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Attorneys for Plaintiff

Symyx Technologies, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SYMYX TECHNOLOGIES, INC., a  
Delaware corporation,

Plaintiff,

vs.

ACCELERGY CORPORATION, a Delaware  
Corporation, YOUQI WANG, PEIJUN  
CONG, and YUMIN LIU,

Defendants.

CASE NO. C0704050RS

**FIRST AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT, BREACH OF  
CONTRACT, BREACH OF DUTY OF  
LOYALTY, INTENTIONAL  
INTERFERENCE WITH CONTRACT  
AND UNFAIR COMPETITION**

**DEMAND FOR JURY TRIAL**

Plaintiff Symyx Technologies, Inc. ("Symyx") complains in this action against Defendants  
Accelergy Corporation ("Accelergy"), Youqi Wang ("Wang"), Peijun Cong ("Cong"), and Yumin  
Liu ("Liu") as follows:

**THE PARTIES**

1. Symyx is a corporation incorporated under the laws of the State of Delaware with  
its principal place of business in Santa Clara, California. Symyx is qualified and duly authorized  
to do business in the State of California. At all relevant times, Symyx is and was an industry  
leader in the development and application of High Throughput Experimentation (HTE), an

1 advanced materials development technology. Symyx performs research for customers using  
2 proprietary technologies to discover new and innovative materials. Symyx also designs, builds  
3 and sells automated research equipment and associated software. Materials discovered using  
4 Symyx's research technologies have been commercialized in a wide variety of industrial  
5 applications, including, for example, catalysts for use in the energy industry.

6         2.         Symyx is informed and believes and on that basis alleges that Accelergy is a  
7 Delaware corporation with its principal place of business in Palo Alto, California.

8         3.         Symyx is informed and believes and on that basis alleges that, at all relevant times,  
9 Accelergy was and is a materials development company engaged in the business of formulating  
10 advanced materials for the energy industry using research processes based on HTE. Symyx is  
11 further informed that former Symyx employees who worked on the development and  
12 implementation of Symyx's patented research and development methods are currently working for  
13 Accelergy to develop and implement research and development methods and processes that  
14 infringe Symyx's proprietary patent rights.

15         4.         Symyx is informed and believes and on that basis alleges that Wang is an  
16 individual residing in California. Wang is a former Symyx employee and named inventor on  
17 approximately eight issued United States patents assigned to Symyx. Symyx is informed and  
18 believes and on that basis alleges that, unbeknownst to Symyx, Wang co-founded Accelergy  
19 while he was still a Symyx employee and is currently Accelergy's Chief Technology Officer  
20 (CTO).

21         5.         Symyx is informed and believes and on that basis alleges that defendant Cong is an  
22 individual residing in California. Cong is a former Symyx employee and named inventor on  
23 approximately ten issued United States patents assigned to Symyx. Symyx is informed and  
24 believes and on that basis alleges that, unbeknownst to Symyx, Cong participated in the effort to  
25 form Accelergy and Cong left Symyx to join Accelergy.

26         6.         Symyx is informed and believes and on that basis alleges that defendant Liu is an  
27 individual residing in California. Liu is a former Symyx employee and named inventor on  
28 approximately eight issued United States patents assigned to Symyx. Symyx is informed and

1 believes and on that basis alleges that, unbeknownst to Symyx, Liu participated in the effort to  
2 form Accelergy and Liu left Symyx to join Accelergy.

3 **JURISDICTION AND VENUE**

4 7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§  
5 1331 and 1338(a) in that this case arises under the patent laws of the United States, 35 U.S.C. § 1  
6 *et seq.*

7 8. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C.  
8 § 1367, in that the facts underlying the state law claims are so related to the patent law claims that  
9 they form part of the same case or controversy under Article III of the United States Constitution.

10 9. Defendant Accelergy is subject to personal jurisdiction in this Court because, *inter*  
11 *alia*, and upon information and belief, Accelergy has its principal place of business and office in  
12 this judicial district and directly and through agents regularly does, solicits and transacts business  
13 in the Northern District of California and elsewhere in the state of California, including business  
14 with respect to the products and services that are the subject of this action.

