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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 SOUTHERN DIVISION

15 **OAKLEY, INC.**, a Washington
16 corporation,

17 Plaintiff,

18 vs.

19 **ASIA PACIFIC TRADING CO.,**
20 **INC.**, a California corporation,

21 Defendant.

22 Case No.: SACV08-00535 AHS (ANx)

23 COMPLAINT FOR VIOLATION OF
24 FINAL CONSENT JUDGMENT,
25 BREACH OF SETTLEMENT
26 AGREEMENT, PATENT
27 INFRINGEMENT, AND
28 TRADEMARK INFRINGEMENT.

DEMAND FOR JURY TRIAL

29 Plaintiff Oakley, Inc. (hereinafter referred to as "Oakley") hereby complains
30 of Defendant Asia Pacific Trading Co., Inc. (hereinafter referred to as "Asia
31 Pacific"), referred to as "Defendant" and alleges as follows:

32 **JURISDICTION AND VENUE**

33 1. Jurisdiction over this action is founded upon 15 U.S.C. §§ 1121, and
34 28 U.S.C. §§ 1331 and 1338. Venue is proper under 28 U.S.C. §§ 1391(b) and (c)
35 and 28 U.S.C. §1400(b), this claim having arisen and Defendant doing business in

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CENTRAL DISTRICT OF CALIFORNIA

1 this district. Defendant sold infringing products in this district and directed sales
2 and marketing efforts toward this district.

3 **THE PARTIES**

4 2. Plaintiff Oakley is a corporation organized and existing under the laws
5 of the State of Washington, having its principal place of business at One Icon,
6 Foothill Ranch, California 92610 and doing business within this judicial district.

7 3. Oakley is informed and believes, and thereupon alleges that
8 Defendant, Asia Pacific is a corporation organized and existing under the laws of
9 the State of California, having its principal place of business at 5132 S. Alameda
10 St., Vernon, California 90014 and doing business within this judicial district.
11 Oakley is informed and believes, and thereupon alleges, that Defendant also does
12 business through its website www.APTCINC.com.

13 **FACTUAL BACKGROUND**

14 4. On or about May 18, 2007, the U.S. District Court for the Central District
15 of California, by the Honorable Alicemarie H. Stotler, entered a Final Consent
16 Judgment in a lawsuit between the parties, titled Oakley, Inc. v. Asia Pacific
17 Trading Co., Inc. (CV-06-2321 AHS (ANx)) (hereinafter referred to as the “2007
18 Final Consent Judgment”). As part of the Final Consent Judgment, Defendant
19 Asia Pacific agreed in paragraph 6, that Oakley’s U.S. Trademark Registration
20 Nos. 1,984,501 and 2,146,295 are valid and enforceable. In paragraph 9, Asia
21 Pacific was permanently enjoined and restrained from making, importing, using,
22 or selling any sunglasses that infringe U.S. Trademark Registration Nos.
23 1,984,501 and 2,146,295. Finally, by way of paragraph 12, the court retained
24 jurisdiction for the purpose of ensuring compliance with the terms of the Final
25 Consent Judgment. A true and correct copy of the 2007 Final Consent Judgment
26 is attached hereto and incorporated by reference as Exhibit 1.

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1 5. In conjunction with filing the 2007 Final Consent Judgment, Oakley and
2 Defendant Asia Pacific entered into a Settlement Agreement signed by their
3 respective officers on or about May 10, 2007 and May 7, 2007 (hereinafter
4 referred to as the "2007 Settlement Agreement"). In section 4 of the 2007
5 Settlement Agreement, Asia Pacific agreed that Oakley's U.S. Trademark
6 Registration Nos. 1,984,501 and 2,146,295 are valid and enforceable and that Asia
7 Pacific would not contest the validity or enforceability of the trademarks. In
8 Section 6, Asia Pacific agreed it would not make, use, import, or sell any
9 sunglasses that infringe Oakley's U.S. Trademark Registration Nos. 1,984,501 and
10 2,146,295. Further, Section 10.8 provides that in "any subsequent action to
11 enforce the provisions of this Agreement, the prevailing party shall be entitled to
12 its reasonable attorneys' fees, in addition to costs and other relief of the court." A
13 true and correct copy of the 2007 Settlement Agreement is attached hereto and
14 incorporated by reference as Exhibit 2.

