

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

CASE NO.:

YOLDAS ASKAN,

Plaintiff,

v.

FARO TECHNOLOGIES, INC.,

Defendant.

COMPLAINT FOR PATENT INFRINGEMENT (INJUNCTIVE RELIEF DEMANDED)

Yoldas Askan sues Defendant FARO Technologies, Inc. (“FARO”) and states as follows:

JURISDICTION AND VENUE

1. This is a civil action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 271, et. seq.

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

3. Venue properly lies within this Judicial District under 28 U.S.C. § 1400(a) because defendant FARO is a Florida corporation with its principal place of business in this district and a substantial part of the events or omissions giving rise to the claims in this suit occurred in this district.

PARTIES

4. Plaintiff Yoldas Askan (“Askan”), is an individual residing at 51 Pinfold St., Suite 542, Birmingham, B2 4AY, United Kingdom.

5. Defendant FARO Technologies, Inc. (“FARO”) is incorporated in the State of Florida and is headquartered at 250 Technology Park, Lake Mary, FL 32746.

FACTS

6. Askan is a mathematician, physicist, and software developer with high degrees in mathematics and physics.

7. FARO is a maker and seller of 3-D imaging equipment and technologies.

8. Prior to June 25, 2012, Askan invented new, novel, non-obvious systems and methods for generating smooth images from point cloud data produced by 3-D imaging equipment such as laser scanners made by FARO.

9. On June 25, 2012, Askan applied for a patent on his invention.

10. On April 22, 2014, the U.S. Patent Office issued Patent No. 8,705,110 entitled “Method of Generating a Smooth Image from Point Cloud Data” to Askan (the “110 Patent”).

11. On March 29, 2016, the U.S. Patent Office issued Patent No. 9,300,841 entitled “Method of Generating a Smooth Image from Point Cloud Data” to Askan (the “841 Patent”). (Ex. 1).

12. On July 24, 2018, the U.S. Patent Office issued Patent No. 10,032,255 entitled “System for Smoothing 3D Clouds” to Askan (the “255 Patent”). (Ex. 2).

13. All three patents claim priority back to June 25, 2012.

14. Askan is the owner of the entire right, title, and interest in the patents.

15. All maintenance fees for have been timely paid, and there are no fees currently due, for the patents.

16. On a date after June 25, 2012, FARO made, used, sold, offered to sell and imported 3D laser scanners that practice at least claim one of the '841 Patent and the '255 Patent.

17. For example, the Faro 3D Focus Premium Flash scanner range released after June 2023 practice all the steps of at least one claim of the '841 Patent and the '255 Patent. One illustrative example is contained in the claim chart for the '841 Patent attached hereto as Exhibit 3¹. Another illustrative example is contained in the claim chart for the '255 Patent attached hereto as Exhibit 4².

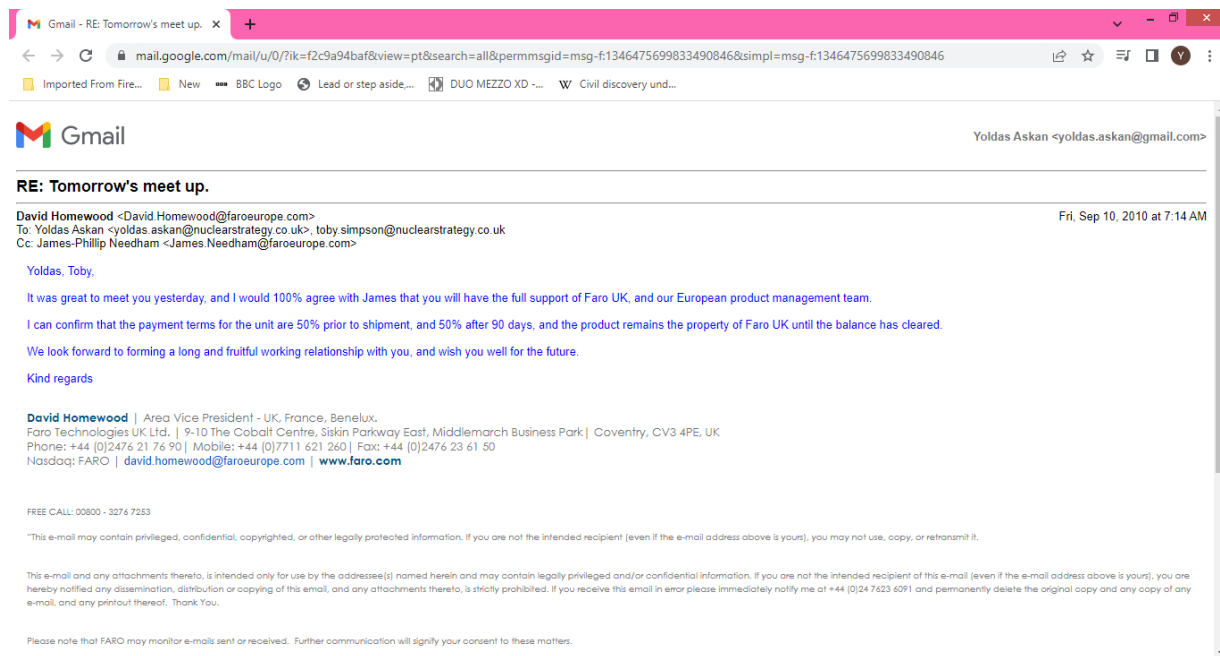
18. In December 2010, Askan purchased an S-PHOTON 120-DEMO-PH P3D laser scanner from FARO to develop his software.

