

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

YOLDAS ASKAN

Plaintiff

vs.

FARO TECHNOLOGIES, INC. and
JOHN DOES 1-10

Defendant.

CASE NO.
JURY TRIAL DEMANDED

INJUNCTIVE RELIEF
REQUESTED

COMPLAINT

Askan Yoldas (“Askan”) sues Defendants FARO Technologies, Inc. (“FARO” and John Does 1-10 collectively with FARO, Defendants} and states as follows:

THE NATURE OF THE ACTION

1. Yoldas Askan, is a mathematician and physicist who has worked since 2009 developing, *inter alia*, software for processing and refining point cloud data produced by 3-D laser scanners. In 2011, Askan invented new, novel methods for generating smooth images from point cloud data and implemented these methods in software for use with laser scanners. Since that time, Askan obtained three patents on these methods and their implementation.

2. During that same time, FARO actively communicated with Askan and showed significant interest in Askan’s software and methods for generating smooth images

from point cloud data, and obtained a version of Askan's software, as well as confidential information relating to Askan's methods.

3. In 2012, FARO announced a new product utilizing Askan's patented methodologies. Shortly thereafter, FARO inexplicably ended its business relationship with Askan and refused to license his methods or his software. Since that time FARO developed and sold multiple products infringing Askan's patented methodologies to, *inter alia*, John Does 1-10. Askan is filing this suit to bring an end to FARO's continuing infringement and receive just compensation.

PARTIES

4. Plaintiff Yoldas Askan ("Askan"), is an individual residing at 51 Pinfold St., Suite 542, Birmingham, B2 4AY, United Kingdom. Askan is a mathematician, physicist, and software developer with graduate degrees in mathematics and physics. He is a recognized expert in processing point cloud data from 3-D laser scanners.

5. Defendant FARO Technologies, Inc. ("FARO") is incorporated in the State of Florida and is headquartered at 250 Technology Park, Lake Mary, FL 32746. FARO is one of the world's largest suppliers of 3-D imaging technologies, and maintains offices worldwide, including the UK.

6. On information and belief, John Does 1-10 are unidentified affiliates or customers of FARO residing in, or doing business in, this District, who use one or more of FARO's infringing products. Askan believes discovery in this case will reveal the identity of these parties.

JURISDICTION AND VENUE

7. This is a civil action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 271, et. seq.

8. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a).

9. Venue properly lies within this Judicial District under 28 U.S.C. § 1400(a) because Defendant FARO is a resident of this District and under 28 U.S.C. § 1391(b), as a substantial part of the events or omissions giving rise to the claims in this suit occurred in the District.

10. Venue also properly lies within this Judicial District under 28 U.S.C. § 1400(a) because, on information and belief, Defendants John Does 1-10 FARO are residents of this District and/or under 28 U.S.C. § 1391(b) a substantial part of the events or omissions giving rise to the claim occurred in the District.

INTRODUCTION

Askan's Business

11. In 2011, Yoldas Askan, a mathematician, physicist, and software developer, invented a number of unique methodologies for smoothing point cloud data generated by 3-D laser scanners.

12. In 2011, Askan implemented his inventive methods in a software product named S-Delta.

13. The software proved to be effective in engineering relatively noise free surfaces from noisy point cloud data.

14. The software attracted a great deal of interest from various users and/or manufacturers of three 3-D laser scanning equipment, including FARO.

Askan's Patents

15. Between 2012 and 2016, Askan filed a number of patent applications relating to his methodologies for smoothing point cloud data. Three patents entitled "METHOD OF GENERATING A SMOOTH IMAGE FROM POINT CLOUD DATA" listed below have been allowed and/or issued (collectively, the "Askan Patents.") These patents are attached as Exhibits 1-3.

Appl. Number	Patent Number	Date Issued
13/532,691	8,705,110 ("the '110 Patent")	April 22, 2014
14/166,840	9,300,841 ("the '840 Patent")	March 9, 2016
15/043,492	Issuing ("the Issuing Patent")	est. July, 2018

16. All patents claim priority back to the original filing date of the '110 patent, June 25, 2012.

17. Askan is the owner of the entire right, title, and interest in the Askan Patents.

18. All maintenance fees for the Askan Patents have been timely paid, and there are no fees currently due.

Askan's Dealings with FARO

19. On information and belief, around or before June, 2010, FARO, became aware of the fact that Askan was developing software for smoothing and de-noising point cloud data from 3-D scanners.

