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8 Attorneys For Plaintiff
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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION

13 CAO GROUP, INC.,

14 Plaintiff,

15 vs.

16 BIOLASE TECHNOLOGY, INC.,

17 Defendant.

18 Case No. 8:18-CV-00133

19 COMPLAINT FOR PATENT
20 INFRINGEMENT

21 JURY TRIAL DEMANDED

22 Plaintiff CAO GROUP, INC., ("CAO") hereby files this
23 Complaint and alleges against Defendant BIOLASE
24 TECHNOLOGY, INC. ("Biolase") as follows:

25 PARTIES

26 1. CAO is, and at all times relevant herein was, a Utah
27 corporation with its principal place of business located
28 at 4628 West Skyhawk Drive, West Jordan, Utah 84084.

29 2. CAO alleges on information and belief that
30 Biolase is, and at all times relevant herein was, a Delaware

1 corporation with its principal place of business located
2 at 4 Cromwell, Irvine, California 92618.

3 NATURE OF THE ACTION

4 3. This is an action for patent infringement arising
5 under the Patent Laws of the United States, *i.e.*, 35
6 U.S.C. §§ 1, *et seq.*, including without limitation, 35
7 U.S.C. § 271.

8 4. CAO alleges on information and belief that
9 Biolase has infringed, and continues to infringe,
10 contribute to the infringement of, and/or actively induce
11 others to infringe, CAO's U.S. Patent Nos.: 8,337,097
12 ("the '097 Patent"); 8,834,457 ("the '457 Patent");
13 8,961,040 ("the '040 Patent"); and 8,967,883 ("the '883
14 Patent") (collectively, "the Patents-in-Suit").

15 JURISDICTION AND VENUE

16 5. This Court has subject matter jurisdiction over
17 this action pursuant to 28 U.S.C. §§ 1331 and 1338.

18 6. CAO alleges on information and belief that this
19 Court has personal jurisdiction over Biolase because,
20 *inter alia*: (i) Biolase has its principal place of
21 business in this Judicial District, (ii) Biolase has
22 engaged in acts of patent infringement and/or
23 contributing to or inducing acts of patent infringement
24 by others in this Judicial District and elsewhere in
25 California; (iii) Biolase regularly conducts business in
26 this Judicial District and elsewhere in California; (iv)
27 Biolase directs advertising to and/or solicits business
28 from persons residing in this₂ Judicial District and

1 elsewhere in California through, at least, in-person
2 sales efforts; and (v) Biolase engages in other
3 persistent courses of conduct, and/or derives substantial
4 revenue from products and/or services provided to
5 persons, in this Judicial District and elsewhere in
6 California.

7 7. Venue is proper in this Court pursuant to 28
8 U.S.C. §§ 1391 and 1400(b) because Biolase has its
9 principal place of business in this Judicial District, a
10 substantial part of the events and omissions giving rise to the
11 claims herein occurred within this Judicial District, and/or
12 Biolase is subject to personal jurisdiction within this Judicial
13 District as set forth above.

14 FACTUAL BACKGROUND

15 8. CAO designs, develops, manufactures, and markets
16 various products for use in, *inter alia*, the dental
17 industry, including but not limited to lasers for
18 performing various dental and medical procedures on soft
19 tissue (e.g., gums).

20 9. CAO has sought protection for its technological
21 innovations resulting in numerous issued patents,
22 including each of the Patents-in-Suit.

23 10. The '097 Patent issued on December 25, 2012, with
24 a filing date of February 21, 2008.

25 11. CAO is the owner by assignment of the '097
26 Patent, which is directed to "Modular Surgical Laser
27 Systems."
28

1 12. The '457 Patent issued on September 16, 2014,
2 with a filing date of February 21, 2008.

3 13. CAO is the owner by assignment of the '457
4 Patent, which is directed to "Modular Surgical Laser
5 Systems."

6 14. The '040 Patent issued on February 24, 2015, with
7 a filing date of November 20, 2012.

