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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PACIFIC BIOSCIENCE
LABORATORIES, INC., a Washington
corporation,

Plaintiff,

v.

SHANGHAI ANZIKANG ELECTRIC
CO., LTD., a Chinese corporation,

Defendant.

No.

COMPLAINT FOR PATENT
INFRINGEMENT, TRADE DRESS
INFRINGEMENT, STATE UNFAIR
COMPETITION AND COMMON LAW
UNFAIR COMPETITION

JURY DEMAND

Plaintiff Pacific Bioscience Laboratories, Inc. (“PBL”), for its Complaint for Patent Infringement, Trade Dress Infringement, State Unfair Competition, and Common Law Unfair Competition against Defendant Shanghai Anzikang Electric Co., Ltd., (“Anzikang”), hereby alleges, by and through its attorney, on personal knowledge as to its own actions and on information and belief as to the actions of others, as follows:

I. INTRODUCTION

1. Plaintiff PBL dramatically changed the market for skin cleansing products when it introduced its innovative Clarisonic Sonic Skin Cleansing System (the “Clarisonic System”) in 2004. The Clarisonic System employs motion and forces at sonic frequencies to cleanse, soften, and smooth skin.

1 11. On information and belief, Anzikang manufactures, markets, and sells electric
2 skin care devices under the name Dione.
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5 **III. JURISDICTION AND VENUE**

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7 12. This case arises under the patent laws of the United States, 35 U.S.C. § 101 et seq.
8 and the Lanham Act, 15 U.S.C. §§ 1051, et seq. Supplemental jurisdiction exists over PBL’s
9 state law claims pursuant to 28 U.S.C. § 1367(a).
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12 13. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C.
13 §§ 1331, 1332, 1338, and 1367.
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16 14. PBL has its principal place of business in this District, and makes its Clarisonic
17 devices available for sale in this District.
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20 15. This Court has personal jurisdiction over Anzikang because, on information and
21 belief, Anzikang has committed and continues to commit the acts violating PBL’s intellectual
22 property described herein within the State of Washington, including in this District, and places
23 infringing products into the stream of commerce, with the knowledge or understanding that such
24 products are sold in the State of Washington, including in this District.
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30 16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), (c), and 28
31 U.S.C. § 1400(b) because, *inter alia*, PBL’s principal place of business is within this District and
32 PBL suffered harm in this District, because a substantial part of the events giving rise to the
33 claims against Anzikang occurred and are occurring in this District, and because Anzikang
34 transacts business within this District and offers for sale in this District products that infringe
35 PBL’s intellectual property.
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43 **IV. BACKGROUND**

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45 17. Since the early 2000s, PBL has designed, developed, manufactured, marketed,
46 and sold in the United States (and worldwide) its innovative Clarisonic System, which is a line of
47 skin care products including a number of Sonic Cleansing Brushes and accessories, the
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1 Clarisonic Opal® Sonic Infusion System, and targeted treatment solutions. Examples of
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3 Clarisonic products are pictured below:
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20 18. The Clarisonic System was developed by PBL over many years at great expense
21 and effort and represents a breakthrough in devices and methods for treatment of early stage acne
22 and for effective cleansing of skin. Those devices and methods employ motion and forces at
23 sonic frequencies to cleanse, soften, and smooth skin. They alleviate clogged pores and remove
24 debris from skin more gently and effectively than alternative devices or methods, such as manual
25 cleansing.
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32 19. The innovations embodied in the Clarisonic System are protected by numerous
33 United States and foreign intellectual property rights, including rights deriving from patents,
34 trademarks, and trade dress.
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38 20. Prior to the introduction of the Clarisonic System, there were no sonic facial
39 cleansing devices on the market. Indeed, before development of the Clarisonic System, no
40 market existed for sonic skin care devices. PBL expended considerable resources to create the
41 sonic skin care market and to educate the public regarding facial cleansing, as well as to market
42 its sonic facial cleansing devices.
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48 21. Since its introduction, the Clarisonic System has become widely acclaimed by
49 professionals and consumers, and has garnered many media awards from sources such as
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1 authoritative magazines in the beauty industry, Oprah’s Favorite Things in 2007 on the Oprah
2 Winfrey Show, Best of Sephora in 2007 and 2008, and QVC Customer Choice in 2008, 2009,
3 and 2010.
4

