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

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

Case No. 8:17-cv-00006

13
14 Plaintiff,

**COMPLAINT FOR DECLARATORY
JUDGMENT**

15 v.

DEMAND FOR JURY TRIAL

16
17 CREE, INC.,

18 Defendant.
19
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21

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

25 **JURISDICTION AND VENUE**

26 1. This is an action for a declaratory judgment, arising under the Declaratory
27 Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States,
28

1 35 U.S.C. §§ 1 *et seq.* Unity requests a judicial declaration that the claims of U.S. Patent
2 Nos. 8,596,819 (“the ’819 patent”) and 8,628,214 (“the ’214 patent”) are invalid.

3 2. Cree claims to own all rights, title, and interest in the ’819 and ’214 patents.
4 True and correct copies of the ’819 patent and ’214 patent are attached hereto as Exhibits
5 A and B respectively.

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

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

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

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

1 California's Long Arm Statute, California Code of Civil Procedure § 410.10.

2 7. Cree also purposefully engaged in activities occurring in or arising out of
3 California through its assertion of the '819 and '214 patents against Unity in the United
4 States International Trade Commission Investigation No. 337-TA-947 ("the 947
5 Investigation"), discussed in more detail below. Specifically, Cree relied on testimony
6 and documentary evidence from Unity's customer, Feit Electric Co. Inc. ("Feit"), in order
7 to contend that Unity infringed these patents.

8 8. Upon information and belief, Cree has asserted and/or licensed the '819 and
9 '214 patents against entities residing in or doing business in this District, including Feit,
10 which has a place of business at 4901 Gregg Road, Pico Rivera, California 90660.

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

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

13 10. On January 12, 2015, Cree filed a Complaint before the United States
14 International Trade Commission against Unity, Unity Microelectronics, Inc., Feit, and
15 Feit Electric Company, Inc. (Xiamen), asserting infringement of eight patents, including
16 the '819 and '214 patents, which was instituted as the 947 Investigation.

17 11. On January 12, 2015, Cree also filed suit against Unity and Feit in the
18 Western District of Wisconsin, alleging multiple claims, including infringement of the
19 '819 and '214 patents by Unity (Case No. 3:15-cv-00022, hereinafter "the Wisconsin
20 Case").

21 12. On July 29, 2016, the Administrative Law Judge ("ALJ") presiding in the
22 947 Investigation issued an Initial Determination finding that various LED products
23 manufactured by Unity infringed the '819 and '214 patents. The ALJ also found that the
24 asserted claims of the '819 and '214 patents were valid.

25 13. On August 15, 2016, Unity, Feit, and the other respondents in the 947
26 Investigation filed a Petition for Review of the Initial Determination to the ITC on the
27 grounds that, among other errors, the ALJ erred in finding the asserted claims of the '819
28 and '214 patents were valid.

1 14. On September 29, 2016, the ITC issued a Notice of Commission
2 Determination to Review In Part the Final ID Finding a Violation of Section 337. The
3 Notice stated that the Commission determined to review “the finding of violation of
4 section 337 by Respondents in connection with the asserted claims of the ’819 and ’214
5 patents” and requested further briefing from the parties on topics relating to whether
6 those patents are enabled under 35 U.S.C. § 112.

7 15. On or about December 16, 2016, Cree and Feit entered into a settlement
8 agreement.

9 16. Unity is not a signatory to the Cree-Feit settlement agreement.

10 17. On December 16, 2016, Cree and Feit filed a joint motion to stay issuance of
11 the Final Determination in the 947 Investigation and a joint motion to terminate the 947
12 Investigation based on settlement.

13 18. On December 21, 2016, Cree filed a notice of voluntary dismissal in the
14 Wisconsin Case, dismissing all claims in the action without prejudice.

15 19. On information and belief, the settlement agreement between Cree and Feit
16 does not extend to products sold by Unity outside those manufactured for and sold to Feit
17 that were at issue in the 947 Investigation. Also upon information and belief, the
18 settlement agreement does not grant a license to Unity for products sold after the
19 effective date of the settlement agreement, regardless of to whom the Unity products are
20 sold. Nor has Cree withdrawn its assertions of patent infringement against Unity. Thus,
21 an immediate, real, and justiciable controversy exists between Unity and Cree as to
22 whether Unity is infringing or has infringed the ’819 and ’214 patents, and whether those
23 patents are valid and enforceable.

24 20. For at least the reasons stated above, Unity has a reasonable apprehension
25 that Cree will enforce the ’819 and ’214 patents against Unity and/or its customers.

26 **COUNT ONE**

27 **Declaratory Judgment of Invalidity of U.S. Patent 8,596,819**

28 21. Unity incorporates paragraphs 1 through 20 of this Complaint as if set fully

1 herein.

