

Michael J. Farrell (ABN 015056)  
mfarrell@jsslaw.com  
JENNINGS, STROUSS & SALMON,  
P.L.C.  
A Professional Limited Liability Co.  
One East Washington Street, Suite  
1900  
Phoenix, AZ 85004-2554  
Telephone: (602) 262-5911

Alan M. Grimaldi (*Pro Hac Vice*)  
grimaldia@howrey.com  
HOWREY LLP  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2402  
Telephone: (202) 783-0800  
Facsimile: (202) 383-6610

Henry Bunsow (*Pro Hac Vice*)  
bunsowh@howrey.com  
HOWREY LLP  
525 Market Street, Suite 3600  
San Francisco, California 94105  
Telephone: (415) 848-4900  
Facsimile: (415) 848-4999

Thomas W. Jenkins, Jr. (*Pro Hac Vice*)  
jenkinst@howrey.com  
HOWREY LLP  
321 North Clark Street, Suite 3400  
Chicago, IL 60654-4717  
Telephone: (312) 595-1239  
Facsimile: (312) 595-2250

*Attorneys for DuPont Air Products NanoMaterials L.L.C.,  
Precision Colloids, L.L.C. and The Virkler Co. ("DA Nano")*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

DUPONT AIR PRODUCTS  
NANOMATERIALS L.L.C. (a  
Delaware limited liability company),

Plaintiff and  
Counterclaim-Defendant,

vs.

CABOT MICROELECTRONICS  
CORPORATION (a Delaware  
corporation),

Defendant and  
Counterclaim-Plaintiff.

CABOT MICROELECTRONICS  
CORPORATION (a Delaware  
corporation),

Counterclaim-Plaintiff,

vs.

PRECISION COLLOIDS, L.L.C. (a  
Georgia limited liability company), and  
THE VIRKLER COMPANY (a  
Delaware corporation),

Counterclaim-Defendants.

No. CV06-2952-PHX-ROS

**NOTICE OF CROSS-APPEAL (TO  
THE UNITED STATES COURT OF  
APPEALS FOR THE FEDERAL  
CIRCUIT) BY PLAINTIFF AND  
COUNTERCLAIM DEFENDANT  
DUPONT AIR PRODUCTS  
NANOMATERIALS, L.L.C. AND  
COUNTERCLAIM-DEFENDANTS  
PRECISION COLLOIDS, L.L.C. AND  
THE VIRKLER COMPANY**

1                   **NOTICE OF CROSS-APPEAL TO THE UNITED STATES COURT OF**  
2                   **APPEALS FOR THE FEDERAL CIRCUIT BY PLAINTIFF AND**  
3                   **COUNTERCLAIM DEFENDANT DUPONT AIR PRODUCTS**  
4                   **NANOMATERIALS, L.L.C. AND COUNTERCLAIM DEFENDANTS**  
5                   **PRECISION COLLOIDS, L.L.C. AND THE VIRKLER COMPANY**

6                   Pursuant to 28 U.S.C. § 1295(a)(1) and Fed. R. App. P. 4(a), Plaintiff and  
7                   Counterclaim Defendant DuPont Air Products NanoMaterials, L.L.C. and Counterclaim  
8                   Defendants Precision Colloids, L.L.C., and The Virkler Company (together, “DA Nano”)  
9                   hereby give Notice of cross-appeal to the **United States Court of Appeals for the**  
10                  **Federal Circuit** following the Notice of Appeal filed on November 10, 2010 (Doc. 694)  
11                  by Defendant and Counterclaim Plaintiff Cabot Microelectronics Corp. DA Nano is  
12                  cross-appealing from the Court’s final judgment dated August 31, 2010 (Doc. 689) with  
13                  respect to any underlying rulings and orders decided adversely to DA Nano which relate  
14                  to, support, or have been incorporated into that judgment, including but not limited to  
15                  those related to the aspects of the court’s judgment that U.S. Patent Nos. 5,958,288,  
16                  5,980,775, and 6,068,787 (collectively the “Grumbine-Mueller Patents”) are not invalid,  
17                  including but not limited to:

- 18                  A.     The Court’s Order (Doc. 693) dated October 18, 2010 denying DA Nano’s  
19                  Renewed Motion For Judgment As A Matter Of Law Regarding Invalidity  
20                  Of The Grumbine-Mueller Patents, Or, Alternatively And Conditionally,  
21                  For A New Trial (Doc. 671);
- 22                  B.     The Court’s Markman Order dated August 11, 2008 (Doc. 223) construing  
23                  certain disputed claim terms to the extent related to the issue of invalidity  
24                  of the Grumbine-Mueller patents, and all subsequent rulings and orders of  
25                  the Court which reflected and incorporated such Markman Order with  
26                  respect to those disputed claim terms, including but not limited to the  
                    Court’s jury instructions (Doc. 640); and

1 C. The Court's order dated June 29, 2010 excluding (and therefore barring DA  
2 Nano from playing at trial) certain deposition testimony by Dr. Chris Yu  
(Doc. 590).

3 Please also take notice that the five-dollar (\$5.00) filing fee and the four-  
4 hundred-and-fifty-dollar (\$450.00) docketing fee have been paid electronically.