5
6 22. The success of the Clarisonic System has spurred a large number of imitations,
7 such as Anzikang’s Dione, pictured below.
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32
33 **V. PBL’S INTELLECTUAL PROPERTY RIGHTS**

34
35 **U.S. Patent No. 7,320,691**

36
37 23. U.S. Patent No. 7,320,691 (“the ’691 patent”) issued on January 22, 2008, and is
38 entitled “Apparatus and Method for Acoustic/Mechanical Treatment of Early Stage Acne.” The
39 inventors are Kenneth A. Pilcher, David Giuliani, and Stephen M. Meginniss.
40

41
42 24. A copy of the ’691 patent is attached as Exhibit 1.

43
44 25. PBL is the exclusive licensee having all substantial rights in and to the ’691
45 patent, with the rights to bring enforcement actions for past, present and future infringement and
46 to collect damages for past infringement.
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PBL’s Clarisonic Trade Dress

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3 36. PBL’s Clarisonic products include the Clarisonic Plus model and the Clarisonic
4 Pro model. The Clarisonic Plus and Clarisonic Pro are substantially identical in appearance.
5
6 The products are sold with a distinctive charging station, in which they rest to recharge.
7

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9 37. The Clarisonic Plus, including its current trade dress, has been used in commerce
10 in the United States since at least as early as 2007. The Clarisonic Pro, including its current trade
11 dress, has been used in commerce in the United States since at least as early as 2007.
12

13
14 38. The Clarisonic Plus and Clarisonic Pro enjoy wide distribution throughout the
15 United States. The Clarisonic Plus is a three-speed model sold directly to consumers via
16 department stores, assisted self-service stores, retail.com, e-tailers, professional salons,
17 professional spas, and dermatologists’ offices as well as online at Clarisonic.com. The
18 Clarisonic Plus sells for approximately \$ 225. The Clarisonic Pro is a four-speed model
19 available in salons, and sells for approximately \$ 225.
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23 39. Since at least as early as 2007, in an effort to set its products apart from others,
24 PBL has adopted and used a distinctive product configuration for its Clarisonic Plus and
25 Clarisonic Pro devices and their charging stations that unmistakably identify PBL as the source.
26
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29 40. The elements of the trade dress for the Clarisonic Plus and Clarisonic Pro devices
30 that create its distinctive overall commercial impression include, but are not limited to, the
31 following (the “Clarisonic Device Trade Dress”):
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- hourglass shape of the product;
- shape of the head unit;
- identical molded arcs on each side of the head unit;
- a droplet or “teardrop” shaped pad of contrasting texture on the front of the device;
- one or more control buttons located towards the top of the droplet, inside its perimeter;
- two round lights or “dots” located just above the droplet on the front of the device;
- four round lights or “dots” centered on the narrowest part of the back of the device;
- location of the product name at the widest part of the back of the device;
- contrasting-color ring of bristles located within the bristles on the brush head;
- the shape and contour of the ring surrounding the brush head, with alternating protrusions and indentations; and
- the brush cap, with six large holes spaced evenly on the face, around the perimeter of the cap.

1 as well as through unsolicited media attention, commercial success, and substantial sales,
2
3 advertising, and promotion.

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5 44. In the minds of consumers, the Clarisonic Trade Dress stands for and identifies a
6
7 single source of high quality facial cleansing devices. PBL, through its continuous, exclusive,
8
9 and prolonged use of its trade dress, has developed substantial goodwill, value, and recognition
10
11 in it. Customers, potential customers and the trade recognize and associate the Clarisonic Trade
12
13 Dress with high quality facial cleansing devices emanating from a single source.

14
15 45. PBL's Clarisonic Plus and Clarisonic Pro devices have been widely promoted
16
17 through in-store promotions, displays, and advertisements, as well as directly to consumers via
18
19 the Internet. The Clarisonic Plus and Clarisonic Pro, including their trade dress, have been
20
21 featured in editorial coverage in national, trade, and regional magazines. Those editorial features
22
23 have been seen by millions upon millions of consumers since 2007.

24
25 **CLAIM I – INFRINGEMENT OF THE '691 PATENT**

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27 46. PBL hereby incorporates and realleges Paragraphs 1 - 45 as if fully set forth
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29 herein.

