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10 Attorneys for Plaintiff  
JOSEPH NEEV

11  
12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 SOUTHERN DIVISION

15 JOSEPH NEEV, an individual,  
16 Plaintiff,  
17 v.  
18 ALCON LENSX, INC., a Delaware  
corporation,  
19 Defendant.  
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No. 8:15-cv-01538

**COMPLAINT FOR PATENT  
INFRINGEMENT AND DEMAND  
FOR JURY TRIAL**

1 Plaintiff Joseph Neev (“Dr. Neev”), by and through his undersigned attorneys,  
2 pleads as follows:

3 **I. PARTIES**

4 1. Dr. Neev is an individual residing in Laguna Beach, California.

5 2. Alcon LenSx, Inc. (“Alcon LenSx”) is a corporation organized and  
6 existing under the laws of the State of Delaware having a principal place of business in  
7 Aliso Viejo, California.

8 **II. JURISDICTION AND VENUE**

9 3. This Court has subject matter jurisdiction for this action pursuant to 28  
10 U.S.C. §§ 1331 and 1338.

11 4. This Court has personal jurisdiction over Alcon LenSx for the reasons,  
12 among others, that (i) Alcon LenSx transacts business by facilitating sales and  
13 maintenance of the infringing products in California, (ii) Alcon LenSx’s principal  
14 place of business is located in Orange County, California, and (iii) Alcon LenSx has  
15 filed counterclaims in related civil litigation in this this Court.

16 5. Venue is proper in this Court pursuant to 28 U.S. Code §§ 1391 because a  
17 substantial part of the events or omissions giving rise to the claim occurred in this  
18 District and under 1400(b) because the Alcon LenSx has its principle place of business  
19 in this District and because it has committed acts of infringement and has a regular and  
20 established place of business in this District.

21 **III. FACTUAL ALLEGATIONS**

22 **A. Dr. Neev**

23 6. Dr. Joseph Neev, President of Femto-Sec, is a physicist and an inventor  
24 of revolutionary applications of lasers in the ophthalmic, dermatological, dental and  
25 cardiovascular fields.

26 7. Dr. Neev’s career in advancing the use of laser technology to optimize  
27 surgical applications began in the late 1980s. His contributions to augment the use of  
28 lasers in medical and other applications is well-recognized in the industry, and can be

1 seen through his numerous publications and his affiliation with reputable institutions  
2 such as Lawrence Livermore National Laboratory (“Livermore”), the University of  
3 California at Irvine (“UCI”), the Beckman Laser Institute, the University of California  
4 at San Diego, the University of California at San Francisco, Cornell University School  
5 of Medicine, the University of Texas at Austin, Stanford University’s School of  
6 Medicine and Duke University’s School of Medicine.

7 8. In the mid and late 1990s, Dr. Neev worked as an assistant professor of  
8 surgery at the Beckman Laser Institute and Medical Clinic, which was part of the  
9 Department of Surgery at UCI. At the time, Dr. Neev worked with other University of  
10 California scientists at Livermore on research and development projects relating to  
11 ultrashort pulse lasers. Livermore, which was managed by the University of  
12 California at the time, is a federally funded research laboratory, entrusted with  
13 strengthening the United States’ security through the development and application of  
14 world-class science and technology.

15 **B. The ‘926 Patents**

16 9. Dr. Neev and his collaborators at Livermore developed foundational  
17 technology relating to ultrashort pulse lasers with various applications. After his  
18 departure from UCI, Dr. Neev continued his research concerning medical applications  
19 of laser technology. Among many other patents that resulted from Dr. Neev’s work,  
20 U.S. Patent No. 8,523,926 (“‘926 Patent”), entitled “Devices and Methods for  
21 Generation of Subsurface Microdisruptions for Biomedical Applications,” which  
22 issued to Dr. Neev on September 3, 2013. A true and correct copy of the ‘926 Patent  
23 is attached hereto as Exhibit 1.

