IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HOYA CORPORATION, HOYA SURGICAL OPTICS, INC., HOYA LAMPHUN LTD., and HOYA MEDICAL SINGAPORE PTE LTD., Plaintiffs, v. ALCON INC., ALCON LABORATORIES, INC., ALCON RESEARCH, LLC, and ALCON VISION LLC, Defendants.	**Civil Action No. 3:20-cv-03629-M** JURY TRIAL DEMANDED
ALCON LABORATORIES, INC., ALCON RESEARCH, LLC, and ALCON VISION LLC, Counterclaim Plaintiffs, v. HOYA CORPORATION, HOYA SURGICAL OPTICS, INC., HOYA LAMPHUN LTD., and HOYA MEDICAL SINGAPORE PTE LTD., Counterclaim Defendants.	

DEFENDANTS' NOTICE OF THIRD-PARTY SUBPOENA TO CRAIG A. SLAVIN, ESQ.

Please take notice that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, Defendants Alcon Inc., Alcon Laboratories, Inc., Alcon Research, LLC, and Alcon Vision LLC will serve the subpoena attached hereto as Exhibits 1 and 2 on Craig A. Slavin, Esq.

Dated: April 4, 2022

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/s/ Jeremy A. Fielding
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ATTORNEYS FOR DEFENDANTS
ALCON INC., ALCON LABORATORIES,
INC., ALCON RESEARCH, LLC, and
ALCON VISION LLC

EXHIBIT 1

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Texas

Hoya Corporation et al.
Plaintiff
v.
Alcon Inc. et al.
Defendant

Civil Action No. 3:20-cv-03629-M

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Craig A. Slavin, Esq.
901 S Mopac Building V, Austin, Texas 78746
(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A.

Place:	Date and Time:
Kirkland & Ellis LLP 401 Congress Avenue Austin, TX 78701	04/26/2022 9:00 am

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 4/4/22

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Alcon Inc., Alcon Laboratories, Inc., Alcon Research, LLC, and Alcon Vision LLC, who issues or requests this subpoena, are:

Ryan Kane, Kirkland & Ellis LLP, 601 Lexington Ave, New York, NY, 10022, ryan.kane@kirkland.com

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:20-cv-03629-M

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Print Save As... Add Attachment Reset

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

ATTACHMENT 1-A

Pursuant to the accompanying subpoena, Defendants Alcon Inc., Alcon Laboratories, Inc., Alcon Research, LLC, and Alcon Vision LLC hereby request that third party Craig A. Slavin, Esq. produce and permit inspection and copying of documents and things in his possession, custody, or control that relate to the following categories of requests according to the following definitions and instructions.

DEFINITIONS

1. "Slavin," "You," and "Your" shall mean Craig A. Slavin, Esq.

2. "Alcon" or "Defendants" refers to Defendants Alcon Inc., Alcon Laboratories, Inc., Alcon Research, LLC, and Alcon Vision LLC, their officers, employees, counsel, agents, consultants, and representatives, and includes joint ventures and other entities which are wholly or partially owned by Alcon, either directly or indirectly, and the officers, employees, counsel, agents, consultants, and representatives of these divisions, subsidiaries, and joint ventures.

3. "HOYA" or "Plaintiffs" shall mean HOYA Corporation, HOYA Surgical Optics, Inc., HOYA Lamphun Ltd., HOYA Medical Singapore Pte Ltd., and their present and former officers, directors, employees, attorneys, agents, representatives, subsidiaries, affiliates, assignees, predecessors in interest, successors in interest, and anyone acting or purporting to act on their behalf, including without limitation any inventors of the Patents in Suit.

4. "Patents in Suit" means U.S. Patent Nos. 9,901,442; 9,980,811; 9,655,718; 9,877,826; 9,907,647; and 10,039,668, and the respective patent applications, including any applications to which they claim priority, that led to each.

5. "Intraocular lens" or "IOL" shall refer to an implantable ocular lens, including those used as part of treatment for cataracts.

6. "IOL Delivery System" refers to IOL insertion devices and systems.

7. "UltraSert" shall mean the Alcon UltraSert Preloaded Delivery System.

8. "Monarch" shall mean the Alcon Monarch IOL Delivery System, including the Monarch II and Monarch III IOL Delivery System.

9. "AcrySert C" shall mean the Alcon AcrySert C Preloaded IOL Delivery System.

10. "AcrySert" shall mean the Alcon AcrySert Preloaded IOL Delivery System.

11. "Alcon IOL Delivery System" refers to Alcon's IOL insertion devices and systems, including, without limitation, the Monarch, AcrySert C, AcrySert, and UltraSert.

12. "HOYA IOL Delivery System" refers to HOYA's IOL insertion devices and systems generally.

13. "Identify" and "Identity" shall mean as follows:

(a) When used in these requests with respect to a natural person, "Identify" or "Identity" shall mean to set forth his or her (i) full name, together with any known aliases or nicknames; (ii) present address or, if unknown, the last known address and the date when such person is last known or believed to have resided at that address; (iii) present known business and residence telephone number or, if unknown, the last known business and residence telephone number and date when such person is last known or believed to have had that telephone number; and (iv) the present known employer, employment position or title, and business address or, if unknown, the last known information in each of these respects.

(b) When used in these requests with respect to an entity, "Identify" or "Identity" shall mean to set forth its (i) full name; (ii) a description of the type of entity

(e.g., corporation, partnership, unincorporated association, etc.); and (iii) its present or last known business address and telephone number.