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31 47. Anzikang has been and/or is directly infringing one or more claims of the '691
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33 patent pursuant to 35 U.S.C. § 271(a), literally or under the doctrine of equivalents, by making,
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35 using, offering to sell, and/or selling in the United States and/or importing into the United States,
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37 products, devices, or systems that are covered by the '691 patent, including the Dione.

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39 48. PBL has consistently and continuously marked its products with the '691 patent
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41 number pursuant to 35 U.S.C. § 287 and has provided constructive notice of the '691 patent.
42
43 PBL seeks monetary and all other damages permitted by statute.

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45 49. Anzikang's infringement of the '691 patent has been and will continue to be
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47 willful and deliberate, by making, using, offering to sell, and/or selling in the United States
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49 and/or importing into the United States, infringing devices despite that such actions constitute
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1 infringement and despite being at least on constructive notice that its actions constitute
2 infringement.
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4 50. Anzikang's infringement of the '691 patent has caused and will continue to cause
5 PBL substantial and irreparable injury, for which PBL is entitled to all of the relief provided by
6 35 U.S.C. §§ 281, 283, 284, and 285, including but not limited to injunctive relief, compensatory
7 damages not less than the amount of a reasonable royalty, interest, costs, enhanced damages, and
8 reasonable attorney's fees, as the court deems just and appropriate.
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14 **CLAIM II – INFRINGEMENT OF THE '906 PATENT**

15 51. PBL hereby incorporates and realleges Paragraphs 1 - 50 as if fully set forth
16 herein.
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19 52. Anzikang has been and/or is directly infringing one or more claims of the '906
20 patent pursuant to 35 U.S.C. § 271(a), literally or under the doctrine of equivalents, by making,
21 using, offering to sell, and/or selling in the United States and/or importing into the United States,
22 products, devices, or systems that are covered by the '906 patent, including the Dione.
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28 53. PBL has consistently and continuously marked its products with the '906 patent
29 number pursuant to 35 U.S.C. § 287 and has provided constructive notice of the '906 patent.
30 PBL seeks monetary and all other damages permitted by statute.
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34 54. Anzikang's infringement of the '906 patent has been and will continue to be
35 willful and deliberate, by making, using, offering to sell, and/or selling in the United States
36 and/or importing into the United States, infringing devices despite that such actions constitute
37 infringement and despite being at least on constructive notice that its actions constitute
38 infringement.
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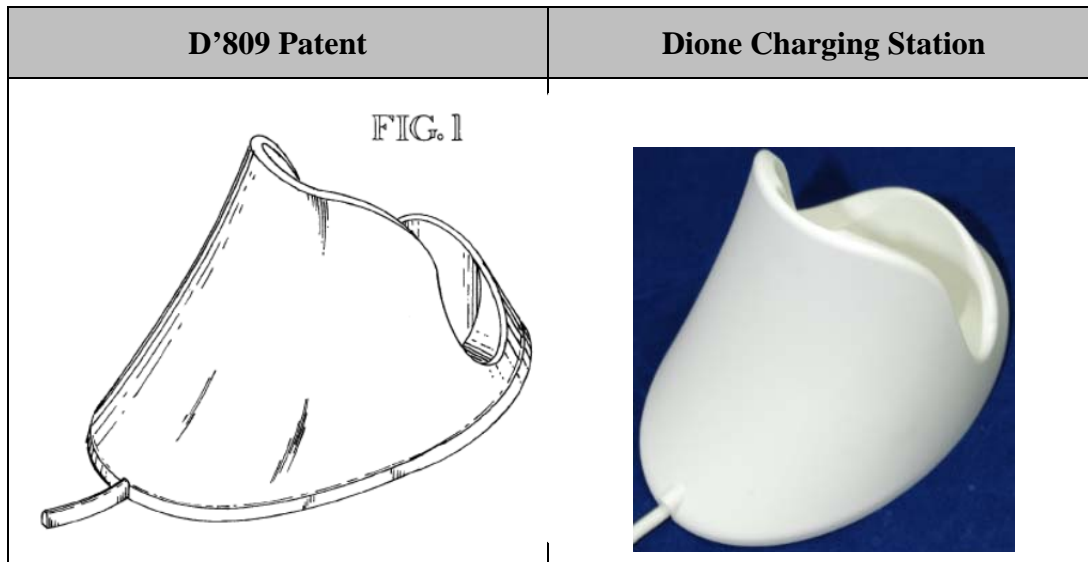
44 55. Anzikang's infringement of the '906 patent has caused and will continue to cause
45 PBL substantial and irreparable injury, for which PBL is entitled to all of the relief provided by
46 35 U.S.C. §§ 281, 283, 284, and 285, including but not limited to injunctive relief, compensatory
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1 damages not less than the amount of a reasonable royalty, interest, costs, enhanced damages, and
 2 reasonable attorney’s fees, as the court deems just and appropriate.
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4 **CLAIM III – INFRINGEMENT OF THE D’809 PATENT**

