

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOVELLUS SYSTEMS, INC.,

Plaintiff,

vs.

PLASMA PHYSICS CORP. and
SOLAR PHYSICS CORP.,

Defendants.

Case No. 00 CV 3146 LDW (ARL)

**AMENDED COMPLAINT FOR
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
HAUPPAUGE OFFICE

JUN 8 - 2000

ENTERED

Plaintiff Novellus Systems, Inc. ("Novellus") alleges as follows:

THE PARTIES

1. Novellus is a California corporation having its principal place of business at 4000 North First Street, San Jose, California 95134.
2. On information and belief, Plasma Physics Corporation ("Plasma Physics") is a New York corporation having its principal place of business at 40 Overlook Road, Locust Valley, New York 11560.
3. On information and belief, Solar Physics Corporation ("Solar Physics") is a New York corporation having its principal place of business at 40 Overlook Road, Locust Valley, New York 11560.

JURISDICTION

4. This action for declaratory and injunctive relief arises under the Patent Act of the United States, title 35, United States Code, and under the Declaratory Judgment Act, title 28, United States Code, sections 2201 and 2202. The Court has subject matter jurisdiction of such claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

VENUE

5. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b)(c).

GENERAL ALLEGATIONS

6. Novellus designs, manufactures, and sells systems that perform, among other things, dielectric plasma enhanced chemical vapor deposition ("PECVD") and dielectric high-density plasma chemical vapor deposition ("HDP CVD"), processes used in the manufacture of semiconductor chips. In particular, Novellus designs, manufactures, and sells the Concept One and Concept Two systems.

7. On information and belief, U.S. Patent No. 4,226,897 (the "'897 patent'"), titled "Method of Forming Semiconducting Materials and Barriers," issued to Plasma Physics on October 7, 1980. The named inventor of the '897 patent is John H. Coleman. On information and belief, Plasma Physics is the owner of the '897 patent. On information and belief, Solar Physics has an exclusive license with respect to certain aspects of the '897 patent.

8. On information and belief, U.S. Patent No. 5,470,784 (the "'784 patent'"), titled "Method of Forming Semiconducting Materials and Barriers Using a Multiple Chamber Arrangement," issued to Plasma Physics on November 28, 1995. The named inventor of the '784 patent is John H. Coleman. On information and belief, Plasma Physics is the owner of the '784 patent. On information and belief, Solar Physics has an exclusive license with respect to certain aspects of the '784 patent.

9. The '897 patent and the '784 patent are collectively referred to herein as the "Coleman Patents."

10. On information and belief, Plasma Physics and Solar Physics have contacted customers of Novellus and have falsely asserted that its customers infringe the Coleman patents.

11. On information and belief, Plasma Physics and Solar Physics have falsely represented that the use of Novellus' Concept One and Concept Two systems infringes the Coleman patents.

12. On or around December 28, 1999, Plasma Physics and Solar Physics sued a number of Novellus' customers for alleged infringement of the Coleman patents in this Court.

CAUSE OF ACTION

(Declaratory Relief for Non-Infringement, Invalidity and Unenforceability)

13. Novellus incorporates by reference the allegations set forth in paragraphs 1 through 12 of this Complaint as though set forth in full herein.

14. Based on the acts, conduct, and statements of Plasma Physics and Solar Physics described above, Novellus has formed a reasonable apprehension and belief that Plasma Physics and Solar Physics intend to and will sue Novellus for alleged infringement of the Coleman patents in the immediate future.

15. An actual controversy exists between Novellus, Plasma Physics, and Solar Physics as to whether any equipment made, used, or sold by Novellus infringes any of the claims of the Coleman patents.

16. An actual controversy exists between Novellus, Plasma Physics, and Solar Physics as to whether the claims of the Coleman patents are valid or enforceable.

17. Novellus desires a judicial determination of the foregoing controversy and a declaration by the Court of the parties' respective rights with respect to all such matters as alleged hereinabove.

18. Novellus has no adequate remedy at law. The aforesaid conduct of Plasma Physics and Solar Physics has caused, and if not enjoined, will continue to cause, irreparable damage to Novellus.

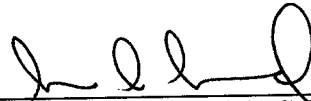
WHEREFORE, Novellus prays that this Court:

- (a) Enter judgment that the Coleman patents are invalid, unenforceable, and not infringed by Novellus;
- (b) Declare this an exceptional case under 35 U.S.C. § 285 and award Novellus its attorney's fees and costs incurred in this action;
- (c) Enter an order permanently enjoining Plasma Physics and Solar Physics and their officers, agents, servants, employees, and attorneys, and all persons acting in concert with them (i) from making any claims to any person or entity that Novellus' PECVD or HDP CVD systems or the use of such systems infringe the Coleman

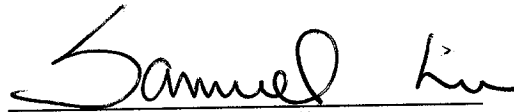
- patents, (ii) from interfering with or threatening to interfere with the manufacture, sale, license, or use of Novellus' PECVD or HDP CVD systems, and (iii) from instituting or prosecuting any lawsuit or proceeding placing at issue the right of Novellus, its customers, licensees, successors, or assigns to make, use, or sell Novellus' PECVD or HDP CVD systems or products made using such systems;
- (d) Grant Novellus such other and further relief as may be deemed just and proper.

Dated: June 7, 2000

Respectfully submitted,



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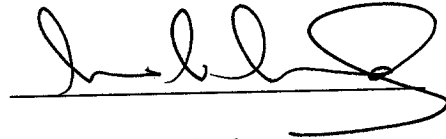


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IRELL & MANELLA LLP

Attorneys for Plaintiff
NOVELLUS SYSTEMS, INC.

CERTIFICATE OF SERVICE

I hereby certify that the enclosed AMENDED COMPLAINT was served by first class mail on defendants Plasma Physics Corp. and Solar Physics Corp., both at 40 Overlook Road, Locust Valley, NY 11560, on June 7, 2000.

A handwritten signature in black ink, appearing to read 'Allison C. Collard', written over a horizontal line.

Allison C. Collard