, 1331, 1367, and 1338(a). This Court also has diversity
15 jurisdiction over this case pursuant to 28 U.S.C. § 1332 because this action is between
16 citizens of different states and the amount in controversy exceeds \$75,000 (exclusive of
17 interest and costs).

18 4. Venue is proper in this Court under 28 U.S.C. § 1391(b), (c) and (d), and
19 1400(b), because Ensign-Bickford is subject to personal jurisdiction in this district and
20 thus resides in this district, and a substantial part of the alleged events or omissions giving
21 rise to the claims occurred in this district.

22 5. This Court has personal jurisdiction over the parties to this lawsuit. This
23 Court has personal jurisdiction over Ensign-Bickford because, among other reasons,
24 Ensign-Bickford has purposefully directed activities to this district, maintains an office in
25 this district (specifically, Tempe, Arizona), and has general and systematic contacts with
26 this district. Furthermore, the claims herein arise from Ensign-Bickford’s intentional
27 sending of correspondence to PSEMC in this district. Ensign-Bickford has also
28 intentionally interfered with the business of PSEMC, a forum resident, by inducing

1 PSEMC's customers and potential customers to disclose PSEMC's highly confidential,
2 proprietary and sensitive competitive information.

3 **FACTUAL BACKGROUND**

4 6. PSEMC is the industry leader in the design, development, and production of
5 ordnance, pyrotechnics, electronics and laser components and systems for the aerospace,
6 defense, and commercial industries. PSEMC was established in 1975 to manufacture a
7 wide range of pyrotechnic devices in support of fire suppression systems on commercial
8 and military aircraft.

9 7. By way of example, PSEMC's products include fire suppression systems,
10 cartridges, detonators, egress systems, shaped charges, active protection systems, flight
11 termination systems, gas generators, initiators, destruct systems, safe-arm devices, bolt
12 cutters, and start cartridges. PSEMC also offers cartridge actuated devices, including pin
13 pullers, separator systems, piston actuators, explosive bolts, frangible nuts, and wing
14 actuators; propellant actuated devices, including attitude control motors and small rocket
15 motors; and systems for launch vehicles and payload separation, aircraft safety, and
16 tactical missile applications. As a result of its innovations, PSEMC has submitted
17 multiple patent applications for patent rights relating to its technology.

18 8. Ensign-Bickford is a direct competitor of PSEMC in several highly
19 competitive fields, and PSEMC and Ensign-Bickford compete directly for government
20 and commercial contracts and for customers. On its website, Ensign-Bickford touts itself
21 as "the global leader in energetic systems used in minefield and obstacle breaching,
22 military demolition, vehicle protection, tactical weapons, and space & strategic systems."

23 9. Throughout 2009 and 2010, Ensign-Bickford has sent a series of letters to
24 PSEMC about Ensign-Bickford's patent portfolio, escalating to the point that Ensign-
25 Bickford has accused PSEMC of infringing three United States patents, Nos. 6,584,907;
26 6,889,610; and 7,278,658 (collectively, "the patents-in-suit"). In its letters, Ensign-
27 Bickford has repeatedly demanded that PSEMC prove that it does not infringe the patents-
28 in-suit, and has insisted that PSEMC provide Ensign-Bickford with highly confidential,

1 proprietary and sensitive competitive information in support of that proof. In response,
2 PSEMC has repeatedly insisted to Ensign-Bickford that it does not infringe the patents-in-
3 suit, and that it does not need to and will not take a license to those patents. Moreover,
4 PSEMC has refused to provide its competitor Ensign-Bickford with its highly
5 confidential, proprietary and sensitive competitive information, and will not do so in the
6 future.

7 10. The dispute between Ensign-Bickford and PSEMC started with a letter from
8 Ensign-Bickford to PSEMC dated May 29, 2009. In that letter, Ensign-Bickford wrote
9 directly to the president of PSEMC, informing PSEMC of the patents-in-suit and attaching
10 those patents. Ensign-Bickford claimed its technology might be “of use” under certain
11 confidential U.S. government programs in which PSEMC was engaged, and offered to
12 enter license negotiations.

