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10 Attorneys for Plaintiff and Counterdefendant
11 THERMAGE, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 THERMAGE, INC., a Delaware corporation,

16 Plaintiff,

17 vs.

18 SYNERON MEDICAL, LTD., an Israeli
corporation, and SYNERON, INC., a
19 Delaware corporation,

20 Defendants.

21 SYNERON MEDICAL, LTD., an Israeli
corporation, and SYNERON, INC., a
22 Delaware corporation,

23 Counterclaimants,

24 vs.

25 THERMAGE, INC., a Delaware corporation,

26 Counterdefendant.

Case No: C 04-2995 CRB

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

Judge: Honorable Charles R. Breyer

1 Plaintiff Thermage, Inc. (“Thermage”) hereby files its First Amended Complaint
2 against Defendant Syneron Medical, Ltd. (“Syneron Medical”) and Defendant Syneron, Inc.
3 (“Syneron”), collectively referred to as “Defendants,” and alleges as follows:
4

5 **JURISDICTION**

6 1. This is an action for patent infringement arising under the Patent Laws of the
7 United States, 35 U.S.C. § 271 et seq. The Court has jurisdiction over this action pursuant to 28
8 U.S.C. §§ 1331 and 1338(a).

9 2. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b).
10

11 **INTRADISTRICT ASSIGNMENT**

12 3. This action is an Intellectual Property case and pursuant to L.R. 3-2(c), it should be
13 assigned on a district wide basis.
14

15 **THE PARTIES**

16 4. Plaintiff Thermage is a corporation organized under the laws of the State of
17 Delaware, having its principal place of business and corporate headquarters located at 25881
18 Industrial Blvd., Hayward, California 94545.

19 5. On information and belief, at all relevant times mentioned below, Defendant
20 Syneron Medical was and is a corporation organized under the laws of Israel, with its principal
21 place of business and corporate headquarters located at Industrial Zone, Tayor Building, P.O.B.
22 550 Yokneam Illit, 20692 Israel, and doing business within this Judicial District.

23 6. On information and belief, at all relevant times mentioned below, Defendant
24 Syneron was and is a corporation organized under the laws of the State of Delaware, with its
25 principal place of business and corporate headquarters located at 111 Granton Drive, Unit 110,
26 Richmond Hill, Ontario, Canada L4B 1L5, and doing business within this Judicial District.
27 Thermage is further informed and believes that Defendant Syneron, Inc. is a wholly-owned
28 subsidiary of Defendant Syneron Medical, Ltd.

1 7. Plaintiff is informed and believes, and on that basis alleges, that Defendants have
2 ongoing and systematic contacts with this Judicial District, and have placed the products accused
3 of infringement herein into the stream of interstate commerce knowing and expecting that such
4 products would end up in this Judicial District.

5 6 **FACTUAL BACKGROUND**

7 8. Thermage is a manufacturer and seller of advanced radiofrequency (RF) based
8 technologies for dermatology and plastic surgery applications.

9 9. Thermage was originally founded in 1996 by Dr. Edward W. Knowlton, who has
10 authored over 20 patents related to its unique RF technology. The company’s first product, the
11 ThermaCool Tissue Contraction System™, is FDA cleared for the non-invasive treatment of the
12 face. This device uses an advanced and unique form of RF to tighten skin tissue and achieve a
13 more youthful appearance. Thermage is the first to use RF to tighten skin and increase collagen
14 formation. The ThermaCool Tissue Contraction System™ has enjoyed enormous commercial
15 success, which is expected to continue.

16 10. Thermage is the owner by assignment of United States Patent No. 6,749,624 (“the
17 ‘624 patent”) duly and legally issued on June 15, 2004, entitled “Fluid Delivery Apparatus.” A
18 true and correct copy of the ‘624 patent is attached as Exhibit A and incorporated herein by
19 reference.

20 11. Thermage is the owner by assignment of United States Patent No. 5,755,753 (“the
21 ‘753 patent”) duly and legally issued on May 26, 1998, entitled “Method for Controlled
22 Contraction of Collagen Tissue.” A true and correct copy of the ‘753 patent is attached as Exhibit
23 B and incorporated herein by reference.

