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IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

OAKLEY, INC., a Washington
 corporation,
 Plaintiff,
 v.
 TABOB ENTERPRISES GROUP INC.
 d/b/a SpyEmporium.com, a Texas
 corporation,
 Defendant.

Civil Action No. **'15CV0680 GPC RBB**
**COMPLAINT FOR
 PATENT INFRINGEMENT**
DEMAND FOR JURY TRIAL

1 Plaintiff Oakley, Inc. (“Oakley”) hereby complains of Tabob Enterprises
2 Group Inc., d/b/a SpyEmporium.com (“Defendant”), and alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has subject matter jurisdiction over this action pursuant
5 to 28 U.S.C. §§ 1331 and 1338, as it arises under the laws of the United States.

6 2. This Court has personal jurisdiction over Defendant because
7 Defendant has a continuous, systematic, and substantial presence within this
8 judicial district including by selling infringing products in this judicial district,
9 and by committing acts of patent infringement in this judicial district, including
10 but not limited to selling infringing eyewear directly to consumers and/or
11 retailers in this district and selling into the stream of commerce knowing such
12 products would be sold in California and this district, which acts form a
13 substantial part of the events or omissions giving rise to Oakley’s claim.

14 3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)
15 and 1400(b).

16 **THE PARTIES**

17 4. Oakley is a corporation organized and existing under the laws of
18 the State of Washington, having its principal place of business at One Icon,
19 Foothill Ranch, California 92610.

20 5. Oakley is informed and believes, and thereon alleges, that
21 Defendant Tabob Enterprises Group Inc. d/b/a SpyEmporium.com is a
22 corporation organized and existing under the laws of the State of Texas, having
23 its principal place of business at 1550 Westheimer Road, Houston, Texas 77006.

24 6. Oakley is informed and believes, and thereon alleges, that
25 Defendant has committed the acts alleged herein within this judicial district.

26 **GENERAL ALLEGATIONS**

27 7. Oakley has been actively engaged in the manufacture and sale of
28 high quality eyewear since at least 1985. Oakley is the manufacturer and

1 retailer of several lines of eyewear that have enjoyed substantial success and are
2 protected by various intellectual property rights owned by Oakley.

3 8. On June 20, 2006, the United States Patent and Trademark Office
4 (“U.S.P.T.O.”) duly and lawfully issued United States Design Patent No.
5 D523,461 (“D461 Patent”), titled “EYEGLASS COMPONENT.” Oakley is the
6 owner by assignment of all right, title, and interest in the D461 Patent. A true
7 and correct copy of the D461 Patent is attached hereto as Exhibit A.

8 9. On January 28, 2003, the U.S.P.T.O. duly and lawfully issued
9 United States Design Patent No. D469,458 (“D458 Patent”), titled “EYEGLASS
10 FRONT.” Oakley is the owner by assignment of all right, title, and interest in
11 the D458 Patent. A true and correct copy of the D458 Patent is attached hereto
12 as Exhibit B.

13 10. Oakley has provided the public with constructive notice of its
14 patent rights pursuant to 35 U.S.C. §287.

15 11. Defendant manufactures, uses, sells, offers for sale, and/or imports
16 into the United States eyewear that infringes Oakley’s intellectual property
17 rights, including the D461 Patent and the D458 Patent (“Asserted Patents”).

18 12. Defendant’s acts complained of herein have caused Oakley to
19 suffer irreparable injury to its business. Oakley will suffer substantial loss of
20 goodwill and reputation unless and until Defendant is preliminarily and
21 permanently enjoined from its wrongful actions complained of herein.

22 **CLAIM FOR RELIEF**

23 (Patent Infringement)
24 (35 U.S.C. § 271)

25 13. Oakley repeats and re-alleges the allegations of paragraphs 1–12 of
26 this Complaint as if set forth fully herein.

27 14. This is a claim for patent infringement under 35 U.S.C. § 271.

28 ///

1 15. Defendant, through its agents, employees, and servants, has, and
2 continues to, knowingly, intentionally, and willfully directly infringe, engage in
3 acts of contributory infringement, and/or induce the infringement of the D461
4 Patent by directly and/or indirectly making, using, selling, offering for sale,
5 and/or importing eyewear having a design that is covered by the claim of the
6 D461 Patent, including for example, Defendant's *Oakley Style HD DVR Spy*
7 *Sunglasses*.

8 16. Defendant's acts of infringement of the D461 Patent were
9 undertaken without permission or license from Oakley. Defendant had actual
10 and/or constructive knowledge of the D461 Patent, and its actions constitute
11 willful and intentional infringement of the D461 Patent. Defendant infringed
12 the D461 Patent with reckless disregard of Oakley's patent rights. Defendant
13 knew, or it was so obvious that Defendant should have known, that its actions
14 constituted infringement of the D461 Patent. Defendant's acts of infringement
15 of the D461 Patent were not consistent with the standards of commerce for its
16 industry.