15 6. Oakley is the owner of U.S. Registered Trademark No. 1,984,501, duly
16 registered on July 2, 1996, claiming the stylized ellipsoid "o" logo for use on
17 goods in Class 9. A true and correct copy of this trademark registration is
18 attached hereto and incorporated by reference as Exhibit 3.

19 7. Oakley is the owner of U.S. Registered Trademark No. 2,146,295, duly
20 registered on March 24, 1998, claiming the stylized ellipsoid "o" logo on an ear-
21 stem for use on goods in Class 9. A true and correct copy of this trademark
22 registration is attached hereto and incorporated by reference as Exhibit 4.

23 8. Oakley's trademark registrations referred to above are in full force and
24 effect. The trademarks and the good will of the business of Oakley in connection
25 with which the trademarks have been used have never been abandoned. Oakley
26 continues to preserve and maintain its rights with respect to said trademark
27 registrations.
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1 9. The trademarks above are inherently distinctive in appearance and have
2 become, through widespread public acceptance, a distinctive designation of the
3 source of origin of goods offered by Oakley and have acquired secondary meaning
4 in the marketplace and constitutes an asset of incalculable value as a symbol of
5 Oakley and its quality goods and good will.

6 10. Plaintiff is informed and believes and based thereon alleges that
7 Defendant Asia Pacific and its agents, employees, and servants have advertised
8 and sold products bearing the trademarks referred to above, which advertisements
9 and products sold are confusingly similar to that of the Oakley's trademarks, and
10 are, therefore, an infringement of Oakley's above described trademarks. In
11 particular Oakley is informed and believes, and thereupon alleges, that
12 Defendant's style numbers PC930PM/RV and PC99361FM/MT, bear the identical
13 or substantially similar marks and are therefore "counterfeit" under the trademark
14 laws of the United States.

15 11. Defendant was aware of Oakley's proprietary rights in these
16 trademarks because of the previous litigation between Oakley and Asia Pacific in
17 2007 regarding the same trademarks, referenced in both the 2007 Final Consent
18 Judgment and 2007 Settlement Agreement. Further, Defendant has received
19 constructive notice of Oakley's trademarks as Oakley caused these trademarks to
20 be placed plainly on the product and/or packaging. Despite actual and constructive
21 knowledge, Defendant has infringed Oakley's trademark rights again, in violation
22 of the 2007 Final Consent Judgment and 2007 Settlement Agreement. Oakley
23 believes such infringement constitutes contempt of this Court's previous order.
24 As such, Defendant's repeat infringement is willful and wanton.

25 12. Since 1993, Oakley has expended large sums of money in the
26 promotion of all of its product lines utilizing the ellipsoid "o" logo. As a result of
27 these promotional efforts, Oakley products have become and are now widely
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1 known by the ellipsoid "o" mark and are recognized in this District and elsewhere
2 as emanating from and authorized by Oakley.

3 13. Oakley's products and their connection with the ellipsoid "o" have
4 become, through widespread public acceptance, a distinctive designation of the
5 source of origin of goods offered by Oakley and an asset of incalculable value as a
6 symbol of Oakley and its quality goods and good will.

7 14. Oakley is informed and believes and thereupon alleges that the
8 Defendant's counterfeit sunglasses incorporating Oakley's ellipsoid "o" mark are
9 designed, manufactured, packaged, advertised, displayed and sold expressly to
10 deceive customers desirous of purchasing products authorized by Oakley or to
11 profit from the demand created by Oakley for the ornamental and inherently
12 distinctive features of the Oakley products.

13 15. Oakley is further informed and believes and thereupon alleges that the
14 presence of Defendants' products in the marketplace damages the value of
15 Oakley's exclusive rights. The presence of the Defendant's products in the
16 marketplace is likely to diminish the apparent exclusivity of the genuine Oakley
17 products thereby dissuading potential customers who otherwise would have
18 sought Oakley products. Upon information and belief, Oakley alleges that such
19 deception has misled and continues to mislead and confuse many of said
20 purchasers to buy the products sold by Defendants and/or has misled non-
21 purchasers to believe the products emanate from or are authorized by Oakley.

