

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

VISUAL INTELLIGENCE LP

Plaintiff,

Case No. _____

v.

JURY

OPTECH, INC.

PATENT CASE

Defendant.

COMPLAINT

Plaintiff Visual Intelligence LP files this Complaint against Optech, Inc. for infringement of United States Patent Nos. 7,127,348 and 7,725,258. In support thereof, Plaintiff states—based on actual knowledge as to its own actions and based upon information and belief as to the actions, knowledge, and intent of Defendant—as follows:

THE PARTIES

1. Plaintiff Visual Intelligence LP (“Visual Intelligence”) is a Delaware limited partnership with its principal place of business at 510 Bering Drive, Suite 310, Houston TX, 77057 in the Southern District of Texas. Visual Intelligence manufactures and sells digital metric geoinaging technology, including but not limited to systems for aerial surveying. Visual Intelligence is an innovator and thought leader in its industry and has no less than nine United States patents in the field.

2. Defendant Optech, Inc. (along with its affiliates, “Defendant”) is a Delaware corporation with its principal place of business at 7225 Stennis Airport Drive, Suite 400, Kiln, MS 39556. Defendant’s Registered Agent in the State of Mississippi is National Corporate

Research Ltd located at 840 Trustmark Building, 248 East Capital Street, Suite 840, Jackson, MS 39201.

3. Defendant is a direct competitor of Visual Intelligence. Defendant manufactures and sells geospatial devices accused of infringement below including its ALTM Orion systems (“Orion”), ALTM Multi-Sensor Integration Package (“Multi-Sensor”) (collectively, Orion and Multi-Sensor are referred to herein as “ALTM”), CZMIL systems (“CZMIL”), Lynx Mobile Mapper systems (“Lynx”) (collectively, ALTM, CZMIL, and Lynx are referred to herein as the “System Products”), CF-410 Camera Frame, and various “Camera Products,” including but not limited to, its D-8900, CS-MS1920, CS-6500, T-4800, T-7200, T-MS, CS-4800, CS-MW640, and CS-LW640 cameras (collectively, System Products, CF-410 Camera Frame, and Camera Products are the “Accused Products”).

4. Defendant sells its Accused Products and offers its Accused Products for sale throughout Texas, including within this District. Defendant’s Accused Products are used throughout Texas, including within this District.

NATURE OF THE ACTION

5. This is a civil action for infringement of United States Patent Nos. 7,127,348 and 7,725,258 (collectively, the “Patents-in-Suit”), arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents).

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1400(b) because Defendant has committed acts of infringement in the United States including use and offers for sale directed to this District and other Districts within the State of Texas, additional

acts of infringement have occurred within this District and other Districts within the State of Texas, Defendant has directly harmed Visual Intelligence's business within this District and other Districts within the State of Texas, and Defendant has sold its Accused Products and Defendant's customers have used Defendant's Accused Products in this District and elsewhere in the State of Texas. Thus Defendant is deemed to reside in this District for purposes of this action.

8. Visual Intelligence has its principal place of business, which includes its business management, engineering, and manufacturing facilities in this District. All potential witnesses known to Visual Intelligence, including all Visual Intelligence witnesses such as its engineers and scientists (including the inventors of the Patents-in-Suit), work and reside within this District. All of Visual Intelligence's documents and products are located within this District.

9. This Court has personal jurisdiction over Defendant and venue is proper in this district because Defendant has committed, and continues to commit, acts of infringement in and directed toward the State of Texas, including in this district; has engaged in continuous and systematic activities in the State of Texas, including in this District; and as a direct, proximate, and natural cause of its infringing activities, harmed Visual Intelligence within this District.

THE PATENTS-IN-SUIT

10. United States Patent Number 7,127,348 ("the '348 Patent"), entitled "Vehicle Based Data Collection and Processing System," was duly and legally issued by the United States Patent and Trademark Office on October 24, 2006. The '348 Patent is internally known as, and marketed as, the System Patent. A copy of the '348 Patent is attached hereto as Exhibit A.