8 15. CAO is the owner by assignment of the '040
9 Patent, which is directed to "Modular Surgical Laser
10 Systems."

11 16. The '883 Patent issued on March 3, 2015, with a
12 filing date of November 20, 2012.

13 17. CAO is the owner by assignment of the '883
14 Patent, which is directed to "Modular Surgical Laser
15 Systems."

16 18. CAO alleges on information and belief that
17 Biolase develops and markets worldwide a number of
18 medical and dental laser devices, including the ezlase®,
19 iLase™, Epic®, Epic™ Pro, Epic™ 10, Epic™ S, Epic™ T,
20 Epic™ V, and Epic™ X (the products beginning with "Epic"
21 collectively referred to as "Epic") dental lasers
22 (collectively, the "Accused Devices").

23 19. By way of example, with respect to claim 1 of the
24 '097 Patent, the Epic™ X device is a laser transmission
25 system that includes, *inter alia*, a portable console
26 having a laser generation module, control electronics, a
27 screen, a battery pack, and a laser transmission fiber.

1 20. The Epic™ X device includes a laser application
2 tip that is attachable to the laser transmission
3 structure.

4 21. The Epic™ X device includes connection structure
5 to join the laser application tip to the transmission
6 fiber. The connection structure includes a fiber seating
7 structure for receiving a ferrule encasing an end of the
8 laser transmission fiber, and an outer casing capable of
9 receiving the seating structure and tip attachment
10 structure.

11 22. The Epic™ X device also includes a remote control
12 foot switch that is in wireless communication with the
13 laser generation module. The foot switch controls
14 whether the laser is generated by the laser generation
15 module.

16 23. By way of example only, with respect to claim 1
17 of the '457 Patent, each of the Accused Devices is a
18 laser transmission system that includes, *inter alia*, a
19 laser generation module, a laser transmission fiber, a
20 handpiece, and a removable tip.

21 24. The laser transmission fiber of each of the
22 Accused Devices includes a first end connected to the
23 laser generation module and a free end encased in a
24 ferrule.

25 25. The handpiece of each of the Accused Devices is
26 configured for connection to the free end of the laser
27 transmission fiber, and has a tip attachment structure.

1 26. The removable tip of each of the Accused Devices
2 is configured for attachment to the handpiece, and
3 includes a casing from which a cannular portion extends.

4 27. At least a portion of the fiber located within a
5 channel of the cannular portion of the removable tip of
6 each of the Accused Devices extends from an end of the
7 cannular portion.

8 28. The removable tip of each of the Accused Devices
9 also includes a connector that encases an end of the
10 fiber, the connection being held within the casing and
11 proximate to the channel.

12 29. The removable tip of each of the Accused Devices
13 also includes a space formed between the casing and the
14 connector into which the tip attachment structure of the
15 handpiece is connected.

16 30. In each of the Accused Devices, when the
17 removable tip is attached to the handpiece, the ferrule
18 encasing the laser transmission fiber and the connector
19 encasing the short piece of fiber are aligned for laser
20 transmission from the laser transmission fiber to the
21 short piece of fiber.

22 31. In each of the Accused Devices, the channel
23 directionally angles the short piece of fiber at an angle
24 of between zero and ninety degrees with respect to the
25 connector.

26 32. By way of example only, with respect to claim 1
27 of the '040 Patent, the Epic™ X device is a laser
28 transmission system that includes, *inter alia*, a wireless

1 handheld laser generation module, which includes a laser
2 module, electronic controls, laser emission controls, and
3 a laser transmission fiber.

4 33. The laser transmission fiber of the Epic™ X has a
5 free end encased in a ferrule.

6 34. The Epic™ X includes a laser application tip that
7 is attachable to the laser generation module through
8 attachment structure.

9 35. Connection structure of the Epic™ X is present to
10 join the tip and laser generation module.

11 36. The connection structure of the Epic™ X includes
12 a fiber seating structure capable of receiving the
13 ferrule and an outer casing capable of receiving the
14 seating structure and tip attachment structure.