22 16. Oakley is informed and believes and thereupon alleges that the sale of
23 Defendants' products has resulted in lost sales, has reduced the business and profit
24 of Oakley, and has greatly injured the general reputation of Oakley, all to Oakley's
25 damage in an amount not yet fully determined.

26 17. The exact amount of profits realized by Defendants as a result of its
27 infringing activities arising from the allegations of trademark infringement, are
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1 presently unknown to Oakley, as are the exact amount of damages suffered by
2 Oakley as a result of these activities. These profits and damages cannot be
3 accurately ascertained without an accounting. Further, Defendants' actions are
4 irreparably injuring Oakley and will continue unless and until enjoined by this
5 Court.

6 18. For decades now, Oakley has been and continues to be actively
7 engaged in the manufacture and sale of high quality eyewear products. Oakley is
8 currently manufacturing and selling several lines of sunglasses, apparel, footwear,
9 bags, watches and accessories under the Oakley name and in association with a
10 stand alone ellipsoid "o" logo which has come to be known as a source indicator
11 of Oakley products. Oakley is the manufacturer and distributor of several lines of
12 sunglasses, including its "Grapevine", "Oil Drum", and the Fox® "Median".

13 19. Oakley is the owner by assignment of U.S. Patent No. D561,814 duly
14 and lawfully issued on February 12, 2008, describing and claiming the invention
15 entitled "EYEGLASS AND EYEGLASS FRAME" protecting the sunglass design
16 marketed by Oakley under the name "Grapevine". A true copy of U.S. Patent No.
17 D561,814 is attached hereto as Exhibit 5.

18 20. Oakley is informed and believes, and thereupon alleges, that the
19 Defendant is selling sunglasses that copy Oakley's U.S. Patent No. D561,814.
20 Oakley alleges that Defendant's style number P47035AP/SD embodies the subject
21 matter claimed in Oakley's U.S. Patent No. D561,814 without any license
22 thereunder and is thereby infringing the patent. Oakley is informed and believes,
23 and based thereon alleges, that Defendant sold or supplied its sunglass to various
24 distributors, retailers, and retail customers.

25 21. Oakley is the owner by assignment of U.S. Patent No. D557,325 duly
26 and lawfully issued on December 11, 2007, describing and claiming the invention
27 entitled "EYEGLASS FRONT" protecting the sunglass design marketed by
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1 Oakley under the name "Oil Drum". A true copy of U.S. Patent No. D557,325 is
2 attached hereto as Exhibit 6.

3 22. Oakley is the owner by assignment of U.S. Patent No. D557,326 duly
4 and lawfully issued on December 11, 2007, describing and claiming the invention
5 entitled "EYEGLOSS COMPONENTS" protecting the sunglass design marketed
6 by Oakley under the name "Oil Drum". A true copy of U.S. Patent No. D557,326
7 is attached hereto as Exhibit 7.

8 23. Oakley is informed and believes, and thereupon alleges, that the
9 Defendant is selling sunglasses that copy U.S. Patent Nos. D557,325 and
10 D557,326. Oakley alleges that Defendant's style number P863SD embodies the
11 subject matter of these patents without any license thereunder, and is thereby
12 infringing the patents. Oakley is informed and believes, and based thereon
13 alleges, that Defendant sold or supplied its sunglass to various distributors,
14 retailers, and retail customers.

15 24. Oakley is the owner by assignment of U.S. Patent No. D561,812 duly
16 and lawfully issued on February 12, 2008, describing and claiming the invention
17 entitled "EYEGLOSS AND EYEGLOSS FRONT" protecting the sunglass design
18 manufactured by Oakley for Fox®, and sold by Fox® under the name "Median".
19 A true copy of U.S. Patent No. D561,812 is attached hereto as Exhibit 8.

