

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	)	No. _____
FOUNDATION, LIMITED PARTNERSHIP,	)	
Plaintiff,	)	<b><u>COMPLAINT</u></b>
	)	<b>(JURY TRIAL DEMANDED)</b>
vs.	)	
	)	
R.R. DONNELLEY & SONS COMPANY; A.H. BELO	)	
CORPORATION; ACX TECHNOLOGIES, INC.;	)	
ADVANCE PUBLICATIONS, INC.; AMERICAN	)	
GREETINGS CORPORATION; ARJO WIGGINS	)	
APPLETON, PLC.; AVONDALE INCORPORATED;	)	
BANTA CORPORATION; BIRMINGHAM STEEL	)	
CORPORATION; BLADE COMMUNICATIONS INC.;	)	
BOISE CASCADE CORPORATION; BOWATER	)	
INCORPORATED; BURLINGTON INDUSTRIES, INC.;	)	
CHAMPION INTERNATIONAL CORPORATION;	)	
CHAPARRAL STEEL COMPANY; THE CHRONICLE	)	
PUBLISHING COMPANY; COMMERCIAL METALS	)	
COMPANY; CONE MILLS CORPORATION; THE	)	
COPLEY PRESS, INC.; COX ENTERPRISES, INC.;	)	
CULP, INC.; DAN RIVER INC.; DELTA WOODSIDE	)	
INDUSTRIES, INC.; DELUXE CORPORATION; THE	)	
DIXIE GROUP, INC.; EBSCO INDUSTRIES, INC.;	)	
FORT JAMES CORPORATION; FREEDOM	)	
COMMUNICATIONS, INC.; GALEY & LORD, INC.;	)	
GEORGIA-PACIFIC CORPORATION; GUILFORD	)	
MILLS, INC.; THE HEARST CORPORATION;	)	
INTERNATIONAL DATA GROUP; INTERNATIONAL	)	
PAPER COMPANY; J.M. HUBER CORPORATION;	)	
JOHNSTON INDUSTRIES, INC.; JPS INDUSTRIES,	)	
INC.; KOBE STEEL, LTD.; LEE ENTERPRISES,	)	
INCORPORATED; LEVI STRAUSS & CO.; LIBERTY	)	

GROUP PUBLISHING, INC.; LOUISIANA-PACIFIC )  
CORPORATION; THE MEAD CORPORATION; MEDIA )  
GENERAL, INC.; MILLIKEN & COMPANY, INC.; )  
MORRIS COMMUNICATIONS CORPORATION; R.B. )  
PAMPLIN CORPORATION; PARKDALE MILLS, INC.; )  
PILLOWTEX CORPORATION; POTLATCH )  
CORPORATION; PRINTPACK, INC.; PULITZER )  
PUBLISHING COMPANY; QUAKER FABRIC )  
CORPORATION; RAYONIER INC.; THE READER’S )  
DIGEST ASSOCIATION, INC.; THE REYNOLDS AND )  
REYNOLDS COMPANY; RIVERWOOD HOLDING, )  
INC.; SAPPI LIMITED; SIERRA PACIFIC )  
INDUSTRIES; SIMPSON INVESTMENT COMPANY; )  
SMURFIT-STONE CONTAINER CORPORATION; )  
SPRINGS INDUSTRIES, INC.; TAYLOR )  
CORPORATION; TEMPLE-INLAND INC.; THE )  
THOMSON CORPORATION; THE TIMES MIRROR )  
COMPANY; TIME WARNER INC.; UNIFI, INC.; UPM- )  
KYMME CORPORATION; W.L. GORE AND )  
ASSOCIATES, INC.; WEIRTON STEEL )  
CORPORATION; WESTPOINT STEVENS INC.; )  
WEYERHAEUSER COMPANY; WILLAMETTE )  
INDUSTRIES, INC.; WORTHINGTON INDUSTRIES, )  
INC., )  
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, such as paper and lumber, textile, printed and steel products, which these defendants make, sell, offer to sell, import or have imported into the United States, that are manufactured using various imaging techniques, principally a technique commonly referred to as “web inspection,” but also including other imaging inspection methods. 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. §71, 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