

1 KEITH L. SLENKOVICH, CA BAR NO. 129793
kslenkovich@thelenreid.com
2 ROBERT E. CAMORS, JR., CA BAR NO. 121204
bobcamors@thelenreid.com
3 CHRISTOPHER KAO, CA BAR NO. 227086
ckao@thelenreid.com
4 RICHARD S. SWOPE, CA BAR NO 233200
rswope@thelenreid.com
5 THELEN REID & PRIEST LLP
225 West Santa Clara Street, Suite 1200
6 San Jose, CA 95113-1723
Tel. 408.292.5800
7 Fax 408.287.8040

8 Attorneys for Plaintiff
9 CELERITY, INC.

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12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION
15

16 CELERITY, INC., a Delaware corporation,
17 Plaintiff,
18 vs.
19 TALON INNOVATIONS CORPORATION,
a Minnesota corporation,
20 Defendant.
21

Case No.: 05-CV-04768-PJH

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT AND FOR
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

22
23 Plaintiff Celerity, Inc. ("Celerity") alleges as follows:

24 **THE PARTIES**

25 1. Plaintiff Celerity is a corporation organized and existing under the laws of the State
26 of Delaware, having its principal place of business in Milpitas, California.
27
28

1 2. Upon information and belief, defendant Talon Innovations, Inc. (“Talon”) is a
2 corporation organized under the laws of the State of Minnesota, having its principal place of
3 business in Sauk Rapids, Minnesota.

4
5 **JURISDICTION AND VENUE**

6 3. This action arises under the patent laws of the United States, including 35 U.S.C. §
7 271(a). Jurisdiction is based upon 28 U.S.C. § 1331 & 1338(a).

8 4. Venue is proper in this District under 28 U.S.C. §§ 1391 & 1400(b), in that Talon
9 has committed acts of infringement within this District and is subject to personal jurisdiction
10 within this District. Jurisdiction over Talon comports with the United States Constitution.

11
12 **INTRADISTRICT ASSIGNMENT**

13 5. The infringement which gives rise to jurisdiction over Talon occurred in Santa
14 Clara County, State of California. This action arises under the patent laws of the United States,
15 and is therefore subject to assignment on a district-wide basis under Northern District of
16 California Local Rule 3-2(c).

17
18 **FIRST COUNT - PATENT INFRINGEMENT**

19 **(35 U.S.C. § 271 as to U.S. Patent No. 6,283,155)**

20 6. Celerity incorporates here by reference and realleges paragraphs 1 through 5 above
21 as if fully set forth here.

22 7. On September 4, 2001, the United States Patent and Trademark Office duly,
23 legally, and regularly issued U.S. Patent No. 6,283,155 (“the ‘155 patent”) entitled “System of
24 Modular Substrates for Enabling the Distribution of Process Fluids Through Removable
25 Components.” Through assignment Celerity is, and at all times relevant herein has been, the
26 owner of all right, title and interest in the ‘155 patent.

27 8. Talon has infringed and is currently infringing the ‘155 patent by making, selling,
28 and/or offering for sale, and/or importing into the United States, within the Northern District of

1 California and elsewhere within the United States, products which embody the inventions of the
2 '155 patent claims.

3 9. Talon has infringed and is currently infringing the '155 patent by actively inducing
4 others to infringe within the Northern District of California and elsewhere within the United
5 States, by using products which embody the inventions of the '155 patent claims.

6 10. Celerity believes that Talon will continue to infringe the '155 patent unless the
7 Court enjoins Talon from such infringement.

8 11. Celerity believes that Talon has willfully and deliberately infringed the '155 patent.
9 Talon has deprived Celerity of profits from the sale of its patented products which Celerity
10 otherwise would have made and has in other respects injured Celerity. Talon will continue to
11 cause Celerity injury and lost profits unless this Court enjoins Talon from infringing the '155
12 patent.

13 12. Talon's infringement is willful such that Celerity is entitled to triple damages
14 pursuant to 35 U.S.C. § 284.

15 13. This is an exceptional case within the meaning of 35 U.S.C. § 285 such that
16 Celerity is entitled to its reasonable attorney's fees.

17
18 **SECOND COUNT - PATENT INFRINGEMENT**

19 **(35 U.S.C. § 271 as to U.S. Patent No. 6,293,310)**

20 14. Celerity incorporates here by reference and realleges paragraphs 1 through 5 above
21 as if fully set forth here.

22 15. On September 25, 2001, the United States Patent and Trademark Office duly,
23 legally, and regularly issued U.S. Patent No. 6,293,310 ("the '310 patent") entitled "Gas Panel."
24 Through assignment Celerity is, and at all times relevant herein has been, the owner of all right,
25 title and interest the '310 patent.

26 16. Talon has infringed and is currently infringing the '310 patent by making, selling,
27 and/or offering for sale, and/or importing into the United States, within the Northern District of
28

1 California and elsewhere within the United States, products which embody the inventions of the
2 '310 patent claims.

3 17. Talon has infringed and is currently infringing the '310 patent by actively inducing
4 others to infringe within the Northern District of California and elsewhere within the United
5 States, by using products which embody the inventions of the '310 patent claims.

6 18. Celerity believes that Talon will continue to infringe the '310 patent unless the
7 Court enjoins Talon from such infringement.