20 25. Oakley is informed and believes, and thereupon alleges, that the
21 Defendant is selling sunglasses that copy U.S. Patent No. D561,812. Oakley
22 alleges that Defendant's style number P48138SD embody the subject matter
23 claimed in Oakley's U.S. Patent No. D561,812 without any license thereunder,
24 and is thereby infringing the patent. Oakley is informed and believes, and based
25 thereon alleges, that Defendant sold or supplied its sunglass to various
26 distributors, retailers, and retail customers.

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1 26. Defendant should be aware of Oakley's proprietary rights in its
2 patents and taken measures to avoid infringing Oakley's rights because of
3 previous disputes in 1994, 1997, 2001 and in 2007 that all ended in a Final
4 Consent Judgment and Settlement Agreement between the parties regarding
5 Oakley's patent and/or trademark rights. Consequently, Defendant should be
6 reviewing its product to ensure that it does not copy any Oakley designs. Further,
7 Defendant received constructive notice of Oakley's patents as Oakley caused its
8 patents to be placed plainly on the product and/or packaging. Despite actual and
9 constructive knowledge, Defendants infringed Oakley's patent rights. On
10 information and belief, such infringement by Defendant has been willful and
11 wanton.

12 27. Oakley is informed and believes, and thereupon alleges, that the
13 Defendant's sale of the allegedly infringing copy sunglasses has resulted in lost
14 sales, has reduced the business and profit of Oakley, and has greatly injured the
15 general reputation of Oakley due to the inferior quality of the copies, all to
16 Oakley's damage in an amount not yet fully determined.

17 28. The exact amount of profits realized by Defendant as a result of its
18 infringing activities, are presently unknown to Oakley, and neither are the exact
19 amount of damages suffered by Oakley as a result of said activities. These profits
20 and damages cannot be accurately ascertained without an accounting. Further,
21 Defendant's actions are irreparably injuring Oakley and will continue unless and
22 until enjoined by this court.

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24 **FIRST CLAIM FOR RELIEF**
25 **(TRADEMARK INFRINGEMENT)**

26 29. Oakley realleges paragraphs 1 through 28 as repled and realleged as
27 though fully set forth herein.

28 30. This is a claim for trademark infringement, and arises under 15 U.S.C.
§ 1114 against Defendant.

1 31. Jurisdiction is founded upon 15 U.S.C. § 1121.

2 32. Oakley is the owner of U.S. Registered Trademark No. 1,984,501,
3 which confers on Oakley the exclusive right to use this trademark in commerce.
4 A true and correct copies of U.S. registered Trademark No. 1,984,501, is attached
5 hereto as Exhibit 3.

6 33. The mark has been in use in commerce in connection with the sale of
7 Oakley products continuously since at least as early as its date of issue. The mark
8 appears clearly on packaging, advertisements, product brochures, and on Oakley
9 products.

10 34. Defendant, through its agents, employees and servants, has
11 manufactured, advertised, and sold products bearing Oakley's registered mark
12 without authority from Oakley for doing so.

13 35. Oakley is informed and believes, and thereupon alleges, that
14 Defendants' use of the ellipsoid "o" mark is identical to Oakley's registered
15 ellipsoid "o" trademark. Accordingly, Defendants' product should be considered
16 counterfeit. Defendants' use is within the same class of goods as Oakley's
17 trademark rights, class 9.

18 36. Oakley is informed and believes, and thereupon alleges, that
19 Defendant's products are counterfeit under 15 U.S.C. § 127.

20 37. Oakley is informed and believes, and thereupon alleges, that
21 Defendant's use of Oakley's registered trademark in commerce constitutes
22 trademark infringement, false designation or origin, a false description or
23 representation of goods and wrongfully and falsely represents to the consuming
24 public that the Defendant's advertising and products bearing the Oakley trademark
25 originated from or somehow are authorized by Oakley.

26 38. Oakley is informed and believes, and thereupon alleges, that
27 Defendant's unauthorized use of Oakley's registered trademark is likely to cause

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1 confusion in the marketplace as to the source of origin of Defendants' products
2 and has caused damage to Oakley within this jurisdictional district.