19. Prior to the sale of the scanner, FARO promised a business partnership with Askan.

20. FARO's David Homewood, Area Vice President - UK, France, Benelux, emailed Askan on Sep 10, 2010 writing, "*We look forward to forming a long and fruitful working relationship with you, and wish you well for the future.*"

¹ Askan provides the claim chart attached as Exhibit 3 and the materials therein for illustrative purposes to show a preliminary theory of infringement. Askan reserves the right to revise, update, amend or supplement the claim chart attached hereto and Askan's infringement contentions prior to a Markman hearing in this case and after receipt of discovery concerning all FARO infringing products.

² Askan provides the claim chart attached as Exhibit 4 and the materials therein for illustrative purposes to show a preliminary theory of infringement. Askan reserves the right to revise, update, amend or supplement the claim chart attached hereto and Askan's infringement contentions prior to a Markman hearing in this case and after receipt of discovery concerning all FARO infringing products.

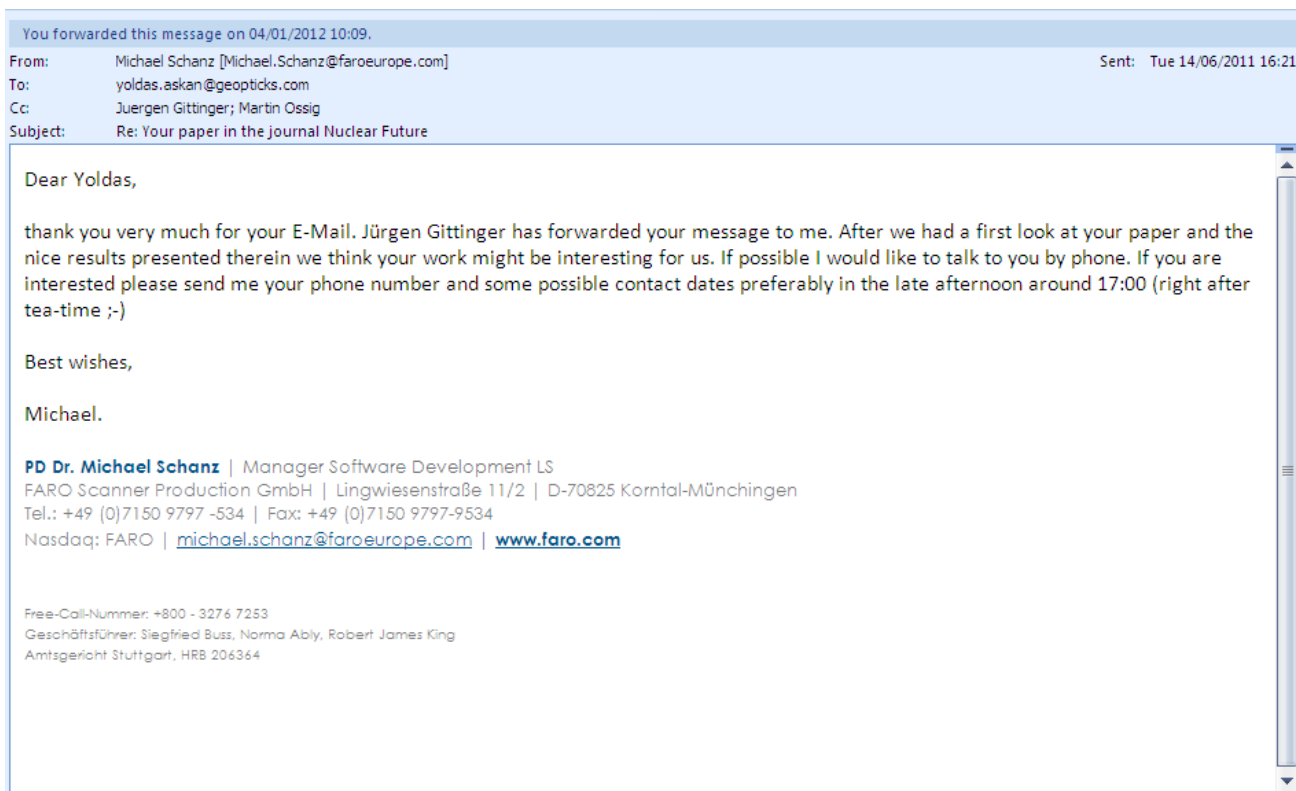


21. Nuclear Engineers Institute in London published Askan's invention in the Nuclear Future Journal Volume 7, Issue 4 date June 2011.

