

1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
 Claude M. Stern (State Bar No. 96737)
 2 Brian C. Cannon (State Bar No. 193071)
 Todd M. Briggs (State Bar No. 209282)
 3 555 Twin Dolphin Drive, Suite 560
 Redwood Shores, California 94065-2139
 4 Telephone: (650) 801-5000
 Facsimile: (650) 801-5100
 5 E-Mail: claudestern@quinnemanuel.com
 brian Cannon@quinnemanuel.com
 6 toddbriggs@quinnemanuel.com

7 Attorneys for Plaintiff
 Symyx Technologies, Inc.

8
 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

11 SYMYX TECHNOLOGIES, INC., a
 Delaware corporation,

12 Plaintiff,

13 vs.

14 INTEMATIX CORPORATION, a California
 15 corporation,

16 Defendant.

CASE NO. C 06-03276 MEJ

**FIRST AMENDED COMPLAINT FOR
 PATENT INFRINGEMENT AND
 DECLARATORY JUDGMENT RE:
 TRADE SECRET MISAPPROPRIATION**

DEMAND FOR JURY TRIAL

**CERTIFICATION OF INTERESTED
 ENTITIES OR PERSONS**

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 20 Plaintiff Symyx Technologies, Inc. ("Symyx") complains in this action against Defendant
 21 Intematix Corporation ("Intematix") as follows:

22 **THE PARTIES**

23 1. Symyx is a corporation incorporated under the laws of the State of Delaware with
 24 its principal place of business in Santa Clara, California. Symyx is qualified and duly authorized
 25 to do business in the State of California. Symyx is an industry leader in the development and
 26 application of high throughput research technologies. Symyx performs research for customers
 27 using proprietary technologies to discover new and innovative materials. Symyx also designs,
 28 builds and sells automated research equipment and associated software. Materials discovered

1 using Symyx's research technologies have been used in a wide variety of industrial applications.

2 2. Symyx is informed and believes and on that basis alleges that Intematix is a
3 California corporation with its principal place of business in Fremont, California, within this
4 judicial district. Intematix's agent for service of process is Yi Qun Li, 46410 S. Fremont Blvd.,
5 Fremont, CA 94538.

6 3. Symyx is informed and believes and on that basis alleges that Intematix is engaged
7 in the business of conducting materials research and offering research services that reduce the time
8 of discovery of industrial materials. Instead of using sequential cycles of materials testing,
9 Intematix uses arrays to synthesize and discover materials and in so doing infringes Symyx's
10 patented methods. Intematix combines materials on such arrays to test in parallel large numbers of
11 combinations of materials such as phosphors, fuel cell catalysts, and materials for integrated
12 circuits.

13 **JURISDICTION AND VENUE**

14 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§
15 1331 and 1338(a) because this action is for patent infringement pursuant to the patent laws of the
16 United States, 35 U.S.C. § 1 *et seq.*

17 5. This Court has jurisdiction over the claim for declaratory relief regarding trade
18 secret misappropriation pursuant to 28 U.S.C. §§ 1367, 2201 and 2202 in so far as there is an
19 actual controversy between the parties as asserted and the claim is so related to other claims
20 asserted in the action that they form part of the same case or controversy under Article III of the
21 United States Constitution, and the claim does not raise a novel or complex issue of State law,
22 substantially predominate over the claim or claims over which the Court has original jurisdiction,
23 present any exceptional circumstances or compelling reasons for this Court to decline jurisdiction
24 over this claim.

25 6. This Court has personal jurisdiction over Intematix because Intematix does
26 business in this jurisdiction and has committed and is continuing to commit the acts of
27 infringement giving rise to Symyx's patent infringement claims in this judicial district.

28 7. Symyx avers upon information and belief that a substantial part of the events giving

1 rise to its claims occurred in this district. Symyx also avers upon information and belief that
2 Intematix has committed the acts complained of within the Northern District of California. Venue
3 is therefore proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

4 **INTRADISTRICT ASSIGNMENT**

5 8. Pursuant to Civil Local Rule 3-2(c), this action is to be assigned on a district-wide
6 basis because it is an Intellectual Property Action. This action is currently assigned to Magistrate
7 Judge Maria-Elena James.

8 **FIRST CLAIM FOR RELIEF**

9 (Infringement of United States Patent No. 5,985,356)

10 9. Symyx incorporates the allegations of paragraphs 1-8 as if fully set forth in this
11 paragraph.