15 10. This Court has personal jurisdiction over Wang because, upon information and  
16 belief, Wang resides in California and he has consented to jurisdiction in this court by express  
17 written agreement with Symyx.

18 11. This Court has personal jurisdiction over Cong because, upon information and  
19 belief, Cong resides in California and he has consented to jurisdiction in this court by express  
20 written agreement with Symyx.

21 12. This Court has personal jurisdiction over Liu because, upon information and belief,  
22 Liu resides in California and he has consented to jurisdiction in this court by express written  
23 agreement with Symyx.

24 13. Symyx avers upon information and belief that a substantial part of the events giving  
25 rise to its claims occurred in this district. Symyx also avers upon information and belief that the  
26 defendants have committed the acts complained of within this judicial district. Venue is therefore  
27 proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b).



**FIRST CLAIM FOR RELIEF**

(Infringement of United States Patent No. 7,216,113 Against Accelergy)

18. Symyx incorporates the allegations of paragraphs 1-3, 7-9, 13 and 14 as if fully set forth in this paragraph.

19. United States Patent No. 7,216,113 (the '113 patent) entitled "Remote Execution of Materials Library Designs" was duly and legally issued to Symyx on May 8, 2007. Symyx has the right to sue for infringements of this patent. A true and correct copy of the '113 patent is attached hereto as Exhibit 1.

20. Accelergy has directly infringed and continues to directly infringe the '113 patent. Accelergy's infringing acts include making, using, offering to sell, selling, and/or importing products and/or services that infringe the '113 patent and/or practicing methods covered by the '113 patent in violation of 35 U.S.C. § 271(a). Accelergy has also been knowingly and intentionally inducing others to infringe the '113 patent in violation of 35 U.S.C. § 271(b), and has been contributorily infringing the '113 patent in violation of 35 U.S.C. § 271(c).

21. Accelergy's infringement of the '113 patent has caused damage to Symyx, and Symyx is entitled to recover from Accelergy the damages sustained by Symyx as a result of its wrongful acts in an amount subject to proof at trial.

22. Accelergy's infringement of the '113 patent will continue to damage Symyx's business, causing irreparable harm for which there is no adequate remedy at law, unless it is enjoined by this Court, entitling Symyx to injunctive relief against Accelergy and all its agents, employees and others who are participating in its acts of infringement.

**SECOND CLAIM FOR RELIEF**

(Breach of Written Contract Against Youqi Wang)

23. Symyx incorporates the allegations of paragraphs 1-17 as if fully set forth in this paragraph.

24. On or about March 1, 1996, Wang and Symyx entered into a written employment Confidential Information, Secrecy, and Invention Agreement ("Wang Agreement"). As part of the Wang Agreement, Wang agreed, while employed at Symyx, not to engage in any employment,

1 consulting or other activity in business directly or indirectly competitive with Symyx's business.

2       25.     The Wang Agreement entered into by Symyx and Wang is a valid and enforceable  
3 contract.

4       26.     Symyx has performed any or all of its obligations or conditions imposed on it under  
5 the Wang Agreement, or such conditions and obligations have been otherwise waived by Wang's  
6 breaches as alleged herein.

7       27.     Wang has breached the Wang Agreement by, among other things, using Symyx's  
8 business information to form a company to compete with Symyx in violation of the Wang  
9 Agreement.

10       28.     As a direct and proximate result of Wang's breach of the Wang Agreement, Symyx  
11 has been damaged in an amount to be proven at trial.

12       29.     In addition, as a direct and proximate result of Wang's breach of the Wang  
13 Agreement, Symyx has been irreparably injured, and has no adequate remedy at law. As a result,  
14 Symyx is entitled to injunctive and other forms of equitable relief against Wang.

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17                   **THIRD CLAIM FOR RELIEF**

18                   (Breach of Duty of Loyalty Against Youqi Wang)

19       30.     Symyx incorporates the allegations of paragraphs 1-17, and 24-29 as if fully set  
20 forth in this paragraph.

