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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

03-2142 **RJK** (RCx)

DIODEM, LLC,

Plaintiff,

vs.

LUMENIS INC.; LUMENIS LTD.;
CONTINUUM; AMERICAN
DENTAL TECHNOLOGIES, INC.;
BT, INC., and DOES 1 through 10,
inclusive,

Defendants.

CASE NO.

**Complaint for Patent
Infringement (U.S. Patent Nos.
5,267,856, 5,304,167, 5,422,899,
and 6,122,300)**

Demand for Jury Trial

1 Plaintiff Diodem, LLC sues Defendants and, on information and
2 belief, alleges as follows:

3
4 **Introduction**

5 1. Plaintiff Diodem, LLC owns the inventions described and
6 claimed in the Patents identified below. Defendants (a) incorporated and continue
7 to incorporate Plaintiff's patented surgical laser technology in products that they
8 make, use, and sell without Plaintiff's permission, and (b) contribute to or induce
9 others to infringe the Patents. Diodem, LLC seeks an injunction preventing
10 Defendants from making, using, or selling and from contributing to and inducing
11 others to make, use, or sell Plaintiff's patented technology without permission and
12 seeks damages for patent infringement.

13
14 **Jurisdiction**

15 2. This is an action for patent infringement arising under the
16 patent laws of the United States, 35 U.S.C. §§ 271 and 281, *et seq.* The Court has
17 original jurisdiction over this patent infringement action under 28 U.S.C.
18 § 1338(a).

19
20 **Plaintiff**

21 3. Plaintiff Diodem, LLC is a limited liability company existing
22 under and by virtue of the laws of the State of California.

23
24 **The Patents**

25 4. The United States Patent and Trademark Office issued United
26 States Patent No. 5,267,856 entitled "Laser Surgical Method" (the "'856 Patent"),
27 Patent on December 7, 1993. Through assignment, Plaintiff is the owner of all
28

1 right, title, and interest, including rights for damages for past infringements, in the
2 '856 Patent.

3 5. The United States Patent and Trademark Office issued United
4 States Patent No. 5,304,167 entitled "Multiwavelength Medical Laser Method"
5 (the "'167 Patent") on April 19, 1994. Through assignment, Plaintiff is the owner
6 of all right, title, and interest, including rights for damages for past infringements,
7 in the '167 Patent.

8 6. The United States Patent and Trademark Office issued the
9 United States Patent No. 5,422,899 entitled "High Repetition Rate Mid-Infrared
10 Laser" (the "'899 Patent") on June 6, 1995. Through assignment, Plaintiff is the
11 owner of all right, title, and interest, including rights for damages for past
12 infringements, in the '899 Patent.

13 7. The United States Patent and Trademark Office issued United
14 States Patent No. 6,122,300 entitled "High Repetition Rate Mid-Infrared Laser"
15 (the "'300 Patent") on September 19, 2000. Through assignment, Plaintiff is the
16 owner of all right, title, and interest, including rights for damages for past
17 infringements, in the '300 Patent.

18 8. Each of these four patents is collectively referred to as the
19 "Patents."
20

20 **Defendants**

21 9. Defendant Lumenis Ltd. is a corporation or other limited
22 liability entity.

23 10. Defendant Lumenis Inc. is a corporation.

24 11. Defendant Continuum is a corporation.

25 12. Defendant American Dental Technologies, Inc. is a corporation.

26 13. Defendant BT, Inc. is a corporation.
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1 14. Plaintiff is unaware of the true names and capacities of
2 defendants named Does 1 through 10 and therefore sues these defendants by
3 fictitious names. Each of the Doe defendants is and was responsible in whole or in
4 part for the acts and omissions alleged in this complaint. The defendants identified
5 in paragraphs 9 through 13 above, and Does 1 through 10 are collectively referred
6 to as "Defendants."

7
8 **First Claim for Patent Infringement ('856 Patent) Against all Defendants**

9 15. Plaintiff incorporates by reference each of the allegations in
10 paragraphs 1-14 above.

11 16. On or about December 7, 1993, the '856 Patent, disclosing and
12 claiming a "Laser Surgical Method," was duly and legally issued.

13 17. Plaintiff Diodem, LLC is the owner of the '856 Patent with full
14 rights to pursue recovery of royalties or damages for infringement of such patent,
15 including full rights to recover past and future damages.

16 18. Defendants have infringed, contributed to the infringement, and
17 induced others to infringe the '856 Patent and, unless enjoined, will continue to
18 infringe the '856 Patent by manufacturing, using, selling, and offering for sale or
19 by contributing to the making, using, and selling of the claimed invention without
20 a license from Plaintiff.

21 19. Plaintiff has been damaged by Defendants' infringement of the
22 '856 Patent and will suffer additional irreparable damage and impairment of the
23 value of its patent rights unless Defendants are enjoined from continuing to
24 infringe the '856 Patent.

25 20. Upon information and belief, Defendants' acts of infringement
26 have been, and continue to be committed with full knowledge of Plaintiff's rights
27 in the '856 Patent, and in willful and wanton disregard of Plaintiff's rights,
28 rendering this an exceptional case under 35 U.S.C. § 285.

