

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PIPSTEK, LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. _____
)	
BIOLASE, INC.,)	DEMAND FOR JURY TRIAL
)	
Defendant.)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Pipstek, LLC (“Pipstek”), by and through their undersigned attorneys, hereby complains of Defendant Biolase, Inc. (“Biolase” or “Defendant”) for infringement of the United States Patents identified herein, and alleges as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, and more particularly 35 U.S.C. §§ 271 and 281.
2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1338(a).
3. This Court has personal jurisdiction over Biolase because, upon information and belief, Biolase has a continuous, systematic, and substantial presence within this judicial district, including by selling, offering for sale, and instructing end users on use of the infringing products in this judicial district and by committing acts of patent infringement in this judicial district.
4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

PARTIES

5. Pipstek realleges and incorporates herein by reference the allegations stated in paragraphs 1–4 of this Complaint as if set forth fully herein.

6. Pipstek is a Delaware limited liability company, having a principal place of business at 26061 Merit Circle Suite 102, Laguna Hills, California, 92653.

7. Upon information and belief, Defendant Biolase is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 27042 Towne Centre Drive, Ste 270, Foothill Ranch, California, 92610.

THE ASSERTED PATENTS

8. Pipstek realleges and incorporates herein by reference the allegations stated in paragraphs 1–7 of this Complaint as if set forth fully herein.

9. On June 7, 2022, the United States Patent and Trademark Office issued United States Patent No. 11,350,993 (“the ’993 Patent”), entitled “Dental and Medical Treatments and Procedures.” Pipstek is the true owner by assignment of all right, title and interest in the ’993 Patent. A true and correct copy of the ’993 Patent is attached hereto as **Exhibit 1**.

10. On August 30, 2022, the United States Patent and Trademark Office issued United States Patent No. 11,426,239 (“the ’239 Patent”), entitled “Dental and Medical Treatments and Procedures.” Pipstek is the true owner by assignment of all right, title and interest in the ’239 Patent. A true and correct copy of the ’239 Patent is attached hereto as **Exhibit 2**.

FIRST CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 11,350,993)

11. Pipstek realleges and incorporates herein by reference the allegations stated in paragraphs 1–10 of this Complaint as if set forth fully herein.

12. Biolase has been aware of the '993 Patent and its contents, as least in part through written communications notifying Biolase of its infringement of this patent, sent on behalf of Pipstek and received by Biolase, on or about November 28, 2022. Despite acknowledging receipt of that notice, Biolase continued its infringing activity.

13. Upon information and belief, Biolase has actively induced others to infringe the '993 Patent by marketing, offering for sale, and selling, for example, Waterlase products, knowing and intending that such products would be used by end users in a manner that infringes the '993 Patent. Attached hereto as **Exhibit 3** is an exemplary claim chart demonstrating that the end-users of such products infringe, at least, method Claim 1 of the '993 Patent. To that end, Biolase provides instructions and information to its customers and the end users that such products be used to infringe the '993 Patent, including the literature and webpages attached hereto as **Exhibits 5–9**, which show that Biolase has promoted and instructed use of the products in a manner that infringes the '993 Patent. These acts by Biolase constitute infringement of the '993 Patent in violation of at least 35 U.S.C. § 271(b).

14. Upon information and belief, the acts of Biolase constitute contributory infringement of the '993 Patent in violation of 35 U.S.C. § 271(c). Upon information and belief, Biolase contributorily infringes because, among other things, Biolase manufactures, offers to sell and/or sells within the United States products that constitute material parts of the invention of the asserted claims of the '993 Patent, that are not staple articles or commodities of commerce suitable for substantial non-infringing use, and that are known by Biolase to be especially made or especially adapted for use in an infringement of the '993 Patent.

15. Biolase's acts of infringement of the '993 Patent were undertaken without permission or license from Pipstek.

16. Biolase's infringement of the '993 patent is willful, deliberate, and intentional by continuing its acts of infringement after becoming aware of the '993 patent and its infringement thereof, thus acting in reckless disregard of Pipstek's patent rights.