15 37. The Epic™ X also includes a separate control
16 console, in connection with a foot switch, in wireless
17 communication with the laser generation module providing
18 some control of the laser generation module.

19 38. The Epic™ X further includes a remote control
20 foot switch that is in wireless communication with the
21 laser generation module. The remote control foot switch
22 will control at least one function of the laser
23 transmission system.

24 39. By way of example only, with respect to claim 1
25 of the '883 Patent, each of the Epic and ezlase® devices
26 is a laser transmission system that includes, *inter alia*,
27 a portable console, a laser generation module housed
28 within the portable console, ₇ control electronics housed

1 within the portable console and electrically coupled to
2 the laser generation module, a touch screen with a
3 graphical user interface, a laser transmission fiber, a
4 laser application tip, connection structure to couple the
5 laser application tip and laser transmission fiber, and a
6 wireless remote control foot switch that controls at
7 least one function of the laser transmission system.

8 40. The laser transmission fiber of each of the Epic
9 and ezlase® devices has a first end and a second end,
10 with the first end in laser communication with the laser
11 generation module.

12 41. The laser application tip of each of the Epic and
13 ezlase® devices is removably coupled to the second end of
14 the laser transmission fiber.

15 42. To the extent they relate to elements recited in
16 the claims of the Patents-in-Suit, the features of each
17 of the Epic®, Epic™ 10, Epic™ S, Epic™ T, Epic™ V, and
18 Epic™ X devices are substantively similar among the
19 different models.

20 43. On information and belief, Biolase operates and
21 maintains a website at www.Biolase.com, where Biolase's
22 products and services, including the Accused Devices, are
23 or have been marketed to consumers worldwide.

24 44. Biolase has had actual notice of the Patents-in-
25 Suit since at least October 31, 2017, and CAO alleges on
26 information and believe that Biolase has also had notice
27 as early as the issue date of each of the Patents-in-
28

1 Suit. Yet, Biolase continues to offer for sale and sell
2 at least some of the Accused Devices.

3 COUNT ONE

4 (Patent Infringement of U.S. Patent No. 8,337,097 -
5 35 U.S.C. §§ 271, *et seq.*)

6 45. CAO realleges and incorporates herein by
7 reference each of the above paragraphs of this Complaint,
8 inclusive, as though fully set forth herein.

9 46. CAO alleges on information and belief that
10 Biolase has (1) infringed and continues to infringe at
11 least claim 1 of the '097 Patent by making, using,
12 offering to sell, selling, and/or importing, in this
13 Judicial District and elsewhere in the United States, at
14 least the Epic®, Epic™ 10, Epic™ S, Epic™ T, Epic™ V, and
15 Epic™ X devices, and/or (2) contributed to the
16 infringement of the '097 Patent, and/or actively induced
17 others to infringe the '097 Patent, in this Judicial
18 District and elsewhere in the United States.

19 47. Biolase's actions constitute infringement, active
20 inducement of infringement, and/or contributory
21 infringement of the '097 Patent in violation of 35 U.S.C.
22 § 271.

23 48. CAO has sustained damages and will continue to
24 sustain damages as a result of Biolase's aforesaid acts
25 of infringement.

26 49. CAO is entitled to recover damages sustained as a
27 result of Biolase's wrongful acts in an amount to be
28 proven at trial.

1 infringement of the '457 Patent in violation of 35 U.S.C.
2 § 271.

3 55. CAO has sustained damages and will continue to
4 sustain damages as a result of Biolase's aforesaid acts
5 of infringement.

6 56. CAO is entitled to recover damages sustained as a
7 result of Biolase's wrongful acts in an amount to be
8 proven at trial.

9 57. Biolase's infringement of CAO's rights under the
10 '457 Patent will continue to damage CAO's business,
11 causing irreparable harm, for which there is no adequate
12 remedy at law, unless it is enjoined by this Court.

