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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

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13 BRIDGELUX, INC. a California corporation,) Case No. C 06-06495 PJH
14 Plaintiff,) **AMENDED COMPLAINT FOR**
15 vs.) **DECLARATORY JUDGMENT**
16 CREE, Inc., a North Carolina corporation,)
CREE LIGHTING COMPANY, a California)
17 corporation, and)
18 TRUSTEES OF BOSTON UNIVERSITY,)
Defendants.)
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21 Plaintiff BridgeLux, Inc. (“BridgeLux”) for its Amended Complaint against Defendants CREE,
22 Inc., CREE LIGHTING COMPANY, and TRUSTEES OF BOSTON UNIVERSITY (collectively,
23 “Defendants”) alleges and avers:

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PARTIES

- 25 1. BridgeLux is a California corporation having its principal place of business at 1225
26 Bordeaux Drive, Sunnyvale, California 94089.
27 2. Upon information and belief, Cree, Inc. (“Cree”) is a North Carolina corporation
28 having its principal place of business at 4600 Silicon Drive, North Carolina 27703.

1 3. Upon information and belief, Cree Lighting Company (“CLC”) is a California
2 corporation with its principal place of business at 340 Storke Road, Goleta, California 93117.

3 4. Upon information and belief, Trustees of Boston University (“BU”) is a non-profit
4 educational institution having its principal campus in Boston, Massachusetts.

5 **JURISDICTION AND VENUE**

6 5. This is an action for the resolution of an existing conflict under the Declaratory
7 Judgment Act, 28 U.S.C. §§ 2201 and 2202. The underlying causes of action arise under the patent
8 laws of the United States. The amount in controversy between the parties exceeds \$75,000. This
9 Court therefore has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1332, and 1338(a).

10 6. On information and belief, this Court has personal jurisdiction over Cree because
11 Cree has established minimum contacts with the forum and the exercise of jurisdiction over Cree
12 would not offend traditional notions of fair play and substantial justice. On information and belief,
13 Cree has conducted business and solicited customers in the State of California.

14 7. On information and belief, this Court has personal jurisdiction over CLC because
15 CLC is found in the State of California. On information and belief, CLC has conceded to personal
16 jurisdiction in this District on matters concerning allegations of infringement of U.S. Patent No.
17 5,686,738.

18 8. On information and belief, this Court has personal jurisdiction over BU because BU
19 has established minimum contacts with the forum and the exercise of jurisdiction over BU would not
20 offend traditional notions of fair play and substantial justice. On information and belief, BU has
21 conceded to personal jurisdiction in this District on matters concerning allegations of infringement of
22 U.S. Patent No. 5,686,738.

23 9. Venue for this action is proper in this District under 38 U.S.C. §§ 1391(b) and
24 1400(b) because, upon information and belief, Defendants have submitted themselves to personal
25 jurisdiction in this District.

26 10. On September 11, 2006, Cree and BU jointly filed suit against BridgeLux in the
27 Middle District of North Carolina, in the case captioned *Cree, Inc. and Trustees of Boston University v.*
28 *BridgeLux, Inc.*, Civil Action No. 1:06cv761 (“North Carolina Litigation”), alleging infringement by

1 BridgeLux of two patents: U. S. Patent No. 6,657,236, on which CLC is the named assignee (and for
2 which Cree alleges ownership), and U.S. Patent No. 5,686,738, on which BU is the named assignee
3 (and on which Cree alleges that it is an exclusive licensee and holds the right to prosecute actions for
4 infringement).

5 11. On October 17, 2006, BridgeLux filed a motion to dismiss the pending North
6 Carolina Litigation for lack of personal jurisdiction and improper venue. BridgeLux does not have any
7 continuous or systematic business activities within the State of North Carolina, and cannot be subject
8 to personal jurisdiction in the Middle District of North Carolina. BridgeLux conducts no business in
9 North Carolina, has not made any product sales or offers for sale in North Carolina, and has not made
10 or used any of its developed products in North Carolina. BridgeLux also has no established product
11 distribution channels into the State, and *a fortiori* the Middle District of North Carolina. BridgeLux
12 concurrently filed the present action for declaratory judgment in the Northern District of California.

13 12. On October 17, 2006, BridgeLux filed suit against Cree in the Eastern District of
14 Texas (*BridgeLux, Inc. v. Cree, Inc.*, Civil Action No. 9:06cv240) (“Texas Litigation”), alleging that
15 Cree infringes BridgeLux’s United States Patent No. 6,869,812. Cree filed an Answer and
16 Counterclaims in the Texas Litigation on November 21, 2006. Cree’s counterclaims in the Texas
17 Litigation include allegations of infringement by BridgeLux of four United States patents, including
18 two patents already at issue in the present action and the North Carolina Litigation, as well as U.S.
19 Patent No. 6,614,056, for which CLC is the named assignee, and U.S. Patent No. 6,885,036, for which
20 Cree is the named assignee.