1
2 **Second Claim for Patent Infringement ('167 Patent) Against all Defendants**

3 21. Plaintiff incorporates by reference each of the allegations in
4 paragraphs 1-14 above.

5 22. On or about April 19, 1994, the '167 Patent, disclosing and
6 claiming a "Multiwavelength Medical Laser Method" was duly and legally issued.

7 23. Plaintiff Diodem, LLC is the owner of the '167 Patent with full
8 rights to pursue recovery of royalties or damages for infringement of such patent,
9 including full rights to recover past and future damages.

10 24. Defendants have infringed, contributed to the infringement, and
11 induced others to infringe the '167 Patent and, unless enjoined, will continue to
12 infringe the '167 Patent by manufacturing, using, selling, and offering for sale or
13 by contributing to the making, using, and selling of the claimed invention without
14 a license from Plaintiff.

15 25. Plaintiff has been damaged by Defendants' infringement of the
16 '167 Patent and will suffer additional irreparable damage and impairment of the
17 value of its patent rights unless Defendants are enjoined from continuing to
18 infringe the '167 Patent.

19 26. Upon information and belief, Defendants' acts of infringement
20 have been, and continue to be committed with full knowledge of Plaintiff's rights
21 in the '167 Patent, and in willful and wanton disregard of Plaintiff's rights,
22 rendering this an exceptional case under 35 U.S.C. § 285.

23 **Third Claim for Patent Infringement ('899 Patent) Against all Defendants**

24 27. Plaintiff incorporates by reference each of the allegations in
25 paragraphs 1-14 above.

26 28. On or about June 6, 1995, the '899 Patent, disclosing and
27 claiming a "High Repetition Rate Mid-Infrared Laser" was duly and legally issued.
28

1 29. Plaintiff Diodem, LLC is the owner of the '899 Patent with full
2 rights to pursue recovery of royalties or damages for infringement of such patent,
3 including full rights to recover past and future damages.

4 30. Defendants have infringed, contributed to the infringement, and
5 induced others to infringe the '899 Patent and, unless enjoined, will continue to
6 infringe the '899 Patent by manufacturing, using, selling, and offering for sale or
7 by contributing to the making, using and selling of the claimed invention without a
8 license from Plaintiff.

9 31. Plaintiff has been damaged by Defendants' infringement of the
10 '899 Patent and will suffer additional irreparable damage and impairment of the
11 value of its patent rights unless Defendants are enjoined from continuing to
12 infringe the '899 Patent.

13 32. Upon information and belief, Defendants' acts of infringement
14 have been, and continue to be committed with full knowledge of Plaintiff's rights
15 in the '899 Patent, and in willful and wanton disregard of Plaintiff's rights,
16 rendering this an exceptional case under 35 U.S.C. § 285.

17 **Fourth Claim for Patent Infringement ('300 Patent) Against all Defendants**

18 33. Plaintiff incorporates by reference each of the allegations in
19 paragraphs 1-14 above.

20 34. On or about September 19, 2000, the '300 Patent, disclosing
21 and claiming a "High Repetition Rate Mid-Infrared Laser" was duly and legally
22 issued.

23 35. Plaintiff Diodem, LLC is the owner of the '300 Patent with full
24 rights to pursue recovery of royalties or damages for infringement of such patent,
25 including full rights to recover past and future damages.

26 36. Defendants have infringed, contributed to the infringement, and
27 induced others to infringe the '300 Patent and, unless enjoined, will continue to
28

1 infringe the '300 Patent by manufacturing, using, selling, and offering for sale or
2 by contributing to the making, using and selling of the claimed invention without a
3 license from Plaintiff.

4 37. Plaintiff has been damaged by Defendants' infringement of the
5 '300 Patent and will suffer additional irreparable damage and impairment of the
6 value of its patent rights unless Defendants are enjoined from continuing to
7 infringe the '300 Patent.

8 38. Upon information and belief, Defendants' acts of infringement
9 have been, and continue to be committed with full knowledge of Plaintiff's rights
10 in the '300 Patent, and in willful and wanton disregard of Plaintiff's rights,
11 rendering this an exceptional case under 35 U.S.C. § 285.

12 WHEREFORE, Plaintiff prays for judgment as follows:

- 13 A. A decree preliminarily and permanently enjoining Defendants, their
14 officers, directors, employees, agents, and all persons in active concert
15 with them, from infringing, and contributing to or inducing others to
16 infringe, the Patents;
- 17 B. Compensatory damages attributable to Defendants' infringement of the
18 Patents;
- 19 C. Trebling Plaintiff's damages by reason of the willful, wanton, and
20 deliberate nature of Defendants' infringement pursuant to 35 U.S.C.
21 § 284;
- 22 D. For costs of suit;
- 23 E. For pre-judgment interest; and

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F. For such other relief as justice requires.

Dated: March 25, 2003

DOVEL & LUNER, LLP

By: 

Gregory S. Dovel
Attorneys for Plaintiff, Diodem, LLC

Demand for Jury Trial

Plaintiff demands trial by jury of all issues.

Dated: March 25, 2003

DOVEL & LUNER, LLP

By: 

Gregory S. Dovel
Attorneys for Plaintiff, Diodem, LLC