13 58. CAO alleges on information and belief that
14 Biolase has willfully infringed the '457 Patent,
15 entitling CAO to increased damages under 35 U.S.C. § 284
16 and to attorney fees and costs incurred in prosecuting
17 this action under 35 U.S.C. § 285.

18 COUNT THREE

19 (Patent Infringement of U.S. Patent No. 8,961,040 -
20 35 U.S.C. §§ 271, et seq.)

21 59. CAO realleges and incorporates herein by
22 reference each of the above paragraphs of this Complaint,
23 inclusive, as though fully set forth herein.

24 60. CAO alleges on information and belief that
25 Biolase has (1) infringed and continues to infringe at
26 least claims 1 and 2 of the '040 Patent by making, using,
27 offering to sell, selling and/or importing, in this
28 Judicial District and elsewhere in the United States, the

1 Epic®, Epic™ 10, Epic™ S, Epic™ T, Epic™ V, and Epic™ X
2 devices, and/or (2) contributed to the infringement of
3 the '040 Patent, and/or actively induced others to
4 infringe the '040 Patent, in this Judicial District and
5 elsewhere in the United States.

6 61. Biolase's actions constitute infringement, active
7 inducement of infringement, and/or contributory
8 infringement of the '040 Patent in violation of 35 U.S.C.
9 § 271.

10 62. CAO has sustained damages and will continue to
11 sustain damages as a result of Biolase's aforesaid acts
12 of infringement.

13 63. CAO is entitled to recover damages sustained as a
14 result of Biolase's wrongful acts in an amount to be
15 proven at trial.

16 64. Biolase's infringement of CAO's rights under the
17 '040 Patent will continue to damage CAO's business,
18 causing irreparable harm, for which there is no adequate
19 remedy at law, unless it is enjoined by this Court.

20 65. CAO alleges on information and belief that
21 Biolase has willfully infringed the '040 Patent,
22 entitling CAO to increased damages under 35 U.S.C. § 284
23 and to attorney fees and costs incurred in prosecuting
24 this action under 35 U.S.C. § 285.

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1 causing irreparable harm, for which there is no adequate
2 remedy at law, unless it is enjoined by this Court.

3 72. CAO alleges on information and belief that
4 Biolase has willfully infringed the '883 Patent,
5 entitling CAO to increased damages under 35 U.S.C. § 284
6 and to attorney fees and costs incurred in prosecuting
7 this action under 35 U.S.C. § 285.

8 PRAYER FOR RELIEF

9 WHEREFORE, CAO prays for this Court to enter judgment
10 in its favor and against Biolase and to grant the
11 following relief:

12 A. An adjudication that Biolase has willfully
13 infringed and continues to directly and/or indirectly
14 infringe each of the Patents-in-Suit as alleged above;

15 B. Orders of this Court temporarily, preliminarily,
16 and permanently enjoining Biolase, its agents, servants,
17 and any and all parties acting in concert with any of
18 them, from directly or indirectly infringing in any
19 manner any of the claims of the Patents-in-Suit,
20 including without limitation, pursuant to 35 U.S.C. §
21 283;

22 C. An award of damages adequate to compensate CAO
23 for Biolase's infringement of the Patents-in-Suit in an
24 amount to be proven at trial;

25 D. A finding that this is an exceptional case and an
26 award of CAO's costs and attorney fees;

27 E. A trebling of the damage award to CAO;

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1 F. An assessment and award of pre-judgment and post-
2 judgment interest on all damages awarded; and

3 G. Any further relief that this Court deems just and
4 proper.

5 DATED: January 23, 2018

SHIELDS LAW OFFICES

6
7 By 

Jeffrey W. Shields

Rick A. Varner

Attorneys for Plaintiff

CAO Group, Inc.

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15 DEMAND FOR JURY TRIAL

16 CAO hereby demands a trial by jury as to all claims
17 and all issues properly triable thereby.

18 DATED: January 23, 2018

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19
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