(c) When used in these requests with respect to a Document, "Identify" or "Identity" shall mean to set forth sufficient detail to enable Defendants to locate the Document, including (i) its nature or type (e.g., letter, memorandum, report, invoice, bill of lading, etc.); (ii) the date appearing on such Document, or if no date appears thereon, the approximate Date the Document was prepared; (iii) its author(s), including every person who prepared any portion of the document; (iv) its addressee(s) and all recipients of a copy; (v) its title and general subject matter; and (vi) the present location and custodian of the original and each non-identical copy thereof, or, if unknown, the last known location and custodian of each; (vii) its Bates number range; (viii) if such Document existed at one time but does not presently exist, the reason why it no longer exists and the identity of the last Person known to have custody of it; and (ix) if the Document is in a language other than English, whether a partial or complete English translation of the Document exists.

(d) When used in these requests with respect to a Thing that is not a Document (including any products manufactured, developed, sold, or imported by You), "Identify" or "Identity" shall include, to the extent known or obtainable, sufficient detail to enable Defendants to locate the Thing, including (a) the product names, product numbers, version numbers, and revision numbers; (b) the dates when the Thing first was introduced for sale and first was sold; and (c) all team names or project titles used in connection with the design, development, testing, or engineering of that tangible Thing.

14. "Person" shall mean any natural person, alive or deceased, and any business, legal or governmental entity or association.

15. "Documents" shall mean all materials, as defined in Rule 34(a) of the Federal Rules of Civil Procedure, including, without limitation, any handwritten, printed, typed, recorded photographic, and computer-generated materials of any kind or nature, however produced or reproduced, as well as material stored electronically, electromagnetically, mechanically, optically, and electronic recordings or transcripts thereof, and includes drafts, revisions of drafts, preliminary and preparatory materials, originals, copies, emails, attachments, exhibits, removable notes, and all translations and summaries thereof.

16. "Communications" shall mean any oral, written, electronic, or other exchange of words, thoughts, information, or ideas to another person or entity, whether in person, in a group, by telephone, by letter, by Telex, or by other process, electric, electronic, or otherwise. All such communications in writing shall include, without limitation, printed, typed, handwritten, or other readable documents, correspondence, memoranda, reports, contracts, drafts (both initial and subsequent), computer discs or transmissions, e-mails, instant messages, tape or video recordings, voicemails, diaries, log books, minutes, notes, studies, surveys and forecasts, and any and all copies thereof.

17. "Thing" is defined to be synonymous in meaning and equal in scope to the usage of the term "tangible things" in Federal Rule of Civil Procedure 34(a)(1)(B). This meaning includes any tangible object of any kind and nature other than a Document, including prototypes, models, and physical specimens thereof.

18. "Prior Art" shall mean the subject matter described in 35 U.S.C. §§ 102 or 103, including without limitation all patents, patent applications, printed publications, documents,

things, or activities, including public uses, disclosures, sales or offers to sell, or any other information described in 35 U.S.C. §§ 102 or 103 that could relate to the validity of the Patents-in-Suit.

19. "Date" means the exact day, month, and year, if ascertainable, or, if not, the closest approximation thereto that can be made by means of a relationship to other events, locations, or matters. Identify each instance in which the given date is an approximation, and state Your bases for making such approximation.

20. "Third Party" means any Person or entity other than HOYA or Alcon.

21. "USPTO" means the United States Patent and Trademark Office and any employees or agents of the USPTO.

22. "Employee" means any director, trustee, officer, employee, partner, corporate parent, subsidiary, affiliate or servant of the designated entity, whether active or retired, full-time or part-time, current or former, and compensated or not.

23. The term "including" or "includes" shall mean including without limitation.

24. The terms "concerning" and "relating to" shall mean, in whole or in part, referring to, describing, evidencing, constituting, containing, comprising, referring to, embodying, connected to, reflecting, analyzing, showing, discussing, identifying, illustrating, stating, regarding, supporting, refuting, rebutting, responding to, commenting on, evaluating, about, in respect of, mentioning, dealing with, or in any way pertaining to, either explicitly or implicitly.

25. The singular form of each word shall be interpreted in the plural, and vice versa, so as to give each request the broadest possible scope.

26. Regardless of the tense employed, all verbs shall be read as applying to past, present, and future as necessary to make any phrase more, rather than less, inclusive.

27. The conjunctives "and" and "or" shall be construed either disjunctively or conjunctively, as necessary, to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

28. The terms "all," "each," and "any" shall be construed as all and any.

29. "ESCRS" means the European Society of Cataract and Refractive Surgeons.

30. "ESCRS 2008" means the XXVI Congress of the ESCRS that occurred in September of 2008 in Berlin, Germany.

31. "McCulley 2008 Presentation" means the presentation given by James P. McCulley, M.D., F.A.C.S., FRCOphth (UK), titled "Benefits of newest generation fully pre-loaded aspheric IOL delivery system," in the category of "Aspheric IOLs," at the free paper session of ESCRS 2008 on September 16, 2008.

32. "McCulley 2008 Video" means the recorded video of the McCulley 2008 Presentation.

INSTRUCTIONS

1. With respect to email correspondence, Defendants are prepared to meet and confer with You regarding appropriate search terms and limits for email production pursuant to these requests.