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 6 56. PBL hereby incorporates and realleges Paragraphs 1 - 55 as if fully set forth
 7 herein.
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 10 57. Anzikang has been and/or is directly infringing the D’809 patent pursuant to 35
 11 U.S.C. § 271(a), by making, using, offering to sell, and/or selling in the United States and/or
 12 importing into the United States, products, devices, or systems that embody the design covered
 13 by the D’809 patent, including the Dione.
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37 58. PBL has consistently and continuously marked its products with the D’809 patent
 38 number pursuant to 35 U.S.C. § 287 and has provided constructive notice of the D’809 patent.
 39 PBL seeks monetary and all other damages permitted by statute.
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 43 59. Anzikang’s infringement of the D’809 patent has been and will continue to be
 44 willful and deliberate, by making, using, offering to sell, and/or selling in the United States
 45 and/or importing into the United States, infringing devices despite that such actions constitute
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1 infringement and despite being at least on constructive notice that its actions constitute
2 infringement.
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4 60. Anzikang's infringement of the D'809 patent has caused and will continue to
5 cause PBL substantial and irreparable injury, for which PBL is entitled to all of the relief
6 provided by 35 U.S.C. §§ 281, 283, 284, 285, and 289, including but not limited to injunctive
7 relief, compensatory damages not less than the amount of a reasonable royalty, interest, costs,
8 enhanced damages, Anzikang's profits, and reasonable attorney's fees, as the court deems just
9 and appropriate.
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11 **CLAIM IV – INFRINGEMENT OF THE CLARISONIC TRADE DRESS**
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13 61. PBL hereby incorporates and realleges Paragraphs 1 - 60 as if fully set forth
14 herein.
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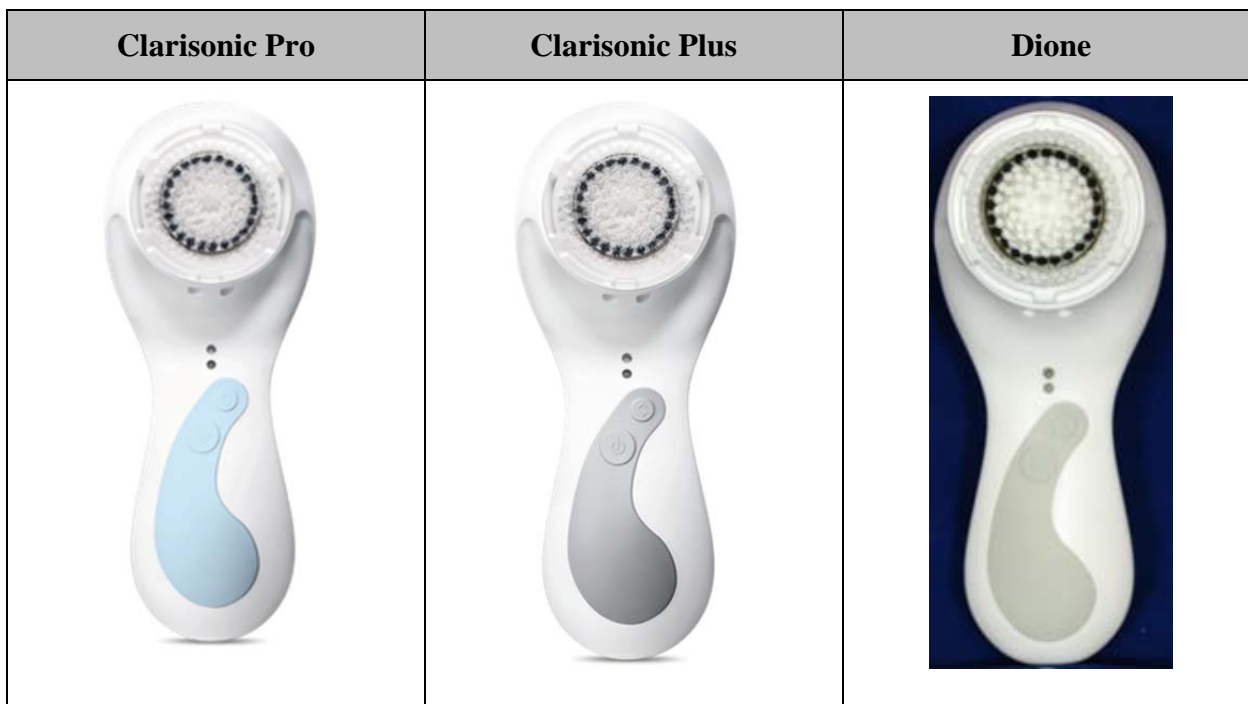
16 62. PBL owns and is the senior user of the Clarisonic Device Trade Dress for its
17 facial cleansing brush and the Clarisonic Charging Station Trade Dress for its charging station,
18 which are entitled to protection under 15 U.S.C. § 1125(a).
19

