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7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 UNITY OPTO TECHNOLOGY CO.,)
LTD.,)

Case No. 8:17-cv-00027

12)
13 Plaintiff,)

**COMPLAINT FOR DECLARATORY
JUDGMENT**

14 v.)

DEMAND FOR JURY TRIAL

15)
16 CREE, INC.,)

17 Defendant.)
18)
19)
20)

21
22 Plaintiff Unity Opto Technology Co., Ltd. (“Unity”) hereby brings its Complaint
23 for Declaratory Judgment against Defendant Cree, Inc. (“Cree”), and alleges as follows:

24 **JURISDICTION AND VENUE**

25 1. This is an action for a declaratory judgment, arising under the Declaratory
26 Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States,
27 35 U.S.C. §§ 1 *et seq.* Unity requests a judicial declaration that the claims of U.S. Patent
28

1 Nos. 8,998,444 (“the ’444 patent”) and 9,052,067 (“the ’067 patent”) are invalid.

2 2. Cree claims to own all rights, title, and interest in the ’444 and ’067 patents.
3 True and correct copies of the ’444 patent and ’067 patent are attached hereto as Exhibits
4 A and B respectively.

5 3. This Court has jurisdiction over the subject matter of this action under 28
6 U.S.C. §§ 1331, 1338(a) and 2201(a).

7 4. Unity is a corporation organized and existing under the laws of Taiwan that
8 maintains its principal place of business in 10 Fl., No. 88-8, Sec.1, Guangfu Road,
9 Sanchong District, New Taipei City 241, Taiwan (R.O.C.). Unity is a global leader in the
10 LED and lighting industry and principally engages in the research, development and
11 manufacture of optoelectronic components.

12 5. Upon information and belief, Cree is a corporation organized and existing
13 under the laws of the State of North Carolina, having a place of business at 4600 Silicon
14 Drive, Durham, North Carolina, 27703. Upon information and belief, Cree also
15 maintains a place of business in this District at 340 Storke Rd., Goleta, CA, 93117.

16 6. Cree is subject to personal jurisdiction in this District because it resides in
17 this District, as stated above. Cree is also subject to jurisdiction in this District because it
18 is doing business in this District and enforcement of the patents-in-suit has occurred in
19 this District. Cree has also availed itself of this jurisdiction for the purposes of enforcing
20 its patents, including by filing a patent infringement lawsuit in the Central District of
21 California against Nichia Corporation (Case No. 2:02-cv-08946). By doing so, Cree
22 purposely conducted its patent enforcement activities in this District and towards a
23 resident of this District, and purposely submitted itself to the jurisdiction of or
24 purposefully availed itself of a court in this District. Cree’s patent enforcement efforts
25 included asserting patents against parties in this District and, upon information and belief,
26 hiring counsel who reside and practice in this District. This Court has personal
27 jurisdiction over Cree pursuant to the laws of the State of California, including
28 California’s Long Arm Statute, California Code of Civil Procedure § 410.10.

1 7. Upon information and belief, Cree has asserted and/or licensed the '444 and
2 '067 patents against entities residing in or doing business in this District, including Feit
3 Electric Co. Inc. ("Feit"), which has a place of business at 4901 Gregg Road, Pico Rivera,
4 California 90660.

5 8. Venue is proper in this District under 28 U.S.C. § 1391(b)-(d).

6 **UNITY'S REASONABLE APPREHENSION OF SUIT**

7 9. On June 24, 2016, Cree filed counterclaims against Feit in the Middle
8 District of North Carolina by accusing Feit of infringing the '444 and '067 patents and
9 seeking declaratory judgment relief as to patents asserted by Feit against Cree (Case No.
10 1:15-cv-00535-WO-JEP, hereinafter "the North Carolina Case"). Cree's counterclaims
11 were filed in retaliation for Feit's earlier assertion on July 5, 2015 of two patents against
12 Cree in the North Carolina Case.

13 10. Cree's counterclaims against Feit for infringement of the '444 and '067
14 patents are directed at products manufactured by Unity for Feit. As a result, Feit tendered
15 a demand that Unity indemnify and defend Feit pursuant to the terms of the agreement
16 under which Unity sold its products to Feit.