2. This subpoena requires You to produce all Documents and Things that are in Your possession, custody, or control, or in the possession, custody or control of Your agents, consultants, representatives, assignees, trustees, employees, attorneys, or anyone else acting on Your behalf or subject to Your control.

3. In producing the Documents and Things requested herein, produce them as kept in the ordinary course of business, in their original file folders, if any, or in lieu thereof, attach to

the set of documents produced from a given file a copy of all written or printed material on the original file folder. In addition, the Documents shall be produced in the same sequence as they are contained or found in the original file folder. The integrity and internal sequence of the requested Documents within each folder shall not be disturbed. Under no circumstances shall Documents from any file folder be commingled with Documents from any other file folder. Documents attached to each other should not be separated. All Documents maintained in electronic form, including, without limitation, email, PDFs (including searchable PDFs), Word documents, and spreadsheets shall be produced in text searchable image files (*e.g.*, PDF or TIFF) with all underlying electronically stored information, *i.e.*, original formatting and the metadata.

4. These requests shall be deemed to include all available English copies or translations of every document requested.

5. If any of the requested Documents cannot be disclosed or produced in full, produce all other Documents and specify Your reasons for its inability to produce the remainder, stating whatever information, knowledge, or belief You has concerning the unproduced portion.

6. Documents and Things may be designated as being Confidential or Highly Confidential Attorney Eyes Only pursuant to the proposed Protective Order filed in the action between Plaintiffs and Defendants pending in the United States District Court for the Northern District of Texas. A copy of the Protective Order is attached as Exhibit 3.

7. In the event that any Document or Thing called for by this subpoena is withheld in whole or in part on the basis of a claim of attorney-client privilege, work product immunity, or any other exemption or immunity from discovery, You must furnish a privilege log that identifies each document for which any privilege or immunity is claimed and that provides, with

respect to each such Document, the following information: (i) the date the Document was created; (ii) the general subject matter of the Document; (iii) the person(s) who prepared the Document and whether that person is an attorney; (iv) all persons to whom the Document was distributed, shown, or explained and whether such persons are attorneys; (v) the Document's present custodian; and (vi) the nature of the privilege asserted. If You claim any privilege as a ground for refusing to respond with information or to produce any Document otherwise or Thing called for by the Request, You must nevertheless respond to that part of the Request that does not call for allegedly privileged communications or materials.

8. In the event that any Document or Thing called for by this subpoena has been destroyed or discarded, that Document or Thing is to be identified by stating: (i) the date the Document or Thing was created; (ii) the subject matter of the Document or Thing; (iii) the person(s) who prepared the Document or Thing; (iv) all persons to whom the Document or Thing was distributed, shown, or explained; (v) the date of destruction, manner of destruction, and reason for destruction; (vi) the persons who were authorized to carry out such destruction; and (vii) whether any copies of the Document or Thing presently exist and, if so, the name of the custodian of each copy of the Document or Thing.

9. If You object to or disagree with any of the definitions set forth in this subpoena, or if You do not understand any term used in this subpoena, explain in detail the nature of Your disagreement with the definition, or lack of understanding of the term, and provide Your definition of the term.

10. If there are no Documents or Things responsive to a particular request, You should so state in writing.

11. If You claim that any command to produce Documents or Things in this subpoena is in any way objectionable, respond to the portion of the command believed to be unobjectionable, and specifically identify that aspect of the command that You claim to be objectionable and explain why such aspect is objectionable.

12. If a refusal to provide Documents responsive to any request is asserted on the grounds of burden, You should state in detail the reason(s) for Your objection(s), including the number and nature of documents or records needed to be searched or produced, the location of the Documents, the custodian of the Documents, and the number of person hours and costs required to conduct the search.

13. If any Document request is ambiguous or unclear to You, You are requested to contact undersigned counsel as soon as possible so that the request can be clarified to avoid unnecessary delays in discovery.

14. If You object to any command to produce Documents or Things on the ground that it is vague and/or ambiguous, identify the language You consider vague and/or ambiguous and state the interpretation You are using in responding to the command.

REQUESTS FOR PRODUCTION

1. Non-privileged Documents sufficient to Identify the individuals who were involved in prosecution of the Patents in Suit.

2. Non-privileged Documents sufficient to Identify the HOYA entity or entities that were involved in prosecution of the Patents in Suit.

3. Non-privileged Documents sufficient to Identify any and all Third Parties that were involved in prosecution of the Patents in Suit.

4. Non-privileged Documents sufficient to Identify the individuals and the HOYA entity or entities that retained You for prosecuting the Patents in Suit.

5. Non-privileged Documents sufficient to Identify the HOYA entity or entities that were involved in assignment of the Patents in Suit.

6. All non-privileged Communications with the inventors of the Patents in Suit.

7. All non-privileged Communications with HOYA Employees or agents of HOYA involved in the preparation, filing, and prosecution of the Patents in Suit.

8. All non-privileged Documents and Things, including Communications, concerning any search, investigation, evaluation, or opinion relating to the patentability, validity, or enforceability of any claim of the Patent-in-Suits, including the Dates of searches and the individuals responsible for any searches.

9. All non-privileged Documents and Things, including Communications, concerning the Communications or correspondence with the USPTO during the prosecution of the Patents in Suit.

10. All Prior Art to the Patents in Suit in Your possession during prosecution of the Patents in Suit including Prior Art concerning or relating to IOL Delivery Systems that is not listed on the faces of the Patents in Suit.