20 63. PBL owns common law trademark rights in the Clarisonic Device Trade Dress
21 and the Clarisonic Charging Station Trade Dress (separately asserted but referred to collectively
22 herein as the "Clarisonic Trade Dress" for convenience). These rights are superior to any rights
23 that Anzikang may claim with respect to its infringing products. The Clarisonic Trade Dress is
24 nonfunctional and has acquired secondary meaning among the relevant public in that it identifies
25 products emanating from a single source.
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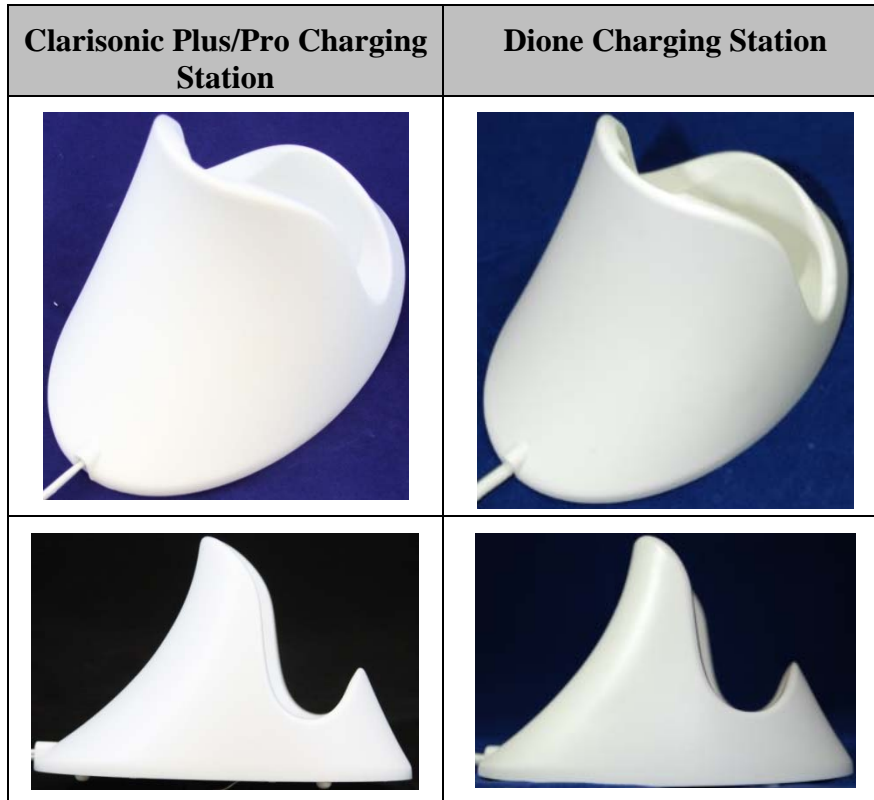
27 64. Anzikang is promoting, offering for sale, and selling products that intentionally
28 copy and imitate the Clarisonic Trade Dress.
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30 65. Anzikang's Dione brush and brushhead embody a combination of several
31 elements of the Clarisonic Device Trade Dress identified above in Paragraph 40.
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66. Anzikang's Dione charging station embodies a combination of several elements of the Clarisonic Charging Station Trade Dress identified above in Paragraph 41.