22. Prior to the issuance of the '841 Patent, Askan notified FARO that he had developed software that could generate a second point cloud data set representing a noise free and smoothed representation of a noisy point cloud produced by a FARO 3D scanner and shared the Nuclear Engineers publication showing Askan's invention.

23. FARO responded to Askan's notification and acknowledged receiving notice.

24. FARO's Software Development LS Manager, PD Dr. Michael Schanz wrote, "*After we had a first look at your paper and the nice results presented therein we think your work might be interesting for us.*" Where "*your paper*" refers to the publication of the Askan's article in Nuclear Future Journal.



25. FARO republished Askan's article on FARO's FARO.com website.

26. German version is still available to inspect at, [<https://media.faro.com/-/media/Project/FARO/FARO/FARO/Resources/2021/01/29/00/36/Case-Study-GEOPTICKS--NUKLEARE-SICHERHEIT--REMOTE-DEPLOYMENT-MIT-LASERSCANNERN-DEU.pdf?rev=22149c9d095f459a875042af3ef3a2ff>]

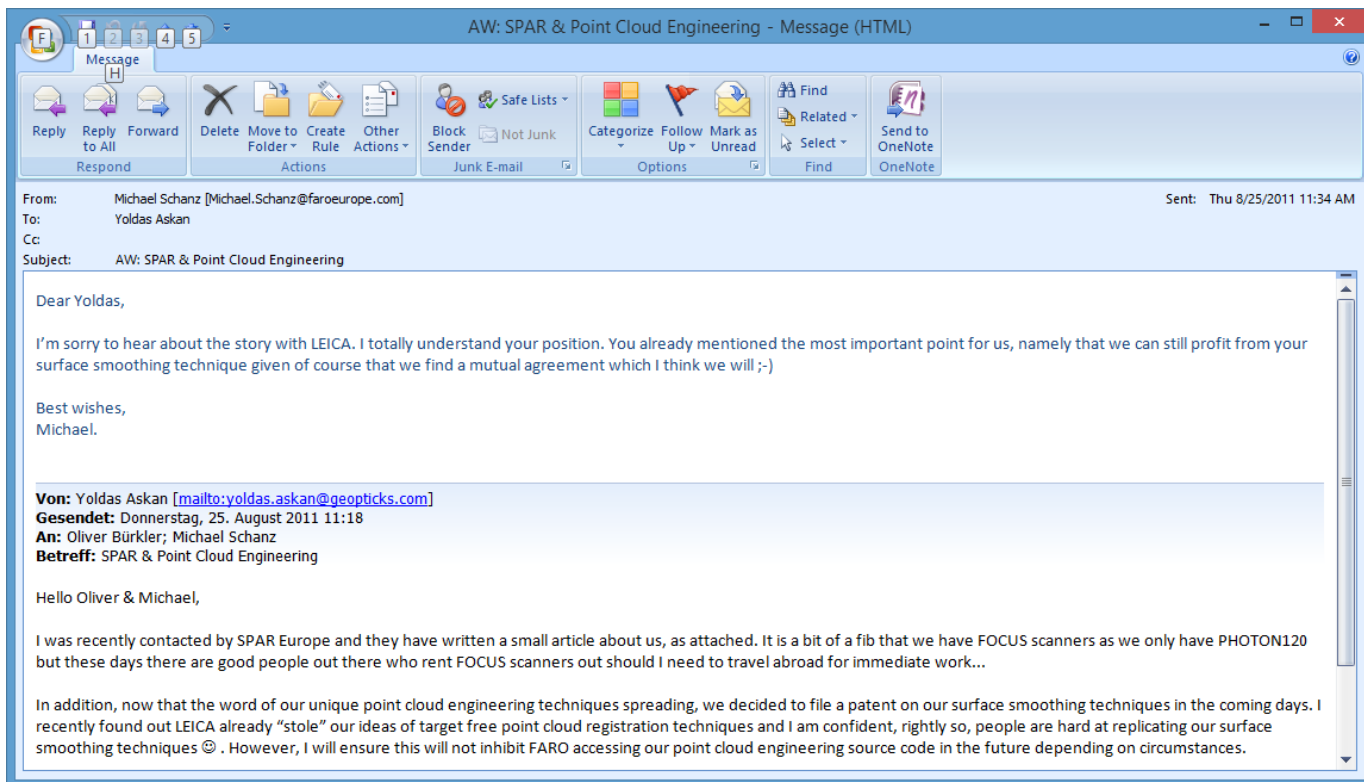


27. FARO wanted to profit from Askan's invention.

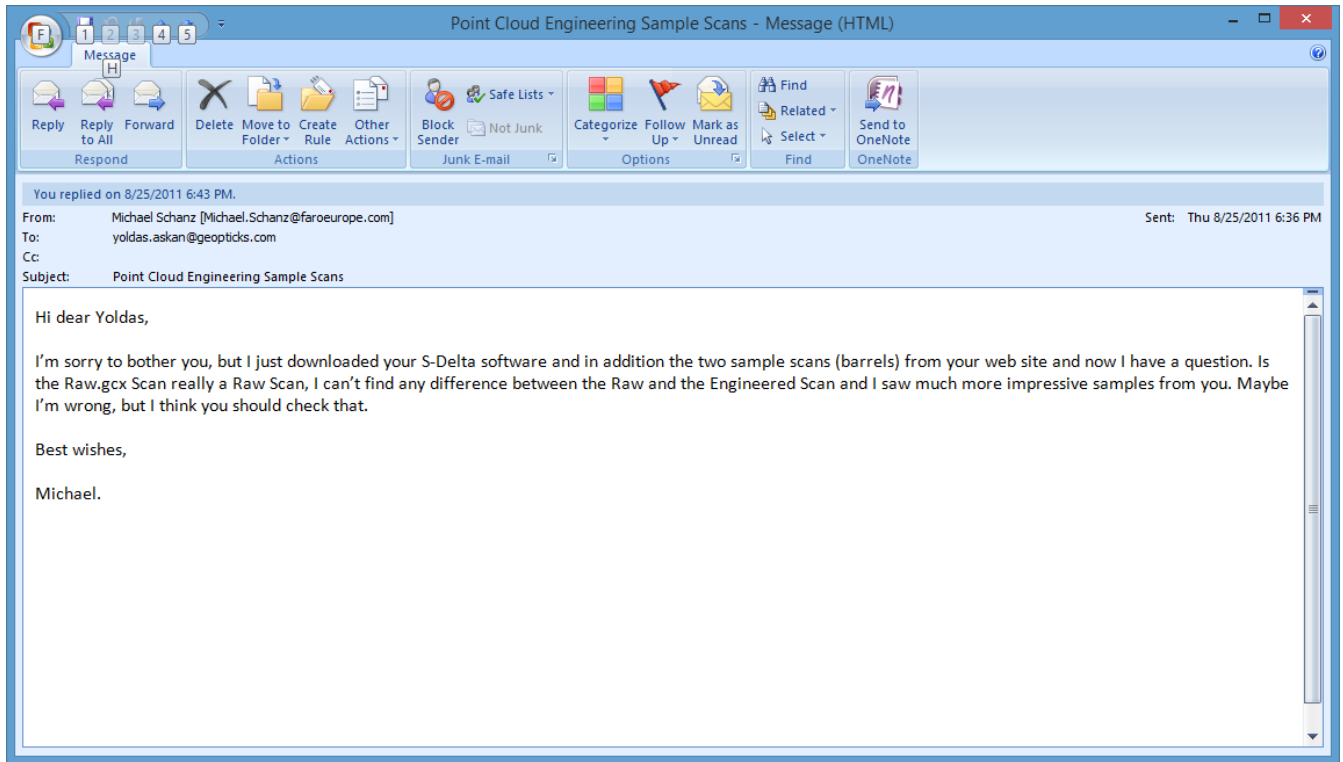
28. FARO's Software Development LS Manager, PD Dr. Michael Schanz, on

Aug 25, 2011 emailed Askan and mentioned, "the most important point for us, namely that

