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14 FINISAR CORPORATION

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 FINISAR CORPORATION,
18 a Delaware corporation,
19 Plaintiff,

20 v.

21 OPLINK COMMUNICATIONS INC., a
22 Delaware corporation, OPTICAL
23 COMMUNICATION PRODUCTS, INC.,
24 a Delaware corporation,
25 Defendants.

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ORIGINAL FILED

DEC 10 2010
RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA

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Case No.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff FINISAR CORPORATION ("Finisar") alleges as follows:

2 **PARTIES**

3 1. Plaintiff Finisar is a Delaware corporation with its principal place of business at
4 1389 Moffett Park Drive, Sunnyvale, California 94089-1134. Finisar is qualified and duly
5 authorized to conduct business in the State of California.

6 2. Defendant Oplink Communications Inc. ("Oplink") is a Delaware corporation
7 doing business in this judicial district, and has a principal place of business at 46335 Landing
8 Parkway, Fremont, California 94538.

9 3. On information and belief, Defendant Optical Communication Products, Inc.
10 ("OCP") is a Delaware corporation doing business in this judicial district, and has a principal
11 place of business at 46335 Landing Parkway, Fremont, California 94538.

12 4. On information and belief, Defendant OCP is a wholly-owned subsidiary of
13 Oplink, and OCP's infringing business has been transferred to Oplink.

14 **JURISDICTION AND VENUE**

15 5. This is a civil action arising under the patent laws of the United States, 35 U.S.C.
16 §§ 1 *et seq.* This Court has jurisdiction over the subject matter of this action pursuant to
17 28 U.S.C. § 1331 and 1338(a).

18 6. Personal jurisdiction as to each defendant is proper in the State of California and in
19 this judicial district. Defendants maintain a regular and established place of business and ongoing
20 business activity in this State and in this judicial district, and therefore have sufficient contacts
21 with the State of California to satisfy the requirements of due process and Rule 4(k)(2) of the
22 Federal Rules of Civil Procedure.

23 7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) & (c) and
24 1400(b).

25 **INTRADISTRICT ASSIGNMENT**

26 8. Under Civil L. R. 3-2(c), this action shall be assigned on a district-wide basis,
27 notwithstanding the fact that a substantial part of the events that give rise to the claims alleged
28 herein occurred in Santa Clara County, in the San Jose Division of this Court.

1 **PROCEDURAL BACKGROUND**

2 9. On January 5, 2010, Finisar filed a Complaint against Defendant Oplink in Case
3 No. C-10-00032 WHA in the United States District Court for the Northern District of California
4 raising the same allegations presented in this Complaint. By Court Order dated May 5, 2010 in
5 that case, Oplink was severed from that case and dismissed without prejudice to Finisar's right to
6 re-file its claims in a separate action.

7 **PATENTS-IN-SUIT**

8 10. Finisar is the sole owner of U.S. Patent No. 5,019,769 (the "769 patent"), issued
9 on May 28, 1991, titled "Semiconductor Laser Diode Controller and Laser Diode Biasing Control
10 Method." The '769 patent expired September 14, 2010. A true and correct copy of the '769
11 patent is attached as Exhibit A.

12 11. Finisar is the sole owner of U.S. Patent No. 7,079,775 (the "775 patent"), issued
13 on July 18, 2006, titled "Integrated Memory Mapped Controller Circuit for Fiber Optics
14 Transceiver." A true and correct copy of the '775 patent is attached to this Complaint as
15 Exhibit B.

16 12. Finisar is the sole owner of U.S. Patent No. 6,957,021 (the "021 patent"), issued
17 on October 18, 2005, titled "Optical Transceiver with Memory Mapped Locations." A true and
18 correct copy of the '021 patent is attached to this Complaint as Exhibit C.

19 13. Finisar is the sole owner of U.S. Patent No. 7,058,310 (the "310 patent"), issued
20 on June 6, 2006, titled "System and Method for Protecting Eye Safety During Operation of a
21 Fiber Optic Transceiver." A true and correct copy of the '310 patent is attached to this Complaint
22 as Exhibit D.