3 39. Oakley is informed and believes, and thereupon alleges, that
4 Defendant willfully infringed upon Oakley's exclusive rights under its trademark
5 with the intent to trade upon the good will of Oakley and to injure Oakley.

6 40. Oakley is informed and believes, and thereupon alleges, that
7 Defendant has derived, received, and will continue to derive and receive from the
8 aforesaid acts of infringement, gains, profits, and advantages in an amount not yet
9 ascertainable, but will be determined at the time of trial.

10 41. Oakley is informed and believes, and thereupon alleges, that
11 Defendant will continue to infringe Oakley's registered trademark to the great and
12 irreparable injury of Oakley, for which Oakley has no adequate remedy at law
13 unless Defendants are enjoined by this court.

14 42. Oakley has been damaged in this judicial district as a result of the
15 Defendant's infringement of its trademarks.

16 **SECOND CLAIM FOR RELIEF**

17 **(TRADEMARK INFRINGEMENT)**

18 43. Oakley realleges paragraphs 1 through 28 as repled and realleged as
19 though fully set forth herein.

20 44. This is a claim for trademark infringement, and arises under 15 U.S.C.
21 § 1114 against Defendant.

22 45. Jurisdiction is founded upon 15 U.S.C. § 1121.

23 46. Oakley is the owner of U.S. Registered Trademark No. 2,146,295,
24 which confers on Oakley the exclusive right to use this trademark in commerce.
25 A true and correct copy of U.S. registered Trademark No. 2,146,295 is attached
26 hereto as Exhibit 4.

27 47. The mark has been in use in commerce in connection with the sale of
28 Oakley products continuously since at least as early as its date of issue. The mark

1 appears clearly on packaging, advertisements, product brochures, and on Oakley
2 products.

3 48. Defendant, through its agents, employees and servants, has
4 manufactured, advertised, and sold products bearing Oakley's registered mark
5 without authority from Oakley for doing so.

6 49. Oakley is informed and believes, and thereupon alleges, that
7 Defendants' use of the ellipsoid "o" mark on an eyeglass ear stem is identical to
8 Oakley's registered ellipsoid "o" trademark. Accordingly, Defendants' product
9 should be considered counterfeit. Defendants' use is within the same class of
10 goods as Oakley's trademark rights, class 9.

11 50. Oakley is informed and believes, and thereupon alleges, that
12 Defendant's products are counterfeit under 15 U.S.C. § 127.

13 51. Oakley is informed and believes, and thereupon alleges, that
14 Defendant's use of Oakley's registered trademark in commerce constitutes
15 trademark infringement, false designation or origin, a false description or
16 representation of goods and wrongfully and falsely represents to the consuming
17 public that the Defendant's advertising and products bearing the Oakley trademark
18 originated from or somehow are authorized by Oakley.

19 52. Oakley is informed and believes, and thereupon alleges, that
20 Defendant's unauthorized use of Oakley's registered trademark is likely to cause
21 confusion in the marketplace as to the source of origin of Defendants' products
22 and has caused damage to Oakley within this jurisdictional district.

23 53. Oakley is informed and believes, and thereupon alleges, that
24 Defendant willfully infringed upon Oakley's exclusive rights under its trademark
25 with the intent to trade upon the good will of Oakley and to injure Oakley.

26 54. Oakley is informed and believes, and thereupon alleges, that
27 Defendant has derived, received, and will continue to derive and receive from the

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1 aforesaid acts of infringement, gains, profits, and advantages in an amount not yet
2 ascertainable, but will be determined at the time of trial.

3 55. Oakley is informed and believes, and thereupon alleges, that
4 Defendant will continue to infringe Oakley's registered trademark to the great and
5 irreparable injury of Oakley, for which Oakley has no adequate remedy at law
6 unless Defendant is enjoined by this court.

7 56. Oakley has been damaged in this judicial district as a result of the
8 Defendant's infringement of its trademarks.

9 **THIRD CLAIM FOR RELIEF**
10 **(BREACH OF FINAL CONSENT JUDGMENT)**

11 57. Oakley realleges paragraphs 1 through 28 as repled and realleged as
12 though fully set forth herein.