21 **BRIDGELUX’S REASONABLE APPREHENSION OF SUIT**

22 13. This action is brought to resolve the apprehension under which BridgeLux is forced
23 to conduct its business in the United States as a result of Cree’s pending infringement action and its
24 additional threats to sue BridgeLux for infringement of certain patents purportedly owned and/or
25 exclusively licensed by Cree.

26 14. BridgeLux is a leading developer of energy saving power-LED chips for high-volume
27 market segments. The company developed the industry’s first high volume ITO/InGaN (Indium Tin
28 Oxide / Indium Gallium Nitride) power light emitting diode (LED) chip. The power-LED chips that

1 are developed by BridgeLux (“BridgeLux’s LED products”) are used to replace traditional bulb
2 technologies with solid state products that provide a powerful and energy-efficient source of visible
3 light.

4 15. Cree, a competitor of BridgeLux, and BU have commenced the North Carolina
5 Litigation in the Middle District of North Carolina against BridgeLux, alleging that BridgeLux
6 infringes U. S. Patent No. 6,657,236 (“the ‘236 patent”) and U.S. Patent No. 5,686,738 (“the ‘738
7 patent”), notwithstanding that forum’s lack of personal jurisdiction over BridgeLux. Cree and BU
8 have also filed patent infringement counterclaims in the Texas Litigation alleging that BridgeLux
9 infringes U.S. Patent No. 6,614,056 (“the ‘056 patent) and U.S. Patent No. 6,885,036 (“the ‘036
10 patent), in addition to infringing the ‘236 and ‘738 patents.

11 16. On information and belief, Cree has informed at least one of BridgeLux’s customers,
12 both orally and in writing, that the LED products developed by BridgeLux are used in products that
13 allegedly infringe not only the ‘236 and ‘738 patents, but also U.S. Patent No. 6,600,175 (the “‘175
14 patent”) and U.S. Patent No. 6,953,703 (the “‘703 patent”). On information and belief, Cree has also
15 informed at least one customer of BridgeLux that a patent infringement lawsuit would be brought by
16 Cree for allegedly infringing use of BridgeLux’s LED products.

17 17. Copies of the ‘236, ‘738, ‘175, ‘703, ‘056 and ‘036 patents are attached hereto as
18 Exhibits A, B, C, D, E, and F respectively.

19 18. On information and belief, Cree has the right to sue for infringement on the ‘175 and
20 the ‘036 patents. BU is the named assignee on the ‘703 patent. CLC is the named assignee on the
21 ‘056 patent.

22 19. Cree and BU’s filing of a patent infringement lawsuit and counterclaims against
23 BridgeLux, in conjunction with Cree’s allegations of infringement and the threat of another lawsuit
24 expressed to at least one of BridgeLux’s customers, has created in BridgeLux a reasonable
25 apprehension that Defendants will sue BridgeLux for patent infringement of the ‘236, ‘738, ‘175,
26 ‘703, ‘056 and ‘036 patents. BridgeLux believes that failure to determine the issues presented by this
27 case at this point in time will lead to substantial commercial injury to BridgeLux.

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1 20. Cree and BU improperly filed patent infringement counterclaims in the Texas
2 Litigation alleging infringement of the '236 and '738 patents, which are already at issue in the present
3 action. Additionally, Cree and BU filed patent infringement counterclaims in the Texas Litigation
4 alleging infringement of the '056 and '036 patents against the same accused BridgeLux technologies
5 that are already at issue in the present action.

6 21. BridgeLux therefore seeks a declaration by this Court that BridgeLux's LED products
7 do not infringe the '236, '738, '175, '703, '056 and '036 patents, and that the '236 and '738 patents are
8 invalid.

9 **COUNT I**

10 **Declaratory Judgment of Non-Infringement of the '236 Patent**

11 22. BridgeLux repeats and realleges paragraphs 1 through 21 of this Complaint as if the
12 same were fully set forth herein.

13 23. BridgeLux's LED products not infringe any valid claim of the '236 patent, either
14 directly or indirectly, contributorily or otherwise. BridgeLux has not induced others to infringe the
15 '236 patent.

16 24. BridgeLux is therefore entitled to a declaratory judgment that it does not infringe the
17 '236 patent.

18 **COUNT II**

19 **Declaratory Judgment of Invalidity of the '236 Patent**

20 25. BridgeLux repeats and realleges paragraphs 1 through 24 of this Complaint as if the
21 same were fully set forth herein.

22 26. The claims of the '236 patent are invalid, as asserted in the North Carolina Litigation,
23 for failure to meet the requirements specified in Title 35 of the United States Code, including, but not
24 limited to, 35 U.S.C. §§ 101, 102, 103, and 112.