12 10. United States Patent No. 5,985,356 (the '356 Patent) entitled "Combinatorial
13 Synthesis Of Novel Materials" was duly and legally issued on November 16, 1999 to Symyx
14 Technologies and The Regents of the University of California. Symyx has the right to sue for
15 infringements of this patent. A true and correct copy of the '356 Patent is attached hereto as
16 Exhibit 1.

17 11. Intematix has infringed and continues to infringe the '356 Patent. Intematix's
18 infringing acts include making, using, offering to sell, selling, and/or importing products that
19 infringe the '356 Patent and/or practicing methods covered by the '356 Patent in violation of 35
20 U.S.C. § 271(a). Intematix has also been knowingly and intentionally inducing others to infringe
21 the '356 Patent in violation of 35 U.S.C. § 271(b), and has been contributorily infringing the '356
22 Patent in violation of 35 U.S.C. § 271(c).

23 12. Intematix's infringement of the '356 Patent has caused damage to Symyx, and
24 Symyx is entitled to recover from Intematix the damages sustained by Symyx as a result of its
25 wrongful acts in an amount subject to proof at trial.

26 13. Intematix's infringement of the '356 Patent will continue to damage Symyx's
27 business, causing irreparable harm for which there is no adequate remedy at law, unless it is
28 enjoined by this Court.

1 14. Intematix's infringement of the '356 Patent has been willful and deliberate, entitling
2 Symyx to enhanced damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in
3 prosecuting this action under 35 U.S.C. § 285.

4 **SECOND CLAIM FOR RELIEF**

5 (Infringement of United States Patent No. 6,004,617)

6 15. Symyx incorporates the allegations of paragraphs 1-14 as if fully set forth in this
7 paragraph.

8 16. United States Patent No. 6,004,617 (the '617 Patent) entitled "Combinatorial
9 Synthesis of Novel Materials" was duly and legally issued on December 21, 1999 to Symyx
10 Technologies and The Regents of the University of California. Symyx has the right to sue for
11 infringements of this patent. A true and correct copy of the '617 Patent is attached hereto as
12 Exhibit 2.

13 17. Intematix has infringed and continues to infringe the '617 Patent. Intematix's
14 infringing acts include making, using, offering to sell, selling, and/or importing products that
15 infringe the '617 Patent and/or practicing methods covered by the '617 Patent in violation of 35
16 U.S.C. § 271(a). Intematix has also been knowingly and intentionally inducing others to infringe
17 the '617 Patent in violation of 35 U.S.C. § 271(b), and has been contributorily infringing the '617
18 Patent in violation of 35 U.S.C. § 271(c).

19 18. Intematix's infringement of the '617 Patent has caused damage to Symyx, and
20 Symyx is entitled to recover from Intematix the damages sustained by Symyx as a result of its
21 wrongful acts in an amount subject to proof at trial.

22 19. Intematix's infringement of the '617 Patent will continue to damage Symyx's
23 business, causing irreparable harm for which there is no adequate remedy at law, unless it is
24 enjoined by this Court.

25 20. Intematix's infringement of the '617 Patent has been willful and deliberate, entitling
26 Symyx to enhanced damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in
27 prosecuting this action under 35 U.S.C. § 285.

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1 **THIRD CLAIM FOR RELIEF**

2 (Infringement of United States Patent No. 6,410,331)

3 21. Symyx incorporates the allegations of paragraphs 1-20 as if fully set forth in this
4 paragraph.

5 22. United States Patent No. 6,410,331 (the '331 Patent) entitled "Combinatorial
6 Screening Of Inorganic And Organometallic Materials" was duly and legally issued on June 25,
7 2002 to Symyx Technologies, Inc. and The Regents of the University of California. Symyx has
8 the right to sue for infringements of this patent. A true and correct copy of the '331 Patent is
9 attached hereto as Exhibit 3.

10 23. Intematix has infringed and continues to infringe the '331 Patent. Intematix's
11 infringing acts include making, using, offering to sell, selling, and/or importing products that
12 infringe the '331 Patent and/or practicing methods covered by the '331 Patent in violation of 35
13 U.S.C. § 271(a). Intematix has also been knowingly and intentionally inducing others to infringe
14 the '331 Patent in violation of 35 U.S.C. § 271(b), and has been contributorily infringing the '331
15 Patent in violation of 35 U.S.C. § 271(c).