20. In an email dated June 14, 2011 from Michael Schantz, a Manager of Software Development of FARO, to Askan, Schantz expressed an interest in Askan's software. Exhibit 4.

21. Responding to the invitation to have a telephone conversation in the email, Askan telephoned Schantz. See *Id.*

22. However, instead of the customary listing of third-party software on its website, Schantz stated that FARO wanted to acquire all rights to the source code for S-Delta.

23. Nevertheless, it was made clear to Schantz that Askan wanted to retain rights to the software and sell its application to users of FARO scanners.

24. On the promise that FARO would follow its customary procedure of listing third-party software useful with its equipment on its website, Geopticks (another of Askan's privately held companies) purchased a FARO 3-D laser scanner in October 2010.

25. During the ensuing weeks, Schanz requested and was sent additional scans of objects generated using FARO's equipment, together with conversions of those scans into substantially noise free scans using S-Delta.

26. In August, 2011, FARO requested and received a copy of the S-Delta software off the Geopticks website upon the condition that it would not commercially exploit any information it might derive from it. Exhibit 5.

27. The S-Delta software implemented the image smoothing and de-noising techniques claimed in the Askan Patents.

28. FARO did not purchase or license Askan's software or Askan's image smoothing methodologies at any time.

29. In August 2011, FARO invited Askan to attend the International Society for Photogrammetry and Remote Sensing (ISPRS) conference held at English Heritage HQ in York August 2011.

30. Askan gave a brief presentation at the conference which included displaying images of substantially noise free point cloud surfaces.

31. From October 2011 to date, Askan continually monitored FARO's activity relating to noise reduction and related functions.

32. The earliest known mention of Askan's new smoothing technology (not FARO's then existing compression function) is in the Laser Scanner Forum dated November 2011.

FARO's Infringement of Askan's Patents

33. On information and belief, FARO reversed engineered Askan's S-Delta software for the purpose of determining Askan's point cloud processing techniques.

34. On information and belief, FARO utilized confidential information obtained from Askan for the purpose of determining Askan's point cloud processing techniques.

35. On or around the first half of 2012, Askan became aware of the fact that FARO announced a one or more new products.

36. Based on FARO's press releases and Askan's FARO lead software developer Jurgen Gittenger in Germany, FARO's newly announced products as utilized multi-scan smoothing and noise free point cloud techniques, the same methods covered by the Askan's point cloud processing techniques.

37. On or about July 12, 2012, in response to inquiries by Askan, FARO sent Askan a letter effectively terminating its business relationship with Askan and refusing to license Askan's software. Exhibit 6.

38. On or about, November 28, 2012, an employee of FARO publicly slandered Askan on Laser Scanning Forum, alleging, additionally, and inaccurately, that FARO had never obtained a copy of Askan's software. Exhibit 7.

39. On information and belief, since 2012, FARO has been making, using, selling, and offering for sale portable coordinate measuring machines, 3D imaging devices, and rendering software, hardware, and related products and services ("the Infringing Products") in the United States and importing into the United States the Infringing Products that that utilizes Askan's point cloud

processing techniques and which infringes at least one claim of at least one of the Askan Patents.

40. A list of FARO products that may be infringing the Askan Patents include, *inter alia*, as follows: FARO Focus3D, FARO, Scan Localizer, FARO Freestyle3D Scanner, FARO Gage, FARO ScanArm, FARO Laser Tracker, FARO Cobalt, Array 3D Imager, CAM2 Measure 10, CAM2 SmartInspect, SCENE, 3D App Center, SCENE WebShare Cloud, SCENECT, FARO CAD Zone, FARO Reality, FARO HD, FARO HD CSI, FARO Blitz, FARO 3D Software.

41. FARO was aware of the fact that Askan filed at least one patent relating to his point cloud processing techniques in 2012.

42. FARO knew, or should have known, that Askan had been granted each of the Askan Patents.

43. FARO has intentionally, willful, and without regard to Askan's rights infringed the Askan Patents.

44. FARO's sales of the Infringing Products to John Does 1-10 has contributed to, or induced, John Does 1-10 to infringe at least one of the Askan Patents,

John Does 1-10's Infringement of Askan's Patents

45. On information and belief, each of the John Does has used, sold and/or offered to sell in the United States and/or importing into the United States, one or more of the Infringing Products obtained from FARO, and thereby directly and indirectly through contributory and/or induced infringement infringed at least one of the Askan Patents.