17 17. Defendant, through its agents, employees, and servants, has, and
18 continues to, knowingly, intentionally, and willfully directly infringe, engage in
19 acts of contributory infringement, and/or induce the infringement of the D458
20 Patent by directly and/or indirectly making, using, selling, offering for sale,
21 and/or importing eyewear having a design that is covered by the claim of the
22 D458 Patent, including for example, Defendant's *Neo Style Black Spy*
23 *Sunglasses*.

24 18. Defendant's acts of infringement of the D458 Patent were
25 undertaken without permission or license from Oakley. Defendant had actual
26 and/or constructive knowledge of the D458 Patent, and its actions constitute
27 willful and intentional infringement of the D458 Patent. Defendant infringed
28 the D458 Patent with reckless disregard of Oakley's patent rights. Defendant

1 knew, or it was so obvious that Defendant should have known, that its actions
2 constituted infringement of the D458 Patent. Defendant's acts of infringement
3 of the D458 Patent were not consistent with the standards of commerce for its
4 industry.

5 19. As a direct and proximate result of Defendant's patent
6 infringement, Defendant has derived and received gains, profits, and advantages
7 in an amount not presently known to Oakley.

8 20. Pursuant to 35 U.S.C. § 284, Oakley is entitled to damages for
9 Defendant's infringing acts and treble damages together with interests and costs
10 as fixed by this Court.

11 21. Pursuant to 35 U.S.C. § 289, Oakley is entitled to Defendant's total
12 profits from the sale of eyewear that infringe Oakley's patent rights.

13 22. Pursuant to 35 U.S.C. § 285, Oakley is entitled to reasonable
14 attorneys' fees for the necessity of bringing this claim.

15 23. Due to the aforesaid infringing acts, Oakley has suffered great and
16 irreparable injury, for which Oakley has no adequate remedy at law.

17 24. Defendant will continue to directly and/or indirectly infringe
18 Oakley's patent rights to the great and irreparable injury of Oakley, unless
19 enjoined by this Court.

20 **WHEREFORE**, Oakley prays for judgment in its favor against
21 Defendant for the following relief:

22 A. An Order adjudging Defendant to have willfully infringed the
23 Asserted Patents under 35 U.S.C. § 271;

24 B. A preliminary and permanent injunction enjoining Defendant, its
25 respective officers, directors, agents, servants, employees, and attorneys, and
26 those persons in active concert or participation with Defendant, from directly or
27 indirectly infringing the Asserted Patents in violation of 35 U.S.C. § 271;

28 ///

1 C. That Defendant account for all gains, profits, and advantages
2 derived by Defendant's infringement of the Asserted Patents in violation of
3 35 U.S.C. § 271, and that Defendant pay to Oakley all damages suffered by
4 Oakley and/or Defendant's total profit from such infringement pursuant to 35
5 U.S.C. § 289;

6 D. An Order for a trebling of damages and/or exemplary damages
7 because of Defendant's willful conduct pursuant to 35 U.S.C. § 284;

8 E. An Order adjudging that this is an exceptional case;

9 F. An award to Oakley of the attorney fees, expenses, and costs
10 incurred by Oakley in connection with this action pursuant to 35 U.S.C. § 285;

11 G. An award of pre-judgment and post-judgment interest and costs of
12 this action against Defendant; and,

13 H. Such other and further relief as this Court may deem just and
14 proper.

15 Respectfully submitted,

16 KNOBBE, MARTENS, OLSON & BEAR, LLP

17
18 Dated: March 26, 2015

By: /s/ Ali S. Razai

19 Michael K. Friedland
20 Ali S. Razai
21 Kent N. Shum
22 Samantha Y. Hsu

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28 Attorneys for Plaintiff Oakley, Inc.

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DEMAND FOR JURY TRIAL

Plaintiff Oakley, Inc. hereby demands a trial by jury on all issues so triable.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 26, 2015 By: /s/ Ali S. Razai
Michael K. Friedland
Ali S. Razai
Kent N. Shum
Samantha Y. Hsu

Attorneys for Plaintiff Oakley, Inc.

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TABLE OF EXHIBITS

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EXHIBIT A

(12) **United States Design Patent** (10) **Patent No.:** **US D523,461 S**
Jannard et al. (45) **Date of Patent:** **** Jun. 20, 2006**

(54) **EYEGLASS COMPONENT**
 (75) Inventors: **James H. Jannard**, Spieden Island, WA (US); **Hans Karsten Moritz**, Foothill Ranch, CA (US); **Lek Thixton**, Orcas, WA (US)
 (73) Assignee: **Oakley, Inc.**, Foothill Ranch, CA (US)
 (**) Term: **14 Years**
 (21) Appl. No.: **29/227,304**
 (22) Filed: **Apr. 7, 2005**

Related U.S. Application Data

(62) Division of application No. 29/218,487, filed on Dec. 2, 1906.
 (51) **LOC (8) Cl.** **16-06**
 (52) **U.S. Cl.** **D16/309; D16/330; D16/335**
 (58) **Field of Classification Search** **D16/300-330, D16/101, 332-338; D29/109-110; D24/110.2; 351/41, 44, 51-52, 158, 92, 103-111, 130, 351/61; 2/426-432, 448, 441, 447, 434-437; D14/189, 192, 372**
 See application file for complete search history.