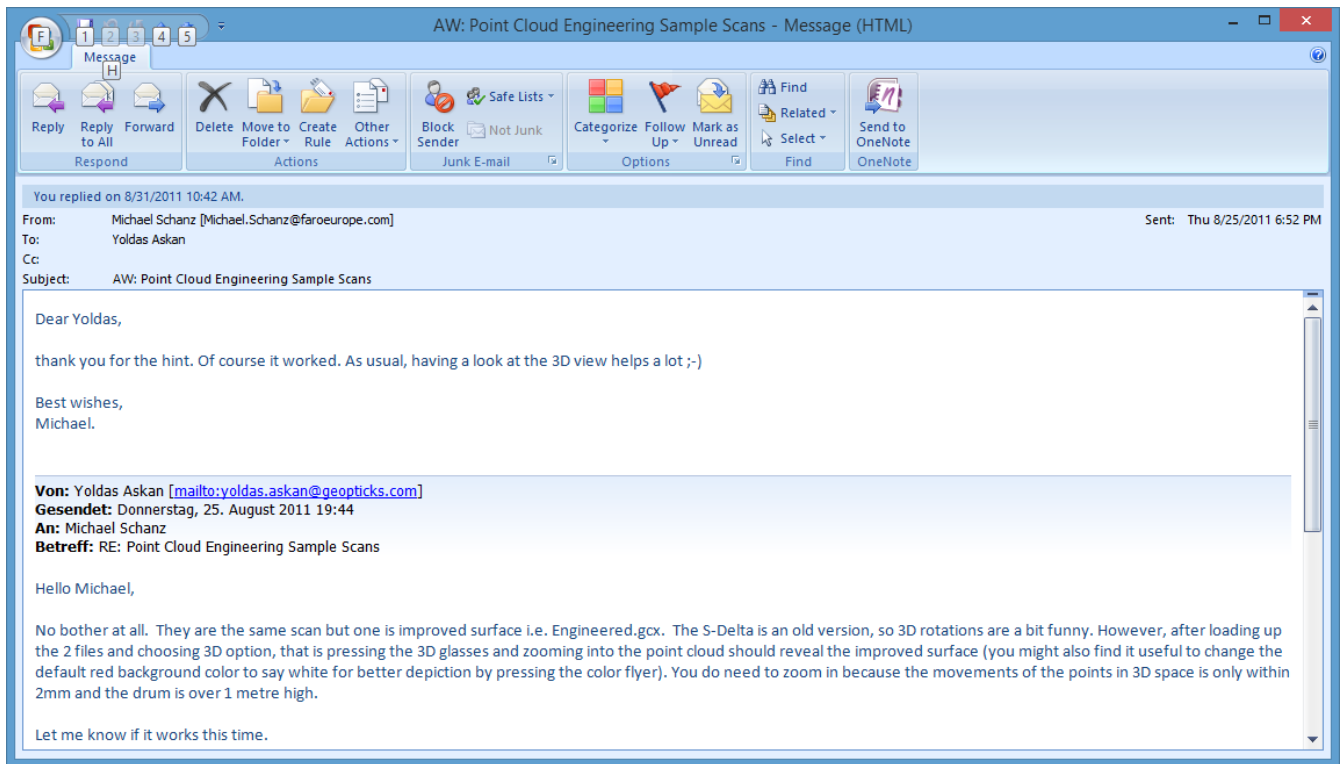
we can still profit from your surface smoothing technique given of course that we find a mutually agreement which I think we will ;-)"



29. Subsequently, FARO downloaded Askan's software,



30. FARO studied and reverse engineered Askan's scans and software,



31. FARO learnt Askan's inventive steps.

32. FARO begun to treat raw data inside their in-camera processor.

33. In October 8, 2013, FARO ran an article on SPAR 3D website claiming, "*New Focus3D scanner cuts noise by 50% at nearly 3x range*".
<https://www.spar3d.com/news/hardware/new-focus3d-scanner-cuts-noise-by-50-at-nearly-3x-range/> [Destroyed evidence]
<https://www.geoweeknews.com/news/new-focus3d-scanner-cuts-noise-by-50-at-nearly-3x-range> [Active link created on October 8, 2013]

34. FARO's software developer Juergen Gittenger, based in Germany (Juergen.Gittinger@faroeurope.com) emailed Askan on November 08, 2011 15:00hrs, months after inquiring about Askan's software and confirmed the use of Askan's technology, "*taking the distance measurements of 4 or more neighboring scan points together and calculating the mean value of it*".

35. After the '841 Patent issued, Askan notified FARO of its issuance and that FARO infringed on at least one claim of the '841 Patent.

36. Despite receiving notice, FARO made, used, sold, offered to sell and imported 3D laser scanners that infringed.

37. On a date prior to the issuance of the '255 Patent, Askan notified FARO that he had developed software that could generate a second point cloud data set representing a noise free and smoothed representation of a noisy point cloud produced by a FARO 3D scanner.

38. FARO responded to Askan's notification and acknowledged receiving notice.

39. Thereafter, Askan demonstrated his invention to FARO.

40. After the '255 Patent issued, Askan notified FARO of its issuance and that FARO infringed on at least one claim of the '255 Patent.

41. Despite receiving notice, FARO made, used, sold, offered to sell and imported 3D laser scanners that infringed.

42. Askan sued FARO three times before the United States District Court Middle District of Florida Orlando Division. Each time, Hon. Judge Paul G. Byron presided over these cases.

43. Prior case numbers are 6:18-cv-01122, 6:21-cv-01366 and 6:23-cv-00920.

44. Due to various reasons, including procedural issues, prior related cases were not decided on the merits.

45. Askan appealed the decision of the case no 6:23-cv-00920 at the Court of Appeals for the Federal Circuit Case no 24-2258. The appeal is pending.