24 12. Thermage is the owner by assignment of United States Patent No. 5,919,219 (“the
25 ‘219 patent”) duly and legally issued on July 6, 1999, entitled “Method for Controlled
26 Contraction of Collagen Tissue Using RF Energy.” A true and correct copy of the ‘219 patent is
27 attached as Exhibit C and incorporated herein by reference.

28 13. Thermage is the owner by assignment of United States Patent No. 5,948,011 (“the

1 '011 patent”) duly and legally issued on September 7, 1999, entitled “Method for Controlled
2 Contraction of Collagen Tissue Via Non-Continuous Energy Delivery.” A true and correct copy
3 of the '011 patent is attached as Exhibit D and incorporated herein by reference.

4 14. Thermage is the owner by assignment of United States Patent No. 6,377,855 (“the
5 '855 patent”) duly and legally issued on April 23, 2002, entitled “Method and Apparatus for
6 Controlled Contraction of Collagen Tissue.” A true and correct copy of the '855 patent is
7 attached as Exhibit E and incorporated herein by reference.

8 15. Thermage is the owner by assignment of United States Patent No. 6,405,090 (“the
9 '090 patent”) duly and legally issued on June 11, 2002, entitled “Method and Apparatus for
10 Tightening Skin by Controlled Contraction of Collagen Tissue.” A true and correct copy of the
11 '090 patent is attached as Exhibit F and incorporated herein by reference.

12 16. Defendants have been and continue to make, use, sell, import, and offer for sale
13 products and services in the aesthetic non-invasive medical device market, including but not
14 limited to skin rejuvenation systems and products, which embody the subject matter claimed in
15 Thermage’s '624 patent, '753 patent, '219 patent, '011 patent, '855 patent, and '090 patent and/or
16 induce or contribute to the infringement of the '624 patent, the '753 patent, the '219 patent, the
17 '011 patent, the '855 patent, and the '090 patent.

18
19
20 **FIRST CAUSE OF ACTION**
(Infringement of the '624 Patent)

21 17. Plaintiff Thermage hereby incorporates paragraphs 1 through 16, inclusive, herein
22 by reference.

23 18. Thermage is informed and believes, and therefore alleges that Defendants, with
24 notice of the patent and full knowledge of Plaintiff’s rights, are infringing the '624 patent by
25 making, using, importing, offering for sale, and selling within the United States products that
26 infringe the '624 patent under 35 U.S.C. § 271(a) and/or inducing others to infringe under §
27 271(b) and/or contributing to the infringement by others of the '624 patent under § 271(c).

28 19. On information and belief, Defendants’ infringing activity has been and continues

1 to be willful.

2 20. The exact amount of profits realized by the Defendants as a result of their
3 infringing activities are presently unknown to Thermage, as are the exact amounts of damages
4 suffered by Thermage as a result of said activities. These profits and damages cannot be
5 accurately ascertained without an accounting. Further, Defendants' actions are irreparably
6 injuring Thermage and will continue unless and until enjoined by this Court.

7 21. Plaintiff Thermage has been damaged by Defendants' infringement, inducement to
8 infringe, and contributory infringement, and is suffering and will continue to suffer damage and
9 irreparable harm as a result, unless the Court enjoins Defendants.

10 **SECOND CAUSE OF ACTION**
11 **(Infringement of the '753 Patent)**

12 22. Plaintiff Thermage hereby incorporates paragraphs 1 through 21, inclusive, herein
13 by reference.

14 23. Thermage is informed and believes, and therefore alleges that Defendants, with
15 notice of the patent and full knowledge of Plaintiff's rights, are infringing the '753 patent by
16 making, using, importing, offering for sale, and selling within the United States products that
17 infringe the '753 patent under 35 U.S.C. § 271(a) and/or inducing others to infringe under §
18 271(b) and/or contributing to the infringement by others of the '753 patent under § 271(c).

19 24. On information and belief, Defendants' infringing activity has been and continues
20 to be willful.

21 25. The exact amount of profits realized by the Defendants as a result of their
22 infringing activities are presently unknown to Thermage, as are the exact amounts of damages
23 suffered by Thermage as a result of said activities. These profits and damages cannot be
24 accurately ascertained without an accounting. Further, Defendants' actions are irreparably
25 injuring Thermage and will continue unless and until enjoined by this Court.