13 11. Before the May 29, 2009 letter, the Parties had engaged in preliminary
14 discussions about collaborating and about a potential cooperative business arrangement.
15 In connection with those discussions, the Parties executed a Proprietary Information
16 Exchange Agreement in November 2009.

17 12. On November 16, 2009, Ensign-Bickford’s president and CEO emailed
18 PSEMC’s president, requesting highly confidential, proprietary and sensitive competitive
19 information about certain confidential programs in which PSEMC was engaged, claiming
20 the request was to address issues regarding the patents-in-suit. Ensign-Bickford indicated
21 that it needed to address the patent allegations before the parties could begin any
22 discussions about a collaborative business arrangement: “As I mentioned to you in AZ last
23 week, EBA&D [Ensign-Bickford] would like to get past the networked ordnance
24 technology questions between our companies prior to marching forward on exploring
25 collaboration opportunities.”

26 13. On December 15, 2009, Ensign-Bickford sent another letter to PSEMC, now
27 insisting that PSEMC provide its highly confidential, proprietary and sensitive
28

1 competitive information about certain programs in which PSEMC was engaged, for
2 review “in light of Ensign-Bickford’s patent estate in this area.”

3 14. On February 2, 2010, PSEMC responded to Ensign-Bickford’s
4 December 15, 2009 letter, explaining in detail why PSEMC’s product does not meet the
5 limitations of any claims of the patents-in-suit. PSEMC wrote: “In summary, PSEMC’s
6 SEA™ is wholly distinct from Ensign-Bickford’s patent portfolio in numerous, significant
7 respects. We trust that this explanation resolves any concerns that Ensign-Bickford may
8 have had.”

9 15. PSEMC’s detailed letter did not end the issue, however. On March 10,
10 2010, Ensign-Bickford wrote to PSEMC to reject PSEMC’s explanation, claiming that
11 “PSEMC does not fully understand the breadth of Ensign-Bickford’s networked ordnance
12 patent estate. As discussed within the individual patents, Ensign-Bickford’s networked
13 patent estate covers many embodiments *including those presented in your letter*”
14 (emphasis added). Thus, Ensign-Bickford directly stated that its patents “cover”
15 PSEMC’s product, which was a direct allegation that PSEMC was infringing Ensign-
16 Bickford’s patents. Ensign-Bickford again requested PSEMC’s highly confidential,
17 proprietary and sensitive competitive information for “analysis.”

18 16. PSEMC had no intention of disclosing the detailed, highly confidential,
19 proprietary and sensitive competitive information that Ensign-Bickford requested for its
20 patent infringement allegations, and fully and reasonably believed it did not infringe
21 Ensign-Bickford’s patents. On July 8, 2010, Ensign-Bickford again wrote to request
22 access to PSEMC’s highly confidential, proprietary and sensitive competitive information
23 for “analysis.” In that letter, Ensign-Bickford also gave a direct ultimatum: “unless we
24 receive your response by July 20, 2010, we will evaluate other options for protecting our
25 intellectual property.”

26 17. On July 13, 2010, PSEMC responded to Ensign-Bickford’s infringement
27 allegations and threat. In its July 13 letter, PSEMC again strongly refuted infringement,
28 and again declined to provide its highly confidential, proprietary and sensitive competitive

1 information to Ensign-Bickford for analysis. PSEMC requested an explanation of how,
2 specifically, PSEMC allegedly infringed Ensign-Bickford's patents: "Since you contend
3 that PSEMC misunderstands your patents, we request a written explanation of your
4 position. We are amenable to meeting with your company to discuss your patents, but
5 first we wish to receive your written analysis as to how the claims of Ensign-Bickford's
6 patents allegedly read on PSEMC's systems, with sufficient detail to substantiate your
7 claim that PSEMC would benefit from a license to your patents."

