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RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

8 Attorneys for Plaintiff
 ULTRA CLEAN TECHNOLOGY SYSTEMS
 9 AND SERVICE, INC.

10
 11 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 12 **SAN JOSE DIVISION**

13
 14 ULTRA CLEAN TECHNOLOGY SYSTEMS AND SERVICE, INC.,

C 05. 03560 BZ

15 Plaintiff,

COMPLAINT FOR DECLARATORY
JUDGMENT OF PATENT NON-
INFRINGEMENT AND INVALIDITY

16 v.

17 CELERITY, INC.,

18 DEMAND FOR JURY

19 Defendant.

20
 21 Plaintiff Ultra Clean Technology Systems and Service, Inc. ("Ultra Clean"), by their
 22 undersigned attorneys, for their complaint against defendant Celerity, Inc. ("Celerity"), allege on
 23 personal knowledge as to its own acts and on information and belief as to the actions of others,
 24 as follows:

25 **THE PARTIES AND PATENTS-IN-SUIT**

26 1. Ultra Clean is a Delaware corporation with its principal place of business in
 27 Menlo Park, California.

1 2. Ultra Clean designs and manufactures gas delivery systems that control the high
2 purity gases used in the processing of semiconductor devices.

3 3. Ultra Clean is informed and believes that Celerity is a California corporation
4 with its principal place of business in Milpitas, California.

5 4. Ultra Clean is informed and believes that Celerity is the owner of all right, title
6 and interest in U.S. Patent No. 6,142,539, entitled "Gas Panel," issued on November 7, 2000
7 ("the '539 patent"). A true and correct copy of the '539 patent is attached as Exhibit A.

8 5. Ultra Clean is informed and believes that Celerity is the owner of all right, title
9 and interest in U.S. Patent No. 6,189,570, entitled "Gas Panel," issued on February 20, 2001
10 ("the '570 patent"). A true and correct copy of the '570 patent is attached as Exhibit B.

11 6. Ultra Clean is informed and believes that Celerity is the owner of all right, title
12 and interest in U.S. Patent No. 6,192,938, entitled "Gas Panel," issued on February 27, 2001
13 ("the '938 patent"). A true and correct copy of the '938 patent is attached as Exhibit C.

14 7. Ultra Clean is informed and believes that Celerity is the owner of all right, title
15 and interest in U.S. Patent No. 6,293,310, entitled "Gas Panel," issued on September 25, 2001
16 ("the '310 patent"). A true and correct copy of the '310 patent is attached as Exhibit D.

17 8. Ultra Clean is informed and believes that Celerity is the owner of all right, title
18 and interest in U.S. Patent No. 6,394,138, entitled "Manifold system of removable components
19 for distribution of fluids," issued on May 28, 2002 ("the '138 patent"). A true and correct copy
20 of the '138 patent is attached as Exhibit E.

21 9. Ultra Clean is informed and believes that Celerity is the owner of all right, title
22 and interest in U.S. Patent No. 6,435,215, entitled "Gas Panel," issued on August 20, 2002
23 ("the '215 patent"). A true and correct copy of the '215 patent is attached as Exhibit F.

24 10. Ultra Clean is informed and believes that Celerity is the owner of all right, title
25 and interest in U.S. Patent No. 6,474,700, entitled "Gas Panel," issued on November 5, 2002
26 ("the '700 patent"). A true and correct copy of the '700 patent is attached as Exhibit G.

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1 **JURISDICTION AND VENUE**

2 11. A case or actual controversy now exists between the parties, within the meaning
3 of 28 U.S.C. § 2201, as to whether Ultra Clean infringes any valid claim of the '539 patent, the
4 '570 patent, the '938 patent, the '310 patent, the '138 patent, the '215 patent and the '700 patent
5 (collectively "the patents-in-suit").

6 12. Jurisdiction over the subject matter is conferred on this Court pursuant to 28
7 U.S.C. §§ 1331, 1338, 2201 and 2202.

8 13. Venue in this District is proper under 28 U.S.C. §§ 1391 and 1400(b), as this is a
9 judicial district in which a substantial part of the events giving rise to the claims occurred.
10 Ultra Clean is informed and believes that Celerity conducts business on a regular basis in this
11 judicial district and resides in this judicial district.

12 **INTRA DISTRICT ASSIGNMENT**

13 14. This action is properly filed in the San Jose Division of the U.S. District Court
14 for the Northern District of California pursuant to Civil L.R. 3-2(c) and (e) because a
15 substantial part of the events giving rise to the claims set forth in this Complaint occurred in
16 San Mateo County.

17 **FACTS**

18 15. Ultra Clean received a letter dated March 29, 2005 where Celerity stated that it
19 became aware of Ultra Clean's modular substrate design and that it had a "substantial patent
20 portfolio in this area." Ultra Clean responded on April 22, 2005, stating that it reviewed
21 Celerity's patent portfolio and concluded there was no infringement of any of the patent claims.

22 16. Ultra Clean received another letter from Celerity dated August 23, 2005, in
23 which Celerity stated that it is the owner of the patents-in-suit. According to Celerity, these
24 patents "broadly cover fluid distribution systems, including manifold blocks, gas panels and
25 systems."