26 26. Plaintiff Thermage has been damaged by Defendants' infringement, inducement to
27 infringe, and contributory infringement, and is suffering and will continue to suffer damage and
28 irreparable harm as a result, unless the Court enjoins Defendants.

1 **THIRD CAUSE OF ACTION**
2 **(Infringement of the '219 Patent)**

3 27. Plaintiff Thermage hereby incorporates paragraphs 1 through 26, inclusive, herein
4 by reference.

5 28. Thermage is informed and believes, and therefore alleges that Defendants, with
6 notice of the patent and full knowledge of Plaintiff's rights, are infringing the '219 patent by
7 making, using, importing, offering for sale, and selling within the United States products that
8 infringe the '219 patent, under 35 U.S.C. § 271(a) and/or inducing others to infringe under §
9 271(b) and/or contributing to the infringement by others of the '219 patent under § 271(c).

10 29. On information and belief, Defendants' infringing activity has been and continues
11 to be willful.

12 30. The exact amount of profits realized by the Defendants as a result of their
13 infringing activities are presently unknown to Thermage, as are the exact amounts of damages
14 suffered by Thermage as a result of said activities. These profits and damages cannot be
15 accurately ascertained without an accounting. Further, Defendants' actions are irreparably
16 injuring Thermage and will continue unless and until enjoined by this Court.

17 31. Plaintiff Thermage has been damaged by Defendants' infringement, inducement to
18 infringe, and contributory infringement, and is suffering and will continue to suffer damage and
19 irreparable harm as a result, unless the Court enjoins Defendants.

20 **FOURTH CAUSE OF ACTION**
21 **(Infringement of the '011 Patent)**

22 32. Plaintiff Thermage hereby incorporates paragraphs 1 through 31, inclusive, herein
23 by reference.

24 33. Thermage is informed and believes, and therefore alleges that Defendants, with
25 notice of the patent and full knowledge of Plaintiff's rights, are infringing the '011 patent by
26 making, using, importing, offering for sale, and selling within the United States products that
27 infringe the '011 patent, under 35 U.S.C. § 271(a) and/or inducing others to infringe under §
28 271(b) and/or contributing to the infringement by others of the '011 patent under § 271(c).

1 34. On information and belief, Defendants’ infringing activity has been and continues
2 to be willful.

3 35. The exact amount of profits realized by the Defendants as a result of their
4 infringing activities are presently unknown to Thermage, as are the exact amounts of damages
5 suffered by Thermage as a result of said activities. These profits and damages cannot be
6 accurately ascertained without an accounting. Further, Defendants’ actions are irreparably
7 injuring Thermage and will continue unless and until enjoined by this Court.

8 36. Plaintiff Thermage has been damaged by Defendants’ infringement, inducement to
9 infringe, and contributory infringement, and is suffering and will continue to suffer damage and
10 irreparable harm as a result, unless the Court enjoins Defendants.

11
12 **FIFTH CAUSE OF ACTION**
(Infringement of the ‘855 Patent)

13 37. Plaintiff Thermage hereby incorporates paragraphs 1 through 36, inclusive, herein
14 by reference.

15 38. Thermage is informed and believes, and therefore alleges that Defendants, with
16 notice of the patent and full knowledge of Plaintiff’s rights, are infringing the ‘855 patent by
17 making, using, importing, offering for sale, and selling within the United States products that
18 infringe the ‘855 patent, under 35 U.S.C. § 271(a) and/or inducing others to infringe under §
19 271(b) and/or contributing to the infringement by others of the ‘855 patent under § 271(c).

20 39. On information and belief, Defendants’ infringing activity has been and continues
21 to be willful.

22 40. The exact amount of profits realized by the Defendants as a result of their
23 infringing activities are presently unknown to Thermage, as are the exact amounts of damages
24 suffered by Thermage as a result of said activities. These profits and damages cannot be
25 accurately ascertained without an accounting. Further, Defendants’ actions are irreparably
26 injuring Thermage and will continue unless and until enjoined by this Court.

27 41. Plaintiff Thermage has been damaged by Defendants’ infringement, inducement to
28 infringe, and contributory infringement, and is suffering and will continue to suffer damage and

1 irreparable harm as a result, unless the Court enjoins Defendants.

