

1 MICHAEL E. DERGOSITS (State Bar No. 118206)
IGOR SHOIKET (State Bar No. 190066)
2 DERGOSITS & NOAH LLP
Three Embarcadero Center, Suite 410
3 San Francisco, CA 94111
Telephone: (415) 705-6377
4 Facsimile: (415) 750-6383
Email: mdergosits@dergnoah.com
5 Email: ishoiket@dergnoah.com

6 Edward W. Goldstein (TX Bar No. 08099500)
Alisa Lipski (TX Bar No. 24041345)
7 Califf T. Cooper (TX Bar No. 24055345)
GOLDSTEIN & VOWELL LLP
8 1177 West Loop South, Suite 400
Houston, Texas 77027
9 Telephone: (713) 877-1515
Facsimile: (713) 877-1145
10 Email: egoldstein@gviplaw.com
Email: alipski@gviplaw.com
11 Email: ccooper@gviplaw.com

12 Attorneys for Plaintiff
Spectros Corp.

14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **OAKLAND DIVISION**

18 SPECTROS CORP., a California corporation,) Civil Action No.: 4:09-CV-01996 SBA
19 Plaintiff,) **FIRST AMENDED COMPLAINT FOR**
20 v.) **PATENT INFRINGEMENT**
21 THERMO FISHER SCIENTIFIC, INC. d/b/a) **DEMAND FOR JURY TRIAL**
22 NANO DROP, a Delaware corporation,)
23 Defendant.)

24
25 Plaintiff Spectros Corp. (“Plaintiff” or “Spectros”), files this complaint against Thermo
26 Fisher Scientific, Inc. d/b/a Nano Drop (“Defendant” or “Thermo Fisher”), and alleges as follows:

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1 **THE PARTIES**

2 1. Plaintiff, Spectros is a corporation organized under the laws of California having its
3 principal place of business at 808 Portola Road, Portola Valley, CA 94028.

4 2. Defendant, Thermo Fisher, on information and belief, is a corporation organized
5 under the laws of the State of Delaware and has a principal place of business 81 Wyman St.,
6 Waltham, MA 02454.

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8 **JURISDICTION & VENUE**

9 3. This is an action for infringement of a United States patent. Accordingly, this action
10 arises under the patent laws of the United States of America, 35 U.S.C. § 1 et seq., and jurisdiction
11 is properly based on 35 U.S.C. § 271 and 28 U.S.C. § 1338(a).

12 4. Venue is proper in this district under 28 U.S.C. §§ 1391(b-c) and 1400(b). Upon
13 information and belief, Thermo Fisher transacts or has transacted business in this judicial district, or
14 committed and/or induced acts of patent infringement in this district. Plaintiff Spectros has a
15 principal place of business in this judicial district.

16
17 **INTRADISTRICT ASSIGNMENT**

18 5. Since this is a civil action, the matter is subject to district-wide assignment under
19 Civil L.R. 3-2(c).

20
21 **FIRST CAUSE OF ACTION – PATENT INFRINGEMENT**

22 6. On March 23, 2004, United States Patent No. 6,711,426 (“the ‘426 patent”) entitled
23 “Spectroscopy Illuminator with Improved Delivery Efficiency for High Optical Density and
24 Reduced Thermal Load” was duly and legally issued. It is assigned to Spectros. The ‘426 patent, in
25 general, relates to an improved illuminator for spectroscopy. A copy of the ‘426 patent is attached
26 as Exhibit A.

27 7. Pursuant to 35 U.S.C. § 282, the ‘426 patent is presumed valid.

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1 8. On September 15, 2009, Thermo Fisher filed a request for *inter partes* reexamination
2 at the United States Patent and Trademark Office (“PTO”) on all claims of the ‘426 patent. On July
3 13, 2010, the PTO deemed claim 19, *inter alia*, was patentable over the prior art. The PTO issued a
4 Notice of Right to Appeal on November 10, 2010. Neither party filed an appeal. On January 25,
5 2011, a Notice of Intent to Issue Reexamination Certificate issued confirming the validity of claim
6 19. A Reexamination Certificate issued on April 19, 2011. A copy of the Reexamination
7 Certificate is attached as Exhibit B.

8 9. Thermo Fisher, on information and belief, manufactures, uses, and sells
9 fluorospectrometers that infringe at least claim 19 of the ‘426 patent, including but not limited to,
10 Thermo Fisher’s NanoDrop 3300. By manufacturing, using and/or selling such products, Thermo
11 Fisher has infringed and continues to infringe, contribute to the infringement of, or induce the
12 infringement of at least claim 19 of the ‘426 patent, either literally or under the doctrine of
13 equivalents.

14 10. Accordingly, the Defendant’s acts of infringement of the ‘426 patent, as alleged
15 above, have injured Plaintiff and thus, Plaintiff is entitled to recover damages adequate to
16 compensate it for Defendant’s acts of infringement, which in no event can be less than a reasonable
17 royalty.

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for entry of judgment:

- 21 A. that Defendant has infringed one or more claims of the ‘426 patent;
22 B. that Defendant accounts for and pays to Plaintiff all damages caused by the
23 infringement of the ‘426 patent, which by statute can be no less than a reasonable royalty;
24 C. that Plaintiff be granted pre-judgment and post-judgment interest on the damages
25 caused to them by reason of Defendant’s infringement of the ‘426 patent;
26 D. that Plaintiff be granted its attorneys’ fees in this action;
27 E. that costs be awarded to Plaintiff;

1 F. that Plaintiff be granted such other and further relief as the Court may deem just and
2 proper under the current circumstances.

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4
5 Dated: May 5, 2011

GOLDSTEIN & VOWELL LLP

6
7 By: /s/ Edward W. Goldstein
8 Edward W. Goldstein

9 Attorney for Plaintiff
10 SPECTROS CORP.
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JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Spectros Corp. hereby demands a trial by jury for all issues so triable.

Dated: May 5, 2011

GOLDSTEIN & VOWELL LLP

By: /s/ Edward W. Goldstein
Edward W. Goldstein

Attorney for Plaintiff
SPECTROS CORP.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on May 5, 2011, or, if not yet registered with the Court's CM/ECF system, via electronic mail pursuant to Fed.R.Civ.P. 5(b)(2)(E). Any other counsel of record will be served by first class U.S. Mail.

/s/ Edward W. Goldstein
Edward W. Goldstein