References Cited

U.S. PATENT DOCUMENTS

D137,753 S	4/1944	Rey	
D146,538 S	4/1947	Gagnon	
D207,919 S	* 6/1967	Lui	351/158
3,665,122 A	5/1972	Weiss	
3,741,635 A	6/1973	Wortman	
3,809,829 A	5/1974	Vignini et al.	
3,883,701 A	5/1975	Delorenzo	
4,773,095 A	9/1988	Zwicker et al.	
4,856,086 A	8/1989	McCullough	
4,882,769 A	11/1989	Gallimore	
4,904,078 A	2/1990	Gorike	
5,020,150 A	5/1991	Shannon	
5,029,216 A	7/1991	Jhabvala et al.	
5,159,639 A	10/1992	Shannon et al.	
5,281,957 A	1/1994	Schoolman	

5,335,285 A	8/1994	Gluz	
5,367,345 A	11/1994	da Silva	
D371,383 S	7/1996	Goldman	
5,579,400 A	11/1996	Ballein	
5,606,743 A	2/1997	Vogt et al.	
5,608,808 A	3/1997	da Silva	
5,694,475 A	12/1997	Boyden	
5,715,323 A	2/1998	Walker	
5,717,479 A	2/1998	Rickards	
5,737,436 A	4/1998	Boyden	
5,781,272 A	* 7/1998	Bright et al.	351/123
D418,153 S	* 12/1999	Haney	D14/189
6,010,216 A	1/2000	Jesiek	
6,012,812 A	1/2000	Rickards	
D426,845 S	* 6/2000	Green et al.	D16/335
6,091,546 A	7/2000	Spitzer	
6,091,832 A	7/2000	Shurman et al.	
D435,058 S	* 12/2000	Green et al.	D16/314
D445,416 S	7/2001	Glezerman	

(Continued)

OTHER PUBLICATIONS

U.S. Appl. No. 29/218,487, filed Dec. 2, 2004, Jannard, et al. Oakley, Inc., Oakley Official Eyewear Catalog 2003/2004, Oakley, Inc., published May 2003, Foothill Ranch, California.

Primary Examiner—Raphael Barkai
 (74) *Attorney, Agent, or Firm*—Gregory K. Nelson

(57) **CLAIM**

The ornamental design for an eyeglass component, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of the eyeglass component of the present invention;
 FIG. 2 is a front elevational view thereof;
 FIG. 3 is a rear elevational view thereof;
 FIG. 4 is a left-side elevational view thereof, the right-side elevational view being a mirror image thereof;
 FIG. 5 is a top elevational view thereof; and,
 FIG. 6 is a bottom plan view thereof.

1 Claim, 4 Drawing Sheets



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U.S. PATENT DOCUMENTS					
			2002/0098877	A1	7/2002 Glezerman
			2002/0197961	A1	12/2002 Warren
6,272,359	B1	8/2001 Kivela et al.	2003/0022690	A1	1/2003 Beyda et al.
6,301,050	B1	10/2001 DeLeon	2003/0068057	A1	4/2003 Miller et al.
6,301,367	B1	10/2001 Boyden et al.	2004/0000733	A1	1/2004 Swab et al.
6,409,338	B1 *	6/2002 Jewell 351/158	2004/0132509	A1	7/2004 Glezerman
6,421,031	B1	7/2002 Ronzani et al.	2004/0239874	A1	12/2004 Swab et al.
D462,708	S *	9/2002 Miller et al. D16/309			
6,456,721	B1	9/2002 Fukuda			