11. Non-privileged Documents sufficient to show decision making regarding what Prior Art to disclose to the USPTO during the prosecution of the Patents in Suit.

12. All IOL Delivery Systems in Your possession during prosecution of the Patents in Suit, including any prototypes from HOYA and/or products from Alcon, which Alcon seeks by production or inspection.

13. All non-privileged Documents and Things, including Communications, concerning any HOYA IOL Delivery Systems, including prototypes and commercialized products, used in drafting claims for the Patents in Suit.

14. All non-privileged Documents and Things relating or referring to ESCRS 2008, including any conference publications, ESCRS publications, notes, summaries, reports, memoranda, photographs, and videos.

15. All non-privileged Documents and Things relating or referring to the McCulley 2008 Presentation, including any conference publications, notes, memoranda, photographs, and videos.

16. All non-privileged Documents and Things relating or referring to the McCulley 2008 Video, including any conference publications, notes, memoranda, photographs, and videos.

17. All non-privileged Documents and Things in Your possession relating to Alcon IOL Delivery Systems or any component thereof during prosecution of the Patents in Suit, including, but not limited to: samples; user or instruction manuals; marketing documents; product demonstrations; internal HOYA reports on Alcon products; or any other Documents describing the design, testing, marketing, offer for sale, sale or use of Alcon IOL Delivery Systems.

18. All Documents and Things, including notes and Communications, regarding the conception of the alleged inventions of the Patents in Suit.

19. All Documents and Things, including notes and Communications, regarding the reduction to practice of the alleged inventions of the Patents in Suit.

20. Non-privileged Documents sufficient to show decisions regarding amendments to the specifications of the Patents in Suit during prosecution.

21. Non-privileged Documents sufficient to show the basis for the drawings in the Patents in Suit, including schematics, prototypes, presentations, and electronic drawing files.

EXHIBIT 2

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Texas

Hoya Corporation et al.
Plaintiff
v.
Alcon Inc. et al.
Defendant

Civil Action No. 3:20-cv-03629-M

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Craig A. Slavin, Esq.
901 S Mopac Building V, Austin, Texas 78746
(Name of person to whom this subpoena is directed)

☑ Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters: see Attachment A.

Place:	Date and Time:
Kirkland & Ellis LLP 401 Congress Avenue Austin, TX 78701	05/02/2022 9:00 am

The deposition will be recorded by this method: stenographic and/or videographic means

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 4/4/22

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Alcon Inc., Alcon Laboratories, Inc., Alcon Research, LLC, and Alcon Vision LLC, who issues or requests this subpoena, are:
Ryan Kane, Kirkland & Ellis LLP, 601 Lexington Ave, New York, NY, 10022, ryan.kane@kirkland.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:20-cv-03629-M

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Print Save As... Add Attachment Reset

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

ATTACHMENT 2-A

Pursuant to the accompanying subpoena, Defendants Alcon Inc., Alcon Laboratories, Inc., Alcon Research, LLC, and Alcon Vision LLC hereby request that third party Craig A. Slavin, Esq. testify about the Topics set forth below, at the date and location specified in the subpoena, unless otherwise agreed to by Defendants.

DEFINITIONS

1. "Slavin," "You," and "Your" shall mean Craig A. Slavin, Esq.

2. "Alcon" or "Defendants" refers to Defendants Alcon Inc., Alcon Laboratories, Inc., Alcon Research, LLC, and Alcon Vision LLC, their officers, employees, counsel, agents, consultants, and representatives, and includes joint ventures and other entities which are wholly or partially owned by Alcon, either directly or indirectly, and the officers, employees, counsel, agents, consultants, and representatives of these divisions, subsidiaries, and joint ventures.

3. "HOYA" or "Plaintiffs" shall mean HOYA Corporation, HOYA Surgical Optics, Inc., HOYA Lamphun Ltd., HOYA Medical Singapore Pte Ltd., and their present and former officers, directors, employees, attorneys, agents, representatives, subsidiaries, affiliates, assignees, predecessors in interest, successors in interest, and anyone acting or purporting to act on their behalf, including without limitation any inventors of the Patents in Suit.

4. "Patents in Suit" means U.S. Patent Nos. 9,901,442; 9,980,811; 9,655,718; 9,877,826; 9,907,647; and 10,039,668, and the respective patent applications, including any applications to which they claim priority, that led to each.

5. "Intraocular lens" or "IOL" shall refer to an implantable ocular lens, including those used as part of treatment for cataracts.

6. "IOL Delivery System" refers to IOL insertion devices and systems.

7. "UltraSert" shall mean the Alcon UltraSert Preloaded Delivery System.

8. "Monarch" shall mean the Alcon Monarch IOL Delivery System, including the Monarch II and Monarch III IOL Delivery System.

9. "AcrySert C" shall mean the Alcon AcrySert C Preloaded IOL Delivery System.

10. "AcrySert" shall mean the Alcon AcrySert Preloaded IOL Delivery System.

11. "Alcon IOL Delivery System" refers to Alcon's IOL insertion devices and systems, including, without limitation, the Monarch, AcrySert C, AcrySert, and UltraSert.

12. "HOYA IOL Delivery System" refers to HOYA's IOL insertion devices and systems generally.

13. "Person" shall mean any natural person, alive or deceased, and any business, legal or governmental entity or association.