23 14. Finisar is the sole owner of U.S. Patent No. 6,952,531 (the "531 patent"), issued
24 on October 4, 2005, titled "System and Method for Protecting Eye Safety During Operation of a
25 Fiber Optic Transceiver." A true and correct copy of the '531 patent is attached to this Complaint
26 as Exhibit E.

27 15. Finisar is the sole owner of U.S. Patent No. 7,162,160 (the "160 patent"), issued
28 on January 9, 2007, titled "System and Method for Protecting Eye Safety During Operation of a

1 Fiber Optic Transceiver.” A true and correct copy of the ‘160 patent is attached to this Complaint
2 as Exhibit F.

3 16. Finisar is the sole owner of U.S. Patent No. 7,184,668 (the “‘668 patent”), issued
4 on February 27, 2007, titled “System and Method for Protecting Eye Safety During Operation of
5 a Fiber Optic Transceiver.” A true and correct copy of the ‘668 patent is attached to this
6 Complaint as Exhibit G.

7 17. Finisar is the sole owner of U.S. Patent No. 7,050,720 (the “‘720 patent”), issued
8 on May 23, 2006, titled “Integrated Memory Mapped Controller Circuit for Fiber Optics
9 Transceiver.” A true and correct copy of the ‘720 patent is attached to this Complaint as Exhibit
10 H.

11 18. Finisar is the sole owner of U.S. Patent No. RE 36,886 (the “‘886 patent”), filed on
12 January 12, 1995, issued on January 21, 1997, and reissued on October 3, 2000, titled “Fiber
13 Optic Module.” A true and correct copy of the ‘886 patent is attached to this Complaint as
14 Exhibit I.

15 19. Finisar is the sole owner of U.S. Patent No. RE 40,150 (the “‘150 patent”), filed on
16 January 12, 1995, issued on January 21, 1997, and reissued on March 11, 2008, titled “Fiber
17 Optic Module.” A true and correct copy of the ‘150 patent is attached to this Complaint as
18 Exhibit J.

19 20. Finisar is the sole owner of U.S. Patent No. RE 40,154 (the “‘154 patent”), filed on
20 January 12, 1995, issued on January 21, 1997, and reissued on March 18, 2008, titled “Fiber
21 Optic Module.” A true and correct copy of the ‘154 patent is attached to this Complaint as
22 Exhibit K.

23 21. The ‘769 patent, ‘775 patent, ‘021 patent, ‘310 patent, ‘531 patent, ‘160 patent,
24 ‘668 patent, ‘720 patent, ‘886 patent, ‘150 patent, and ‘154 patent are referred to collectively
25 herein as the “Patents-In-Suit.” A subset of the Patents-In-Suit including the ‘775 patent, ‘021
26 patent, ‘310 patent, ‘531 patent, ‘160 patent, ‘668 patent, and ‘720 patent are referred to
27 collectively herein as the “Enhanced Digital Diagnostics Patents.” Another subset of the Patents-
28 In-Suit including the ‘886 patent, ‘150 patent, and ‘154 patent are referred to collectively herein

1 as the "Optoelectronic Module Patents."

2 **FINISAR'S OPTOELECTRONIC TRANSCEIVER TECHNOLOGY**

3 22. Optoelectronic transceivers are used to provide the electrical-to-optical and
4 optical-to-electrical conversion required for modern communication over fiber optic cables.
5 Optoelectronic transceivers are a vital component of the high-speed broadband revolution that has
6 transformed the way consumers all over the world watch television, surf the internet, and
7 communicate.

8 23. Finisar is a leading supplier of optoelectronic transceivers and invests substantially
9 in research and development of new and innovative technologies and products. Finisar has been a
10 pioneer in the optoelectronics industry, developing, for example, automated transceiver
11 calibration methods and adding diagnostic intelligence to its transceivers.

12 24. Finisar developed the digital processor controlled laser diode calibration
13 technology claimed in the '769 patent directed to automation of the process of selecting the drive
14 current level of the laser diode.