* cited by examiner

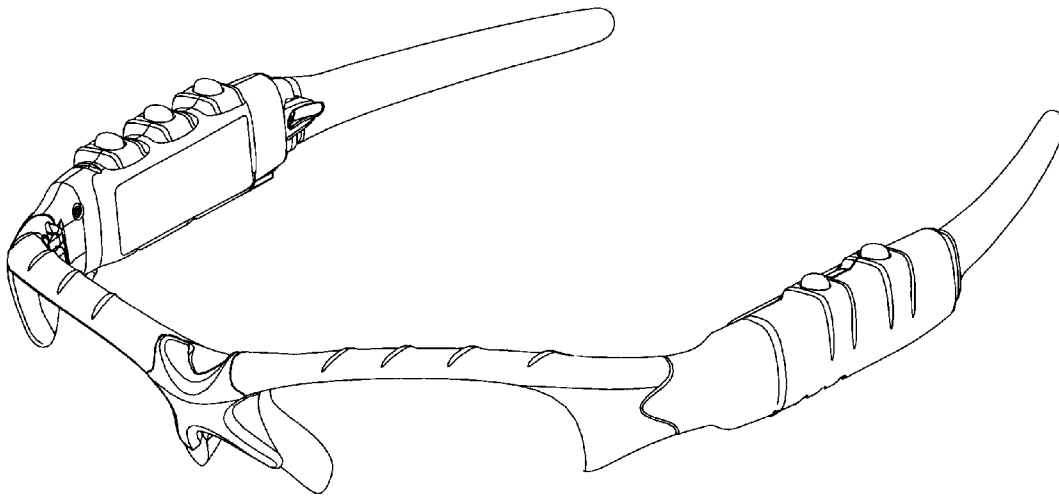


FIG. 1

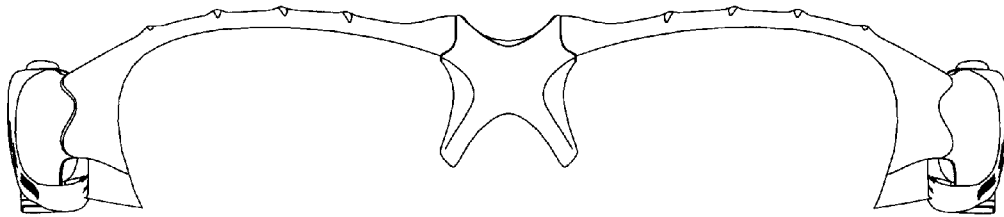


FIG. 2

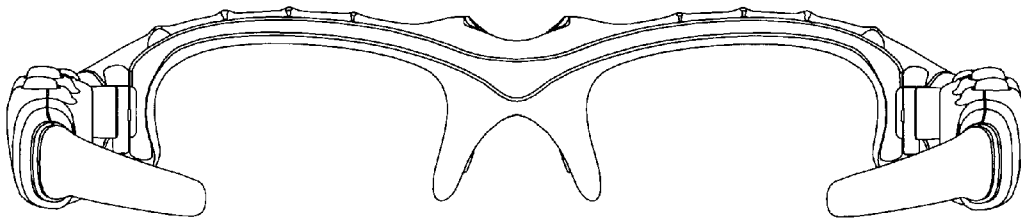


FIG. 3

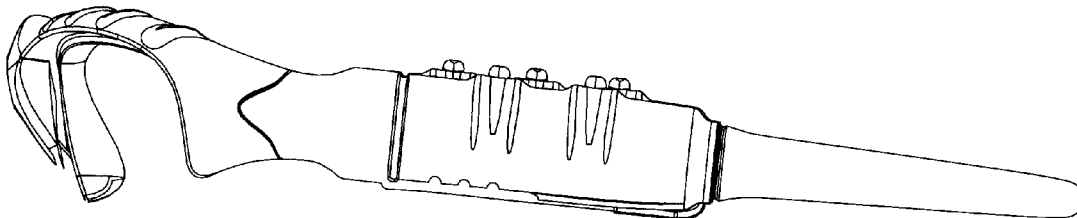


FIG. 4

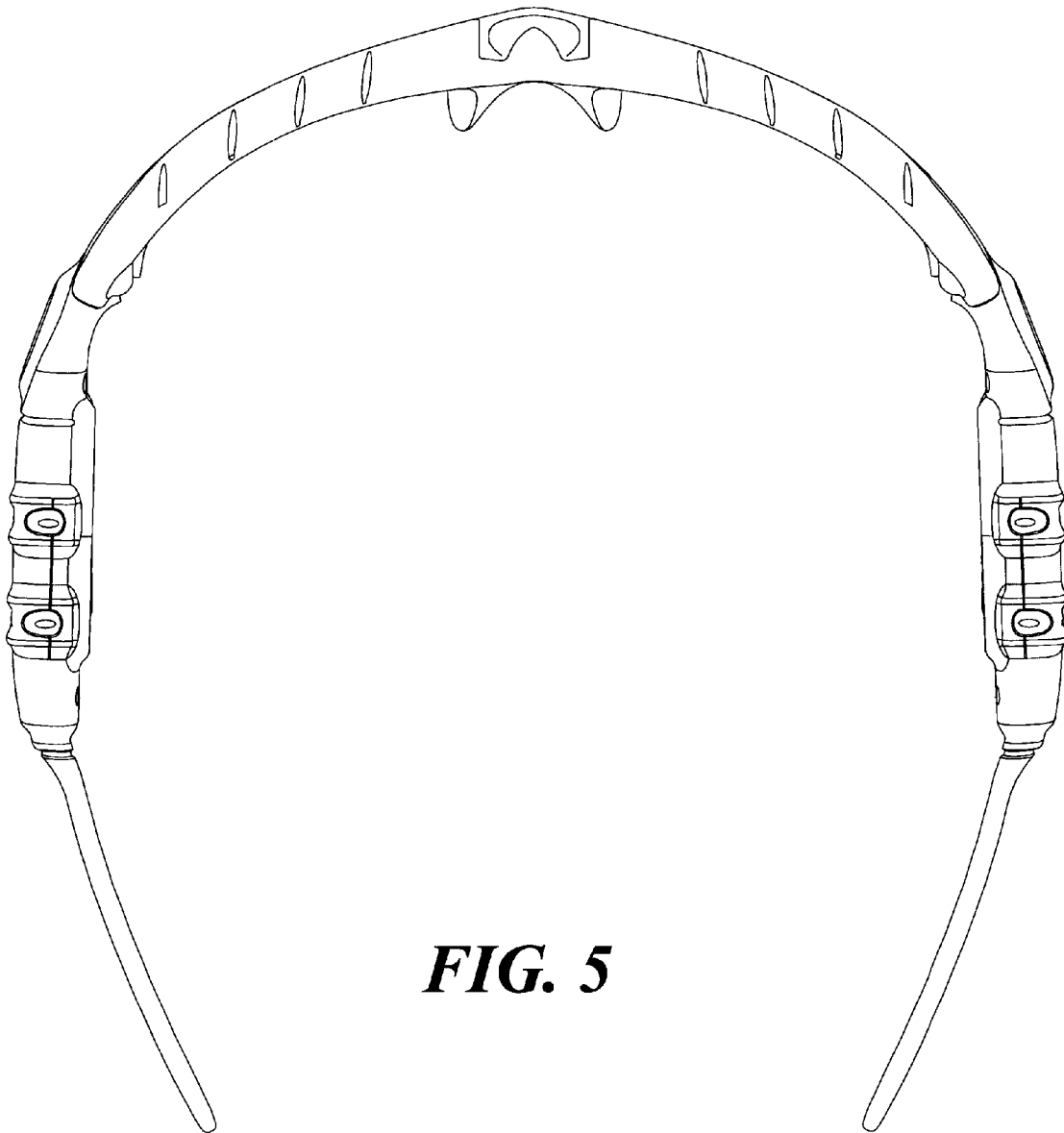


FIG. 5

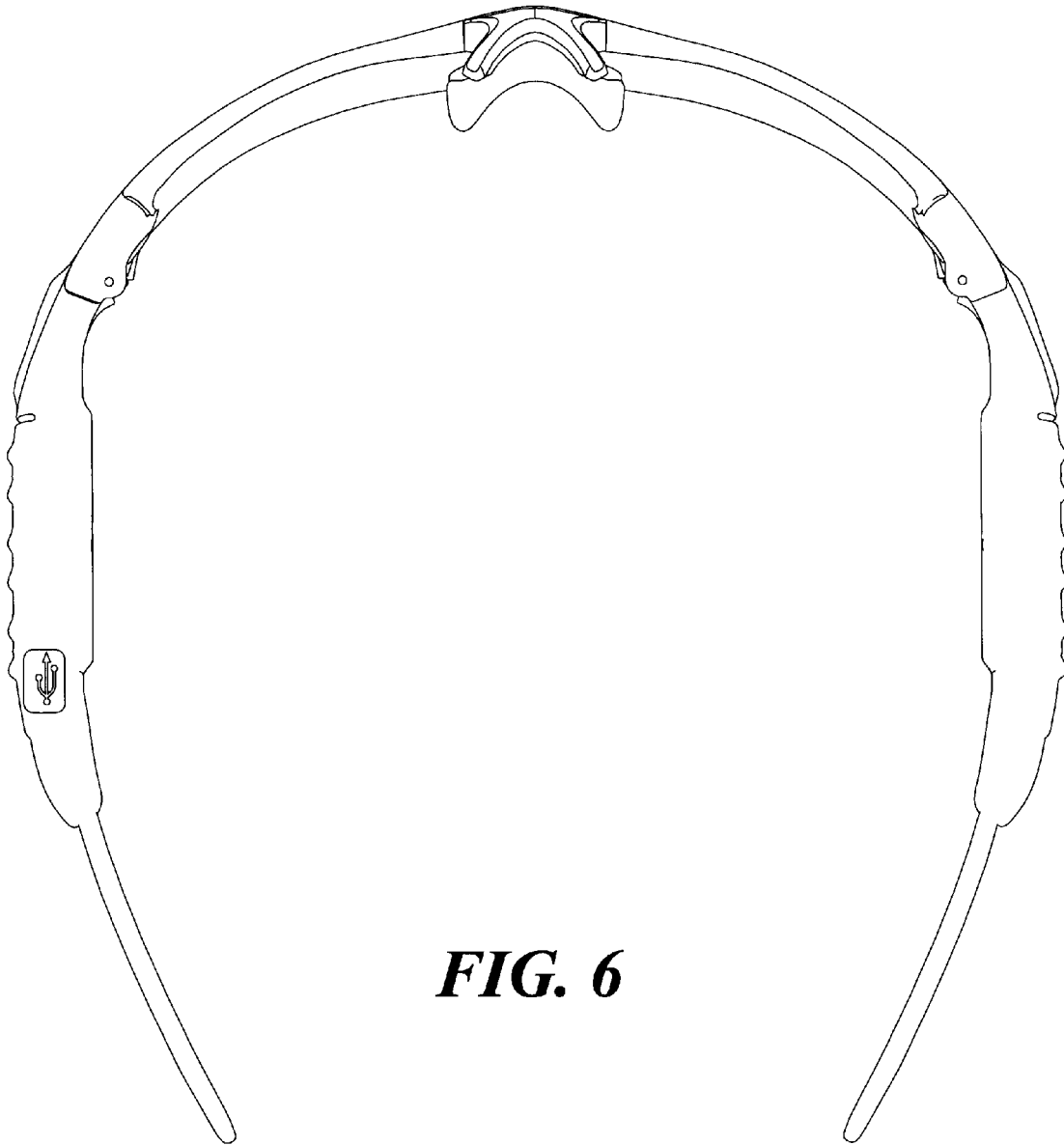


FIG. 6

EXHIBIT B



US00D469458S

(12) **United States Design Patent** (10) **Patent No.:** **US D469,458 S**
Baden et al. (45) **Date of Patent:** **** Jan. 28, 2003**

- (54) **EYEGLASS FRONT**
- (75) Inventors: **Colin Baden, Irvine, CA (US); Peter Yee, Irvine, CA (US)**
- (73) Assignee: **Oakley, Inc., Foothill Ranch, CA (US)**
- (**) Term: **14 Years**

- D366,890 S 2/1996 Arnette
- D366,891 S 2/1996 Arnette
- D369,614 S 5/1996 Fukuchi
- D371,152 S 6/1996 Simioni et al.
- D372,726 S 8/1996 Simioni
- D373,781 S 9/1996 Simioni et al.

(List continued on next page.)

OTHER PUBLICATIONS

- (21) Appl. No.: **29/162,825**
- (22) Filed: **Jun. 17, 2002**

Related U.S. Application Data