1 67. Anzikang's sale and advertising of the Dione is likely to cause confusion, or to
2 cause mistake, or to deceive as to an affiliation, connection, or association of Anzikang with PBL
3 that does not exist, or as to the origin, sponsorship, or approval of the Dione product by PBL in
4 violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
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9 68. Anzikang copied the Clarisonic Trade Dress with the intent to trade on the
10 goodwill developed by PBL in the Clarisonic Trade Dress. Anzikang's intentional copying is
11 evidenced by the high degree of similarity between the Dione and the Clarisonic Trade Dress.
12
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14 69. Anzikang has willfully taken these actions with the intent to confuse or deceive
15 consumers and unfairly profit from the goodwill PBL has developed in the Clarisonic Trade
16 Dress.
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20 70. Anzikang's intentional and willful actions have infringed PBL's common law
21 rights in the Clarisonic Trade Dress in violation of 15 U.S.C. § 1125(a).
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24 71. As a result of Anzikang's actions, Anzikang has been and will continue to be
25 unjustly enriched by profits made through the sale of its infringing products.
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28 72. Anzikang's infringement of the Clarisonic Trade Dress has caused and will
29 continue to cause PBL substantial and irreparable injury, for which PBL is entitled to all of the
30 relief provided by 15 U.S.C. §§ 1116 and 1117, including but not limited to injunctive relief,
31 compensatory damages, enhanced damages, and Anzikang's profits.
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34 73. Anzikang's intentional and willful violations entitle PBL to recover three times its
35 actual damages, pursuant to 15 U.S.C. § 1117.
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38 74. This is an exceptional case under 15 U.S.C. § 1117(a), thus entitling PBL to an
39 award of reasonable attorney's fees.
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42 75. PBL has no adequate remedy at law for Anzikang's continued infringement.
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CLAIM V – VIOLATION OF WASHINGTON STATE’S CONSUMER PROTECTION ACT – RCW § 19.86.020 (UNFAIR COMPETITION)

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4 76. PBL hereby incorporates and realleges Paragraphs 1 - 75 as if fully set forth
5 herein.
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8 77. The State of Washington has an important interest in ensuring that companies
9 doing business with Washington residents fully comply with Washington laws.
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11
12 78. Anzikang’s unauthorized use of the Clarisonic Trade Dress is an unfair or
13 deceptive act or practice that has the capacity to and does in fact deceive consumers into
14 believing that Anzikang is affiliated, connected, or associated with PBL, or that Anzikang’s
15 product comes from or is sponsored or approved by PBL.
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19 79. Anzikang’s conduct occurred in the conduct of trade or commerce or the sale of
20 products in the State of Washington.
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24 80. Anzikang’s unfair and deceptive acts and practices implicate the public interest
25 because of the widespread deception they are causing on the consuming public.
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28 81. All the conduct alleged herein occurs and continues to occur in the course of
29 Anzikang’s business. The conduct is part of a pattern or generalized course of conduct repeated
30 on numerous occasions daily.
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34 82. Anzikang has engaged and continues to engage in these activities knowingly,
35 willfully, and deliberately.
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38 83. PBL has been directly and proximately injured in its business and property by
39 Anzikang’s conduct complained of herein, in violation of PBL’s rights under RCW § 19.86.020.
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42 84. Anzikang’s violations of RCW § 19.86.020 have caused and will continue to
43 cause PBL to sustain damage, loss, and injury in an amount that cannot be fully measured or
44 compensated in economic terms.
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48 85. Pursuant to RCW § 19.86.090, PBL is entitled to actual and trebled damages,
49 reasonable attorney’s fees and costs of suit.
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1 86. PBL has no adequate remedy at law, unless the acts of Anzikang are enjoined
2 during the pendency of this action and thereafter.
3