8 19. Celerity believes that Talon has willfully and deliberately infringed the '310 patent.
9 Talon has deprived Celerity of profits from the sale of its patented products which Celerity
10 otherwise would have made and has in other respects injured Celerity. Talon will continue to
11 cause Celerity injury and lost profits unless this Court enjoins Talon from infringing the '310
12 patent.

13 20. Talon's infringement is willful such that Celerity is entitled to triple damages
14 pursuant to 35 U.S.C. § 284.

15 21. This is an exceptional case within the meaning of 35 U.S.C. § 285 such that
16 Celerity is entitled to its reasonable attorney's fees.

17
18 **THIRD COUNT - PATENT INFRINGEMENT**

19 **(35 U.S.C. § 271 as to U.S. Patent No. 6,394,138)**

20 22. Celerity incorporates here by reference and realleges paragraphs 1 through 5 above
21 as if fully set forth here.

22 23. On May 28, 2002, the United States Patent and Trademark Office duly, legally, and
23 regularly issued U.S. Patent No. 6,394,138 ("the '138 patent") entitled "Manifold System of
24 Removable Components for Distribution of Fluids." Through assignment, Celerity is, and at all
25 times relevant herein has been, the owner of all right, title and interest the '138 patent.

26 24. Talon has infringed and is currently infringing the '138 patent by making, selling,
27 and/or offering for sale, and/or importing into the United States, within the Northern District of
28

1 California and elsewhere within the United States, products which embody the inventions of the
2 '138 patent claims.

3 25. Talon has infringed and is currently infringing the '138 patent by actively inducing
4 others to infringe within the Northern District of California and elsewhere within the United
5 States, by using products which embody the inventions of the '138 patent claims.

6 26. Celerity believes that Talon will continue to infringe the '138 patent unless the
7 Court enjoins Talon from such infringement.

8 27. Celerity believes that Talon has willfully and deliberately infringed the '138 patent.
9 Talon has deprived Celerity of profits from the sale of its patented products which Celerity
10 otherwise would have made and has in other respects injured Celerity. Talon will continue to
11 cause Celerity injury and lost profits unless this Court enjoins Talon from infringing the '138
12 patent.

13 28. Talon's infringement is willful such that Celerity is entitled to triple damages
14 pursuant to 35 U.S.C. § 284.

15 29. This is an exceptional case within the meaning of 35 U.S.C. § 285 such that
16 Celerity is entitled to its reasonable attorney's fees.

17
18 **WHEREFORE**, plaintiff Celerity, Inc. prays for judgment against defendant Talon
19 Innovations, Inc. as follows:

20
21 **ON THE FIRST COUNT**

22 (1) For judgment that Talon has infringed the '155 Patent;

23 (2) For actual damages that Celerity has suffered as a result of Talon's infringement of
24 the '155 patent according to proof and that the Court treble such damages, pursuant to 35 U.S.C. §
25 284, because of the willful and deliberate character of the infringement;

26 (3) For an accounting as to Talon's sales and a royalty calculation for its products that
27 infringe the '155 patent and for damages that are no less than a reasonable royalty payment for
28 such sales;

1 (4) For a permanent injunction restraining Talon and all those acting in concert with it
2 from further infringement of the '155 patent;

3 (5) For attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;

4 (6) For all costs of suit; and

5 (7) For such other and further relief as the Court may deem proper.

6
7 **ON THE SECOND COUNT**

8 (1) For judgment that Talon has infringed the '310 Patent;

9 (2) For actual damages that Celerity has suffered as a result of Talon's infringement of
10 the '310 patent according to proof and that the Court treble such damages, pursuant to 35 U.S.C. §
11 284, because of the willful and deliberate character of the infringement;

12 (3) For an accounting as to Talon's sales and a royalty calculation for its products that
13 infringe the '310 patent and for damages that are no less than a reasonable royalty payment for
14 such sales;

15 (4) For a permanent injunction restraining Talon and all those acting in concert with it
16 from further infringement of the '310 patent;

17 (5) For attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;

18 (6) For all costs of suit; and

19 (7) For such other and further relief as the Court may deem proper.

20 **ON THE THIRD COUNT**

21 (1) For judgment that Talon has infringed the '138 Patent;

22 (2) For actual damages that Celerity has suffered as a result of Talon's infringement of
23 the '138 patent according to proof and that the Court treble such damages, pursuant to 35 U.S.C. §
24 284, because of the willful and deliberate character of the infringement;

25 (3) For an accounting as to Talon's sales and a royalty calculation for its products that
26 infringe the '138 patent and for damages that are no less than a reasonable royalty payment for
27 such sales;

1 (4) For a permanent injunction restraining Talon and all those acting in concert with it
2 from further infringement of the '138 patent;

3 (5) For attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;

4 (6) For all costs of suit; and

5 (7) For such other and further relief as the Court may deem proper.

6
7
8 Dated: December 21, 2005

9 THELEN REID & PRIEST LLP

10 By /s/
11 KEITH SLENKOVICH
12 ROBERT E. CAMORS
13 CHRISTOPHER KAO
14 RICHARD S. SWOPE
Attorneys for Plaintiff
15 CELERITY, INC.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff demands trial by jury on all counts in the Complaint.

18
19 Dated: December 21, 2005

20 THELEN REID & PRIEST LLP

21
22 By /s/
23 KEITH SLENKOVICH
24 ROBERT E. CAMORS
25 CHRISTOPHER KAO
26 RICHARD S. SWOPE
Attorneys for Plaintiff
27 CELERITY, INC.

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