Peter C. Warner (Ariz. State Bar # 009338)
Louis J. Hoffman (Ariz. State Bar # 009722)
Victoria Gruver Curtin (Ariz. State Bar #010897)
Richard Lustiger (Ariz. State Bar #007623)
Steven G. Lisa (Ill. State Bar # 6187348)
14614 North Kierland Boulevard, Suite 300
Scottsdale, Arizona 85254
Tel.: (480) 948-3295
Fax: (480) 948-3387

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

LEMELSON MEDICAL, EDUCATION & RESEARCH FOUNDATION, LIMITED PARTNERSHIP, Plaintiff,	)	No. _____
	)	**COMPLAINT**
	)	**(JURY TRIAL DEMANDED**
vs.	)	
	)	
ALCON LABORATORIES, INC.; AKZO NOBEL, INC.; ALLIED DOMECQ, PLC; ALPHARMA INC.; THE AMERICAN BOTTLING COMPANY; AMERICAN FOODS GROUP, INC.; THE ANDREW JERGENS COMPANY; AMWAY CORPORATION; ANHEUSER-BUSCH COMPANIES, INC.; AVENTIS PHARMACEUTICALS INC.; BACARDI U.S.A., INC.; BAUSCH & LOMB INCORPORATED; BESTFOODS; BORDEN, INC.; BROOKE GROUP LTD.; BROWN & WILLIAMSON TOBACCO CORP.; CADBURY SCHWEPPES PLC; CAMPBELL SOUP COMPANY; CANANDAIGUA BRANDS, INC.; CARGILL, INCORPORATED; CARTER-WALLACE, INC.; CHIQUITA BRANDS INTERNATIONAL, INC.; THE COCA-COLA COMPANY; COCA-COLA ENTERPRISES INC.; CONAGRA, INC.; COTT CORPORATION; DEAN FOODS COMPANY; DEL LABORATORIES, INC.; DEL MONTE FOODS COMPANY; DIAGEO PLC; DOLE FOOD COMPANY, INC.; DR. PEPPER BOTTLING OF TEXAS; EQUINOX INTERNATIONAL; FIELD PACKING COMPANY; FLOWERS INDUSTRIES, INC.; FOREST LABORATORIES, INC.; FRENCH FRAGRANCES, INC.; FRITO-LAY COMPANY; THE GAMBRINUS COMPANY; GENERAL MILLS, INC.; GILSTER-MARY LEE CORPORATION; GLAXO WELLCOME INC.;	)	

GOLDEN PEANUT COMPANY; GOLDEN STATE)
FOODS CORPORATION; GOYA FOODS, INC.;)
GROUPE DANONE; GUINNESS LTD.; H. J. HEINZ)
COMPANY; HEAVEN HILL DISTILLERIES, INC.;)
HERSHEY FOODS CORPORATION; HONICKMAN)
AFFILIATES; HORMEL FOODS CORPORATION; IBP,)
INC.; INTIMATE BRANDS, INC.; IVAX)
CORPORATION; THE J.M. SMUCKER COMPANY;)
KEEBLER FOODS COMPANY; KEYSTONE FOODS)
CORP.; KRAFT FOODS, INC.; LANCASTER COLONY)
CORPORATION; LANCE, INC.; LORILLARD, INC.;)
MAPLE LEAF FOODS, INC.; McCAIN FOODS,)
LIMITED; MCCORMICK & COMPANY,)
INCORPORATED; MCKEE FOODS CORPORATION;)
MILLER BREWING COMPANY; MOLSON INC.;)
MYLAN LABORATORIES INC.; NABISCO HOLDINGS)
CORP.; NATIONAL BEVERAGE CORP.; NESTLE)
USA, INC.; NEW DANA PERFUMES CO.; OCEAN)
SPRAY CRANBERRIES, INC.; THE PEPSI BOTTLING)
GROUP, INC.; PEPSICO, INC.; PHILIP MORRIS)
COMPANIES INC.; PILGRIM'S PRIDE)
CORPORATION; THE PILLSBURY COMPANY;)
PLAYTEX PRODUCTS, INC.; THE QUAKER OATS)
COMPANY; R.J. REYNOLDS TOBACCO HOLDINGS,)
INC.; RALCORP HOLDINGS, INC.; ROCCO)
ENTERPRISES, INC.; ROSEN'S DIVERSIFIED, INC.;)
RUSSELL STOVER CANDIES INC.; S&P CO.;)
SANDERSON FARMS, INC.; SARA LEE)
CORPORATION; SCHEIN PHARMACEUTICAL, INC.;)
SCHREIBER FOODS, INC.; SCHWAN'S SALES)
ENTERPRISES, INC.; SEABOARD CORPORATION;)
THE SEAGRAM COMPANY LTD.; SENECA FOODS)
CORPORATION; SMITHFIELD FOODS, INC.;)
SPECIALTY FOODS CORPORATION; SUNKIST)
GROWERS, INC.; TEVA PHARMACEUTICALS USA,)
INC.; TOOTSIE ROLL INDUSTRIES, INC.; TYSON)
FOODS, INC.; UNITED DISTILLERS & VINTNERS)
LTD.; WATSON PHARMACEUTICALS, INC.; THE)
WINE GROUP; WISE FOODS, INC.; WLR FOODS,)
INC.; WM. WRIGLEY JR. COMPANY,)
Defendants.)
_____)
)
)