21       31.     As an employee of Symyx, Wang owed a duty of undivided loyalty to his  
22 employer. Pursuant to this duty, during his employment with Symyx, Wang could not compete  
23 with Symyx, or assist a competitor of Symyx, or use or disclose Symyx's information in  
24 contravention of the Wang Agreement. Pursuant to this duty, Wang was also required to always  
25 give preference to Symyx's business over his own, similar interests during the course of his  
26 employment with Symyx.

27  
28       32.     Wang breached his duty of loyalty to Symyx by using Symyx's information, data

1 and employees to secretly create a business that competed with Symyx and infringed Symyx's  
2 proprietary patent rights.

3         33. As a direct and proximate result of Wang's breach of duty of loyalty, Symyx has  
4 incurred damages in an amount not yet ascertained, but in any event in excess of the jurisdictional  
5 amount of this Court. Symyx, therefore, is entitled to recover compensatory damages in an  
6 amount to be determined at trial.

7  
8         34. In breaching his duty of loyalty to Symyx, Wang acted with malice, fraud and  
9 oppression, and in conscious disregard of Symyx's rights. Accordingly, Symyx is entitled to  
10 recover exemplary damages from Wang in an amount to be determined at trial.

11                                 **FOURTH CLAIM FOR RELIEF**

12                                 (Breach of Contract Against Peijun Cong)

13         35. Symyx incorporates the allegations of paragraphs 1-17 as if fully set forth in this  
14 paragraph.

15         36. On October 25, 1996, Peijun Cong entered into a Confidential Information,  
16 Secrecy, and Invention Agreement with Symyx ("Cong Agreement"). As part of the Cong  
17 Agreement, Peijun Cong agreed, while employed at Symyx, not to engage in any employment,  
18 consulting or other activity in business directly or indirectly competitive with Symyx's business.

19         37. The Cong Agreement entered into by Symyx and Peijun Cong is a valid and  
20 enforceable contract.

21  
22         38. Symyx has performed any or all of its obligations or conditions imposed on it under  
23 the Cong Agreement, or such conditions and obligations have been otherwise waived by Cong's  
24 breaches as alleged herein.

25         39. Cong has breached the Cong Agreement by, among other things, using Symyx's  
26 business information to form a company to compete with Symyx in violation of the Cong  
27 Agreement.  
28

1           40.     As a direct and proximate result of Peijun Cong's breach of the Cong Agreement,  
2 Symyx has been damaged in an amount to be proven at trial.

3           41.     In addition, as a direct and proximate result of Cong's breach of the Cong  
4 Agreement, Symyx has been irreparably injured, and has no adequate remedy at law. As a result,  
5 Symyx is entitled to injunctive and other forms of equitable relief against Cong.  
6

7                                   **FIFTH CLAIM FOR RELIEF**

8                                   (Breach of Duty of Loyalty Against Peijun Cong)

9           42.     Symyx incorporates the allegations of paragraphs 1-17, and 36-41 as if fully set  
10 forth in this paragraph.

11           43.     As an employee of Symyx, Cong owed a duty of undivided loyalty to his employer.  
12 Pursuant to this duty, during his employment with Symyx, Cong could not compete with Symyx,  
13 or assist a competitor of Symyx, or use or disclose Symyx's information in contravention of the  
14 Cong Agreement. Pursuant to this duty, Cong was also required to always give preference to  
15 Symyx's business over his own, similar interests during the course of his employment with  
16 Symyx.  
17

18           44.     Cong breached his duty of loyalty to Symyx by using Symyx's information, data  
19 and employees to secretly create a business that competed with Symyx and infringed Symyx's  
20 proprietary patent rights.