16 24. Intematix's infringement of the '331 Patent has caused damage to Symyx, and
17 Symyx is entitled to recover from Intematix the damages sustained by Symyx as a result of its
18 wrongful acts in an amount subject to proof at trial.

19 25. Intematix's infringement of the '331 Patent will continue to damage Symyx's
20 business, causing irreparable harm for which there is no adequate remedy at law, unless it is
21 enjoined by this Court.

22 26. Intematix's infringement of the '331 Patent has been willful and deliberate, entitling
23 Symyx to enhanced damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in
24 prosecuting this action under 35 U.S.C. § 285.

25 **FOURTH CLAIM FOR RELIEF**

26 (Infringement of United States Patent No. 6,686,205)

27 27. Symyx incorporates the allegations of paragraphs 1-26 as if fully set forth in this
28 paragraph.

1 28. United States Patent No. 6,686,205 (the '205 Patent) entitled "Screening
2 Combinatorial Arrays Of Inorganic Materials With Spectroscopy Or Microscopy" was duly and
3 legally issued on February 3, 2004 to Symyx Technologies, Inc. and Lawrence Berkeley National
4 Laboratory. Symyx has the right to sue for infringements of this patent. A true and correct copy
5 of the '205 Patent is attached hereto as Exhibit 4.

6 29. Intematix has infringed and continues to infringe the '205 Patent. Intematix's
7 infringing acts include making, using, offering to sell, selling, and/or importing products that
8 infringe the '205 Patent and/or practicing methods covered by the '205 Patent in violation of 35
9 U.S.C. § 271(a). Intematix has also been knowingly and intentionally inducing others to infringe
10 the '205 Patent in violation of 35 U.S.C. § 271(b), and has been contributorily infringing the '205
11 Patent in violation of 35 U.S.C. § 271(c).

12 30. Intematix's infringement of the '205 Patent has caused damage to Symyx, and
13 Symyx is entitled to recover from Intematix the damages sustained by Symyx as a result of its
14 wrongful acts in an amount subject to proof at trial.

15 31. Intematix's infringement of the '205 Patent will continue to damage Symyx's
16 business, causing irreparable harm for which there is no adequate remedy at law, unless it is
17 enjoined by this Court.

18 32. Intematix's infringement of the '205 Patent has been willful and deliberate, entitling
19 Symyx to enhanced damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in
20 prosecuting this action under 35 U.S.C. § 285.

21 **FIFTH CLAIM FOR RELIEF**

22 (Infringement of United States Patent No. 6,883,921)

23 33. Symyx incorporates the allegations of paragraphs 1-32 as if fully set forth in this
24 paragraph.

25 34. United States Patent No. 6,883,921 (the '921 Patent) entitled "Optical Systems And
26 Methods For Rapid Screening of Libraries of Different Materials" was duly and legally issued on
27 December 21, 2004 to Symyx Technologies, Inc. Symyx owns all rights and interest in the '921
28 patent. A true and correct copy of the '921 Patent is attached hereto as Exhibit 5.

1 35. Intematix has infringed and continues to infringe the '921 Patent. Intematix's
2 infringing acts include making, using, offering to sell, selling, and/or importing products that
3 infringe the '921 Patent and/or practicing methods covered by the '921 Patent in violation of 35
4 U.S.C. § 271(a). Intematix has also been knowingly and intentionally inducing others to infringe
5 the '921 Patent in violation of 35 U.S.C. § 271(b), and has been contributorily infringing the '921
6 Patent in violation of 35 U.S.C. § 271(c).

7 36. Intematix's infringement of the '921 Patent has caused damage to Symyx, and
8 Symyx is entitled to recover from Intematix the damages sustained by Symyx as a result of its
9 wrongful acts in an amount subject to proof at trial.

10 37. Intematix's infringement of the '921 Patent will continue to damage Symyx's
11 business, causing irreparable harm for which there is no adequate remedy at law, unless it is
12 enjoined by this Court.

13 38. Intematix's infringement of the '921 Patent has been willful and deliberate, entitling
14 Symyx to enhanced damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in
15 prosecuting this action under 35 U.S.C. § 285.

16 **SIXTH CLAIM FOR RELIEF**

17 (Declaratory Judgment Regarding Trade Secret Misappropriation)

18 39. Symyx incorporates the allegations of paragraphs 1-38 as if fully set forth in this
19 paragraph.

20 40. Upon information and belief, in March 2006, Intematix began seeking additional
21 funding for its business. As part of this effort, Intematix made presentations to a number of
22 potential investors, including a 26-page document (the "Investor Presentation Document"), which
23 Symyx is informed and believes has been distributed by Intematix in interstate commerce.