- (62) Division of application No. 29/134,388, filed on Dec. 20, 2000.
- (51) **LOC (7) Cl.** **16-06**
- (52) **U.S. Cl.** **D16/326**
- (58) **Field of Search** D16/101, 300-330;
 D29/109, 110; 351/41, 44, 51, 52, 158;
 2/447, 448

Asia Pacific Trading Company, Inc., "Asia Pacific 1999-2000", pp. 1 (models M0302SD/PM, M16SD and M1685SD), 2 (models M1824LPM, M2066SD, M2128SD), 3 (model M3991SD), 5 (model M4771SD), 6 (model M663-1PM, M7107SD), 8 Model M8162SD/PM), 10 (models M942150SD/PM, M942240SD/PM, M942242sd/pm), 21 (models M942150CP, P4988SD), 24 (model M2282SD), 25 (models M5505PM, M60680SD), 35 (models M5409MSG, M7349MSG), and 42 (models M9820IR, M9821IR, M9822IR) unknown publisher and publishing date.

(List continued on next page.)

(56) **References Cited**

U.S. PATENT DOCUMENTS

836,796 A	11/1906	Anderson
1,338,880 A	5/1920	Stevens
2,031,771 A	2/1936	Grier
D116,259 S	8/1939	Cook
D145,288 S	7/1946	DiCicco
2,482,664 A	9/1949	Gagnon
D168,903 S	2/1953	Neary
D169,724 S	6/1953	Bauer et al.
D193,028 S	6/1962	Petitto