15 25. Finisar engineers later developed an improved digital diagnostics technology
16 claimed in the Enhanced Digital Diagnostics Patents directed to real-time monitoring of
17 transceiver operating parameters with dramatically improved diagnostic data storage and host
18 access capabilities, helping to identify abnormal and potentially unsafe operating conditions,
19 simplifying maintenance, and enhancing reliability.

20 26. Optoelectronic high-speed networks using optoelectronic transceivers with digital
21 diagnostic monitoring features are now in widespread use, in no small part because of the efforts
22 of Finisar. Finisar has worked to bring its advanced technology to the entire industry not only by
23 designing new products, but also by its participation in and commitment to working with industry
24 committees to create standards and common specifications for transceiver digital diagnostics.

25 27. One such specification is the SFF-8472 specification, titled "Digital Diagnostic
26 Monitoring Interface for Optical Transceivers," which was published by the Small Form Factor
27 Committee. This document specifies a digital diagnostic feature set for Small Form Factor
28 Pluggable ("SFP") transceivers. It defines an enhanced digital diagnostics monitoring interface

1 for optical transceivers which allows real-time access to device operating parameters.

2 28. The SFF-8472 specification was developed at least in part by Finisar employees
3 and relies upon Finisar's inventions.

4 29. Industry adoption of the SFF-8472 specification was swift. SFF-8472-compliant
5 transceivers are now widely available.

6 30. Similar digital diagnostic capabilities have been incorporated into other widely
7 used industry multi-source agreement specifications and/or products, including but not limited to
8 the Enhanced Small Form Factor Pluggable ("SFP+"), 10 Gigabit Small Form Factor Pluggable
9 ("XFP"), DWDM Pluggable Transceiver ("DWDM"), XENPAK, Broadband Passive Optical
10 Network ("BPON"), Gigabit Passive Optical Network ("GPON"), and Gigabit Ethernet Passive
11 Optical Network ("GEAPON") specifications and/or products. For example, the XFP specification
12 states that the mandatory XFP 2-wire serial interface is "modeled largely after the digital
13 diagnostics monitoring interface proposed for the SFP and GBIC optical transceivers and defined
14 in SFF draft document SFF-8472 Rev 9.3"

15 31. All of the major transceiver manufacturers, including the Defendants, make
16 transceivers that include digital diagnostics. The widespread acceptance and use of Finisar's
17 digital diagnostics technology by numerous standards bodies and competitors demonstrates the
18 industry's recognition of the value and importance of Finisar's innovation.

19 32. Finisar has licensed its '769 patent and the Enhanced Digital Diagnostics Patents
20 to other manufacturers in the industry.

21 33. Finisar has also provided notice of its '769 patent and the Enhanced Digital
22 Diagnostics Patents portfolio, and offered licenses to this portfolio, to others in the industry,
23 including each of the Defendants. Defendants first received notice of the '769 patent and one or
24 more of the Enhanced Digital Diagnostics Patents on or before December 13, 2005. Defendants
25 have refused to license Finisar's '769 patent or the Enhanced Digital Diagnostics Patents.

26 34. Finisar also recognizes the technical contributions of other companies as
27 demonstrated by its purchase of the Optoelectronic Module Patents from Matsushita Electric
28 Industrial Co., Ltd.

1 39. On information and belief, Defendants' infringement of the '769 patent has been
 2 willful and deliberate. Despite knowing of the '769 patent, the Defendants continued to directly
 3 and indirectly infringe one or more claims of the '769 patent, entitling Finisar to increased
 4 damages under 35 U.S.C. § 284 and to attorneys' fees and expenses incurred in prosecuting this
 5 action under 35 U.S.C. § 285.

6 40. As a direct and proximate result of Defendants' infringement of the '769 patent,
 7 Finisar has been damaged in an amount yet to be determined.

8 **SECOND CLAIM FOR RELIEF**

9 (Infringement of U.S. Patent No. 7,079,775)

10 41. Finisar realleges and incorporates by reference the allegations stated in paragraphs
 11 1 through 40 of this Complaint.