Plaintiff Lemelson Medical, Education & Research Foundation, Limited Partnership ("Lemelson Foundation Partnership") alleges as follows:

1. This action arises under the Patent Laws of the United States, 35 United States Code. This Court has jurisdiction of this action under 28 U.S.C. § 1338(a).

2. The Lemelson Foundation Partnership is a Nevada limited partnership that owns the Letters Patent listed in this Complaint ("the Subject Lemelson Patents") and that is entitled to sue for and recover the relief requested below, including all past damages.

3. The Lemelson Foundation Partnership was established in 1993 to license patents rights of the renowned inventor, Jerome H. Lemelson ("Mr. Lemelson") and, in part, to further Mr. Lemelson's charitable endeavors, particularly in promoting invention, including (a) the annual Lemelson/MIT Prize for Invention (presently $500,000 per year) as a Nobel-type prize to recognize and reward particularly noteworthy inventors; (b) the Lemelson Center for the Study of Invention and Innovation at the Smithsonian Institution in Washington, D.C.; and (c) university programs to teach students the arts of creativity and innovation.

4. Mr. Lemelson, who died on October 1, 1997, is a named inventor on more than five hundred issued patents (including the Subject Lemelson Patents) and about seventy pending patent applications. Mr. Lemelson is one of the most prolific inventors of all time and is in the top five inventors of all time in terms of the number of U.S. patents obtained.

5. Each defendant is an entity whose businesses include the manufacture (either directly or through third parties) and sale of products for human consumption or use, such as food, beverage, drug, cosmetics or tobacco products, which these defendants make, sell, offer to sell, import or have imported into the United States. The defendants are listed in the caption of this Complaint.

6. Numerous issues relating to infringement of the Subject Lemelson Patents are common as to each of the defendants, including the construction of the claims and the patents, the validity and enforceability of the patents (including relation between the prior art and the claims), and infringement of the claims both by manufacturing processes common to the products sold by each of

the defendants in the United States and by use of automatic identification to control work in process, inventory and distribution. These common issues may be efficiently resolved in a single case.

7. The United States Letters Patent at issue in this action are:

(a) No. 4,338,626, “Scanning Apparatus and Method,” issued July 6, 1982;

(b) No. 4,511,918, “Scanning Apparatus and Method,” issued April 16, 1985;

(c) No. 4,969,038, “Method for Scanning Image Information,” issued November 6, 1990;

(d) No. 4,979,029, “Method and Systems for Scanning and Inspecting Images,” issued December 18, 1990;

(e) No. 4,984,073, “Methods and Systems for Scanning and Inspecting Images,” issued January 8, 1991;

(f) No. 5,023,714, “Methods and Systems for Scanning and Inspecting Images,” issued June 11, 1991;

(g) No. 5,067,012, “Methods and Systems for Scanning and Inspecting Images,” issued November 19, 1991;

(h) No. 5,119,190, “Controlling Systems and Methods for Scanning and Inspecting

(i) No. 5,119,205, “Methods and Apparatus for Scanning and Analyzing Selected Image

(j) No. 5,128,753, “Method and Apparatus for Scanning Objects and Generating Image

(k) No. 5,144,421, “Method and Apparatus for Scanning Objects and Generating Image Information,” issued September 1, 1992.

(l) No. 5,249,045, “Apparatus and Methods for Automated Observation of Three-Dimensional Objects,” September 28, 1993;

(m) No. 5,283,641, “Apparatus and Methods for Automated Analysis,” February 1, 1994;

(n) No. 5,351,078, “Apparatus and Methods for Automated Observation of Objects,” issued September 27, 1994.

8. Each of the Subject Lemelson Patents was duly and legally issued to Mr. Lemelson for the inventions claimed therein. In 1993, Mr. Lemelson assigned all right, title and interest in the Subject Lemelson Patents to the Lemelson Foundation Partnership, including the right to sue for past damages.