COUNT I
Infringement of the '110 Patent by FARO

46. Askan restates the allegations set forth in paragraphs 1-45 and incorporates them herein by reference.

47. FARO has infringed and continues to infringe, directly and indirectly through contributory and/or induced infringement, one or more claims of the '110 Patent by using, selling and/or offering to sell in the United States and/or importing into the United States, one or more of the Infringing Products

48. FARO's infringing activities violate 35 U.S.C. § 271.

49. FARO's infringement of the '110 Patent has been and continues to be intentional, willful, deliberate and without regard to Askan's rights.

50. FARO has gained profits by virtue of its infringement of the '110 Patent.

51. Askan has sustained damages as a direct and proximate result of FARO's infringement of the '110 Patent.

52. Askan has suffered and is suffering irreparable harm from FARO's infringement of the '110 Patent. Askan has no adequate remedy at law and is entitled to an injunction against FARO's continuing infringement of the '110 Patent. Unless enjoined, FARO will continue its infringing conduct.

COUNT II

Infringement of the '840 Patent by FARO

53. Askan restates the allegations set forth in paragraphs 1-45 and incorporates them herein by reference.

54. FARO has infringed and continues to infringe, directly and indirectly through contributory and/or induced infringement, one or more claims of the '840 Patent by using, selling and/or offering to sell in the United States and/or importing into the United States, one or more of the Infringing Products

55. FARO's infringing activities violate 35 U.S.C. § 271.

56. FARO's infringement of the '840 Patent has been and continues to be intentional, willful, deliberate and without regard to Askan's rights.

57. FARO has gained profits by virtue of its infringement of the '840 Patent.

58. Askan has sustained damages as a direct and proximate result of FARO's infringement of the '840 Patent.

59. Askan has suffered and is suffering irreparable harm from FARO's infringement of the '840 Patent. Askan has no adequate remedy at law and is entitled to an injunction against FARO's continuing infringement of the '840 Patent. Unless enjoined, FARO will continue its infringing conduct.

COUNT III

Infringement of the Issuing Patent by FARO

60. Askan restates the allegations set forth in paragraphs 1-45 and incorporates them herein by reference.

61. FARO has infringed and continues to infringe, directly and indirectly through contributory and/or induced infringement, one or more claims of the Issuing Patent by using, selling and/or offering to sell in the United States and/or importing into the United States, one or more of the Infringing Products

62. FARO's infringing activities violate 35 U.S.C. § 271.

63. FARO's infringement of the Issuing Patent has been and continues to be intentional, willful, deliberate and without regard to Askan's rights.

64. FARO has gained profits by virtue of its infringement of the Issuing Patent.

65. Askan has sustained damages as a direct and proximate result of FARO's infringement of the Issuing Patent.

66. Askan has suffered and is suffering irreparable harm from FARO's infringement of the Issuing Patent. Askan has no adequate remedy at law and is entitled to an injunction against FARO's continuing infringement of the Issuing Patent. Unless enjoined, FARO will continue its infringing conduct.

COUNT IV
Infringement of the '110 Patent by John Does 1-10

67. Askan restates the allegations set forth in paragraphs 1-45 and incorporates them herein by reference.

68. John Does 1-10 has infringed and continues to infringe, directly and indirectly through contributory and/or induced infringement, one or more claims of the '110 Patent by using, selling and/or offering to sell in the United States and/or importing into the United States, one or more of the Infringing Products

69. John Does 1-10's infringing activities violate 35 U.S.C. § 271.

70. John Does 1-10 has gained profits by virtue of its infringement of the '110 Patent.

71. Askan has sustained damages as a direct and proximate result of John Does 1-10's infringement of the '110 Patent.

72. Askan has suffered and is suffering irreparable harm from John Does 1-10's infringement of the '110 Patent. Askan has no adequate remedy at law and is entitled to an injunction against John Does 1-10's continuing infringement of the '110 Patent. Unless enjoined, John Does 1-10 will continue its infringing conduct.