12 42. Defendants, by engaging in the unauthorized manufacture (or causing to be
 13 manufactured), importation, use, sale and/or offer for sale of Accused Products that are covered
 14 by one or more of the claims of the '775 patent and/or that are made overseas by processes that
 15 are covered by one or more of the claims of the '775 patent, have committed acts of direct
 16 infringement of one or more claims of the '775 patent. These acts constitute violations of 35
 17 U.S.C. § 271.

18 43. Defendants have committed acts of contributory and/or inducement of
 19 infringement of one or more claims of the '775 patent by selling, supporting, and/or encouraging
 20 the infringing use of the Accused Products to third parties. Such optoelectronic transceivers are
 21 not staple articles or commodities suitable for non-infringing uses. On information and belief,
 22 Defendants knew or should have known of the '775 patent, at least because Finisar provided
 23 notice of the '775 patent to the Defendants prior to some or all of the sales to third parties of
 24 optoelectronic transceivers covered by one or more of the claims of the '775 patent. These acts
 25 constitute violations of 35 U.S.C. § 271.

26 44. On information and belief, Defendants' infringement of the '775 patent is, has
 27 been, and continues to be willful and deliberate. Despite knowing of the '775 patent, the
 28 Defendants have continued to directly and indirectly infringe one or more claims of the '775

1 patent, entitling Finisar to increased damages under 35 U.S.C. § 284 and to attorneys' fees and
2 expenses incurred in prosecuting this action under 35 U.S.C. § 285.

3 45. As a direct and proximate result of Defendants' infringement of the '775 patent,
4 Finisar has been and continues to be damaged in an amount yet to be determined.

5 **THIRD CLAIM FOR RELIEF**

6 (Infringement of U.S. Patent No. 6,957,021)

7 46. Finisar realleges and incorporates by reference the allegations stated in paragraphs
8 1 through 45 of this Complaint.

9 47. Defendants, by engaging in the unauthorized manufacture (or causing to be
10 manufactured), importation, use, sale and/or offer for sale of Accused Products that are covered
11 by one or more of the claims of the '021 patent and/or that are made overseas by processes that
12 are covered by one or more of the claims of the '021 patent, have committed acts of direct
13 infringement of one or more claims of the '021 patent. These acts constitute violations of 35
14 U.S.C. § 271.

15 48. Defendants have committed acts of contributory and/or inducement of
16 infringement of one or more claims of the '021 patent by selling, supporting, and/or encouraging
17 the infringing use of the Accused Products to third parties. Such optoelectronic transceivers are
18 not staple articles or commodities suitable for non-infringing uses. On information and belief,
19 Defendants knew or should have known of the '021 patent, at least because Finisar provided
20 notice of the '021 patent to the Defendants prior to some or all of the sales to third parties of
21 optoelectronic transceivers covered by one or more of the claims of the '021 patent. These acts
22 constitute violations of 35 U.S.C. § 271.

23 49. On information and belief, Defendants' infringement of the '021 patent is, has
24 been, and continues to be willful and deliberate. Despite knowing of the '021 patent, the
25 Defendants have continued to directly and indirectly infringe one or more claims of the '021
26 patent, entitling Finisar to increased damages under 35 U.S.C. § 284 and to attorneys' fees and
27 expenses incurred in prosecuting this action under 35 U.S.C. § 285.

28 50. As a direct and proximate result of Defendants' infringement of the '021 patent,

1 Finisar has been and continues to be damaged in an amount yet to be determined.

2 **FOURTH CLAIM FOR RELIEF**

3 (Infringement of U.S. Patent No. 7,058,310)

4 51. Finisar realleges and incorporates by reference the allegations stated in paragraphs
5 1 through 50 of this Complaint.