17. As a consequence of the infringement of the '993 Patent, Pipstek has suffered and will continue to suffer irreparable harm and injury, including monetary damages in an amount to be determined at trial.

18. Upon information and belief, unless enjoined, Biolase and/or others acting on its behalf, will continue their infringing acts relating to the '993 Patent, thereby causing additional irreparable injury to Pipstek for which there is no adequate remedy at law.

SECOND CLAIM FOR RELIEF
(Infringement of U.S. Patent No. 11,426,239)

19. Pipstek realleges and incorporates herein by reference the allegations stated in paragraphs 1–18 of this Complaint as if set forth fully herein.

20. Biolase has been aware of the '239 Patent and its contents, as least in part through written communications notifying Biolase of its infringement of this patent, sent on behalf of Pipstek and received by Biolase, on or about November 28, 2022. Despite acknowledging receipt of that notice, Biolase continued its infringing activity.

21. Upon information and belief, Biolase has actively induced others to infringe the '239 Patent by marketing, offering for sale, and selling, for example, Waterlase products, knowing and intending that such products would be used by end users in a manner that infringes the '239 Patent. Attached hereto as **Exhibit 4** is an exemplary claim chart demonstrating that the end-users of such products infringe, at least, method Claim 1 of the '239 Patent. To that end, Biolase provides instructions and information to its customers and the end users that such products be used to infringe the '239 Patent, including the literature and webpages attached hereto as **Exhibits 5–9**,

which show that Biolase has promoted and instructed use of the products in a manner that infringes the '239 Patent. These acts by Biolase constitute infringement of the '239 Patent in violation of at least 35 U.S.C. § 271(b).

22. Upon information and belief, the acts of Biolase constitute contributory infringement of the '239 Patent in violation of 35 U.S.C. § 271(c). Upon information and belief, Biolase contributorily infringes because, among other things, Biolase manufactures, offers to sell and/or sells within the United States products that constitute material parts of the invention of the asserted claims of the '239 Patent, that are not staple articles or commodities of commerce suitable for substantial non-infringing use, and that are known by Biolase to be especially made or especially adapted for use in an infringement of the '239 Patent.

23. Biolase's acts of infringement of the '239 Patent were undertaken without permission or license from Pipstek.

24. Biolase's infringement of the '239 patent is willful, deliberate, and intentional by continuing its acts of infringement after becoming aware of the '239 patent and its infringement thereof, thus acting in reckless disregard of Pipstek's patent rights.

25. As a consequence of the infringement of the '239 Patent, Pipstek has suffered and will continue to suffer irreparable harm and injury, including monetary damages in an amount to be determined at trial.

26. Upon information and belief, unless enjoined, Biolase and/or others acting on its behalf, will continue their infringing acts relating to the '239 Patent, thereby causing additional irreparable injury to Pipstek for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Pipstek prays for judgment in their favor and against Defendant, including but not limited to, the following relief:

1. For an Order adjudging Biolase to have infringed the '993 Patent and '239 Patent under 35 U.S.C. § 271;

2. A preliminary and permanent injunction enjoining Biolase, their respective officers, directors, agents, servants, employees and attorneys, and those persons in active concert or participation with Defendant, from infringing the '993 Patent and '239 Patent in violation of 35 U.S.C. § 271;

3. Pursuant to 35 U.S.C. § 284, an award of monetary damages compensating Pipstek for Biolase's infringement of the '993 Patent and '239 Patent;

4. Pursuant to 35 U.S.C. § 284, an assessment of pre-judgment and post-judgment interest and costs against Biolase, together with an award of such interest and costs;

5. Pursuant to 35 U.S.C. § 284, an award increasing damages up to three times the amount found or assessed by the jury for Biolase's infringement of the '993 Patent and '239 Patent in view of the willful and deliberate nature of the infringement;

6. Pursuant to 35 U.S.C. § 285, a finding that this is an exceptional case, and an award of reasonable attorney's fees and non-taxable costs; and

7. That the Court award Pipstek such other and further relief as this Court may deem just.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Pipstek, LLC Inc. demands a trial by jury of all issues raised by this Complaint that are triable by jury.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Brian P. Egan

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