COUNT V

Infringement of the '840 Patent by John Does 1-10

73. Askan restates the allegations set forth in paragraphs 1-45 and incorporates them herein by reference.

74. John Does 1-10 has infringed and continues to infringe, directly and indirectly through contributory and/or induced infringement, one or more claims of the '840 Patent by using, selling and/or offering to sell in the United States and/or importing into the United States, one or more of the Infringing Products

75. John Does 1-10's infringing activities violate 35 U.S.C. § 271.

76. John Does 1-10 has gained profits by virtue of its infringement of the '840 Patent.

77. Askan has sustained damages as a direct and proximate result of John Does 1-10's infringement of the '840 Patent.

78. Askan has suffered and is suffering irreparable harm from John Does 1-10's infringement of the '840 Patent. Askan has no adequate remedy at law and is entitled to an injunction against John Does 1-10's continuing infringement of the '840 Patent. Unless enjoined, John Does 1-10 will continue its infringing conduct.

COUNT VI

Infringement of the Issuing Patent by John Does 1-10

79. Askan restates the allegations set forth in paragraphs 1-45 and incorporates them herein by reference.

80. John Does 1-10 has infringed and continues to infringe, directly and indirectly through contributory and/or induced infringement, one or more claims of the Issuing Patent by using, selling and/or offering to sell in the United States and/or importing into the United States, one or more of the Infringing Products

81. John Does 1-10's infringing activities violate 35 U.S.C. § 271.

82. John Does 1-10 has gained profits by virtue of its infringement of the Issuing Patent.

83. Askan has sustained damages as a direct and proximate result of John Does 1-10's infringement of the Issuing Patent.

84. Askan has suffered and is suffering irreparable harm from John Does 1-10's infringement of the Issuing Patent. Askan has no adequate remedy at law and is entitled to an injunction against John Does 1-10's continuing infringement of the Issuing Patent. Unless enjoined, John Does 1-10 will continue its infringing conduct.

PRAYER FOR RELIEF

WHEREFORE, Askan prays for relief, as follows:

1. A judgment that FARO has infringed, contributorily infringed, and/or induced infringement of one of more claims of each of the Askan Patents;
2. An order and judgment preliminarily and permanently enjoining FARO and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns from further acts of infringement of the Askan Patents;
3. A judgment awarding Askan all damages adequate to compensate for FARO's infringement of the Askan Patents, and in no event less than a reasonable royalty for FARO's acts of infringement, including all prejudgment and post judgment interest at the maximum rate permitted by law;
4. A judgment awarding Askan all damages, including treble damages, based on any infringement found to be willful, under 35 U.S.C. § 284, together with prejudgment interest;
5. Actual damages suffered by Askan as a result of FARO's unlawful conduct, in an amount to be proven at trial, as well as prejudgment interest as authorized by law;
6. A judgment that this is an exceptional case and an award to Askan of its costs and reasonable attorneys' fees incurred in this action as provided by 35 U.S.C. § 285;
7. A judgment that John Does 1-10 has infringed, contributorily infringed, and/or induced infringement of one of more claims of each of the Askan Patents;

8. An order and judgment preliminarily and permanently enjoining John Does 1-10 and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns from further acts of infringement of the Askan Patents;
9. A judgment awarding Askan all damages adequate to compensate for John Does 1-10's infringement of the Askan Patents, and in no event less than a reasonable royalty for FARO's acts of infringement, including all prejudgment and post judgment interest at the maximum rate permitted by law;
10. A judgment awarding Askan all damages, including treble damages, based on any infringement found to be willful, pursuant to 35 U.S.C. § 284, together with prejudgment interest;
11. Actual damages suffered by Askan as a result of John Does 1-10's unlawful conduct, in an amount to be proven at trial, as well as prejudgment interest as authorized by law;
12. A judgment that this is an exceptional case and an award to Askan of its costs and reasonable attorneys' fees incurred in this action as provided by 35 U.S.C. § 285;
13. And such other relief as this Court deems just and proper.

Dated: June 21, 2018.

Respectfully submitted,

HARPER IP LAW, P.A.

/s/Wayne Vincent Harper

Wayne V. Harper

Florida Bar No. 763,101

711 S. Howard Ave.

Tampa, FL 33606

Telephone: (813) 892-7839

wayne@harperiplaw.com

Attorney for the Plaintiffs