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08 APR 29 AM 11:13

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

'08 CV 774 JAH BLM

Civil Action No.

COMPLAINT FOR PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

Defendant.

OK

1 Plaintiff CVI Laser LLC, d/b/a CVI Melles Griot ("Melles Griot"), hereby complains of
2 Defendant Photop Technologies, Inc. ("Photop" or "Defendant"), and alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This action arises under the Patent Laws of the United States, Title 35 of the
5 United States Code.

6 2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

7 3. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391 and 1400(b).

8 **THE PARTIES**

9 4. Plaintiff Melles Griot is a limited liability company organized and existing under
10 the laws of the State of Delaware, headquartered at 200 Dorado Place SE, Albuquerque, New
11 Mexico, 87123, and having a principal place of business in this District at 2051 Palomar Airport
12 Rd #200, Carlsbad, California 92011.

13 5. Melles Griot is the owner by assignment of United States Patent No. 6,724,787
14 ("the '787 patent"), duly and lawfully issued on April 20, 2004. A copy of the '787 patent is
15 attached hereto as Exhibit A.

16 6. Melles Griot is informed and believes, and thereon alleges, that Photop is a
17 corporation organized and existing under the laws of the state of California, having a place of
18 business at 260 North Wolfe Road, Sunnyvale, CA 94085.

19 7. Melles Griot is informed and believes, and thereon alleges, that Photop conducts
20 business throughout the United States, including in this Judicial District, and has committed the
21 acts complained of in this Judicial District and elsewhere.

22 **ALLEGATIONS FOR ALL CLAIMS FOR RELIEF**

23 8. On April 20, 2004, the U.S. Patent and Trademark Office ("PTO") duly and
24 lawfully issued the '787 patent entitled "Low Noise Solid State Laser." Melles Griot is the
25 owner by assignment of the '787 patent. In 2006, Melles Griot provided a copy of the '787
26 patent to Defendant.

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9. Defendant sells low-noise laser products that are covered by the ‘787 patent, including, but not limited to, the GDL line of laser products (“GDL products”), such as the Green Diode Laser Model No. GDL-7010EL, GDL-7020L, and GDL-7050L.

10. Melles Griot is informed and believes, and thereon alleges, that Defendant, through its agents, employees and servants, has infringed Melles Griot's patent rights through Defendant's making, using, selling, importing and/or offering to sell low-noise lasers such as the GDL products. Furthermore, this infringement has been willful, Defendant having received actual notice of Melles Griot's patent rights since at least 2006.

FIRST CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 6,724,787)

11. Melles Griot repeats, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 10 of this Complaint.

12. This is a claim for patent infringement and arises under the Patent Laws of the United States, Title 35 of the United States Code.

13. Melles Griot is informed and believes, and thereon alleges, that Defendant, through its agents, employees and servants, has been and is currently willfully and intentionally infringing the '787 patent by making, using, selling, importing and/or offering to sell low-noise laser products that are covered by at least one claim of the '787 patent, such as the GDL products. Defendant's acts constitute infringement of the '787 patent in violation of 35 U.S.C. § 271.

14. Melles Griot is informed and believes, and thereon alleges, that Defendant's infringement will continue unless enjoined by this Court.

15. Melles Griot is informed and believes, and thereon alleges, that Defendant has derived and received, and will continue to derive and receive, gains, profits and advantages from the aforesaid acts of infringement in an amount that is not presently known to Melles Griot. By reason of the aforesaid infringing acts, Melles Griot has been damaged and is entitled to monetary relief in an amount to be determined at trial.

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1 16. Because of the aforesaid infringing acts, Melles Griot has suffered and continues
2 to suffer great and irreparable injury, for which Melles Griot has no adequate remedy at law.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Melles Griot prays for judgment in its favor against Defendant for the
5 following relief:

6 A. An Order adjudging Defendant to have willfully infringed the '787 patent under
7 35 U.S.C. § 271;

8 B. An Order adjudging Defendant to be liable for the acts of infringement of the '787
9 patent;

10 C. An injunction enjoining Defendant, its subsidiaries, divisions, affiliates, officers,
11 directors, agents, servants, employees and attorneys, and those persons in active concert or
12 participation with Defendant, from directly or indirectly infringing the '787 patent in violation of
13 35 U.S.C. § 271;

14 D. That Defendant account for all gains, profits, and advantages derived by
15 Defendant's infringement of the '787 patent in violation of 35 U.S.C. § 271, and that Defendant
16 pay to Melles Griot all damages suffered by Melles Griot;

17 E. An Order for a trebling of damages and/or exemplary damages because of
18 Defendant's willful conduct pursuant to 35 U.S.C. § 284;

19 F. An Order adjudging that this is an exceptional case;

20 G. An award to Melles Griot of the attorneys' fees and costs incurred by Melles
21 Griot in connection with this action pursuant to 35 U.S.C. § 285;

22 H. An award of pre-judgment and post-judgment interest and costs of this action
23 against Defendant; and

24 I. Such other and further relief as this Court may deem just.

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1 KNOBBE, MARTENS, OLSON & BEAR, LLP

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Dated: April 7, 2008

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By: 

Frederick S. Berretta

Boris Zelkind

Cynthia Arko

Attorneys for Plaintiff
CVI LASER LLC

DEMAND FOR TRIAL BY JURY

Plaintiff CVI Laser LLC hereby demands a trial by jury on all issues so triable.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: April 7, 2008

By: 

Frederick S. Berretta
Boris Zelkind
Cynthia Arko

Attorneys for Plaintiff
CVI LASER LLC

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040308

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 150275 - MB
* * C O P Y * *
April 29, 2008
11:16:04**

Civ Fil Non-Pris

USAO #: 08CV0774 CIVIL FILING
Judge.: JOHN A HOUSTON
Amount.: \$350.00 CK
Check#: BC11104

Total-> \$350.00

FROM: CVI LASER LLC VS PHOTOP
TECHNOLOGIES, INC

ORIGINAL

CIVIL COVER SHEET

JS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CVI LASER LLC, a Delaware limited liability company

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Frederick S. Berretta, Boris Zelkind; Knobbe Martens Olson & Bear LLP;
550 West C Street, Suite 1200; San Diego CA 92101 619-235-8550

DEFENDANTS

PHOTOP TECHNOLOGIES INC

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Unknown

DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) SOCIAL SECURITY <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
35 United States Code 271 et seq.

Brief description of cause:
Patent infringement

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

4-7-2008

B. S. W.

FOR OFFICE USE ONLY

RECEIPT # 150275 AMOUNT \$350- APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

04/29/08 AB