

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

EMCORE CORPORATION,  
JDS UNIPHASE CORPORATION,

Plaintiffs,

v.

OPTIUM CORPORATION,

Defendant.

Civil Action No. \_\_\_\_\_

Judge \_\_\_\_\_

**JURY TRIAL DEMANDED**

**Electronically Filed**

**COMPLAINT**

Plaintiffs EMCORE Corporation and JDS Uniphase Corporation for their  
Complaint against defendant Optium Corporation, allege:

**THE PARTIES**

1. Plaintiff EMCORE Corporation (“EMCORE”) is a New Jersey corporation with its principal place of business at 145 Belmont Drive, Somerset, New Jersey 08873.

2. Plaintiff JDS Uniphase Corporation (“JDSU”) is a Delaware corporation with its principal place of business at 430 N. McCarthy Boulevard, Milpitas, California 95035.

3. Defendant Optium Corporation (“Optium”) is a Delaware corporation with its principal place of business at 500 Horizon Drive, Suite 505, Chalfont, Pennsylvania 18914.

**JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this patent infringement action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201 because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.*

5. Personal jurisdiction over Defendant is proper in this Court because Defendant conducts business within the Commonwealth of Pennsylvania and this judicial district.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

### **THE PATENTS**

7. United States Patent No. 6,282,003 (“the ‘003 patent”) entitled “Method and apparatus for optimizing SBS performance in an optical communication system using at least two phase modulation tones” was duly and properly issued by the United States Patent & Trademark Office (“USPTO”) on August 28, 2001. The ‘003 patent was assigned to JDSU. Thereafter, JDSU granted an exclusive license of rights and interests in the ‘003 patent to EMCORE, including the right to litigate for and receive damages for any past infringement. EMCORE continues to hold an exclusive license in the ‘003 patent. A copy of the ‘003 patent is attached hereto as Exhibit A.

8. United States Patent No. 6,490,071 (“the ‘071 patent”) likewise entitled “Method and apparatus for optimizing SBS performance in an optical communication system using at least two phase modulation tones” is a continuation of the ‘003 patent and was duly and properly issued by the USPTO on December 3, 2002. The ‘071 patent was assigned to JDSU. Thereafter, JDSU granted an exclusive license of rights and interest in the ‘071 patent to EMCORE, including the right to litigate for and receive damages for any past infringement. EMCORE continues to hold an exclusive license in the ‘071 patent. A copy of the ‘071 patent is attached hereto as Exhibit B.

**COUNT ONE: INFRINGEMENT OF THE '003 PATENT**

9. The allegations contained in paragraphs 1 through 8 are incorporated by reference as if fully set forth herein.

10. Defendant is infringing claims of the '003 patent under one or more sections of 35 U.S.C. § 271 in this judicial district and elsewhere in the United States by the manufacture, use, sale, offer for sale and/or importation into the United States of product(s) falling within the scope of one or more claims of the '003 patent, and on information and belief, by actively inducing and/or contributing to infringement of said patent by others. In addition to products as yet unidentified, examples of Defendant's infringing products include Defendant's 1550 nm externally modulated transmitters, including but not limited to the family of products known as the PRISMA II 1550 nm Externally Modulated Transmitters.

11. Plaintiffs have been damaged by Defendant's infringement of the '003 patent. Plaintiffs are entitled to recover from Defendant the damages sustained by Plaintiffs as a result of each of Defendant's wrongful acts.

12. Defendant's infringement of Plaintiffs' rights under the '003 patent will continue to damage Plaintiffs' businesses, causing irreparable harm, for which there is no adequate remedy at law, unless Defendant is enjoined by this Court.

13. Upon information and belief, Defendant's infringement is deliberate and willful, entitling Plaintiffs to increased damages under 35 U.S.C. § 284 and attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

**COUNT TWO: INFRINGEMENT OF THE '071 PATENT**

14. The allegations contained in paragraphs 1 through 13 are incorporated by reference as if fully set forth herein.

15. Defendant is infringing claims of the '071 patent under one or more sections of 35 U.S.C. § 271 in this judicial district and elsewhere in the United States by the manufacture, use, sale, offer for sale and/or importation into the United States of product(s) falling within the scope of one or more claims of the '071 patent, and on information and belief, by actively inducing and/or contributing to infringement of said patent by others. In addition to products as yet unidentified, examples of Defendant's infringing products include the Defendant's 1550 nm externally modulated transmitters, including but not limited to the family of products known as the PRISMA II 1550 nm Externally Modulated Transmitters.

16. Plaintiffs have been damaged by Defendant's infringement of the '071 patent. Plaintiffs are entitled to recover from Defendant the damages sustained by Plaintiffs as a result of each of Defendant's wrongful acts.

17. Defendant's infringement of Plaintiffs' rights under the '071 patent will continue to damage Plaintiffs' businesses, causing irreparable harm, for which there is no adequate remedy at law, unless Defendant is enjoined by this Court.

18. Upon information and belief, Defendant's infringement is deliberate and willful, entitling Plaintiffs to increased damages under 35 U.S.C. § 284 and attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request judgment as follows:

- a. That this Court declare that the '003 and '071 patents are valid and enforceable;
- b. That this Court declare that Defendant has infringed one or more claims of the '003 and '071 patents;
- c. That this Court declare that Defendant's infringement of claims of the '003 and '071 patents has been willful;
- d. That this Court, pursuant to 35 U.S.C. § 283, enjoin Defendant, its officers, agents, servants, employees, subsidiaries, and those persons acting in concert with them, including related individuals and entities, customers, representatives, OEMs, dealers, and distributors from making, using, selling, offering to sell or importing products that infringe one or more claims of the '003 and '071 patents;
- e. That this Court award damages adequate to compensate Plaintiffs for the patent infringement that has occurred, together with prejudgment interest and costs;
- f. That this Court award to Plaintiffs all other damages permitted by 35 U.S.C. § 284, including increased damages up to three times the amount of compensatory damages found;
- g. That this Court find that this is an exceptional case and award to Plaintiffs its costs and reasonable attorneys' fees incurred in this action as provided by 35 U.S.C. § 285; and
- h. That this Court award to Plaintiffs such other relief as this Court deems just and proper.

**DEMAND FOR JURY**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demands a trial by jury.

Date: September 11, 2006

By: /s Robert O. Lindefjeld

Robert O. Lindefjeld (PA 70444)  
rlindefjeld@jonesday.com  
Michael A. Comber (PA 81951)  
macomber@jonesday.com  
Andrew J. Kozusko, III (PA 88172)  
ajkozusko@jonesday.com  
Cecilia R. Dickson (PA 89348)  
crdickson@jonesday.com  
Clay P. Hughes (PA 200033)  
cphughes@jonesday.com  
JONES DAY  
One Mellon Center  
500 Grant Street, Suite 3100  
Pittsburgh, PA 15219  
Telephone: (412) 391-3939  
Facsimile: (412) 394-7959

Robert C. Kahrl (OH 0009334)  
rckahrl@jonesday.com  
Sheryl H. Love (OH 0065459)  
shlove@jonesday.com  
JONES DAY  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114-1190  
Telephone: (216) 586-3939  
Facsimile: (216) 579-0212

Attorneys for Plaintiffs  
EMCORE Corporation and  
JDS Uniphase Corporation

---