14. "Documents" shall mean all materials, as defined in Rule 34(a) of the Federal Rules of Civil Procedure, including, without limitation, any handwritten, printed, typed, recorded photographic, and computer-generated materials of any kind or nature, however produced or reproduced, as well as material stored electronically, electromagnetically, mechanically, optically, and electronic recordings or transcripts thereof, and includes drafts, revisions of drafts, preliminary and preparatory materials, originals, copies, emails, attachments, exhibits, removable notes, and all translations and summaries thereof.

15. "Communications" shall mean any oral, written, electronic, or other exchange of words, thoughts, information, or ideas to another person or entity, whether in person, in a group, by telephone, by letter, by Telex, or by other process, electric, electronic, or otherwise. All such communications in writing shall include, without limitation, printed, typed, handwritten, or other readable documents, correspondence, memoranda, reports, contracts, drafts (both initial and

subsequent), computer discs or transmissions, e-mails, instant messages, tape or video recordings, voicemails, diaries, log books, minutes, notes, studies, surveys and forecasts, and any and all copies thereof.

16. "Thing" is defined to be synonymous in meaning and equal in scope to the usage of the term "tangible things" in Federal Rule of Civil Procedure 34(a)(1)(B). This meaning includes any tangible object of any kind and nature other than a Document, including prototypes, models, and physical specimens thereof.

17. "Prior Art" shall mean the subject matter described in 35 U.S.C. §§ 102 or 103, including without limitation all patents, patent applications, printed publications, documents, things, or activities, including public uses, disclosures, sales or offers to sell, or any other information described in 35 U.S.C. §§ 102 or 103 that could relate to the validity of the Patents in Suit.

18. "Date" means the exact day, month, and year, if ascertainable, or, if not, the closest approximation thereto that can be made by means of a relationship to other events, locations, or matters. Identify each instance in which the given date is an approximation, and state Your bases for making such approximation.

19. "Third Party" means any Person or entity other than HOYA or Alcon.

20. "USPTO" means the United States Patent and Trademark Office and any employees or agents of the USPTO.

21. "Employee" means any director, trustee, officer, employee, partner, corporate parent, subsidiary, affiliate or servant of the designated entity, whether active or retired, full-time or part-time, current or former, and compensated or not.

22. The term "including" or "includes" shall mean including without limitation.

23. The terms "concerning" and "relating to" shall mean, in whole or in part, referring to, describing, evidencing, constituting, containing, comprising, referring to, embodying, connected to, reflecting, analyzing, showing, discussing, identifying, illustrating, stating, regarding, supporting, refuting, rebutting, responding to, commenting on, evaluating, about, in respect of, mentioning, dealing with, or in any way pertaining to, either explicitly or implicitly.

24. The singular form of each word shall be interpreted in the plural, and vice versa, so as to give each request the broadest possible scope.

25. Regardless of the tense employed, all verbs shall be read as applying to past, present, and future as necessary to make any phrase more, rather than less, inclusive.

26. The conjunctives "and" and "or" shall be construed either disjunctively or conjunctively, as necessary, to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

27. The terms "all," "each," and "any" shall be construed as all and any.

28. "ESCRS" means the European Society of Cataract and Refractive Surgeons.

29. "ESCRS 2008" means the XXVI Congress of the ESCRS that occurred in September of 2008 in Berlin, Germany.

30. "McCulley 2008 Presentation" means the presentation given by James P. McCulley, M.D., F.A.C.S., FRCOphth (UK), titled "Benefits of newest generation fully pre-loaded aspheric IOL delivery system," in the category of "Aspheric IOLs," at the free paper session of ESCRS 2008 on September 16, 2008.

31. "McCulley 2008 Video" means the recorded video of the McCulley 2008 Presentation.

INSTRUCTIONS

1. If You object to or disagree with any of the definitions set forth in this subpoena, or if You do not understand any term used in this subpoena, explain in detail the nature of Your disagreement with the definition, or lack of understanding of the term, and provide Your definition of the term.

2. Documents and Things may be designated as being Confidential or Highly Confidential Attorney Eyes Only pursuant to the proposed Protective Order filed in the action between Plaintiffs and Defendant pending in the United States District Court for the Northern District of Texas. A copy of the proposed Protective Order is attached as Exhibit 3.

3. To the extent You claim a Topic is in any way objectionable, respond to the portion of the command believed to be unobjectionable, and specifically identify that aspect of the command that You claim to be objectionable and explain why such aspect is objectionable.

4. If You object to any Topic on the ground that it is vague and/or ambiguous, identify the language You consider vague and/or ambiguous and state the interpretation You are using in responding to the command.

5. If any Topic is ambiguous or unclear to You, You are requested to contact undersigned counsel as soon as possible so that the request can be clarified to avoid unnecessary delays in discovery.

DEPOSITION TOPICS

1. The individuals who were involved in prosecution of the Patents in Suit.

2. The HOYA entity or entities that were involved in prosecution of the Patents in Suit.

3. Any Third Parties that were involved in prosecution of the Patents in Suit.

4. Assignment of the Patents in Suit.

5. Your retention by HOYA for prosecuting the Patents in Suit, including dates of retention and those involved in Your retention.

6. Any search, investigation, evaluation, or opinion relating to the patentability, validity, or enforceability of any claim of the Patents in Suit, including the Dates of searches and the individuals responsible for any searches.