11. United States Patent Number 7,725,258 ("the '258 Patent"), entitled "Vehicle Based Data Collection Processing System and Imaging Sensor System and Methods Thereof," was duly and legally issued by the United States Patent and Trademark Office on May 25, 2010. The '258 Patent is internally known as, and marketed as, the CoCo Patent. "CoCo" is an

acronym trademarked by Visual Intelligence and stands for Co-Mounting and Co-Registration. A copy of the '258 Patent is attached hereto as Exhibit B.

12. Visual Intelligence is the exclusive owner of all rights, title, and interest in the Patents-in-Suit, including the right to exclude others and to enforce, sue and recover damages for past and future infringement thereof.

13. At all times relevant to this suit, Visual Intelligence has marked its products and product offerings with its patent numbers.

14. In addition, at all times relevant to this suit, Visual Intelligence has posted their patents on their website for the public to view. The '258 Patent was posted by at least June 2010. Prior to that time, the patent application that matured into the '258 Patent was posted on the Visual Intelligence website.

RELATIONSHIP BETWEEN THE PARTIES

15. Visual Intelligence and Defendant are direct competitors.

16. The parties entered into a Non-Disclosure Agreement ("NDA") with the intent of integrating their technology and marketing directly to certain customers, in competition with other competitors in this vigorously competitive field given Visual Intelligence's superior technology, the technical benefits of using Visual Intelligence's technology in conjunction with Defendant's then-existing products, and Defendant's established brand recognition and market position.

17. No later than December 19, 2006, Visual Intelligence reached out to Defendant about the potential of exploring a business alliance between the parties, and on December 21, 2006 Visual Intelligence proposed an NDA between the parties to allow Visual Intelligence to disclose their new camera technology to Defendant.

18. No later than November 11, 2008, Visual Intelligence informed Defendant of the existence of the '348 Patent and of the patent application that eventually matured into the '258 Patent.

19. During 2009-2010, the parties jointly marketed sample concept products at trade shows.

20. Over the time that the parties were cooperating, Visual Intelligence explained its patented technology to Defendant. These explanations included, but were not limited to, a presentation that Visual Intelligence gave in June 2009 at Defendant's "Innovative Lidar Solutions Conference." This presentation included a detailed explanation of Visual Intelligence's technology, including innovations contained in Visual Intelligence's patent application that would eventually become the '258 Patent.

21. The most recent NDA between the parties was signed with an effective date of July 10, 2009.

22. In addition, Visual Intelligence signed an NDA with DiMAC Systems s.à.r.l. ("DiMAC") dated June 24, 2009. Visual Intelligence also signed an NDA with Geospatial Systems Inc. ("GSI") dated October 25, 2007. Visual Intelligence disclosed its innovative technology and the Patents-in-Suit to both DiMAC and GSI under these NDAs.

23. On June 7, 2010, Optech announced that it had acquired DiMAC. In addition, on December 20, 2010, GSI announced that it had been acquired by Defendant.

24. After Optech acquired DiMAC and GSI, Optech released products incorporating the patented technology of Visual Intelligence included as part of Visual Intelligence's various presentations to Optech, DiMAC, and GSI.

25. The parties stopped communicating by mid-2012.

INFRINGEMENT OF THE PATENTS-IN-SUIT

26. The Patents-in-Suit are valid and enforceable.

27. Defendant directly infringes one or more claims of the Patents-in-Suit under 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, the Accused Products.

28. Third parties, including Defendant's employees, contractors, and customers (including, but not limited to, mapping and engineering companies that buy products from Defendant in the United States) have infringed, and continue to infringe, one or more claims of the Patents-in-Suit under 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents, by using, selling, and/or offering for sale in the United States, and/or importing into the United States, products supplied by Defendant.

29. Defendant has since no later than November 11, 2008 induced infringement and continues to induce infringement of one or more claims of the Patents-in-Suit under 35 U.S.C. § 271(b). Defendant has since no later than November 11, 2008 actively, knowingly, and intentionally induced, and continues to actively, knowingly, and intentionally induce, infringement of the Patents-in-Suit by making, using, importing, and selling or otherwise supplying products to third parties, including at a minimum its employees, contractors, and customers (including, but not limited to, mapping and engineering companies that buy products from Defendant in the United States) with the knowledge and intent that such third parties will use, sell, offer for sale, and/or import, products supplied by Defendant to infringe the Patents-in-Suit; and with the knowledge and intent to encourage and facilitate the infringement through the dissemination of the products and/or the creation and dissemination of promotional and

marketing materials, supporting materials, instructions, training, product manuals, and/or technical information related to such products.