8 18. On July 29, 2010, Ensign-Bickford responded by letter. This time, Ensign-
9 Bickford said it had contacted PSEMC's customers and future customers to obtain
10 purported confirmation that PSEMC was infringing the patents-in-suit. According to
11 Ensign-Bickford: "The basis of our concerns is *information obtained from customers* who
12 have sought either alternatives to PSEMC or who have been in the process of considering
13 Ensign-Bickford's system or PSEMC's system who understand our patent estate and have
14 expressed that they don't see how it is possible that PSEMC *is not in conflict* with the
15 Ensign-Bickford patent estate We think US patent 6,584,907 is particularly relevant"
16 (emphasis added). Ensign-Bickford again demanded PSEMC's highly confidential,
17 proprietary and sensitive competitive information, and requested that PSEMC prove that it
18 does not "conflict with"—i.e., infringe—the patents-in-suit. Ensign-Bickford again
19 indicated that it needed to address the patent allegations before the parties could "enter
20 exploratory discussions regarding commercial collaboration."

21 19. PSEMC has confidentiality agreements with its customers and potential
22 customers. On information and belief, both before and after the July 29, 2010 letter,
23 Ensign-Bickford improperly induced PSEMC's customers and potential customers to
24 disclose PSEMC's highly confidential, proprietary and sensitive competitive information,
25 in violation of those customers' and potential customers' agreements. On information and
26 belief, Ensign-Bickford did so to interfere with PSEMC's contracts and to disrupt its
27 future contractual relations and valid business expectancies with those customers.
28

1 PSEMC's actions have caused Ensign-Bickford to lose customers and to lose future
2 contracts with those customers.

3 20. By letter dated August 30, 2010, PSEMC's president responded to Ensign-
4 Bickford's July 29 letter by directly addressing Ensign-Bickford's president. In that letter,
5 PSEMC strongly refuted Ensign-Bickford's infringement allegations in detail, and again
6 refused to provide PSEMC's highly confidential, proprietary and sensitive competitive
7 information. PSEMC provided further details in an attachment to the letter. In the letter
8 itself, PSEMC also explained that, even if any claims of Ensign-Bickford's patents were
9 relevant to PSEMC's activities, those claims would be rendered invalid in light of
10 development work that took place before the earliest filing date for Ensign-Bickford's
11 patents.

12 21. In its most recent letter, dated September 30, 2010, Ensign-Bickford
13 responded by again insisting that PSEMC prove that it "does not in fact infringe Ensign-
14 Bickford's patents" and that it "doesn't and never did conflict with Ensign-Bickford's
15 patent estate." Ensign-Bickford once again demanded PSEMC's highly confidential,
16 proprietary and sensitive competitive information, and denied that the patent claims were
17 invalid.

18 22. As of the filing of this lawsuit, PSEMC has not responded to Ensign-
19 Bickford's September 30 letter, because doing so would be futile. PSEMC does not
20 infringe the patents-in-suit, believes any relevant claims in those patents are invalid, will
21 not provide Ensign-Bickford with its highly confidential, proprietary and sensitive
22 competitive information, and will not take a license to the patents-in-suit. Ensign-
23 Bickford has repeatedly ignored PSEMC's detailed explanations proving that PSEMC
24 does not infringe, and instead insists upon keeping PSEMC under the threat of potential
25 litigation and making false allegations to PSEMC about alleged infringement.

26 23. Under these circumstances, including Ensign-Bickford's continued
27 accusations of infringement of the patents-in-suit and Ensign-Bickford's persistent
28 demands for highly confidential, proprietary and sensitive competitive information from

1 PSEMC, an immediate, substantial, definite, actual and justiciable controversy exists
2 between PSEMC and Ensign-Bickford regarding non-infringement of the patents-in-suit,
3 and PSEMC is entitled to relief as requested. On that basis PSEMC brings this
4 declaratory judgment action.

5 **COUNT ONE**

6 **INVALIDITY AND NONINFRINGEMENT OF U.S. PATENT NO. 6,584,907**

7 24. PSEMC realleges and incorporates by reference the allegations set forth in
8 Paragraphs 1-23 as though fully set forth herein.