46. In the Federal Circuit Case no 24-2258 Askan is due to request disqualification of Hon. Judge Paul G. Byron from Askan's cases under 28 U.S. Code § 455.

47. Hon. Judge Paul G. Byron must not preside over this case until pending appeal is resolved by the issuance of an appellate mandate, dismissal, or otherwise, see 6:23-cv-00920, Order at Doc. 188.

48. FARO introduced new products sometime since the filing of the case 6:23-cv-00920.

49. Prior related case 6:23-cv-00920 did not proceed to discovery stage and therefore FARO's new products were not litigated in the earlier lawsuit.

50. Therefore, Askan sues FARO for the newly released products after June 2023 owing to *Aspex* [No. 2011-1147 (Fed. Cir. Mar. 14, 2012)] authority from the Federal Circuit,

"Turning to Revolution and Marchon's (appellee's) argument that the Old Design and New Design were essentially the same and that res judicata should therefore apply equally to the latter design as well, the Federal Circuit disagreed. It held that because the New Design was not in existence when the earlier actions were filed, res judicata could not bar a subsequent lawsuit against that design because a claim

was not, and could not have been, asserted against that design. Whether the designs were essentially the same was of little relevance to the court. Thus, the Federal Circuit accepted this alternative theory requiring reversal and remanded the case. The Federal Circuit noted that the district court should also consider the implications of the doctrine of collateral estoppel, also known as issue preclusion, but that its ruling on res judicata was unaffected by this because it was not based on an attempt by Aspex to relitigate an issue it had lost on previously."

51. Under 35 U.S.C. § 271 a claim for direct patent infringement requires a plaintiff to; (iv) state the means by which the defendant allegedly infringes. *Hall v. Bed Bath & Beyond, Inc.*, 705 F.3d 1357, 1362 (Fed. Cir. 2013) (citing *Phonometrics, Inc. v. Hospitality Franchise Sys., Inc.*, 203 F.3d 790 (Fed. Cir. 2000))

52. In the related prior case, 6:21-cv-01366, FARO employee Jurgen Gittinger admitted, ". . . Code can change the distance values of scan points by replacing the distance values of a given scan points with a mean distance value . . .":

9. Once SCENE has read the scan data from the FOCUS scanner, portions of each of the 2019 Code and the 2020 Code can change the distance values of scan points by replacing the distance value of a given scan point with a mean distance value of scan points within a 2D grid, provided certain criteria are met. The source code executing, setting variables used by, and invoking such functions in the 2019 Code did not change in the 2020 Code and was also the same in all SCENE versions from the 2019 Code to SCENE version 2022.0. Neither the 2019 Code nor the 2020 Code, nor any other version from the 2019 Code to SCENE version 2022.0, executes any other algorithm that addresses averaging distance values of scan points. As such, that functionality of averaging distance values in the 2019 Code was not modified in the 2020 Code or in any SCENE code through SCENE 2022.0.

53. Askan's patent 255 recites, "*generating a second point cloud data set based on the second distance values which are an average based distance value of the at least two neighboring points*"

54. In support of this present case, experimentation conducted using FARO scanners released after June 2023, for example FARO Premium Flash and FARO SCENE 2023 software have revealed that scanned data measured noise levels on smooth planar surfaces to be less than 0.1mm.

55. However, FARO scanners have failed to distinguish actual object details, or intricacies, less than 0.1mm.

56. On that basis, FARO must therefore filter data, because upon inspection, the smoothness of the actual scanned surfaces does not correlate to reverse-engineered surface details viewed as data points.

57. The activity stands accused of infringement is therefore the processing of the scan points by averaging, as testified by FARO employee in the prior related action, and evidenced by the smooth images from the FARO's products when displayed on computer screen, see Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 555).

58. Defendant is hereby on notice, averaging of scan-point distance values to cause a display of smooth images from raw/unprocessed data points infringe upon the elements of patent 255 and patent 841 claims. *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009), See *K-Tech Telecomms.*, 714 F.3d at 1284; see, e.g., *Blue Water Innovations, LLC v. Fettig*, 2019 WL 1904589, *2 (S.D. Fla. Mar. 8, 2019).

59. Askan has been irreparably harmed by FARO's infringement of his valuable patent rights.

60. FARO's unauthorized, infringing use of Askan's patented systems and methods has threatened the value of his intellectual property because FARO's conduct results in Askan's loss of his lawful patent rights to exclude others from making, using, selling, offering to sell and/or importing the patented inventions.

61. FARO's disregard for Askan's property rights similarly threatens Askan's relationships with potential licensees of his intellectual property.

62. FARO derives a competitive advantage from using Askan's patented technology without paying compensation for such use.

63. Unless and until FARO's continued acts of infringement are enjoined, Askan will suffer further irreparable harm for which there is no adequate remedy at law.