30. Defendant has since no later than November 11, 2008 contributed, and continues to contribute, to the infringement by third parties (including at a minimum its employees, contractors, and customers (including, but not limited to, mapping and engineering companies that buy products from Defendant in the United States)) of one or more claims of the Patents-in-Suit under 35 U.S.C. § 271(c) by manufacturing, using, selling, offering for sale, and/or importing Defendant's products, knowing that those products constitute a material part of the inventions of the Patents-in-Suit, knowing that those products are specially made or adapted to infringe the Patents-in-Suit, and knowing that those products are not staple articles of commerce suitable for substantial noninfringing use.

31. Visual Intelligence has been and continues to be damaged by Defendant's infringement of the Patents-in-Suit.

32. Defendant's actions complained of herein are causing irreparable harm to Visual Intelligence and will continue to do so unless and until Defendant is enjoined and restrained by the Court.

33. As explained above, Defendant has been aware of Visual Intelligence's patents since no later than November 11, 2008. On information and belief, Defendant also knew, or reasonably should know, of an objectively high likelihood that the Accused Products infringed the Patents-in-Suit, and Defendant continued to infringe despite the objectively high likelihood that it was infringing.

34. Upon information and belief, Defendant's acts of infringement have at all times since November 11, 2008 been willful.

35. Defendant's conduct in infringing the Patents-in-Suit renders this case exceptional within the meaning of 35 U.S.C. § 285.

COUNT I
DIRECT INFRINGEMENT OF THE '348 PATENT

36. Plaintiff realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 35 above.

37. Defendant's ALTM, and Lynx meet, either directly or through the doctrine of equivalents, all the limitations of at least one claim of the '348 Patent.

38. Defendant directly infringes one or more of the claims of the '348 Patent by making, using, offering for sale, or importing into the United States at least its products listed in Paragraph 37 above in violation of 35 U.S.C. § 271(a).

39. Visual Intelligence has been and continues to be damaged by Defendant's infringement of the '348 Patent.

40. Defendant's infringement of the '348 Patent is causing irreparable harm to Visual Intelligence and will continue to do so unless and until Defendant is enjoined and restrained by the Court.

41. Upon information and belief, Defendant's infringement has been willful.

COUNT II
DIRECT INFRINGEMENT OF THE '258 PATENT

42. Plaintiff realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 41 above.

43. Defendant's System Products meet, either directly or through the doctrine of equivalents, all the limitations of at least one claim of the '258 Patent.

44. Defendant directly infringes one or more of the claims of the '258 Patent by making, using, offering for sale, or importing into the United States at least its products listed in Paragraph 43 above in violation of 35 U.S.C. § 271(a).

45. Visual Intelligence has been and continues to be damaged by Defendant's infringement of the '258 Patent.

46. Defendant's infringement of the '258 Patent is causing irreparable harm to Visual Intelligence and will continue to do so unless and until Defendant is enjoined and restrained by the Court.

47. Upon information and belief, Defendant's infringement has been willful.

COUNT III
INDIRECT INFRINGEMENT (Inducing Infringement) OF THE '348 PATENT

48. Plaintiff realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 47 above.

49. Defendant has had knowledge of infringement of the '348 Patent since at least November 11, 2008.

50. Upon information and belief, Defendant has indirectly infringed, and continues to indirectly infringe, one or more claims of the '348 Patent in violation of 35 USC § 271(b) by actively inducing the infringement of its employees, contractors, customers, users, and/or licensees who have directly infringed, and continue to directly infringe, one or more claims of the '348 Patent under 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents, by using, selling, and/or offering for sale in the United States, and/or importing into the United States Defendant's ALTM and Lynx.

51. Upon information and belief, Defendant actively induced, and continues to actively induce others such as its employees, contractors, customers, users, and/or licensees, to

make (*e.g., inter alia*, assemble and install) and use the Accused Products, including but not limited to the ALTM and Lynx, which meet every limitation recited in one or more claims of the '348 Patent.