D199,150 S	9/1964	Carmichael
D204,496 S	4/1966	McCulloch
D204,812 S	5/1966	Shindler
D209,862 S	1/1968	McCracken
D214,292 S	5/1969	Mitchell
D228,026 S	7/1973	Schindler
5,054,903 A	10/1991	Jannard et al.
D324,394 S	3/1992	Jannard
D342,534 S	12/1993	Jannard et al.
D354,501 S	1/1995	Jannard
D365,591 S	12/1995	Jannard et al.

Primary Examiner—Raphael Barkai
 (74) *Attorney, Agent, or Firm*—Gregory Nelson

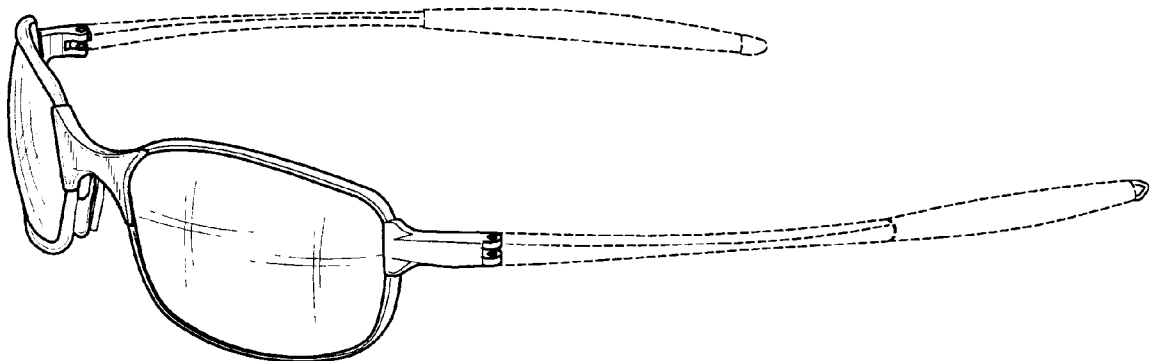
(57) **CLAIM**

The ornamental design for an eyeglass front, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of the eyeglass of the present invention;
 FIG. 2 is a front elevational view;
 FIG. 3 is a rear elevational view thereof;
 FIG. 4 is a left-side elevational view thereof, the right-side elevational view being a mirror image thereof;
 FIG. 5 is a top plan view thereof; and,
 FIG. 6 is a bottom plan view thereof.
 Phantom lining, where utilized, is for illustrative purposes only and is not intended to limit the claimed design to the features shown in phantom.