6 52. Defendants, by engaging in the unauthorized manufacture (or causing to be
7 manufactured), importation, use, sale and/or offer for sale of Accused Products that are covered
8 by one or more of the claims of the '310 patent and/or that are made overseas by processes that
9 are covered by one or more of the claims of the '310 patent, have committed acts of direct
10 infringement of one or more claims of the '310 patent. These acts constitute violations of 35
11 U.S.C. § 271.

12 53. Defendants have committed acts of contributory and/or inducement of
13 infringement of one or more claims of the '310 patent by selling, supporting, and/or encouraging
14 the infringing use of the Accused Products to third parties. Such optoelectronic transceivers are
15 not staple articles or commodities suitable for non-infringing uses. On information and belief,
16 Defendants knew or should have known of the '310 patent, at least because Finisar provided
17 notice of the '310 patent to the Defendants prior to some or all of the sales to third parties of
18 optoelectronic transceivers covered by one or more of the claims of the '310 patent. These acts
19 constitute violations of 35 U.S.C. § 271.

20 54. On information and belief, Defendants' infringement of the '310 patent is, has
21 been, and continues to be willful and deliberate. Despite knowing of the '310 patent, the
22 Defendants have continued to directly and indirectly infringe one or more claims of the '310
23 patent, entitling Finisar to increased damages under 35 U.S.C. § 284 and to attorneys' fees and
24 expenses incurred in prosecuting this action under 35 U.S.C. § 285.

25 55. As a direct and proximate result of Defendants' infringement of the '310 patent,
26 Finisar has been and continues to be damaged in an amount yet to be determined.

27 **FIFTH CLAIM FOR RELIEF**

28 (Infringement of U.S. Patent No. 6,952,531)

1 56. Finisar realleges and incorporates by reference the allegations stated in paragraphs
2 1 through 55 of this Complaint.

3 57. Defendants, by engaging in the unauthorized manufacture (or causing to be
4 manufactured), importation, use, sale and/or offer for sale of Accused Products that are covered
5 by one or more of the claims of the '531 patent and/or that are made overseas by processes that
6 are covered by one or more of the claims of the '531 patent, have committed acts of direct
7 infringement of one or more claims of the '531 patent. These acts constitute violations of 35
8 U.S.C. § 271.

9 58. Defendants have committed acts of contributory and/or inducement of
10 infringement of one or more claims of the '531 patent by selling, supporting, and/or encouraging
11 the infringing use of the Accused Products to third parties. Such optoelectronic transceivers are
12 not staple articles or commodities suitable for non-infringing uses. On information and belief,
13 Defendants knew or should have known of the '531 patent, at least because Finisar provided
14 notice of the '531 patent to the Defendants prior to some or all of the sales to third parties of
15 optoelectronic transceivers covered by one or more of the claims of the '531 patent. These acts
16 constitute violations of 35 U.S.C. § 271.

17 59. On information and belief, Defendants' infringement of the '531 patent is, has
18 been, and continues to be willful and deliberate. Despite knowing of the '531 patent, the
19 Defendants have continued to directly and indirectly infringe one or more claims of the '531
20 patent, entitling Finisar to increased damages under 35 U.S.C. § 284 and to attorneys' fees and
21 expenses incurred in prosecuting this action under 35 U.S.C. § 285.

22 60. As a direct and proximate result of Defendants' infringement of the '531 patent,
23 Finisar has been and continues to be damaged in an amount yet to be determined.

24 **SIXTH CLAIM FOR RELIEF**

25 (Infringement of U.S. Patent No. 7,162,160)

26 61. Finisar realleges and incorporates by reference the allegations stated in paragraphs
27 1 through 60 of this Complaint.

28 62. Defendants, by engaging in the unauthorized manufacture (or causing to be

1 manufactured), importation, use, sale and/or offer for sale of Accused Products that are covered
2 by one or more of the claims of the '160 patent and/or that are made overseas by processes that
3 are covered by one or more of the claims of the '160 patent, have committed acts of direct
4 infringement of one or more claims of the '160 patent. These acts constitute violations of 35
5 U.S.C. § 271.