21           45.     As a direct and proximate result of Cong's breach of duty of loyalty, Symyx has  
22 incurred damages in an amount not yet ascertained, but in any event in excess of the jurisdictional  
23 amount of this Court. Symyx, therefore, is entitled to recover compensatory damages in an  
24 amount to be determined at trial.  
25

26           46.     In breaching his duty of loyalty to Symyx, Cong acted with malice, fraud and  
27 oppression, and in conscious disregard of Symyx's rights. Accordingly, Symyx is entitled to  
28 recover exemplary damages from Cong in an amount to be determined at trial.



**SIXTH CLAIM FOR RELIEF**

(Breach of Contract Against Yumin Liu)

47. Symyx incorporates the allegations of paragraphs 1-17 as if fully set forth in this paragraph.

48. On March 30, 1998, Yumin Liu entered into a Confidential Information, Secrecy, and Invention Agreement with Symyx ("Liu Agreement"). As part of the Liu Agreement, Yumin Liu agreed, while employed at Symyx, not to engage in any employment, consulting or other activity in business directly or indirectly competitive with Symyx's business.

49. The Liu Agreement entered into by Symyx and Yumin Liu is a valid and enforceable contract.

50. Symyx has performed any or all of its obligations or conditions imposed on it under the Liu Agreement, or such conditions and obligations have been otherwise waived by Liu's breaches as alleged herein.

51. Liu has breached the Liu Agreement by, among other things, using Symyx's business information to form a company to compete with Symyx in violation of the Liu Agreement.

52. As a direct and proximate result of Yumin Liu's breach of the Liu Agreement, Symyx has been damaged in an amount to be proven at trial.

53. In addition, as a direct and proximate result of Liu's breach of the Liu Agreement, Symyx has been irreparably injured, and has no adequate remedy at law. As a result, Symyx is entitled to injunctive and other forms of equitable relief against Liu.

**SEVENTH CLAIM FOR RELIEF**

(Breach of Duty of Loyalty Against Yumin Liu)

54. Symyx incorporates the allegations of paragraphs 1-17 and 48-53 as if fully set forth in this paragraph.

57. As a direct and proximate result of Liu's breach of duty of loyalty, Symyx has incurred damages in an amount not yet ascertained, but in any event in excess of the jurisdictional amount of this Court. Symyx, therefore, is entitled to recover compensatory damages in an amount to be determined at trial.

### EIGHTH CLAIM FOR RELIEF

59. Symyx incorporates the allegations of paragraphs 1-58 as if fully set forth in this paragraph.

61. Symyx is informed and believes and on that basis alleges that Accelryg knew that Symyx had contracts with Wang, Cong and Liu that prevented Wang, Cong and Liu from

1 engaging in any employment, consulting or other activity in business directly or indirectly  
2 competitive with Symyx's business, and each of the individual defendants knew that the other  
3 individual defendants had contracts with Symyx that prevented Wang, Cong and Liu from  
4 engaging in any employment, consulting or other activity in business directly or indirectly  
5 competitive with Symyx's business.  
6

7         62. Symyx is informed and believes and on that basis alleges that Accelergy and each  
8 of the individual defendants knew that using Wang, Cong and Liu to develop a business to directly  
9 compete with Symyx while Wang, Cong and Liu were still Symyx employees would disrupt  
10 Symyx's contractual relationships with Wang, Cong and Liu and intended to disrupt those  
11 contractual relationships.  
12

13         63. Accelergy and the individual defendants have caused actual disruption to the  
14 contractual relationships between Symyx and Wang, Cong and Liu.  
15

16         64. As a direct and proximate result of the actions taken by Accelergy and the  
17 individual defendants in interfering with Symyx's contractual relationships, Symyx has suffered  
18 and continues to suffer damages in an amount to be proven at trial.  
19

20         65. In interfering with Symyx's contractual relationships, Accelergy and the individual  
21 defendants acted with malice, fraud and oppression, and in conscious disregard of Symyx's rights.  
22 Accordingly, Symyx is entitled to recover exemplary damages in an amount to be proven at trial.  
23

24         66. As a result of the actions taken by Accelergy and the individual defendants in  
25 interfering with Symyx's contractual relationships, Symyx has suffered and will continue to suffer  
26 irreparable harm, including but not limited to harm to its business reputation and goodwill.  
27 Symyx is informed and believes and on that basis alleges that Accelergy and the individual  
28 defendants threaten to continue their wrongful actions, and unless restrained and enjoined, will do  
so. Symyx's remedy at law is not by itself adequate to compensate Symyx for the harm inflicted  
and threatened by Accelergy and the individual defendants.