1 Claim, 3 Drawing Sheets



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U.S. PATENT DOCUMENTS

D376,381 S	12/1996	Jannard et al.	
D378,375 S	3/1997	Tsai	
D383,149 S	9/1997	Simioni	
D388,816 S	1/1998	Jannard et al.	
D391,596 S	3/1998	Simioni	
D392,662 S	3/1998	Jannard et al.	
D399,240 S	10/1998	Jannard et al.	
D399,865 S	10/1998	Jannard et al.	
D406,858 S	3/1999	Arnette	
D410,667 S	6/1999	Arnette	
D414,796 S	10/1999	Arnette	
D436,982 S	1/2000	Jannard et al.	
D420,036 S	2/2000	Yee et al.	
D423,035 S	4/2000	Yee et al.	
D433,437 S	* 11/2000	Yee	D16/326

OTHER PUBLICATIONS

Asia Pacific Trading Company, Inc., "Asia Pacific 2000 Supplement", pp. 2 (models M5915SD, M5932SD, M5936SD, M5956SD), 3 (models M631SD, M6405SD/PM,

M7920SD), 4 (models M88155SD/PM, M88205SD/PM, M95005PM, M95007SD/PM), 9 (models M98001MSG, M971MSG), unknown publisher and publishing date. Sunglass Hut International, page stamped G00298, Model B, unknown publisher and publishing date. Alpina, "Serious, Perfect Eye Protection", Tatoo model—top right corner of third page, unknown publisher and publishing date. Frames, "Winter 1997", p. 1151, bottom right corner (Revolt model), unknown publisher and publishing date. Frames, "Summer 1996", p. 1225, second to bottom in right column (model GU 5003 Sun), unknown publisher and publishing date. Unknown source, p. 90 (model Z5469), 93 (model Z554), 97 (models Z586, Z590, Z585, Z591), 100 (model Z604, Z605, Z606, Z607, Z608) unnumbered page (models B632, B630), 133 (models Z847, Z848), 136 (Model Z873), and 328 (both models).

U.S. patent application Ser. No. 29/134388, Baden et al., filed Dec. 20, 2000.