17 11. On January 5, 2017, Unity filed an unopposed Rule 24 motion for leave to
18 intervene in the North Carolina Case.

19 12. The North Carolina Case is at an early stage in the litigation. Cree only
20 provided its infringement contentions on October 26, 2016 and Feit has yet to provide
21 invalidity contentions or responses to infringement contentions because the parties
22 stipulated to extend patent discovery deadlines. The parties have not begun claim
23 construction proceedings.

24 13. As such, an immediate, real, and justiciable controversy exists between
25 Unity and Cree as to whether Unity is infringing or has infringed the '444 and '067
26 patents, and whether those patents are valid and enforceable.

27 14. For at least the reasons stated above, Unity has a reasonable apprehension
28 that Cree will enforce the '444 and '067 patents against Unity and/or its customers.

COUNT ONE

Declaratory Judgment of Invalidity of U.S. Patent 8,998,444

15. Unity incorporates paragraphs 1 through 14 of this Complaint as if set fully herein.

16. The claims of the '819 patent are invalid for failure to meet the statutory requirements and/or specified in Title 35 of the United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

17. As one example, the claims of the '444 patent are not directed to patentable subject matter under 35 U.S.C. § 101 and controlling case law. The claims of the '444 patent are directed to the law of nature and/or abstract idea of color mixing to create white light. Further, the limitations of the claims, read individually or as a whole, do not alter the claims such that they transform the claims into a patent-eligible application. Rather, the limitations are all either generic LED technology that far-predates the filing of the patent or additional abstract ideas.

18. As another example, the claims of the '444 patent are invalid under 35 U.S.C. § 112 as indefinite. For example, under the claim construction of “yellow” seemingly advanced by Cree in the North Carolina case, a person of ordinary skill in the art would not be able to ascertain the scope of the claims with reasonable certainty.

19. As yet another example, the claims of the '444 patent are invalid under 35 U.S.C. § 112 for lack of enablement. For example, the term “solid state lighting apparatus” could cover numerous embodiments not disclosed in the patent. For at least these reasons, a person of ordinary skill in the art would not have been able to make and use the full scope of the invention absent undue experimentation.

20. There is an actual controversy, within the meaning of 28 U.S.C. § 2201 and § 2202, between Unity and Cree concerning the invalidity of the '444 patent.

21. Unity is therefore entitled to a declaratory judgment that the '444 patent claims are invalid for failing to satisfy one or more of the conditions specified in Title 35 of the United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and

1 112.

2 **COUNT TWO**

3 **Declaratory Judgment of Invalidity of U.S. Patent No. 9,052,067**

4 22. Unity incorporates paragraphs 1 through 21 of this Complaint as if set fully
5 herein.

6 23. The claims of the '067 patent are invalid for failure to meet the statutory
7 requirements and/or conditions specified in Title 35 of the United States Code, including
8 but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

9 24. As one example, the claims of the '067 patent are not directed to patentable
10 subject matter under 35 U.S.C. § 101 and controlling case law. The claims of the '067
11 patent are directed to the abstract idea of achieving certain functional goals such as a CRI
12 of at least 90. Further, the limitations of the claims, read individually or as a whole, do
13 not alter the claims such that they transform the claims into a patent-eligible application.
14 Rather, the limitations are all either generic LED technology that far-predates the filing of
15 the patent or additional abstract ideas.

16 25. As another example, the claims of the '067 patent are invalid under 35
17 U.S.C. § 112 as indefinite. For example, under the claim construction of “substantially
18 transparent section having a higher transmittance-to-reflectance ratio than most of the
19 domed enclosure” seemingly advanced by Cree in the North Carolina case, a person of
20 ordinary skill in the art would not be able to ascertain the scope of the claims with
21 reasonable certainty.

22 26. As yet another example, the claims of the '067 patent are invalid under 35
23 U.S.C. § 112 for lack of enablement. For example, the term “omnidirectional LED lamp”
24 could cover numerous embodiments not disclosed in the patent. For at least these
25 reasons, a person of ordinary skill in the art would not have been able to make and use
26 the full scope of the invention absent undue experimentation.