7. Your prosecution of the Patents in Suit.

8. Your Communications or correspondence with the USPTO during the prosecution of the Patents in Suit.

9. Prior Art to the Patents in Suit in Your possession during prosecution of the Patents in Suit, including Prior Art concerning or relating to IOL Delivery Systems, that is not listed on the faces of the Patents in Suit.

10. IOL Delivery Systems in Your possession during prosecution of the Patents in Suit including any prototypes from HOYA and/or Alcon IOL Delivery Systems.

11. Your knowledge of Alcon IOL Delivery Systems during prosecution of the Patents in Suit.

12. Your knowledge of ESCRS 2008 during prosecution of the Patents in Suit.

13. Your knowledge of the McCulley 2008 Presentation during prosecution of the Patents in Suit.

14. Your knowledge of the McCulley 2008 Video during prosecution of the Patents in Suit.

15. Amendments to the specifications of the Patents in Suit during prosecution.

16. Drawings in the Patents in Suit, including schematics, prototypes, presentations, and electronic drawing files.

17. All Documents and Things prepared for and/or reviewed by You in connection with the deposition on these Topics.

18. The subject matter of all Documents and Things identified in response to Defendants' requests for production.

19. The authenticity of the Documents and Things produced in response to Defendants' requests for production.

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HOYA CORPORATION, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 3:20-cv-03629-M
	§	
ALCON INC, et al.,	§	
	§	
Defendants.	§	
	§	
	§	

PROTECTIVE ORDER

Plaintiffs Hoya Corporation, et al. ("Plaintiffs") and Defendants Alcon Inc., et al. ("Defendants"), through their counsel, in order to allow the parties to respond to discovery expeditiously while limiting discovery costs, hereby stipulate to the entry by the Court of the following protective order ("Protective Order"), which binds all parties and counsel of record.

PROCEEDINGS AND INFORMATION GOVERNED

1. This Protective Order is made under Fed. R. Civ. P. 26(c). It governs any document, information, or other thing furnished by any party to any other party, and it includes any nonparty who receives a subpoena in connection with this action. The information protected includes, but is not limited to: answers to interrogatories; answers to requests for admission; responses to requests for production of documents; deposition transcripts and videotapes; deposition exhibits; and other documents or things produced, given, or filed in this action that are designated by a party as "Confidential Information" or "Confidential Attorney Eyes Only Information" in accordance with the terms of this Protective Order, as well as to any copies,

excerpts, abstracts, analyses, summaries, descriptions, or other forms of recorded information containing, reflecting, or disclosing such information.

DESIGNATION AND MAINTENANCE OF INFORMATION

2. For purposes of this Protective Order, (a) the "Confidential Information" designation means that the document is comprised of trade secrets or commercial information that is not publicly known and is of technical or commercial advantage to its possessor, in accordance with Fed. R. Civ. P. 26(c)(1)(G), or other information required by law or agreement to be kept confidential, and (b) the "Confidential Attorney Eyes Only" designation means that the document is comprised of information that the producing party deems especially sensitive, which may include, but is not limited to, confidential research and development, financial, technical, marketing, or any other sensitive trade-secret information, or information capable of being utilized for the preparation or prosecution of a patent application dealing with such subject matter. Confidential Information and Confidential Attorney Eyes Only Information does not include, and this Protective Order does not apply to, information that is already in the knowledge or possession of the party to whom disclosure is made unless that party is already bound by agreement not to disclose such information, or information that has been disclosed to the public or third persons in a manner making such information no longer confidential.

3. Documents and things produced during the course of this litigation within the scope of paragraph 2(a) above, may be designated by the producing party as containing Confidential Information by placing on each page and each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER

Documents and things produced during the course of this litigation within the scope of paragraph 2(b) above may be designated by the producing party as containing Confidential Attorney Eyes Only Information by placing on each page and each thing a legend substantially as follows:

CONFIDENTIAL ATTORNEY EYES ONLY INFORMATION
SUBJECT TO PROTECTIVE ORDER

A party may designate information disclosed at a deposition as Confidential Information or Confidential Attorney Eyes Only Information by requesting the reporter to so designate the transcript or any portion of the transcript at the time of the deposition. If no such designation is made at the time of the deposition, any party will have fourteen (14) calendar days after the date of the deposition to designate, in writing to the other parties and to the court reporter, whether any portion of the transcript is to be designated as Confidential Information or Confidential Attorney Eyes Only Information. If no such designation is made at the deposition or within this fourteen (14) calendar day period (during which period, the transcript must be treated as Confidential Attorney Eyes Only Information, unless the disclosing party consents to less confidential treatment of the information), the entire deposition will be considered devoid of Confidential Information or Confidential Attorney Eyes Only Information. Each party and the court reporter must attach a copy of any final and timely written designation notice to the transcript and each copy of the transcript in its possession, custody or control, and the portions designated in such notice must thereafter be treated in accordance with this Protective Order. It is the responsibility of counsel for each party to maintain materials containing Confidential Information or Confidential Attorney Eyes Only Information in a secure manner and appropriately identified so as to allow access to such information only to such persons and under such terms as is permitted under this Protective Order.

INADVERTENT FAILURE TO DESIGNATE

4. The inadvertent failure to designate or withhold any information as confidential or privileged will not be deemed to waive a later claim as to its confidential or privileged nature, or to stop the producing party from designating such information as confidential at a later date in writing and with particularity. The information must be treated by the receiving party as confidential from the time the receiving party is notified in writing of the change in the designation.