6 63. Defendants have committed acts of contributory and/or inducement of
7 infringement of one or more claims of the '160 patent by selling, supporting, and/or encouraging
8 the infringing use of the Accused Products to third parties. Such optoelectronic transceivers are
9 not staple articles or commodities suitable for non-infringing uses. On information and belief,
10 Defendants knew or should have known of the '160 patent, at least because Finisar provided
11 notice of the '160 patent to the Defendants prior to some or all of the sales to third parties of
12 optoelectronic transceivers covered by one or more of the claims of the '160 patent. These acts
13 constitute violations of 35 U.S.C. § 271.

14 64. On information and belief, Defendants' infringement of the '160 patent is, has
15 been, and continues to be willful and deliberate. Despite knowing of the '160 patent, the
16 Defendants have continued to directly and indirectly infringe one or more claims of the '160
17 patent, entitling Finisar to increased damages under 35 U.S.C. § 284 and to attorneys' fees and
18 expenses incurred in prosecuting this action under 35 U.S.C. § 285.

19 65. As a direct and proximate result of Defendants' infringement of the '160 patent,
20 Finisar has been and continues to be damaged in an amount yet to be determined.

21 **SEVENTH CLAIM FOR RELIEF**

22 (Infringement of U.S. Patent No. 7,184,668)

23 66. Finisar realleges and incorporates by reference the allegations stated in paragraphs
24 1 through 65 of this Complaint.

25 67. Defendants, by engaging in the unauthorized manufacture (or causing to be
26 manufactured), importation, use, sale and/or offer for sale of Accused Products that are covered
27 by one or more of the claims of the '668 patent and/or that are made overseas by processes that
28 are covered by one or more of the claims of the '668 patent, have committed acts of direct

1 infringement of one or more claims of the '668 patent. These acts constitute violations of 35
2 U.S.C. § 271.

3 68. Defendants have committed acts of contributory and/or inducement of
4 infringement of one or more claims of the '668 patent by selling, supporting, and/or encouraging
5 the infringing use of the Accused Products to third parties. Such optoelectronic transceivers are
6 not staple articles or commodities suitable for non-infringing uses. On information and belief,
7 Defendants knew or should have known of the '668 patent, at least because Finisar provided
8 notice of the '668 patent to the Defendants prior to some or all of the sales to third parties of
9 optoelectronic transceivers covered by one or more of the claims of the '668 patent. These acts
10 constitute violations of 35 U.S.C. § 271.

11 69. On information and belief, Defendants' infringement of the '668 patent is, has
12 been, and continues to be willful and deliberate. Despite knowing of the '668 patent, the
13 Defendants have continued to directly and indirectly infringe one or more claims of the '668
14 patent, entitling Finisar to increased damages under 35 U.S.C. § 284 and to attorneys' fees and
15 expenses incurred in prosecuting this action under 35 U.S.C. § 285.

16 70. As a direct and proximate result of Defendants' infringement of the '668 patent,
17 Finisar has been and continues to be damaged in an amount yet to be determined.

18 **EIGHTH CLAIM FOR RELIEF**

19 (Infringement of U.S. Patent No. 7,050,720)

20 71. Finisar realleges and incorporates by reference the allegations stated in paragraphs
21 1 through 70 of this Complaint.

22 72. Defendants, by engaging in the unauthorized manufacture (or causing to be
23 manufactured), importation, use, sale and/or offer for sale of Accused Products that are covered
24 by one or more of the claims of the '720 patent and/or that are made overseas by processes that
25 are covered by one or more of the claims of the '720 patent, have committed acts of direct
26 infringement of one or more claims of the '720 patent. These acts constitute violations of 35
27 U.S.C. § 271.

28 73. Defendants have committed acts of contributory and/or inducement of

1 infringement of one or more claims of the '720 patent by selling, supporting, and/or encouraging
2 the infringing use of the Accused Products to third parties. Such optoelectronic transceivers are
3 not staple articles or commodities suitable for non-infringing uses. On information and belief,
4 Defendants knew or should have known of the '720 patent, at least because Finisar provided
5 notice of the '720 patent to the Defendants prior to some or all of the sales to third parties of
6 optoelectronic transceivers covered by one or more of the claims of the '720 patent. These acts
7 constitute violations of 35 U.S.C. § 271.