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

5 23. As one example, the claims of the '819 patent are not directed to patentable
6 subject matter under 35 U.S.C. § 101 and controlling case law. The claims of the '819
7 patent are directed to the abstract idea of achieving output light of at least 60 lumens per
8 watt of electricity, but do not contain limitations to achieve that abstract idea. Further,
9 the limitations of the claims, read individually or as a whole, do not alter the claims such
10 that they transform the claims into a patent-eligible application. Rather, the limitations
11 are all either generic LED technology that far-predates the filing of the patent or
12 additional abstract ideas.

13 24. As another example, the claims of the '819 patent are invalid under 35
14 U.S.C. § 112 because they lack written description support. For example, the patent does
15 not provide description that would allow a person of ordinary skill in the art to
16 understand the inventors possessed the claimed device achieving "60 lumens per watt" of
17 electricity at the time of filing. Thus, the written description fails to show that the
18 inventors were in possession of the full scope of the invention for at least this reason.

19 25. As yet another example, the claims of the '819 patent are invalid under 35
20 U.S.C. § 112 for lack of enablement. For example, the terms "lighting device" and "light
21 emitting diode" could cover numerous embodiments not disclosed in the patent. For
22 another example, most of the claims contain an unbound range of "60 lumens per watt"
23 of electricity, which could potentially cover efficiencies beyond existing world records.
24 For at least these reasons, a person of ordinary skill in the art would not have been able to
25 make and use the full scope of the invention absent undue experimentation.

26 26. There is an actual controversy, within the meaning of 28 U.S.C. § 2201 and
27 § 2202, between Unity and Cree concerning the invalidity of the '819 patent.

28 27. Unity is therefore entitled to a declaratory judgment that the '819 patent

1 claims are invalid for failing to satisfy one or more of the conditions specified in Title 35
2 of the United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and
3 112.

4 **COUNT TWO**

5 **Declaratory Judgment of Invalidity of U.S. Patent No. 8,628,214**

6 28. Unity incorporates paragraphs 1 through 27 of this Complaint as if set fully
7 herein.

8 29. The claims of the '214 patent are invalid for failure to meet the statutory
9 requirements and/or conditions specified in Title 35 of the United States Code, including
10 but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

11 30. As one example, the claims of the '214 patent are not directed to patentable
12 subject matter under 35 U.S.C. § 101 and controlling case law. The claims of the '214
13 patent are directed to the abstract idea of achieving output light of at least 60 lumens per
14 watt of electricity, but do not contain limitations to achieve that abstract idea. Further,
15 the limitations of the claims, read individually or as a whole, do not alter the claims such
16 that they transform the claims into a patent-eligible application. Rather, the limitations
17 are all either generic LED technology that far-predates the filing of the patent or
18 additional abstract ideas.

19 31. As another example, the claims of the '214 patent are invalid under 35
20 U.S.C. § 112 because they lack written description support. For example, the patent does
21 not provide description that would allow a person of ordinary skill in the art to
22 understand the inventors possessed the claimed device achieving “60 lumens per watt” of
23 electricity as of the claimed priority date. Thus, the written description fails to show that
24 the inventors were in possession of the full scope of the invention for at least this reason.

25 32. As yet another example, the claims of the '214 patent are invalid under 35
26 U.S.C. § 112 for lack of enablement. For example, the terms “lighting device” and “solid
27 state light emitter” could cover numerous embodiments not disclosed in the patent. For
28 another example, most of the claims contain an unbound range of “60 lumens per watt”

1 of electricity, which could potentially cover efficiencies beyond existing world records.
2 For at least these reasons, a person of ordinary skill in the art would not have been able to
3 make and use the full scope of the invention absent undue experimentation.

4 33. There is an actual controversy, within the meaning of 28 U.S.C. § 2201 and
5 § 2202, between Unity and Cree concerning the invalidity of the '214 patent.

6 34. Unity is therefore entitled to a declaratory judgment that the '214 patent
7 claims are invalid for failing to satisfy one or more of the conditions specified in Title 35
8 of the United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and
9 112.

10 **PRAYER FOR RELIEF**

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

- 12 1. The claims of U.S. Patent No. 8,596,819 are invalid;
- 13 2. The claims of U.S. Patent No. 8,628,214 are invalid;
- 14 3. This is an exceptional case within the meaning of 35 U.S.C. § 285, and that
15 Unity shall be awarded its attorney fees, costs, and expenses incurred in prosecuting this
16 action; and
- 17 4. That Unity shall be awarded such other and further relief as this Court may
18 deem just and proper.

19 **JURY DEMAND**

- 20 5. Unity demands a jury trial on all issues and claims so triable.

1 Dated: January 3, 2016

Respectfully submitted,

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4 By: /s/ Yitai Hu

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