27 27. There is an actual controversy, within the meaning of 28 U.S.C. § 2201 and
28 § 2202, between Unity and Cree concerning the invalidity of the '067 patent.

1 28. Unity is therefore entitled to a declaratory judgment that the '067 patent
2 claims are invalid for failing to satisfy one or more of the conditions specified in Title 35
3 of the United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and
4 112.

5 **COUNT THREE**

6 **Declaratory Judgment of Non-Infringement of U.S. Patent 8,998,444**

7 29. Unity incorporates paragraphs 1 through 28 of this Complaint as if set fully
8 herein.

9 30. Unity has not infringed and does not infringe any valid and enforceable
10 claim of the '444 patent directly or indirectly, either literally, or under the doctrine of
11 equivalents.

12 31. As one example, Cree alleged in the North Carolina Case that Feit product
13 CEOM60/927/4, manufactured by Unity, infringes claim 16 of the '444 patent. This
14 claim contains numerous limitations, including requiring "a second phosphor that emits
15 yellow light in response to light emitted by the second LED chip." At a minimum, the
16 Unity manufactured CEOM60/927/4 does not infringe claim 16 because it does not
17 contain a second phosphor that emits yellow light in response to light emitted by the
18 second LED chip.

19 32. There is an actual controversy, within the meaning of 28 U.S.C. § 2201 and
20 § 2202, between Unity and Cree concerning the non-infringement of the '444 patent.

21 33. Unity is therefore entitled to a declaratory judgment that it has not infringed
22 any valid and enforceable claim of the '444 patent, directly or indirectly, either literally
23 or under the doctrine of equivalents.

24 **COUNT THREE**

25 **Declaratory Judgment of Non-Infringement of U.S. Patent 9,052,067**

26 34. Unity incorporates paragraphs 1 through 33 of this Complaint as if set fully
27 herein.

28 35. Unity has not infringed and does not infringe any valid and enforceable

1 claim of the '067 patent directly or indirectly, either literally, or under the doctrine of
2 equivalents.

3 36. As one example, Cree alleged in the North Carolina Case that Feit product
4 CEOM60/927/4, manufactured by Unity, infringes claim 28 of the '067 patent. This
5 claim contains numerous limitations, including requiring “a domed enclosure configured
6 to include a section closer to the LED assembly having a higher transmittance-to-
7 reflectance ratio than most of the domed enclosure.” At a minimum, the Unity
8 manufactured CEOM60/927/4 does not infringe claim 28 because it does not contain a
9 domed enclosure configured to include a section closer to the LED assembly having a
10 higher transmittance-to-reflectance ratio than most of the domed enclosure.

11 37. There is an actual controversy, within the meaning of 28 U.S.C. § 2201 and
12 § 2202, between Unity and Cree concerning the non-infringement of the '067 patent.

13 38. Unity is therefore entitled to a declaratory judgment that it has not infringed
14 any valid and enforceable claim of the '067 patent, directly or indirectly, either literally
15 or under the doctrine of equivalents.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Unity respectfully requests the Court enter judgment as follows:

- 18 1. The claims of U.S. Patent No. 8,998,444 are invalid;
- 19 2. The claims of U.S. Patent No. 9,052,067 are invalid;
- 20 3. Unity does not infringe any valid and enforceable claim of U.S. Patent No.
21 8,998,444, directly or indirectly, either literally or under the doctrine of equivalents.
- 22 4. Unity does not infringe any valid and enforceable claim of U.S. Patent No.
23 9,052,067, directly or indirectly, either literally or under the doctrine of equivalents.
- 24 5. This is an exceptional case within the meaning of 35 U.S.C. § 285, and that
25 Unity shall be awarded its attorney fees, costs, and expenses incurred in prosecuting this
26 action; and
- 27 6. That Unity shall be awarded such other and further relief as this Court may
28 deem just and proper.

JURY DEMAND

7. Unity demands a jury trial on all issues and claims so triable.

Dated: January 6, 2017

Respectfully submitted,

By: /s/ Yitai Hu

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