8 74. On information and belief, Defendants' infringement of the '720 patent is, has
9 been, and continues to be willful and deliberate. Despite knowing of the '720 patent, the
10 Defendants have continued to directly and indirectly infringe one or more claims of the '720
11 patent, entitling Finisar to increased damages under 35 U.S.C. § 284 and to attorneys' fees and
12 expenses incurred in prosecuting this action under 35 U.S.C. § 285.

13 75. As a direct and proximate result of Defendants' infringement of the '720 patent,
14 Finisar has been and continues to be damaged in an amount yet to be determined.

15 **NINTH CLAIM FOR RELIEF**

16 (Infringement of U.S. Patent No. RE 36,886)

17 76. Finisar realleges and incorporates by reference the allegations stated in paragraphs
18 1 through 75 of this Complaint.

19 77. Defendants, by engaging in the unauthorized manufacture (or causing to be
20 manufactured), importation, use, sale and/or offer for sale of Accused Products that are covered
21 by one or more of the claims of the '886 patent and/or that are made overseas by processes that
22 are covered by one or more of the claims of the '886 patent, have committed acts of direct
23 infringement of one or more claims of the '886 patent. These acts constitute violations of 35
24 U.S.C. § 271.

25 78. Defendants have committed acts of contributory and/or inducement of
26 infringement of one or more claims of the '886 patent by selling, supporting, and/or encouraging
27 the infringing use of the Accused Products to third parties. Such optoelectronic transceivers are
28 not staple articles or commodities suitable for non-infringing uses. On information and belief,

1 Defendants knew or should have known of the '886 patent. These acts constitute violations of 35
2 U.S.C. § 271.

3 79. On information and belief, Defendants' infringement of the '886 patent is, has
4 been, and continues to be willful and deliberate. Despite knowing of the '886 patent, Defendants
5 have continued to directly and indirectly infringe one or more claims of the '886 patent, entitling
6 Finisar to increased damages under 35 U.S.C. § 284 and to attorneys' fees and expenses incurred
7 in prosecuting this action under 35 U.S.C. § 285.

8 80. Such infringement has injured and damaged Finisar. Unless enjoined by this
9 Court, Defendants will continue their infringement, irreparably injuring Finisar.

10 81. As a direct and proximate result of Defendants' infringement of the '886 patent,
11 Finisar has been and continues to be damaged in an amount yet to be determined.

12 **TENTH CLAIM FOR RELIEF**

13 (Infringement of U.S. Patent No. RE 40,150)

14 82. Finisar realleges and incorporates by reference the allegations stated in paragraphs
15 1 through 81 of this Complaint.

16 83. Defendants, by engaging in the unauthorized manufacture (or causing to be
17 manufactured), importation, use, sale and/or offer for sale of Accused Products that are covered
18 by one or more of the claims of the '150 patent and/or that are made overseas by processes that
19 are covered by one or more of the claims of the '150 patent, have committed acts of direct
20 infringement of one or more claims of the '150 patent. These acts constitute violations of 35
21 U.S.C. § 271.

22 84. Defendants have committed acts of contributory and/or inducement of
23 infringement of one or more claims of the '150 patent by selling, supporting, and/or encouraging
24 the infringing use of the Accused Products to third parties. Such optoelectronic transceivers are
25 not staple articles or commodities suitable for non-infringing uses. On information and belief,
26 Defendants knew or should have known of the '150 patent. These acts constitute violations of 35
27 U.S.C. § 271.

28 85. On information and belief, Defendants' infringement of the '150 patent is, has

1 been, and continues to be willful and deliberate. Despite knowing of the '150 patent, Defendants
2 have continued to directly and indirectly infringe one or more claims of the '150 patent, entitling
3 Finisar to increased damages under 35 U.S.C. § 284 and to attorneys' fees and expenses incurred
4 in prosecuting this action under 35 U.S.C. § 285.