**NINTH CLAIM FOR RELIEF**

(Unfair Competition Under Cal. Bus. & Prof. Code § 17200 Against All Defendants)

67. Symyx incorporates the allegations of paragraphs 1-66 as if fully set forth in this paragraph.

68. Defendants' acts, as alleged herein, constitute unfair business acts and practices in violation of California Business and Professions Code § 17200 et seq, in that such actions are unfair, deceptive and unlawful.

69. Symyx has suffered an actual loss due to Defendants' actions.

70. Symyx is further entitled to restitution, an accounting of Defendants' profits, and the disgorgement of Defendant's ill-gotten gains.

71. Symyx's remedy at law is not by itself sufficient to compensate Symyx for injuries inflicted and threatened by Defendants. Thus, Symyx is entitled to Accelergy's and the individual defendants' disgorgement of revenues and/or profits from their respective wrongful acts and injunctive relief to prohibit Defendants from continuing their unfair, deceptive and illegal actions.

**TENTH CLAIM FOR RELIEF**

(Common Law Unfair Competition Against All Defendants)

72. Symyx incorporates the allegations of paragraphs 1-71 as if fully set forth in this paragraph.

73. Defendants' acts, as alleged herein, constitute an unfair method of competition.

74. Symyx has suffered an actual loss due to Defendants' actions.

75. Symyx is further entitled to restitution, an accounting of Defendants' profits, and the disgorgement of Defendants' ill-gotten gains.

76. Symyx's remedy at law is not by itself sufficient to compensate Symyx for injuries inflicted and threatened by Defendants. Thus, Symyx is entitled to injunctive relief to prohibit Defendants from continuing their illegal actions.

## PRAYER FOR RELIEF

- A. Judgment that Accelergy infringes the ‘113 patent under 35 U.S.C. § 271(a), (b), and (c).
- B. For an award to Symyx of damages adequate to compensate Symyx for Accelergy’s infringement of the ‘113 patent, but in no event less than a reasonable royalty together with interests and costs;
- C. For an entry of a temporary restraining order, and preliminary and permanent injunctive relief enjoining and restraining Accelergy and its officers, directors, agents, servants, employees, and all other persons in privity or acting in concert with Accelergy from further infringement of the ‘113 patent, or from further breaching any contractual obligation owing from them to Symyx;
- D. For a declaration that this case is exceptional, and for an award to Symyx of attorneys’ fees, expenses, and costs pursuant to 35 U.S.C. § 285;
- E. For compensatory damages resulting from the individual defendants breach of contract;
- F. For compensatory damages resulting from all defendants' tortious conduct toward Symyx (including breaches of the duty of loyalty and interference with contract and common law unfair competition);
- G. For disgorgement of all profits, revenues or investments that Accelergy receives as a result of any wrongful action as averred herein by Accelergy;
- H. Awarding Symyx punitive damages in an amount to be determined at trial; and
- I. For an award to Symyx of such other and further relief as this Court deems just and proper.

1 DATED: November 28, 2007

2 QUINN EMANUEL URQUHART OLIVER &  
3 HEDGES, LLP

4 /s/ Claude M. Stern  
5 Claude M. Stern  
6 Evette D. Pennypacker  
7 Bobbie N. Eftekar  
8 Attorneys for Plaintiff  
9 Symyx Technologies, Inc.  
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**DEMAND FOR JURY TRIAL**

In accordance with Federal Rule of Civil Procedure 38(b), Symyx demands a trial by jury.

DATED: November 28, 2007

QUINN EMANUEL URQUHART OLIVER &  
HEDGES, LLP

/s/ Claude M. Stern  
Claude M. Stern  
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