CHALLENGE TO DESIGNATIONS

5. A receiving party may challenge a producing party's designation at any time. Any receiving party disagreeing with a designation may request in writing that the producing party change the designation. The producing party will then have ten (10) business days after receipt of a challenge notice to advise the receiving party whether or not it will change the designation. If the parties are unable to reach agreement after the expiration of this ten (10) business day time frame, and after the conference required under Local Rule 7.1(a), the receiving party may at any time thereafter seek an order to alter the confidential status of the designated information. Until any dispute under this paragraph is ruled upon by the presiding judge, the designation will remain in full force and effect, and the information will continue to be accorded the confidential treatment required by this Protective Order.

DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION

6. Information designated as Confidential Information or Confidential Attorney Eyes Only Information may only be used for purposes of preparation, trial, and appeal of this action. Confidential Information or Confidential Attorney Eyes Only Information may not be used under

any circumstances for prosecuting any patent application, for patent licensing, or for any other purpose.

7. Subject to paragraph 9 below, Confidential Information may be disclosed by the receiving party only to the following individuals, provided that such individuals are informed of the terms of this Protective Order (as used in this section, per "party" shall be interpreted as per "side"):

(a) two (2) employees of the receiving party who are required in good faith to provide assistance in the conduct of this litigation, including any settlement discussions, and who are identified as such in writing to counsel for the designating party in advance of the disclosure;

(b) two (2) in-house counsel for the receiving party. For Defendants, those individuals are Christopher Cook and Jeffrey Prokop. For Plaintiffs, those individuals are Alvin Ng and Alan Dow;

(c) outside counsel for the receiving party;

(d) supporting personnel employed by (b) and (c), such as paralegals, legal secretaries, data-entry clerks, legal clerks, and private photocopying and litigation support services;

(e) experts or consultants; and

(f) any persons requested by counsel to furnish services such as document coding, image scanning, mock trial, jury profiling, translation services, court-reporting services, demonstrativeexhibit preparation, or the creation of any computer database from documents.

8. Subject to paragraph 9 below, Confidential Attorney Eyes Only Information may be disclosed by the receiving party only to the following individuals, provided that such individuals are informed of the terms of this Protective Order (as used in this section, per "party" shall be interpreted as per "side"):

(a) outside counsel for the receiving party;

(b) supporting personnel employed by outside counsel, such as paralegals, legal secretaries, data-entry clerks, legal clerks, private photocopying and litigation support services;

(c) one (1) in-house counsel for the receiving party. For Defendants, that individual may be Christopher Cook or Jeffrey Prokop. For Plaintiffs, that individual may be Alvin Ng or Alan Dow.

(d) experts or consultants;

(e) those individuals designated in paragraph 11(c); and

(f) any persons requested by counsel to furnish services such as document coding, image scanning, mock trial, jury profiling, translation services, court-reporting services, demonstrative-exhibit preparation, or the creation of any computer database from documents.

9. Further, prior to disclosing Confidential Information or Confidential Attorney Eyes Only Information to a receiving party's proposed expert, consultant, or employees, the receiving party must provide to the producing party a signed Confidentiality Agreement in the form attached as Exhibit A, the resume or curriculum vitae of the proposed expert or consultant, the expert or consultant's business affiliation, and any current and past consulting relationships in the industry. The producing party will thereafter have ten (10) business days from receipt of the Confidentiality Agreement to object to any proposed individual. The objection must be made for good cause and in writing, stating with particularity the reasons for the objection. Failure to object within ten (10) business days constitutes approval. If the parties are unable to resolve any objection, the receiving party may file a motion to resolve the matter. There will be no disclosure to any proposed individual during the ten (10) business day objection period, unless that period is

waived by the producing party, or if any objection is made, until the parties have resolved the objection, or the presiding judge has ruled upon any resultant motion.

10. Counsel is responsible for the adherence by third-party vendors to the terms and conditions of this Protective Order. Counsel may fulfill this obligation by obtaining a signed Confidentiality Agreement in the form attached as Exhibit B.

11. Confidential Information or Confidential Attorney Eyes Only Information may be disclosed to a person who is not already allowed access to such information under this Protective Order if:

(a) the information was previously received or authored by the person or was authored or received by a director, officer, employee, or agent of the company for which the person is testifying as a designee under Fed. R. Civ. P. 30(b)(6);

(b) the person is the designating party, or is a director, officer, employee, consultant, or agent of the designating party; or

(c) counsel for the party designating the material agrees that the material may be disclosed to the person. In the event of disclosure under this paragraph, only the reporter, the person, his or her counsel, the presiding judge, and persons to whom disclosure may otherwise be made under and who are bound by this Protective Order, may be present during the disclosure or discussion of the Confidential Information or Confidential Attorney Eyes Only Information. Disclosure of material pursuant to this paragraph does not constitute a waiver of the confidential status of the material so disclosed.