52. Upon information and belief, Defendant has since at least November 11, 2008 been aware that such making and/or use of the ALTM and/or Lynx meets all of the limitations identified in one or more of claims of the '348 Patent. Defendant has encouraged and continues to encourage this infringement by such third parties by, among other things, instructing its employees, contractors, customers, users, and/or licensees on the assembly, installation, and use of its ALTM and Lynx. Defendant's employees, contractors, customers, users, and/or licensees infringe when they make or use Defendant's ALTM and Lynx.

53. Visual Intelligence has been and continues to be damaged by Defendant's infringement of the '348 Patent.

54. Defendant's infringement of the '348 Patent is causing irreparable harm to Visual Intelligence and will continue to do so unless and until Defendant is enjoined and restrained by the Court.

55. Upon information and belief, Defendant's infringement has been and continues to be willful.

COUNT IV
INDIRECT INFRINGEMENT (Inducing Infringement) OF THE '258 PATENT

56. Plaintiff realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 55 above.

57. Upon information and belief, Defendant has had knowledge of infringement of the '258 Patent since at least approximately May 25, 2010.

58. Upon information and belief, Defendant has indirectly infringed, and continues to indirectly infringe, one or more claims of the '258 Patent in violation of 35 USC § 271(b) by actively inducing the infringement of its employees, contractors, customers, users, and/or licensees who have directly infringed, and continue to directly infringe, one or more claims of the '258 Patent under 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents, by using, selling, and/or offering for sale in the United States, and/or importing into the United States Defendant's System Products.

59. Upon information and belief, Defendant actively induced, and continues to actively induce, others, such as its employees, contractors, customers, users, and/or licensees, to make (*e.g., inter alia*, assemble and install) and use the Accused Products, including but not limited to the ALTM, CZMIL, and Lynx, which meet every limitation recited in one or more claims of the '258 Patent.

60. Upon information and belief, Defendant has since at least approximately May 25, 2010 been aware that such making and/or use of the ALTM and/or Lynx meets all of the limitations identified in one or more of claims of the '258 Patent. Defendant has encouraged, and continues to encourage, this infringement by such third parties by, among other things, instructing its employees, contractors, customers, users, and/or licensees on the assembly, installation, and use of its ALTM, CZMIL, and Lynx. Defendant's employees, contractors, customers, users, and/or licensees infringe when they make or use Defendant's ALTM, CZMIL, and Lynx.

61. Visual Intelligence has been and continues to be damaged by Defendant's infringement of the '258 Patent.

62. Defendant's infringement of the '258 Patent is causing irreparable harm to Visual Intelligence and will continue to do so unless and until Defendant is enjoined and restrained by the Court.

63. Upon information and belief, Defendant's infringement has been and continues to be willful.

COUNT V
INDIRECT INFRINGEMENT (Contributory Infringement) OF THE '348 PATENT

64. Plaintiff realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 63 above.

65. Defendant has had knowledge of infringement of the '348 Patent since at least November 11, 2008.

66. Upon information and belief, with knowledge of the '348 Patent, Defendant has indirectly infringed, and continues to indirectly infringe, the '348 Patent by contributing to the direct infringement of a class of actors which includes the end-users of the Accused Products, as well as Defendant's other customers, users, and/or licensees, by encouraging the class of actors to make (*e.g., inter alia*, assemble and install) and use the Accused Products, which meet, either literally or under the doctrine of equivalents, all of the limitations described in one or more claims of the '348 Patent, aware of the fact that such acts amount to infringement of one or more claims of the '348 Patent and with the specific intent to contribute to such infringement.

67. Defendant has sold, and continues to sell, devices and products, including but not limited to the Accused Products, which (a) are components of a patented machine covered by one or more claims of the '348 Patent, (b) constitute a material part of the invention, and (c) are not a staple article or commodity of commerce suitable for substantial non-infringing use.

68. Upon information and belief, Defendants have known that such devices and products, including but not limited to the Accused Products, were especially made or especially adapted for use in infringement of the '348 Patent since at least November 11, 2008.

69. In sum, Defendant has indirectly infringed, and continues to indirectly infringe, the '348 Patent by contributing to the direct infringement of one or more claims of the '348 Patent in violation of 35 U.S.C. §271(c).