24 10. Dr. Neev is the sole inventor and owner of the ‘926 Patent.

25 11. Defendant is and has been aware of the ‘926 Patent for at least the  
26 following reasons. In 2009, Dr. Ron Kurtz, the President and CEO of LenSx Lasers,  
27 Inc. (“LenSx”), informed Dr. Neev that LenSx was interested in obtaining licenses to  
28 certain intellectual property owned by Dr. Neev. Dr. Neev and LenSx engaged in

1 discussions and negotiations over the course of 2009 and into 2010. In the course of  
2 those discussions Dr. Neev informed LenSx that he had filed an application that later  
3 issued as the '926 Patent, and provided LenSx with a copy of the application. LenSx  
4 was later acquired by Alcon, Inc., an affiliate of Alcon Labs and Wavelight.

5 **C. The LenSx Laser System**

6 12. In or around 2009 or 2010, Alcon LenSx received FDA approval for the  
7 LenSx Laser System (“the LenSx Laser”).<sup>1</sup>

8 13. On information and belief, Alcon LenSx began offering to sell and selling  
9 its LenSx Laser in the United States in 2011.

10 14. The LenSx Laser uses focused femtosecond laser pulses to create  
11 incisions and separate tissue in the lens capsule, crystalline lens and cornea, by means  
12 of ablation and photodisruption of corneal tissue.

13 15. On information and belief, when the LenSx Laser is used for an indicated  
14 use in accordance with instructions provided by Alcon LenSx, laser energy is directed  
15 below the surface of the eye, creating a plurality of cavitation bubbles below the  
16 surface of the eye in a three-dimensional pattern.

17 16. On information and belief, when the LenSx Laser is used for an indicated  
18 use in accordance with instructions provided by Alcon LenSx, no thermal damage is  
19 caused further than five microns below the disrupted area.

20 17. On information and belief, when the LenSx Laser is used for an indicated  
21 use in accordance with instructions provided by Alcon LenSx, modification or  
22 ablation of eye tissue occurs as a result of the interaction of laser energy with eye  
23 tissue.

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27 <sup>1</sup> Alcon LenSx variously refers to its femtosecond laser products as “LenSx Laser,”  
28 “LenSx 550,” and the “LenSx Laser System.” Wherever possible, Plaintiff’s choice of  
terms reflects Alcon LenSx’s own use, otherwise “LenSx Laser” refers collectively to  
all LenSx femtosecond laser product.

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**COUNT I**

**INFRINGEMENT OF THE '926 PATENT**

18. Dr. Neev restates and incorporates by reference his previous allegations above, as if fully set forth herein.

19. Alcon LenSx has infringed and continues to infringe one or more claims of the '926 Patent by making, using, selling or offering to sell in the United States and/or by importing into the United States the LenSx laser.

20. Alcon LenSx has induced and continues to induce infringement of one or more claims of the '926 Patent in the United States by, among others, ophthalmic surgeons performing eye surgery using the LenSx laser. Alcon LenSx has known of the '926 Patent since at least September 3, 2013, the date the '926 Patent issued, at least as a result of (i) the fact that by no later than 2009 Dr. Neev informed LenSx of the PCT application from which the '926 Patent issued, and (ii) the fact that Dr. Neev's counsel sent a letter to Alcon Labs, an affiliate of Alcon LenSx, in or about February 2009 informing Alcon Labs of the existence of the PCT application from which the '926 Patent issued. Alcon LenSx has known or acted with willful blindness to the likelihood that the use of the LenSx laser by ophthalmic surgeons infringes the '926 Patent.

21. Alcon LenSx's infringing LenSx lasers are configured such that the use of the lasers for eye surgery constitutes infringement, and Alcon LenSx instructs and encourages users to use the infringing lasers for eye surgery. For example, Alcon's website states: "The LenSx<sup>®</sup> Laser is indicated for use in patients undergoing cataract surgery for removal of the crystalline lens. Intended uses in cataract surgery include anterior capsulotomy, phacofragmentation, and the creation of single plane and multi-plane arc cuts/incisions in the cornea, each of which may be performed either individually or consecutively during the same procedure."