64. FARO's infringement of Askan's patents is willful.

65. The FARO Focus Premium Flash 3d scanner range post June 2023 infringes on at least one claim of each patent-in-suit.

66. On information and belief, the following additional FARO products may infringe at least one claim of each patent-in-suit, but Askan requires discovery in order to determine infringement definitively: FARO Orbis™ Mobile Scanner released on October 2023 [<https://www.prnewswire.com/news-releases/revolutionizing-3d-scanning-data-capture-faro-unveils-orbis-mobile-scanner-301951652.html>].

67. Askan does not presently assert infringement claims regarding these additional products, but reserves the right to do so upon receipt of discovery from FARO.

COUNT I
Literal Infringement of the '841 Patent by FARO

68. Askan restates the allegations set forth in paragraphs 1 to 67 above and incorporates them herein by reference.

69. FARO makes, uses, sells, offers to sell and/or imports into the United States for subsequent sale or use products, services, methods or processes that directly infringe, or which employ systems, components and/or steps that make use of other systems or processes that directly infringe, at least claim 1 of the '841 Patent.

70. FARO has been and continues to infringe one or more of the claims of the '841

Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

71. FARO's wrongful conduct has caused Askan to suffer irreparable harm resulting from the loss of his lawful patent rights to exclude others from making, using, selling, offering to sell and importing the patented inventions.

72. FARO's infringement has been willful, deliberate and with knowledge of Plaintiffs' rights under the '841 Patent, and unless FARO is enjoined by this Court, such acts of willful infringement will continue. Therefore, Askan is without adequate remedy at law.

73. Askan is entitled to recover damages adequate to compensate for the infringement of the '841 Patent, as well as additional damages for willful infringement.

COUNT II
Literal Infringement of the '255 Patent by FARO

74. Askan restates the allegations set forth in paragraphs 1 to 67 above and incorporates them herein by reference.

75. FARO makes, uses, sells, offers to sell and/or imports into the United States for subsequent sale or use products, services, methods or processes that directly infringe, or which employ systems, components and/or steps that make use of other systems or processes that directly infringe, at least claim 1 of the '255 Patent.

76. FARO has been and continues to infringe one or more of the claims of the '255 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

77. FARO's wrongful conduct has caused Askan to suffer irreparable harm resulting from the loss of his lawful patent rights to exclude others from making, using, selling, offering to sell and importing the patented inventions.

78. FARO's infringement has been willful, deliberate and with knowledge of Plaintiffs' rights under the '255 Patent, and unless FARO is enjoined by this Court, such acts of willful infringement will continue. Therefore, Askan is without adequate remedy at law.

79. Askan is entitled to recover damages adequate to compensate for the infringement of the '255 Patent, as well as additional damages for willful infringement.

COUNT III
Infringement by Equivalents of the '841 Patent by FARO

80. Askan restates the allegations set forth in paragraphs 1 to 67 above and incorporates them herein by reference.

81. FARO makes, uses, sells, offers to sell and/or imports into the United States for subsequent sale or use products, services, methods or processes that directly infringe, or which employ systems, components and/or steps that make use of other systems or processes that infringe by equivalents, at least claim 1 of the '841 Patent.

82. FARO has been and continues to infringe one or more of the claims of the '841 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

83. FARO's wrongful conduct has caused Askan to suffer irreparable harm resulting from the loss of his lawful patent rights to exclude others from making, using, selling, offering to sell and importing the patented inventions.

84. FARO's infringement has been willful, deliberate and with knowledge of Plaintiffs' rights under the '841 Patent, and unless FARO is enjoined by this Court, such acts of willful infringement will continue. Therefore, Askan is without adequate remedy at law.

85. Askan is entitled to recover damages adequate to compensate for the infringement of the '841 Patent, as well as additional damages for willful infringement.

COUNT IV
Infringement by Equivalents of the '255 Patent by FARO

86. Askan restates the allegations set forth in paragraphs 1 to 67 above and incorporates them herein by reference.

87. FARO makes, uses, sells, offers to sell and/or imports into the United States for subsequent sale or use products, services, methods or processes that directly infringe, or which employ systems, components and/or steps that make use of other systems or processes that infringe by equivalents, at least claim 1 of the '255 Patent.

88. FARO has been and continues to infringe one or more of the claims of the '255 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

89. FARO's wrongful conduct has caused Askan to suffer irreparable harm resulting from the loss of his lawful patent rights to exclude others from making, using, selling, offering to sell and importing the patented inventions.

90. FARO's infringement has been willful, deliberate and with knowledge of Plaintiffs' rights under the '255 Patent, and unless FARO is enjoined by this Court, such acts of willful infringement will continue. Therefore, Askan is without adequate remedy at law.

91. Askan is entitled to recover damages adequate to compensate for the infringement of the '255 Patent, as well as additional damages for willful infringement.