26 17. In the same letter, Celerity claimed that it had the opportunity to observe Ultra
27 Clean's recently-introduced integrated gas-delivery substrate called the Predator™ and that the
28 Predator™ substrate designs appear to be covered by one or more claims of the patents-in-suit.

1 Celerity further alleged that any offer, sale or installation of the Predator™ substrate designs
2 place both Ultra Clean and its customers who use those designs "at risk" and that Ultra Clean's
3 conduct may be considered willful infringement.

4 18. Celerity demanded that Ultra Clean "cease any and all commercial activity
5 involving the Predator™ substrate designs" and confirm Ultra Clean's compliance within
6 twenty (20) days from August 23, 2005 with Celerity's demand.

7 19. Celerity has engaged in conduct giving rise to a reasonable apprehension on the
8 part of Ultra Clean that it, and its actual and prospective customers, will face patent
9 infringement lawsuits for any commercial activity relating to the Predator™ substrate designs,
10 including any offer, sale or installation of the Predator™ substrate designs and that such
11 lawsuits are imminent.

12 **FIRST CAUSE OF ACTION**

13 **(Declaratory Judgment For Non-Infringement of the Patents-In-Suit)**

14 20. Ultra Clean repeats and re-alleges the allegations of paragraphs 1 through 19 of
15 the Complaint as if fully set forth herein.

16 21. As a result of Celerity's conduct, Ultra Clean has a reasonable apprehension that
17 Celerity plans to file suit against it for infringement of the patents-in-suit and that such suit is
18 imminent. Accordingly, there exists an actual, justiciable and legal controversy between Ultra
19 Clean and Celerity regarding the alleged infringement of the patents-in-suit.

20 22. Ultra Clean has not directly infringed, induced the infringement of nor been a
21 contributory infringer of any valid claim of the patents-in-suit.

22 23. Ultra Clean is therefore entitled to a judicial determination and declaration that
23 the Predator™ substrate designs do not infringe any valid claim of the patents-in-suit.

24
25 **SECOND CAUSE OF ACTION**

26 **(Declaratory Judgment For Invalidity of the Patents-In-Suit)**

27 24. Ultra Clean repeats and re-alleges the allegations of paragraphs 1 through 23
28 above as if fully set forth herein.

1 25. As a result of Celerity's conduct, Ultra Clean has a reasonable apprehension that
2 Celerity plans to file suit against it for infringement of the patents-in-suit and that such suit is
3 imminent. Accordingly, there exists an actual, justiciable and legal controversy between Ultra
4 Clean and Celerity regarding the validity of the patents-in-suit.

5 26. At least one or more claims of each of the patents-in-suit are invalid for failure
6 to comply with one or more of the requirements of the patent laws of the United States,
7 particularly 35 U.S.C. §§ 102, 103 and/or 112.

8 27. Ultra Clean is therefore entitled to a judgment declaring that the patents-in-suit
9 are invalid.

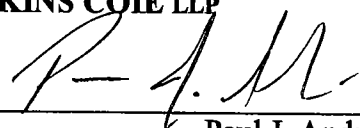
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Ultra Clean requests that the Court enter judgment in their favor and
12 against Celerity on their Complaint as follows:

- 13 A. Declaring that the patents-in-suit invalid;
- 14 B. Declaring that the Predator™ substrate designs do not infringe, and have
15 not infringed, any valid claim of the patents-in-suit;
- 16 C. Enjoining Celerity, their officers, agents, employees, representatives,
17 counsel and all parties acting in concert with them, permanently and during the pendency of this
18 action, from directly or indirectly asserting or charging that the Predator™ substrate designs
19 infringe the patents-in-suit;
- 20 D. Declaring this an exceptional case, under 35 U.S.C. § 285, and rendering
21 an award to Ultra Clean of its reasonable attorneys' fees, expenses and costs in this action;
- 22 F. Granting Ultra Clean such other and further relief as this Court deems just
23 and proper.

24 DATED: September 2, 2005.

PERKINS COIE LLP

25
26 By 
Paul J. Andre

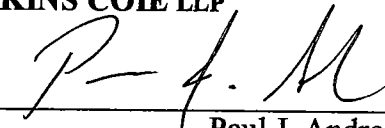
27 Attorneys for Plaintiff
28 ULTRA CLEAN TECHNOLOGY SYSTEMS AND SERVICE, INC.

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

DATED: September 2, 2005.

PERKINS COIE LLP

By  _____
Paul J. Andre

Attorneys for Plaintiff
ULTRA CLEAN TECHNOLOGY SYSTEMS AND
SERVICE, INC.

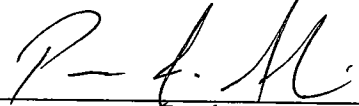
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JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Ultra Clean demands a trial by jury of all issues triable of right by jury.

PERKINS COIE LLP

By 
Paul J. Andre

Attorneys for Plaintiff
ULTRA CLEAN TECHNOLOGY SYSTEMS AND
SERVICE, INC.