22. Alcon LenSx intends that the infringing products be used in a manner that infringes the '926 Patent. Alcon LenSx has obtained FDA approval for infringing

1 uses and markets these products for infringing uses. On information and belief, Alcon  
2 LenSx directly or indirectly creates and provides manuals, brochures or other  
3 documentation instructing and enabling infringing uses.

4 23. Alcon LenSx has contributed to and continues to contribute to  
5 infringement of one or more claims of the '926 Patent in the United States by, among  
6 others, ophthalmic surgeons performing eye surgery using the LenSx laser. Alcon  
7 LenSx has known of the '926 Patent since at least September 3, 2013, the date the  
8 '926 Patent issued. The infringing products embody a material part of the claimed  
9 invention of the '926 Patent, and Alcon LenSx knows that these products are  
10 especially made or adapted for uses that infringe the '926 Patent. The infringing  
11 products are not a staple article or commodity of commerce suitable for substantially  
12 non-infringing uses.

13 24. Alcon LenSx's infringement of the '926 Patent has been and continues to  
14 be willful. Alcon LenSx has known of the '926 Patent since at least September 3,  
15 2013, the date the '926 Patent issued. Alcon LenSx knew or should have known that  
16 its products infringe the '926 Patent, and Alcon LenSx has proceeded despite an  
17 objectively high likelihood that a court would find the products to be infringing.

18 25. Alcon LenSx does not now have a license under the '926 Patent and has  
19 not had a license under the '926 Patent since the date on which the Femto-LenSx  
20 Sublicense Agreement was terminated.

21 26. Dr. Neev has sustained significant damages as a direct and proximate  
22 result of Alcon LenSx's infringement of the '926 Patent.

23 27. Dr. Neev will suffer and is suffering irreparable harm from Alcon  
24 LenSx's infringement of the '926 Patent. Dr. Neev is entitled to an injunction against  
25 Alcon LenSx's continuing infringement of the '926 Patent. Unless enjoined, Alcon  
26 LenSx will continue its infringing conduct.

27 28. Alcon LenSx's infringement of the '926 Patent is exceptional and entitles  
28 Dr. Neev to attorneys' fees and costs incurred in prosecuting this action.

1 **RELIEF REQUESTED**

2 WHEREFORE, Dr. Neev prays that the Court enter judgment as follows:

3 A. That Alcon LenSx has infringed and continues to infringe the ‘926 Patent  
4 and that the ‘926 Patent is not invalid and is enforceable;

5 B. Awarding Dr. Neev damages adequate to compensate him for Alcon  
6 LenSx’s infringement of the ‘926 Patent, in an amount to be determined at trial, but in  
7 no event less than a reasonable royalty for the use made of the claimed inventions by  
8 them;

9 C. Awarding a preliminary and permanent injunction restraining and  
10 enjoining Alcon LenSx, and its officers, agents, servants, employees, attorneys, and  
11 any persons in active concert or participation with them who receive actual notice of  
12 the order by personal service or otherwise, from any further manufacture, use, sales,  
13 offers to sell, or importations of any and all of the products and services identified  
14 above;

15 D. Trebling all damages awarded to Dr. Neev under the ‘926 Patent;

16 E. Finding this case exceptional and awarding to Dr. Neev his reasonable  
17 attorneys’ fees incurred in prosecuting his claims for patent infringement;

18 F. Costs and interest;

19 G. Such other relief as the Court determines to be just and proper.

20  
21 DATED: September 24, 2015

HAGENS BERMAN SOBOL SHAPIRO LLP

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**DEMAND FOR JURY TRIAL**

Dr. Neev requests a jury trial for all issues triable to a jury.

DATED: September 24, 2015

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