COUNT V
Inducement of Infringement of the '841 Patent by FARO

92. Askan restates the allegations set forth in paragraphs 1 to 67 above and incorporates them herein by reference.

93. FARO makes, uses, sells, offers to sell and/or imports into the United States for subsequent sale or use products, services, methods or processes that directly infringe, or which employ systems, components and/or steps that make use of other systems or processes that directly infringe or infringe by equivalents, at least claim 1 of the '841 Patent.

94. FARO makes, uses, sells, offers to sell and/or imports into the United States for subsequent sale or use 3D laser scanners including but not limited to the Faro 3D Focus Premium Flash scanner range released after June 2023 that directly infringe or infringe by equivalents one or more of the claims of the '841 Patent.

95. FARO, by making, using, selling, offering to sell and/or importing into the United States for subsequent sale or use 3D laser scanners including but not limited to the Faro 3D Focus Premium Flash scanner range released after June 2023 to users that directly infringe or infringe by equivalents one or more of the claims of the '841 Patent with knowledge of the infringement, FARO possessed specific intent to encourage its customers to infringe one or more claims on the '841 Patent.

96. Askan previously informed FARO of the '841 Patent and its relevance to FARO's business and products.

97. Notwithstanding FARO's knowledge, FARO continued to induce infringement by its 3D scanner customers.

98. Defendant's infringement has been willful, deliberate and with knowledge of Plaintiffs' rights under the '841 Patent, and unless Defendant are enjoined by this Court, such acts of willful infringement will continue. Therefore, Plaintiffs are without adequate remedy at law.

99. Askan is entitled to recover damages adequate to compensate for the infringement of the '841 Patent, as well as additional damages for willful infringement.

COUNT VI
Inducement of Infringement of the '255 Patent by FARO

100. Askan restates the allegations set forth in paragraphs 1 to 67 above and incorporates them herein by reference.

101. FARO makes, uses, sells, offers to sell and/or imports into the United States for subsequent sale or use products, services, methods or processes that directly infringe, or which employ systems, components and/or steps that make use of other systems or processes that directly infringe or infringe by equivalents, at least claim 1 of the '255 Patent.

102. FARO makes, uses, sells, offers to sell and/or imports into the United States for subsequent sale or use 3D laser scanners including but not limited to the Faro 3D Focus Premium Flash scanner range released after June 2023 that directly infringe or infringe by equivalents one or more of the claims of the '255

103. FARO, by making, using, selling, offering to sell and/or importing into the United States for subsequent sale or use 3D laser scanners including but not limited to the Faro 3D Focus Premium Flash scanner range released after June 2023 to users that directly infringe or infringe by equivalents one or more of the claims of the '255 Patent with knowledge of the infringement, FARO possessed specific intent to encourage its customers to infringe one or more claims on the '255 Patent.

104. Askan previously informed FARO of the '255 Patent and its relevance to FARO's business and products.

105. Notwithstanding FARO's knowledge, FARO continued to induce infringement by its 3D scanner customers.

106. Defendant's infringement has been willful, deliberate and with knowledge of Plaintiffs' rights under the '255 Patent, and unless Defendant are enjoined by this Court, such acts of willful infringement will continue. Therefore, Plaintiffs are without adequate remedy at law.

107. Askan is entitled to recover damages adequate to compensate for the infringement of the '255 Patent, as well as additional damages for willful infringement.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Askan prays for relief, as follows:

A. A judgment that FARO has infringed, contributorily infringed, and/or induced infringement of one of more claims of each of the patents-in-suit;

B. An order and judgment preliminarily and permanently enjoining FARO and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns from further acts of infringement of the patents-in-suit;

C. A judgment awarding Askan all damages adequate to compensate for FARO's infringement of the Askan Patents, and in no event less than a reasonable royalty for FARO's acts of infringement, including all prejudgment and post judgment interest at the maximum rate permitted by law;

D. A judgment awarding Askan all damages, including treble damages, based on any infringement found to be willful, under 35 U.S.C. § 284, together with prejudgment interest;

E. Actual damages suffered by Askan as a result of FARO's unlawful conduct, in an amount to be proven at trial, as well as prejudgment interest as authorized by law;

F. A judgment that this is an exceptional case and an award to Askan of its costs and reasonable attorneys' fees incurred in this action as provided by 35 U.S.C. § 285;

G. A judgment awarding Askan all damages, including treble damages, based on any infringement found to be willful, pursuant to 35 U.S.C. § 284, together with prejudgment interest;

H. A judgment that this is an exceptional case and an award to Askan of its costs and reasonable attorneys' fees incurred in this action as provided by 35 U.S.C. § 285;

I. And such other relief as this Court deems just and proper.

Dated: September 15, 2024

/s/ Yoldas Askan

Yoldas Askan

Plaintiff Yoldas Askan

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