1 2 3 4 5 6	HOLLAND & KNIGHT LLP Matthew P. Vafidis (SBN 103578) Rebecca H. Benavides (SBN 246201) 50 California Street, 28th Floor San Francisco, California 94111 Telephone: (415) 743-6900 Facsimile: (415) 743-6910 E-mail: matthew.vafidis@hklaw.com E-mail: rebecca.benavides@hklaw.com  Attorneys for Plaintiff MEYER CORPORATION, U.S.
7	METER COR GRATION, C.S.
8	UNITED STATES DISTRICT COURT
9	FOR THE EASTERN DISTRICT OF CALIFORNIA
10	
11	MEYER CORPORATION, US, a corporation, ) Case No.
12	Plaintiff, )
13 14	BODUM, Inc., a corporation, doing business COMPLAINT FOR
15	as BODUM U.S.A., Inc.; and PI DESIGN AG, DECLARATORY RELIEF
16	a foreign corporation,  DEMAND FOR JURY TRIAL
17	Defendants. )
18	
19	For its Complaint herein, Plaintiff MEYER CORPORATION U.S. (hereinafter,
20	"MEYER") alleges against Defendants BODUM, Inc. d/b/a BODUM USA Inc. (hereinafter,
21	"BODUM") and PI DESIGN AG (hereinafter, "PI DESIGN") as follows:
22	STATEMENT OF THE CASE
23	1. This is an action for declaratory relief of non-infringement of U.S. Patent No.
24	D486,989 ("'989 Patent") by MEYER's BONJOUR® Round teapot. A copy of the '989 Patent
25	is attached as Exhibit 1.
26	SUBJECT MATTER JURISDICTION
27	2. This action arises out of the patent laws of the United States, 35 U.S.C. §§ 101 et
28	seq., and this Court has subject matter jurisdiction under 28 U.S.C. §§ 1338, and 2201.
	Complaint for Declaratory Relief 1

1 **PARTIES** 2 PERSONAL JURISDICTION 3 3. This court has personal jurisdiction over BODUM and PI DESIGN pursuant to 4 California Civ. Proc. Code section 410.10 5 **VENUE** 4. 6 Venue is proper in the United States District Court for the Eastern District of 7 California under 28 U.S.C. § 1391. 8 **COMMON ALLEGATIONS** 9 5. MEYER is a Delaware corporation having a place of business at One Meyer 10 Plaza, Vallejo, CA 94590. 11 6. Upon information and belief, BODUM is a Wisconsin corporation, having a place 12 of business at New York, N.Y. 13 7. Upon information and belief, PI DESIGN is a Swiss corporation having a place of 14 business at Kantonsstrasse 100, Postfach 463, CH-5234 Triengen, Switzerland. 15 8. Upon information and belief, PI DESIGN is the owner by assignment of the '989 16 Patent. 17 9. Upon information and belief, BODUM the exclusive licensee under the '989 18 Patent. 19 10. Upon information and belief, BODUM licenses its BODUM trademarks from PI 20 DESIGN. 21 11. MEYER sells its BONJOUR® Round teapot in this District. Photographs of the 22 BONJOUR® Round teapot are attached as Exhibit 2. 23 12. Upon information and belief, BODUM sells its products via the interactive 24 website www.bodumusa.com. 25 13. On or about September 3, 2008, BODUM and PI DESIGN sent a cease and desist 26 letter to MEYER alleging infringement of the '989 Patent by MEYER's BONJOUR® Round 27 teapot. A copy of the cease and desist letter is attached as Exhibit 3. 28

- 14. In the cease and desist letter, BODUM and PI DESIGN jointly demanded that MEYER cease all commercial activity related to the BONJOUR® Round teapot and account to both BODUM and PI DESIGN for any profit made in relation to any infringing product.
- 15. In the cease and desist letter, BODUM and PI DESIGN required that MEYER comply their demands and that if appropriate assurances were not received, BODUM and PI DESIGN would take all appropriate action to stop MEYER's activities.
- 16. MEYER has not ceased all commercial activity related to the BONJOUR® Round teapot. There is therefore a judiciable controversy between the parties.

## FIRST CAUSE OF ACTION DECLARATORY JUDGMENT OF NON-INFRINGEMENT

- 17. MEYER realleges and repeats paragraphs 1 through 16 of this Complaint, as if set forth fully herein.
- 18. MEYER's manufacture, use, sale, offer for sale, or importation of the BONJOUR® Round teapot does not infringe, contributorily infringe, or induce infringement the '989 Patent, either literally or under the doctrine of equivalents.
- 19. MEYER is entitled to a declaratory judgment that its manufacture, use, sale, offer for sale, or importation of the BONJOUR® Round teapot does not infringe, contributorily infringe, or induce infringement the '989 Patent, either literally or under the doctrine of equivalents.
- 20. MEYER has at all material times acted in utmost good faith and is entitled to equitable relief as aforesaid.

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WHEREFORE, MEYER CORPORATION, US prays for judgment against BODUM Inc. and PI DESIGN AG, and each of them, as follows:

As to the FIRST CAUSE OF ACTION for Declaratory Judgment:

- 1. That the Court declare the rights and duties of MEYER relating to the promotion, marketing and sale of the BONJOUR® Round teapot;
  - 2. Enter a judgment in favor of MEYER;
- 3. Declare that MEYER has not infringed, contributively infringed, or induced infringement of U.S. Patent No. D486,989, either literally or under the doctrine of equivalents;
- 4. Declare that this is an exceptional case under 35 U.S.C. § 285 and award attorneys fees to MEYER;
- 5. Declare that MEYER be awarded, and award MEYER its costs, expenses and attorneys' fees incurred herein; and,
  - 6. Grant such further relief as the Court deems just and proper.

## **DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), MEYER respectfully demands a trial by jury on all issues so triable.

Dated: September 16, 2008

**HOLLAND & KNIGHT LLP** 

Matthew P. Vafidis

Attorneys for Plaintiff
MEYER CORPORATION, US