5 86. Such infringement has injured and damaged Finisar. Unless enjoined by this
6 Court, Defendants will continue their infringement, irreparably injuring Finisar.

7 87. As a direct and proximate result of Defendants' infringement of the '150 patent,
8 Finisar has been and continues to be damaged in an amount yet to be determined.

9 **ELEVENTH CLAIM FOR RELIEF**

10 (Infringement of U.S. Patent No. RE 40,154)

11 88. Finisar realleges and incorporates by reference the allegations stated in paragraphs
12 1 through 87 of this Complaint.

13 89. Defendants, by engaging in the unauthorized manufacture (or causing to be
14 manufactured), importation, use, sale and/or offer for sale of Accused Products that are covered
15 by one or more of the claims of the '154 patent and/or that are made overseas by processes that
16 are covered by one or more of the claims of the '154 patent, have committed acts of direct
17 infringement of one or more claims of the '154 patent. These acts constitute violations of 35
18 U.S.C. § 271.

19 90. Defendants have committed acts of contributory and/or inducement of
20 infringement of one or more claims of the '154 patent by selling, supporting, and/or encouraging
21 the infringing use of the Accused Products to third parties. Such optoelectronic transceivers are
22 not staple articles or commodities suitable for non-infringing uses. On information and belief,
23 Defendants knew or should have known of the '154 patent. These acts constitute violations of 35
24 U.S.C. § 271.

25 91. On information and belief, Defendants' infringement of the '154 patent is, has
26 been, and continues to be willful and deliberate. Despite knowing of the '154 patent, Defendants
27 have continued to directly and indirectly infringe one or more claims of the '154 patent, entitling
28 Finisar to increased damages under 35 U.S.C. § 284 and to attorneys' fees and expenses incurred

1 in prosecuting this action under 35 U.S.C. § 285.

2 92. Such infringement has injured and damaged Finisar. Unless enjoined by this
3 Court, Defendants will continue their infringement, irreparably injuring Finisar.

4 93. As a direct and proximate result of Defendants' infringement of the '154 patent,
5 Finisar has been and continues to be damaged in an amount yet to be determined.

6 **PRAYER FOR RELIEF**


7 WHEREFORE, Finisar prays that this Court enter judgment as follows:

- 8 (A) Adjudicating and declaring that Defendants have infringed, actively induced
9 infringement of, and/or contributorily infringed the Patents-In-Suit;
- 10 (B) Preliminarily and permanently enjoining the Defendants, their officers, agents,
11 servants, employees, attorneys and all persons in active concert or participation
12 with them from further infringement of the Patents-In-Suit or, to the extent not so
13 enjoined, ordering Defendants to pay compulsory ongoing royalties for any
14 continuing infringement of the Patents-In-Suit;
- 15 (C) Ordering that Defendants account, and pay actual damages (but no less than a
16 reasonable royalty), to Finisar for Defendants' infringement of the Patents-in-Suit;
- 17 (D) Declaring that the Defendants willfully infringed one or more of the Patents-in-
18 Suit and ordering that Defendants pay treble damages to Finisar as provided by 35
19 U.S.C. § 284;
- 20 (E) Ordering that Defendants pay Finisar's costs, expenses, and interest, including
21 prejudgment interest, as provided for by 35 U.S.C. § 284;
- 22 (F) Declaring that this is an exceptional case and awarding Finisar its attorneys' fees
23 and expenses as provided for by 35 U.S.C. § 285;
- 24 (G) Granting Finisar such other and further relief as the Court deems just and
25 appropriate, or that Finisar may be entitled to as a matter of law or equity.
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Dated: December 10, 2010

MORGAN, LEWIS & BOCKIUS LLP

By 
Michael J. Lyons
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Finisar hereby requests a trial by jury.

Dated: December 10, 2010

MORGAN, LEWIS & BOCKIUS LLP

By 

Michael J. Lyons
Attorneys for Plaintiff