9 25. PSEMC has not directly or indirectly infringed, nor is it presently directly or
10 indirectly infringing, any valid claims of U.S. Patent No. 6,584,907 (“the ’907 patent”).

11 26. Each claim of the ’907 patent is invalid.

12 27. Ensign-Bickford’s infringement claims against PSEMC with respect to the
13 ’907 patent are barred in whole or in part by the doctrines of laches and equitable
14 estoppel.

15 28. There is a valid and justiciable controversy between the Parties as to
16 whether PSEMC has infringed any valid claims of the ’907 patent and as to the validity
17 and enforceability against PSEMC of the claims of the ’907 patent. PSEMC desires a
18 judicial determination and a declaration of the respective rights of the Parties regarding
19 the ’907 patent. A judicial declaration concerning these matters is necessary and
20 appropriate at this time.

21 **COUNT TWO**

22 **INVALIDITY AND NONINFRINGEMENT OF U.S. PATENT NO. 6,889,610**

23 29. PSEMC realleges and incorporates by reference the allegations set forth in
24 Paragraphs 1-28 as though fully set forth herein.

25 30. PSEMC has not directly or indirectly infringed, nor is it presently directly or
26 indirectly infringing, any valid claims of U.S. Patent No. 6,889,610 (“the ’610 patent”).

27 31. Each claim of the ’610 patent is invalid.

28 32. Ensign-Bickford’s infringement claims against PSEMC with respect to the

1 '610 patent are barred in whole or in part by the doctrines of laches and equitable
2 estoppel.

3 33. There is a valid and justiciable controversy between the Parties as to
4 whether PSEMC has infringed any valid claims of the '610 patent and as to the validity
5 and enforceability against PSEMC of the claims of the '610 patent. PSEMC desires a
6 judicial determination and a declaration of the respective rights of the Parties regarding
7 the '610 patent. A judicial declaration concerning these matters is necessary and
8 appropriate at this time.

9 **COUNT THREE**

10 **INVALIDITY AND NONINFRINGEMENT OF U.S. PATENT NO. 7,278,658**

11 34. PSEMC realleges and incorporates by reference the allegations set forth in
12 Paragraphs 1-33 as though fully set forth herein.

13 35. PSEMC has not directly or indirectly infringed, nor is it presently directly or
14 indirectly infringing, any valid claims of U.S. Patent No. 7,278,658 ("the '658 patent").

15 36. Each claim of the '658 patent is invalid.

16 37. Ensign-Bickford's infringement claims against PSEMC with respect to the
17 '658 patent are barred in whole or in part by the doctrines of laches and equitable
18 estoppel.

19 38. There is a valid and justiciable controversy between the Parties as to
20 whether PSEMC has infringed any valid claims of the '658 patent and as to the validity
21 and enforceability against PSEMC of the claims of the '658 patent. PSEMC desires a
22 judicial determination and a declaration of the respective rights of the Parties regarding
23 the '658 patent. A judicial declaration concerning these matters is necessary and
24 appropriate at this time.

25 **COUNT FOUR**

26 **INTENTIONAL INTERFERENCE WITH CONTRACT**

27 39. PSEMC realleges and incorporates by reference the allegations set forth in
28 Paragraphs 1-38 as though fully set forth herein.

1 F. For an injunction precluding Ensign-Bickford and its officers, agents,
2 servants, employees, attorneys, and any other person acting in concert or participation
3 with such person, who receive actual notice of the order or judgment, from inducing
4 PSEMC's customers and potential customers from disclosing PSEMC's confidential,
5 proprietary and sensitive competitive information in violation of those customers' and
6 potential customers' confidentiality (nondisclosure) agreements;

7 G. For punitive damages on PSEMC's tortious interference claims, because the
8 conduct of Ensign-Bickford was outwardly aggravated, outrageous, malicious, or
9 fraudulent, thus justifying an award of punitive damages to deter such egregious conduct;
10 and

11 H. Such other and further relief as the court may deem just and proper.

12 **Demand For Jury Trial**

13 PSEMC demands a trial by jury on all issues so triable.

14
15 Dated: October 21, 2010

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