9. The Lemelson Foundation Partnership (or before it was created, Mr. Lemelson personally) has licensed over 500 companies under the Subject Lemelson Patents. These licensees have paid hundreds of millions of dollars in license royalties for the right to practice the manufacturing and distribution methods claimed in the Subject Lemelson Patents. Included within the group of licensees under Mr. Lemelson's patents are world-class companies such as the following 50 companies, all of whom are members of the Fortune 100 (or equivalent-sized foreign companies): 3M, Alcoa, Bayer, BMW, Boeing, Bristol-Myers Squibb, Canon, Caterpillar, Compaq, Daimler-Chrysler, Dell, Dow Chemical, Dupont, Ericsson, Ford, Fujitsu, General Electric, General Motors, Hewlett-Packard, Hitachi, Honda, Honeywell, Hyundai, IBM, Johnson & Johnson, Kodak, Matsushita, Merck, Mitsubishi, Motorola, NEC, Nissan, Northern Telecom, Novartis, Philips, R. Bosch, Raytheon, Samsung, Siemens, Sony, Sumitomo, Toshiba, Toyota, Unilever, United Parcel Service, United Technologies, USX, Volkswagen, Volvo, and Xerox.

10. More specifically, each of the Subject Lemelson Patents is infringed under 35 U.S.C. § 271, inter alia, as follows:

(a) U.S. Patent Nos. 4,338,626, 4,511,918, 4,979,029, 4,984,073, 5,023,714, 5,067,012, 5,119,190, 5,119,205, 5,128,753, 5,249,045, 5,283,641 and 5,351,078 relate to what is generally referred to as "machine vision" or "computer image analysis." Upon information and belief, each of the defendants infringe these patents (i) by practicing manufacturing or processing steps in the United States that infringe method claims of the listed patents, or (ii) by importing, selling or offering to sell in the United States products made by or for it using the various methods that infringe method claims of the listed patents. This Complaint does not assert that defendants infringe any apparatus claim in any of these patents.

(b) U.S. Patent Nos. 4,969,038, 4,979,029, 4,984,073, 5,119,190, 5,119,205, 5,128,753 and 5,144,421 fall within a subset of image analysis that is generally referred to as "Automatic Identification" or "Auto ID," and most frequently relate to methods of scanning production markings (typically "bar codes") placed on workpieces. Each of the defendants infringe these patents by (i) using the patented Auto ID methods to track or identify its products or other workpieces, or (ii) importing, selling or offering to sell in the United States products made by or for it using various Auto ID methods that infringe the method claims of the listed patents. This Complaint does not assert that defendants infringe any apparatus claim in any of these patents.

11. In the six-year period preceding the filing of this action, each of the defendants has infringed some or all of the Subject Lemelson Patents in violation of 35 U.S.C. § 271 with resultant damage to the Lemelson Foundation Partnership. Each of the defendants will continue to infringe some or all of the unexpired Subject Lemelson Patents unless enjoined by this Court.

12. The Lemelson Foundation Partnership has given written notice to each of the defendants of its infringement of the Subject Lemelson Patents, has requested each defendant either to identify its defenses to the assertions of infringement or to enter into good-faith licensing negotiations, and has attempted, without success, to resolve this matter short of litigation. Thus, each of the defendants, with actual knowledge of the Subject Lemelson Patents and without lawful justification, has willfully and deliberately infringed those patents.

WHEREFORE, THE LEMELSON FOUNDATION PARTNERSHIP PRAYS FOR:

(a) judgment on the Complaint holding the Subject Lemelson Patents to have been willfully and deliberately infringed by each of the defendants;

(b) an order enjoining each of the defendants and its respective officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them, from further acts of infringement of the unexpired Subject Lemelson Patents;

(c) an award of damages against each of the defendants adequate to compensate the Lemelson Foundation Partnership for past infringement of the Subject Lemelson Patents, together

with interest and costs as fixed by the Court, such damages to be trebled under 35 U.S.C. § 284 because of the willful and deliberate character of the infringement;

(d) judgment against each of the defendants that this case is "exceptional" in the sense of 35 U.S.C. § 285 and that the Lemelson Foundation Partnership is entitled to an award of its reasonable attorneys' fees in the prosecution of this action; and

(e) such other and further relief as this Court may deem just and proper.

A JURY TRIAL IS DEMANDED BY PLAINTIFF.

Respectfully submitted,

LOUIS J. HOFFMAN, P.C.

Dated: April 14, 2000

By: _____

Louis J. Hoffman
14614 North Kierland Boulevard
Suite 300
Scottsdale, Arizona 85254
Tel.: (480) 948-3295
Fax: (480) 948-3387

Attorneys for Plaintiff