25 27. BridgeLux is therefore entitled to a declaratory judgment that the '236 patent claims
26 are invalid.

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COUNT III

Declaratory Judgment of Non-Infringement of the ‘738 Patent

28. BridgeLux repeats and realleges paragraphs 1 through 27 of this Complaint as if the same were fully set forth herein.

29. BridgeLux’s LED products do not infringe any valid claim of the ‘738 patent, either directly, indirectly, contributorily or otherwise. BridgeLux has not induced others to infringe the ‘738 patent.

30. BridgeLux is therefore entitled to a declaratory judgment that it does not infringe the ‘738 patent.

COUNT IV

Declaratory Judgment of Invalidity of the ‘738 Patent

31. BridgeLux repeats and realleges paragraphs 1 through 30 of this Complaint as if the same were full set forth herein.

32. The claims of the ‘738 patent are invalid, as asserted in the North Carolina Litigation, for failure to meet the requirements specified in Title 35 of the United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, and 112.

33. BridgeLux is therefore entitled to a declaratory judgment that the ‘738 patent claims are invalid.

COUNT V

Declaratory Judgment of Non-Infringement of the ‘175 Patent

34. BridgeLux repeats and realleges paragraphs 1 through 33 of this Complaint as if the same were fully set forth herein.

35. BridgeLux’s LED products do not infringe any valid claim of the ‘175 patent, either directly, indirectly, contributorily or otherwise. BridgeLux has not induced others to infringe the ‘175 patent.

36. BridgeLux is therefore entitled to a declaratory judgment that it does not infringe the ‘175 patent.

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COUNT VI

Declaratory Judgment of Non-Infringement of the ‘703 Patent

37. BridgeLux repeats and realleges paragraphs 1 through 36 of this Complaint as if the same were fully set forth herein.

38. BridgeLux’s LED products do not infringe any valid claim of the ‘703 patent, either directly, indirectly, contributorily or otherwise. BridgeLux has not induced others to infringe the ‘703 patent.

39. BridgeLux is therefore entitled to a declaratory judgment that it does not infringe the ‘703 patent.

COUNT VII

Declaratory Judgment of Non-Infringement of the ‘056 Patent

40. BridgeLux repeats and realleges paragraphs 1 through 39 of this Complaint as if the same were fully set forth herein.

41. BridgeLux’s LED products do not infringe any valid claim of the ‘056 patent, either directly, indirectly, contributorily or otherwise. BridgeLux has not induced others to infringe the ‘056 patent.

42. BridgeLux is therefore entitled to a declaratory judgment that it does not infringe the ‘056 patent.

COUNT VIII

Declaratory Judgment of Non-Infringement of the ‘036 Patent

43. BridgeLux repeats and realleges paragraphs 1 through 42 of this Complaint as if the same were fully set forth herein.

44. BridgeLux’s LED products do not infringe any valid claim of the ‘036 patent, either directly, indirectly, contributorily or otherwise. BridgeLux has not induced others to infringe the ‘036 patent.

45. BridgeLux is therefore entitled to a declaratory judgment that it does not infringe the ‘036 patent.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff BridgeLux, Inc. prays that the Court enter judgment that:

- a) U.S. Patent No. 6,657,236 is not infringed by BridgeLux’s LED products;
- b) The claims of U.S. Patent No. 6,657,236 are invalid;
- c) U.S. Patent No. 5,686,738 is not infringed by BridgeLux’s LED products;
- d) The claims of U.S. Patent No. 5,686,738 are invalid;
- e) U.S. Patent No. 6,953,703 is not infringed by BridgeLux’s LED products;
- f) U.S. Patent No. 6,600,175 is not infringed by BridgeLux’s LED products;
- g) U.S. Patent No. 6,614,056 is not infringed by BridgeLux’s LED products;
- h) U.S. Patent No. 6,885,036 is not infringed by BridgeLux’s LED products;
- i) Defendants and each of its officers, agents, and employees, and those persons in active concert or participation with any of them, and their successors and assigns are permanently enjoined from communicating to BridgeLux’s customers, whether orally, or in writing, directly or indirectly, that the BridgeLux’s LED products infringe the ‘236, ‘738, ‘175, ‘703, ‘056 and/or ‘036 patents; and
- j) This is an exceptional case within the meaning of 35 U.S.C. § 285, and that BridgeLux shall be awarded its attorney fees, costs, and expenses incurred in prosecuting this action; and
- k) That BridgeLux shall be awarded such other and further relief as this Court may deem just and proper.

Dated: November 28, 2006

Respectfully submitted,

By: /s/ Constance F. Ramos
 HOWREY LLP
 Henry C. Bunsow
 K. T. Cherian
 Robert F. Kramer
 Constance F. Ramos

Attorneys for Plaintiff
 BRIDGELUX, INC.

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