

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

AMO DEVELOPMENT, LLC,  
AMO MANUFACTURING USA,  
LLC and AMO SALES AND  
SERVICE, INC.,

Plaintiffs,

v.

ALCON VISION, LLC, ALCON  
LABORATORIES, INC. and  
ALCON RESEARCH, LLC

Defendants.

Civil Action No. 20-842-CFC

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Jack B. Blumenfeld, Anthony D. Raucci, Brian P. Egan, MORRIS, NICHOLS, ARSHT & TUNNELL LLP, Wilmington, Delaware; Michael A. Morin, Matthew J. Moore, Rachel W. Cohen, Sarang V. Damle, Holly K. Victorson, Carolyn M. Homer, Susan Y. Tull, Michael E. Bern, LATHAM & WATKINS LLP, Washington, DC; Roger J. Chin, Allison Harms, Joseph R. Wetzel, LATHAM & WATKINS LLP, San Francisco, California; S. Giri Pathmanaban, LATHAM & WATKINS LLP, Menlo Park, California; P. Anthony Sammi, Rachel R. Blitzer, LATHAM & WATKINS LLP, New York, New York; Aaron Macris, LATHAM & WATKINS LLP, Boston, Massachusetts

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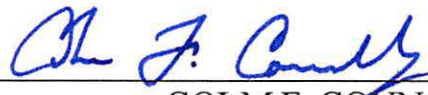
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*Counsel for Defendants*

**MEMORANDUM OPINION**

January 23, 2023  
Wilmington, Delaware



COLM F. CONNOLLY  
CHIEF JUDGE

Plaintiffs AMO Development, LLC, AMO Manufacturing USA, LLC, and AMO Sales and Service, Inc. have sued Defendants Alcon Vision, LLC, Alcon Laboratories, Inc., and Alcon Research, LLC (collectively, Alcon) for copyright infringement. Pending before me is a motion titled “Alcon’s Motion for Summary Judgment (No. 2) That Only AMO Development, LLC Is Entitled to Actual Damages.” D.I. 360. Alcon seeks by the motion two declarations. First, notwithstanding the title of the motion, it asks for a declaratory judgment that “AMO Development, LLC is *not* entitled to lost profits prior to December 30, 2019, or for any sales of intraocular lenses.” D.I. 360-1 at 2 (emphasis added). Plaintiffs did not oppose this request in their briefing, *see* D.I. 422, and therefore I will grant the motion in this respect. Second, Alcon seeks a declaratory judgment that “Johnson & Johnson Surgical Vision, Inc., AMO Manufacturing USA, LLC, AMO Sales and Service, Inc., and AMO Ireland are not entitled to claim lost profits.” D.I. 360-1 at 1. This request is very much challenged by Plaintiffs, *see* D.I. 422; but for the reasons explained below, I will issue this declaratory judgment.

I.

A court shall grant summary judgment only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 n.10 (1986). “Facts that could alter the outcome are ‘material,’ and disputes are ‘genuine’ if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct.” *Horowitz v. Fed. Kemper Life Assurance Co.*, 57 F.3d 300, 302 n.1 (3d Cir. 1995) (citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then “must come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Matsushita*, 475 U.S. at 587 (emphasis omitted) (quoting Fed. R. Civ. P. 56(e)). The court will “view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion.” *Pa. Coal Ass’n v. Babbitt*, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for

the nonmoving party on that issue. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

## II.

Plaintiffs accuse Alcon of infringing certain copyrights (the Asserted Copyrights) based on Alcon's incorporation of certain computer programs in its LenSx<sup>®</sup> Laser System, a femtosecond laser assisted cataract surgery (FLACS) system approved by the FDA in 2009 and commercially launched in 2011. D.I. 141 ¶¶ 84, 101. Cataract surgery is performed by removing the patient's natural, opacified crystalline lens and replacing it with an artificial intraocular lens (IOL).

Plaintiffs seek damages in part based on the theory that Alcon's sales of the LenSx and IOLs caused Counter-Defendant Johnson & Johnson Surgical Vision, Inc. (JJSV) to lose sales of the Catalys<sup>®</sup> Precision Laser System, which competes directly with the LenSx, and IOLs. D.I. 422 at 8–9. Plaintiffs also seek profits allegedly lost by three of JJSV's subsidiaries—Plaintiffs AMO Manufacturing USA, LLC and AMO Sales and Service, Inc., and nonparty AMO Ireland—based on their share of JJSV's revenue stream for Catalys sales. D.I. 422 at 8–9. Alcon argues that neither JJSV nor any of the three subsidiaries had an ownership interest

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