4 **CLAIM VI – COMMON LAW UNFAIR COMPETITION**

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6 87. PBL hereby incorporates and realleges Paragraphs 1 - 86 as if fully set forth
7 herein.
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10 88. Anzikang has used and continues to use in advertising and commerce false and
11 misleading descriptions of fact, and/or false and misleading representations of fact, concerning
12 its merchandise. Anzikang has further displayed, distributed, sold, and used merchandise that
13 infringes the Clarisonic Trade Dress, thereby unfairly taking advantage of the goodwill and
14 business reputation of PBL. These activities constitute unfair competition.
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20 89. Anzikang has engaged in unfair competition willfully and with a bad faith intent
21 to confuse consumers and injure PBL.
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23 90. PBL has sustained, and will continue to sustain, substantial injuries, loss, and
24 damage to its business by reason of the unfair competition of Anzikang.
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28 91. On information and belief, unless restrained and enjoined, Anzikang will continue
29 to engage in unfair competition that injures PBL and thereby causes irreparable damage to PBL,
30 as it would be unreasonably difficult to ascertain the amount of compensation that could afford
31 PBL adequate relief for such continuing infringement. PBL has no adequate remedy at law.
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37 **VI. DEMAND FOR JURY TRIAL**

38 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, PBL respectfully requests a
39 trial by jury of all issues properly triable by jury.
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43 **VII. PRAYER FOR RELIEF**

44 WHEREFORE, PBL prays for relief, as follows:

- 45
46 A. A judgment that Anzikang has infringed one or more claims of the '691 patent;
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48 B. A judgment that Anzikang has infringed one or more claims of the '906 patent;
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50 C. A judgment that Anzikang has infringed the D'809 patent;
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1 D. An order and judgment preliminarily and permanently enjoining Anzikang and its
2 officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in
3 privity or in concert with them, and their investors, partners, parents, subsidiaries, divisions,
4 successors, and assigns, from further acts of infringement of PBL's asserted patents;
5
6

7 E. A judgment awarding PBL all damages adequate to compensate for Anzikang's
8 infringement of PBL's asserted patents and/or Anzikang's total profits pursuant to 35 U.S.C.
9 § 289, and in no event less than a reasonable royalty for Anzikang's acts of infringement,
10 including all pre-judgment and post-judgment interest at the maximum rate permitted by law;
11
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13 F. A judgment declaring that Anzikang's infringement of the asserted patents has
14 been willful and deliberate;
15
16

17 G. A judgment awarding PBL all damages, including treble damages, as a result of
18 Anzikang's willful and deliberate infringement of the asserted patents, pursuant to 35 U.S.C.
19 § 284, together with pre-judgment and post-judgment interest;
20
21

22 H. A judgment declaring that this case is exceptional;
23
24

25 I. A judgment awarding PBL its expenses, costs, and attorney's fees in accordance
26 with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure;
27
28

29 J. An order preliminarily and permanently enjoining Anzikang and its officers,
30 directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in
31 concert with them, and their investors, partners, parents, subsidiaries, divisions, successors, and
32 assigns, from directly or indirectly infringing the Clarisonic Trade Dress or using any other
33 product or packaging design or designations constituting a colorable imitation of or likely to
34 cause confusion with the Clarisonic Trade Dress; from passing off Anzikang's products as being
35 associated with and/or sponsored or affiliated with PBL; from committing any other unfair
36 business practices directed toward obtaining for themselves the business and customers of PBL;
37 and from committing any other unfair acts or practices directed toward devaluing or diminishing
38 the goodwill, brand, or business of PBL;
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1 K. Actual damages suffered by PBL as a result of Anzikang's unlawful conduct, in
2 an amount to be proven at trial, as well as pre-judgment and post-judgment interest as authorized
3 by law;
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6 L. A recall of all infringing products and destruction thereof;
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8 M. An accounting of Anzikang's profits pursuant to 15 U.S.C. § 1117;
9

10 N. A judgment trebling any profits and/or damages award pursuant to 15 U.S.C.
11 § 1117;
12

13
14 O. The filing of a declaration with this Court in accordance with 15 U.S.C. § 1116
15 within 30 days of any injunction that issues;
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17
18 P. An award of PBL's actual and trebled damages and costs of suit, including
19 attorney's fees, in an amount to be proved at trial and as provided under RCW § 19.86.090;
20

21 Q. Costs of suit and reasonable attorney's fees; and
22

23 R. Such other and further relief as the Court deems just and proper.
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27
28 DATED: May 1, 2015.

Respectfully submitted,

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30
31 By: s/ Ramsey M. Al-Salam

Ramsey M. Al-Salam WSBA #18822

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Pacific Bioscience Laboratories, Inc.

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COUNSEL:

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