PROSECUTION BAR

12. Any individual who receives Confidential Attorney Eyes Only Information shall not be involved in the prosecution of patents or patent applications relating to intraocular lens

insertion devices, including without limitation the patents asserted in this Action, before any foreign or domestic agency, including the United States Patent and Trademark Office. For purposes of this paragraph, "prosecution" shall be defined as directly or indirectly drafting or amending patent claims, or advising others who are drafting or amending patent claims regarding the scope of said patent claims. However, the term "prosecution" as used in this paragraph excludes representing a party in connection with post-grant challenges to the validity of a patent before a domestic of foreign agency (including but not limited to inter partes reexaminations, inter partes review, post grant review, oppositions to European patents, and patent nullity litigation), except that all persons who receive and/or review Confidential Attorney Eyes Only Information are prohibited from drafting, supervising, or providing advice regarding drafting new or amended claims in any such proceedings. This Prosecution Bar shall end two (2) years after termination of this Action, including appeals.

NONPARTY INFORMATION

13. The existence of this Protective Order must be disclosed to any person producing documents, tangible things, or testimony in this action who may reasonably be expected to desire confidential treatment for such documents, tangible things, or testimony. Any such person may designate documents, tangible things, or testimony confidential pursuant to this Protective Order.

FILING DOCUMENTS WITH THE COURT

14. If any party wishes to submit Confidential Information or Confidential Attorney Eyes Only Information to the Court, the submission must be filed using the Sealed and/or Ex Parte Motion event. The word "Sealed" must appear in the title or caption of any document intended for filing under seal (and any proposed order you believe should be filed under seal if entered by the judge).

The parties must not unreasonably file under seal pleadings, motions, or other papers that do not qualify for protection from disclosure under this Order. Rather, the parties must attempt to file unsealed as much of a pleading, motion, or other paper as they reasonably can without undermining the protections conferred by this Order.

15. Producing or receiving Confidential Information or Confidential Attorney Eyes Only Information, or otherwise complying with the terms of this Protective Order, will not (a) operate as an admission by any party that any particular Confidential Information or Confidential Attorney Eyes Only Information contains or reflects trade secrets or any other type of confidential or proprietary information; (b) prejudice the rights of a party to object to the production of information or material that the party does not consider to be within the scope of discovery; (c) prejudice the rights of a party to seek a determination by the presiding judge that particular materials be produced; (d) prejudice the rights of a party to apply to the presiding judge for further protective orders; or (e) prevent the parties from agreeing in writing to alter or waive the provisions or protections provided for in this Protective Order with respect to any particular information or material.

CONCLUSION OF LITIGATION

16. Within sixty (60) calendar days after final judgment in this action, including the exhaustion of all appeals, or within sixty (60) calendar days after dismissal pursuant to a settlement agreement, each party or other person subject to the terms of this Protective Order, **but not the Court or any court staff,** is under an obligation to destroy or return to the producing party all materials and documents containing Confidential Information or Confidential Attorney Eyes Only Information, and to certify to the producing party that this destruction or

return has been done. However, outside counsel for any party is entitled to retain all court papers, trial transcripts, exhibits, and attorney work provided that any such materials are maintained and protected in accordance with the terms of this Protective Order.

OTHER PROCEEDINGS

17. By entering this Protective Order and limiting the disclosure of information in this case, the presiding judge does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this Protective Order who may be subject to a motion to disclose another party's information designated Confidential Information or Confidential Attorney Eyes Only Information pursuant to this Protective Order must promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed. Remedies.

18. It is Ordered that this Protective Order will be enforced by the sanctions set forth in Fed. R. Civ. P. 37(b) and any other sanctions as may be available to the presiding judge, including the power to hold parties or other violators of this Protective Order in contempt. All other remedies available to any person injured by a violation of this Protective Order are fully reserved.

19. Any party may petition the presiding judge for good cause shown if the party desires relief from a term or condition of this Protective Order.

SO ORDERED.

November 15, 2021.

BARBARA M. G. LYNN
CHIEF JUDGE

<u>THE STRIKEOUTS AND BOLD, UNDERLINED LANGUAGE WAS ADDED TO THIS ORDER BY THE COURT AFTER IT WAS SIGNED BY COUNSEL FOR THE PARTIES.</u>**

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HOYA CORPORATION and HOYA SURGICAL OPTICS, INC. Plaintiffs, v. ALCON INC., ALCON LABORATORIES, INC., and ALCON RESEARCH, LLC, Defendants.	**Civil Action No. 3:20-cv-03629** JURY TRIAL DEMANDED
ALCON LABORATORIES, INC. and ALCON RESEARCH, LLC, Counterclaim Plaintiffs, v. HOYA CORPORATION and HOYA SURGICAL OPTICS, INC. Counterclaim Defendants.	

CONFIDENTIALITY AGREEMENT FOR THIRD-PARTY VENDORS

I hereby affirm that:

Information, including documents and things, designated as "Confidential Information," or "Confidential Attorney Eyes Only Information," as defined in the Protective Order entered in the above-captioned action ("Protective Order"), is being provided to me pursuant to the terms and restrictions of the Protective Order.

I have been given a copy of and have read the Protective Order.

I am familiar with the terms of the Protective Order and I agree to comply with and to be bound by its terms.

I submit to the jurisdiction of this Court for enforcement of the Protective Order.

I agree not to use any Confidential Information or Confidential Attorney Eyes Only Information disclosed to me pursuant to the Protective Order except for purposes of the above-captioned litigation and not to disclose any of this information to persons other than those specifically authorized by the Protective Order, without the express written consent of the party who designated the information as confidential or by order of the presiding judge.

DATED: _____

_____
SIGNATURE

_____
PRINTED NAME