5 Dated: November 17, 2010

6 **HOWREY LLP**

7 */s/ Alan Grimaldi*

8 

---

Alan M. Grimaldi (pro hac vice)  
9 grimaldia@howrey.com  
10 HOWREY LLP  
11 1299 Pennsylvania Ave., N.W.  
12 Washington, D.C. 20004-2404  
13 Telephone: (202) 783-0800

14 Thomas W. Jenkins (pro hac vice)  
15 jenkinst@howrey.com  
16 HOWREY LLP  
17 321 North Clark Street, Suite 3400  
18 Chicago, IL 60654-4717  
19 Telephone: (312) 595-1239

20 Henry C. Bunsow (pro hac vice)  
21 bunsowh@howrey.com  
22 HOWREY LLP  
23 525 Market Street, Suite 3600  
24 San Francisco, CA 94105  
25 Telephone: (415) 848-4900

26 **JENNINGS, STROUSS & SALMON,  
P.L.C.**

Michael J. Farrell (SBN 015056)  
mfarrell@jsslaw.com  
Annie E. Hardwick (SBN 025521)  
ahardwick@jsslaw.com  
JENNINGS, STROUSS & SALMON,  
P.L.C.  
One East Washington Street, Suite 1900  
Phoenix, AZ 85004-2554  
Telephone: (602) 262-5911

### CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2010 I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

- Aaron R. Hand - [handa@howrey.com](mailto:handa@howrey.com)
- Adam Gershenson - [adam.gershenson@wilmerhale.com](mailto:adam.gershenson@wilmerhale.com)
- Alan Michael Grimaldi - [grimaldia@howrey.com](mailto:grimaldia@howrey.com)
- Allen C. Nunnally - [allen.nunnally@wilmerhale.com](mailto:allen.nunnally@wilmerhale.com)
- Bryon T. Wasserman -  
[wassermanb@howrey.com](mailto:wassermanb@howrey.com); [bryonwasserman@gmail.com](mailto:bryonwasserman@gmail.com)
- Christopher Zimmerman -  
[christopher.zimmerman@wilmerhale.com](mailto:christopher.zimmerman@wilmerhale.com)
- Christopher R. Noyes - [christopher.noyes@wilmerhale.com](mailto:christopher.noyes@wilmerhale.com)
- D. Alexander Ewing - [alexander.ewing@wilmerhale.com](mailto:alexander.ewing@wilmerhale.com)
- David Bancroft Robinson - [drobinson@pattonboggs.com](mailto:drobinson@pattonboggs.com);  
[davidrobinson125@aol.com](mailto:davidrobinson125@aol.com)
- Gregory L. Teran - [gregory.teran@wilmerhale.com](mailto:gregory.teran@wilmerhale.com)
- Henry C. Bunsow - [bunsowh@howrey.com](mailto:bunsowh@howrey.com)
- John Kilyk , Jr. - [jkilyk@leydig.com](mailto:jkilyk@leydig.com)
- Jonathan M. James - [JJames@perkinscoie.com](mailto:JJames@perkinscoie.com)
- Joseph Mueller - [joseph.mueller@wilmerhale.com](mailto:joseph.mueller@wilmerhale.com)
- Karin Kramer - [kramerk@howrey.com](mailto:kramerk@howrey.com)
- Kate Hutchins - [kate.hutchins@wilmerhale.com](mailto:kate.hutchins@wilmerhale.com)
- Kevin M. Bell - [kbell@pattonboggs.com](mailto:kbell@pattonboggs.com)
- Mark E. Strickland - [mstrickland@perkinscoie.com](mailto:mstrickland@perkinscoie.com)
- Mary Rose L. Scozzafava - [maryrose.scozzafava@wilmerhale.com](mailto:maryrose.scozzafava@wilmerhale.com)
- Matthew F. Greinert - [greinertm@howrey.com](mailto:greinertm@howrey.com)
- Megan Barbero - [megan.barbero@wilmerhale.com](mailto:megan.barbero@wilmerhale.com)
- Oren D. Langer - [olanger@morganlewis.com](mailto:olanger@morganlewis.com)
- Rachel I. Gurvich - [rachel.gurvich@wilmerhale.com](mailto:rachel.gurvich@wilmerhale.com)
- Ross E. Firsenbaum - [ross.firsenbaum@wilmerhale.com](mailto:ross.firsenbaum@wilmerhale.com)
- Scott AM Chambers - [schambers@pattonboggs.com](mailto:schambers@pattonboggs.com)
- Stephen M. Muller - [stephen.muller@wilmerhale.com](mailto:stephen.muller@wilmerhale.com)
- Thomas Jenkins - [jenkinst@howrey.com](mailto:jenkinst@howrey.com)
- Timothy Patrick Heaton - [theaton@morganlewis.com](mailto:theaton@morganlewis.com)
- Wayne L. Stoner - [wayne.stoner@wilmerhale.com](mailto:wayne.stoner@wilmerhale.com)
- Wyley S. Proctor - [wyley.proctor@wilmerhale.com](mailto:wyley.proctor@wilmerhale.com)

*/s/ Kathrine A. Roberts*  
Kathrine A. Roberts