70. Visual Intelligence has been and continues to be damaged by Defendant's infringement of the '348 Patent.

71. Defendant's infringement of the '348 Patent is causing irreparable harm to Visual Intelligence and will continue to do so unless and until Defendant is enjoined and restrained by the Court.

72. Upon information and belief, Defendant's infringement has been and continues to be willful.

COUNT VI
INDIRECT INFRINGEMENT (Contributory Infringement) OF THE '258 PATENT

73. Plaintiff realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 72 above.

74. Upon information and belief, Defendant has had knowledge of infringement of the '258 Patent since at least approximately May 25, 2010.

75. Upon information and belief, with knowledge of the '258 Patent, Defendant has indirectly infringed, and continues to indirectly infringe, the '258 Patent by contributing to the direct infringement of a class of actors which includes the end-users of the Accused Products, as well as its other customers, users, and/or licensees, by encouraging the class of actors to make (*e.g., inter alia*, assemble and install) and use the Accused Products, which meet, either literally

or under the doctrine of equivalents, all of the limitations described in one or more claims of the '258 Patent, aware of the fact that such acts amount to infringement of one or more claims of the '258 Patent and with the specific intent to contribute to such infringement.

76. Defendant has sold, and continues to sell, devices and products, including but not limited to the Accused Products, which (a) are components of a patented machine covered by one or more claims of the '258 Patent, (b) constitute a material part of the invention, and (c) are not a staple article or commodity of commerce suitable for substantial non-infringing use.

77. Upon information and belief, Defendants have known that such devices and products, including but not limited to the Accused Products, were especially made or especially adapted for use in infringement of the '258 Patent since at least approximately May 25, 2010.

78. In sum, Defendant has indirectly infringed, and continues to indirectly infringe, the '258 Patent by contributing to the direct infringement of one or more claims of the '258 Patent in violation of 35 U.S.C. §271(c).

79. Visual Intelligence has been and continues to be damaged by Defendant's infringement of the '258 Patent.

80. Defendant's infringement of the '258 Patent is causing irreparable harm to Visual Intelligence and will continue to do so unless and until Defendant is enjoined and restrained by the Court.

81. Upon information and belief, Defendant's infringement has been and continues to be willful.

JURY DEMAND

82. Plaintiff Visual Intelligence LP hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Visual Intelligence prays for judgment as follows:

- A. That Defendant has infringed one or more claims of the Patents-in-Suit;
- B. That Defendant account for and pay all damages necessary to adequately compensate Visual Intelligence for infringement of the Patents-in-Suit, such damages to be determined by a jury, and that such damages be awarded to Visual Intelligence with pre-judgment and post-judgment interest;
- D. That Defendant be adjudged to have willfully infringed the Patents-in-Suit;
- E. That Defendant be directed to pay Visual Intelligence treble damages, as well as Visual Intelligence's attorneys' fees, costs, and expenses that it incurs prosecuting this action, for its willful infringement of the Patents-in-Suit;
- F. That Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or actively participating with them, be permanently enjoined from directly or indirectly infringing the Patents-in-Suit; or, in the alternative, judgment that Defendant account for and pay to Visual Intelligence an ongoing post-judgment royalty reflecting Defendant's willful continuing infringement;
- G. That this case be declared an exceptional case within the meaning of 35 U.S.C. § 285 and that Visual Intelligence be awarded the attorneys' fees, costs, and expenses that it incurs prosecuting this action; and
- H. That Visual Intelligence be awarded such other and further relief as this Court deems just and proper.

DATED: September 4, 2013

Respectfully submitted,

/s/ Craig L. Uhrich

Craig L. Uhrich

Attorney-In-Charge

Texas Bar No. 24033284

Southern District of Texas Bar No. 604430

UHRICH LAW FIRM P.A.

311A Center Ave.

Oakley, KS 67748

P: 785.671.1237

craig.uhrich@gmail.com

Everett M. Upshaw

Texas Bar No. 24025690

Southern District of Texas Bar No. 29104

LAW OFFICE OF EVERETT UPSHAW, PLLC

13901 Midway Rd. Suite 102-208

Dallas TX 75244

P: 214.680.6005

F: 214.865.6086

everettupshaw@everettupshaw.com

ATTORNEYS FOR PLAINTIFF