* cited by examiner

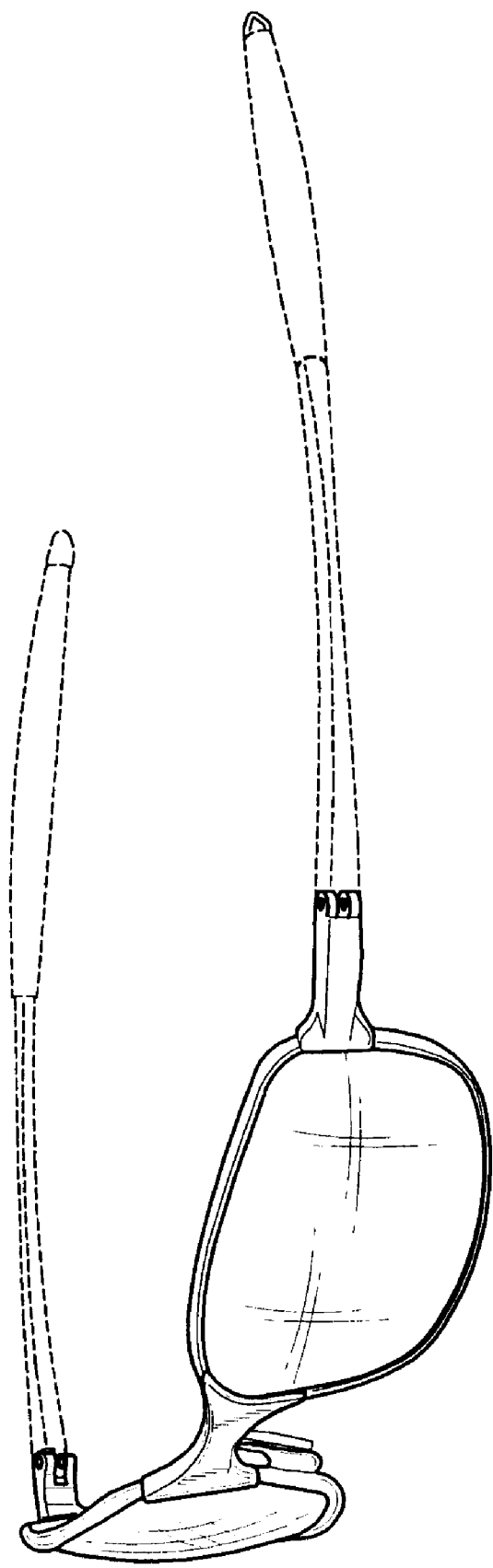


FIG. 1

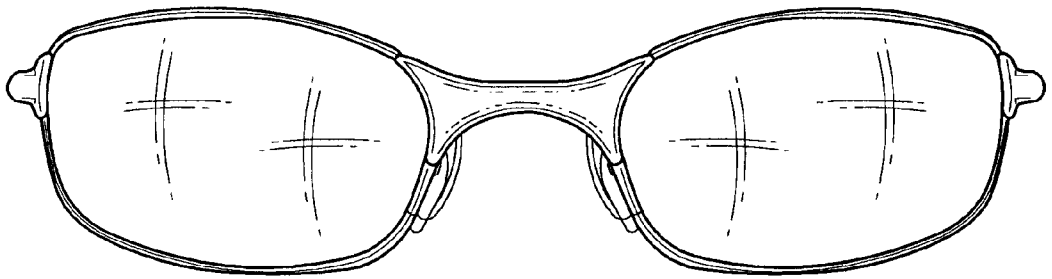


FIG. 2

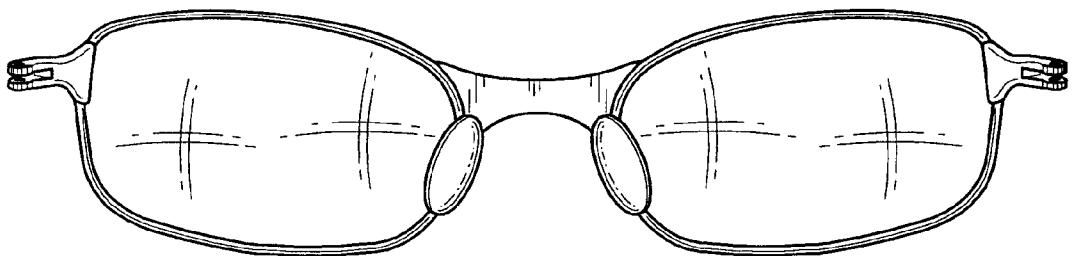


FIG. 3

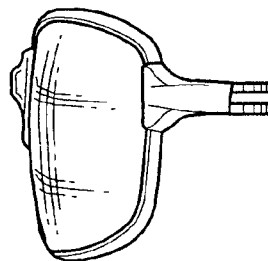


FIG. 4

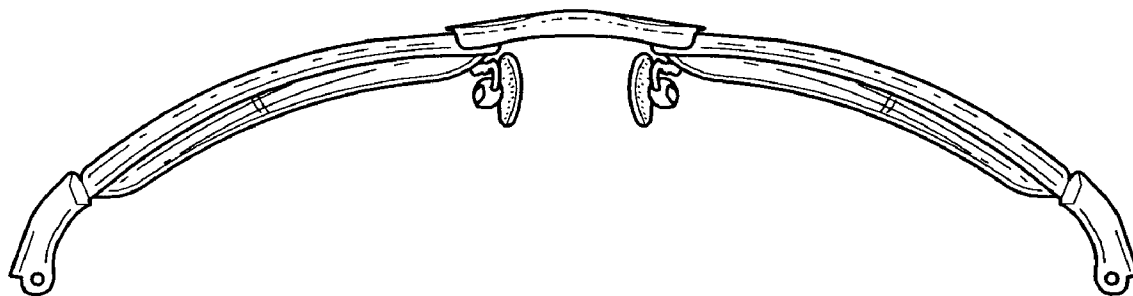


FIG. 5

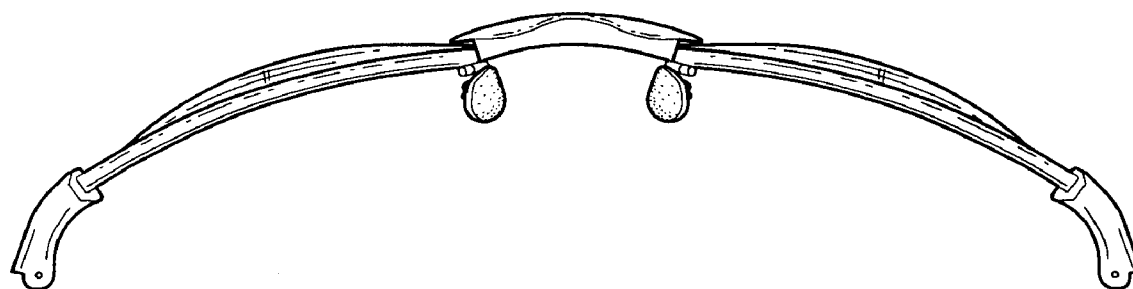


FIG. 6