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3 **SIXTH CAUSE OF ACTION**
(Infringement of the '090 Patent)

4 42. Plaintiff Thermage hereby incorporates paragraphs 1 through 41, inclusive, herein
5 by reference.

6 43. Thermage is informed and believes, and therefore alleges that Defendants, with
7 notice of the patent and full knowledge of Plaintiff's rights, are infringing the '090 patent by
8 making, using, importing, offering for sale, and selling within the United States products that
9 infringe the '090 patent, under 35 U.S.C. § 271(a) and/or inducing others to infringe under §
10 271(b) and/or contributing to the infringement by others of the '090 patent under § 271(c).

11 44. On information and belief, Defendants' infringing activity has been and continues
12 to be willful.

13 45. The exact amount of profits realized by the Defendants as a result of their
14 infringing activities are presently unknown to Thermage, as are the exact amounts of damages
15 suffered by Thermage as a result of said activities. These profits and damages cannot be
16 accurately ascertained without an accounting. Further, Defendants' actions are irreparably
17 injuring Thermage and will continue unless and until enjoined by this Court.

18 46. Plaintiff Thermage has been damaged by Defendants' infringement, inducement to
19 infringe, and contributory infringement, and is suffering and will continue to suffer damage and
20 irreparable harm as a result, unless the Court enjoins Defendants.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for:

23 1. Judgment that U.S. Patent Nos. 6,749,624, 5,755,753, 5,919,219, 5,948,011,
24 6,377,855, and 6,405,090 are valid, enforceable and infringed by Defendants;

25 2. A preliminary and permanent injunction enjoining Defendants, their officers,
26 agents, servants, employees, and those persons acting in active concert or in participation with
27 them or any of them from infringing, inducing the infringement of, or contributorily infringing
28

1 the '624 patent, the '753 patent, the '219 patent, the '011 patent, the '855 patent, and the '090
2 patent.

3 3. An award of the damages arising out of Defendants' infringement, inducing the
4 infringement, or contributory infringement of the '624 patent, the '753 patent, the '219 patent, the
5 '011 patent, the '855 patent, and the '090 patent, together with interest and costs, all in
6 accordance with 35 U.S.C. § 284;

7 4. That all patent infringement damages against all the Defendants be awarded up to
8 three times the amount of damages found or assessed to compensate Plaintiff Thermage for the
9 willful, deliberate, and intentional acts of infringement by the Defendants, pursuant to 35 U.S.C.
10 § 284;

11 5. That the Court find this to be an exceptional case and award reasonable costs,
12 expenses, and attorney's fees be to Plaintiff Thermage pursuant to 35 U.S.C. § 285; and

13 6. Such other and further relief as the Court may deem just and proper.

14
15 **DEMAND FOR JURY TRIAL**

16 Thermage demands trial by jury for all claims triable by jury pursuant to Fed. R. Civ. P.
17 38 and Civil L.R. 3-6(a).

18
19 DATE: December 3, 2004

PAUL, HASTINGS, JANOFSKY & WALKER LLP
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25 By: _____ /s/
Dave B. Koo

26 Attorneys for Plaintiff and Counterdefendant
27 THERMAGE, INC.
28

1 **DISCLOSURE OF INTERESTED ENTITIES OR PERSONS PURSUANT TO CIVIL L.R.**
2 **3-16**

3 Pursuant to Civil L.R. 3-6(a), the undersigned certifies that the following listed persons,
4 associations of persons, firms, partnerships, corporations (including parent corporations) or other
5 entities (i) have a financial interest in the subject matter in controversy or in a party to the
6 proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be
7 substantially affected by the outcome in this proceeding:

8 Syneron GmbH, European subsidiary of Syneron Medical, Ltd.

9
10 DATE: December 3, 2004

PAUL, HASTINGS, JANOFSKY & WALKER LLP

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12 DAVE B. KOO

NOEL C. GILLESPIE

13 CHRISTOPHER K. EPPICH

14 CHARLES B. COHLER

KEVIN C. McCANN

15
16 By: _____ /s/

Dave B. Koo

17 Attorneys for Plaintiff and Counterdefendant
18 THERMAGE, INC.
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