24 41. Upon information and belief, the Investor Presentation Document was deliberately
25 disseminated to the investor community.

26 42. Upon information and belief, the Investor Presentation Document was provided to
27 investors in hard copy and/or electronic form under no obligation of confidentiality and subject to
28 no written or express non-disclosure agreement.

1 43. The Investor Presentation Document confirms Symyx's belief that Intematix's
2 business does, and intends to further, use Symyx's patented materials research methods.

3 44. Symyx learned of the contents of the Investor Presentation Document through
4 proper means and did not violate any duty of confidentiality, nor induce anyone to breach a duty
5 of confidentiality related to the Investor Presentation Document.

6 45. Intematix now claims that the Investor Presentation Document contains certain
7 Intematix trade secrets. Intematix has demanded that Symyx return all hard copies and destroy all
8 electronic copies that Symyx may have of the Investor Presentation Document, and make no use
9 whatsoever of the information contained in the document. Symyx disagrees with Intematix's
10 claim that the Investor Presentation Document consists of Intematix's trade secrets, and has so
11 informed Intematix. For example, upon information and belief, certain information in the Investor
12 Presentation Document is publicly available on Intematix's website and in published patents and
13 patent applications, which were filed by and assigned to Intematix.

14 46. Intematix has stated that if Symyx fails to comply with Intematix's demand,
15 Intematix will take "appropriate measures" to protect Intematix's alleged trade secrets, which
16 Symyx reasonably has understood to mean that Intematix intends to file a lawsuit if Symyx fails to
17 comply with Intematix's demands. Symyx is unwilling to comply with each and every demand
18 Intematix has made regarding the Investor Presentation Document.

19 47. As evidenced by Intematix's demand and threat, an actual case or controversy exists
20 between Symyx and Intematix concerning the Investor Presentation Document.

21 48. Symyx is entitled to a declaratory judgment that it has not misappropriated any
22 trade secret information of Intematix, and that Symyx's use of information in the Investor
23 Presentation Document was and is privileged and lawful.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Symyx prays for:

- 26 A. Judgment that the '356, '617, '331, '205, and '921 Patents are valid and enforceable;
27 B. Judgment that Intematix infringes the '356, '617, '331, '205, and '921 Patents under
28 35 U.S.C. § 271(a), (b), and (c).

1 C. Judgment that Intematix's infringement of the '356, '617, '331, '205, and '921
2 Patents under 35 U.S.C. § 271(a), (b), and (c) has been willful and deliberate, and for an award to
3 Symyx of treble damages pursuant to 35 U.S.C. § 284.

4 D. For an award to Symyx of damages adequate to compensate Symyx for Intematix's
5 infringement of the '356, '617, '331, '205, and '921 Patents, but in no event less than a reasonable
6 royalty together with interests and costs;

7 E. For an entry of preliminary and permanent injunctive relief enjoining and
8 restraining Intematix and its officers, directors, agents, servants, employees, and all other persons
9 in privity or acting in concert with Intematix from further infringement of the '356, '617, '331,
10 '205, and '921 Patents;

11 F. For a declaration that this case is exceptional, and for an award to Symyx of
12 attorneys' fees, expenses, and costs pursuant to 35 U.S.C. § 285;

13 G. For a declaration that Symyx has not misappropriated any trade secret information
14 of Intematix;

15 H. For disgorgement of all profits, revenues or investments that Intematix receives as a
16 result of any wrongful action as averred herein by Intematix; and

17 I. For an award to Symyx of such other and further relief as this Court deems just and
18 proper.

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20 DATED: May 30, 2006

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QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

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/ s /

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Claude M. Stern

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Brian C. Cannon

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Todd M. Briggs

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Attorneys for Plaintiff

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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: May 30, 2006

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

/ s /
Claude M. Stern
Brian C. Cannon
Todd M. Briggs
Attorneys for Plaintiff
Symyx Technologies, Inc.

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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

In accordance with Civil Local Rule 3-16, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

The Regents of the University of California ("The Regents") have a financial interest in any damages award recovered from defendant in this lawsuit. The Regents are not represented in this lawsuit by the undersigned.

DATED: May 30, 2006

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

/ s /

Claude M. Stern
Brian C. Cannon
Todd M. Briggs
Attorneys for Plaintiff
Symyx Technologies, Inc.