13 58. This is an action for civil contempt against Defendant Asia Pacific.

14 59. The court has jurisdiction over this claim pursuant to Paragraph 12 of
15 the 2007 Final Consent Judgment entered by this Court against Defendant Asia
16 Pacific, a copy of which is attached hereto as Exhibit 1.

17 60. This Court entered a Final Consent Judgment against Defendant Asia
18 Pacific arising out of Oakley's lawsuit against it for patent infringement. Pursuant
19 to this Court's 2007 Final Consent Judgment, Defendant Asia Pacific was
20 permanently enjoined and restrained from making, importing, using, or selling any
21 sunglasses that infringe U.S. Trademark Registration Nos. 1,984,501 and
22 2,146,295.

23 61. Oakley is informed and believes, and thereupon alleges, that
24 Defendant Asia Pacific has wilfully disobeyed and violated the 2007 Final
25 Consent Judgment issued by this court. Specifically, Oakley is informed and
26 believes, and thereupon alleges, that Defendant Asia Pacific is knowingly and
27 wilfully selling sunglasses that infringe U.S. Trademark Registration Nos.

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1 1,984,501 and 2,146,295 owned by Oakley. Accordingly, Defendant Asia Pacific
2 is in civil contempt of this Court’s 2007 Final Consent Judgment.

3 62. As a direct and proximate result of Defendant Asia Pacific’s violation
4 of this Court’s previous Final Consent Judgment, Oakley has been damaged in an
5 amount that is yet unascertainable, but that will be proven at the time of trial.
6 Consequently, Oakley requests that the Court order Defendant Asia Pacific to pay
7 Oakley exemplary, punitive damages in an amount to be determined by the Court
8 to be sufficient.

9 63. Oakley is also entitled to compensation from Defendant Asia Pacific
10 for Oakley’s reasonable attorneys’ fees, costs, and expenses associated with
11 enforcing the court’s 2007 Final Consent Judgment.

12 64. Defendant Asia Pacific will continue to violate this court’s 2007 Final
13 Consent Judgment to the great and irreparable injury of Oakley, for which Oakley
14 has no adequate remedy at law unless Defendant Asia Pacific is forced by this
15 court into compliance with the court’s 2007 Final Consent Judgment.

16 **FOURTH CLAIM FOR RELIEF**
17 **(BREACH OF CONTRACT)**

18 65. Oakley realleges paragraphs 1 through 28 as repled and realleged as
19 though fully set forth herein.

20 66. This in an action for breach of contract against Defendant Asia
21 Pacific.

22 67. Jurisdiction is founded upon 28 U.S.C. §1367.

23 68. As set forth above, pursuant to Section 10.8 of the 2007 Settlement
24 Agreement, a copy of which is attached hereto as Exhibit 2, Defendant Asia
25 Pacific was prohibited from making, using, importing, or selling any sunglasses
26 that infringe U.S. Trademark Registration Nos. 1,984,501 and 2,146,295, owned
27 by Oakley.

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1 69. Oakley is informed and believes and thereupon alleges that Defendant
2 Asia Pacific breached the 2007 Settlement Agreement by making, using,
3 importing, or selling products that infringe U.S. Trademark Registration Nos.
4 1,984,501 and 2,146,295.

5 70. As a direct and proximate result of the breach of the 2007 Settlement
6 Agreement by Defendant Asia Pacific, Oakley has been damaged in an amount
7 that is yet unascertainable, but that will be proven at the time of trial.

8 71. Additionally, pursuant to the terms of the 2007 Settlement Agreement,
9 Oakley is entitled to compensation from Defendant Asia Pacific for Oakley's
10 reasonable attorneys' fees associated with this claim for breach of contract.

11 **FIFTH CLAIM FOR RELIEF**

12 72. The allegations of paragraphs 1 through 28 are repled and realleged as
13 though fully set forth herein.

14 73. This is a claim for patent infringement, and arises under 35 U.S.C. §§
15 271 and 281.

16 74. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

17 75. Oakley is the owner of U.S. Patent No. D561,814 which protects the
18 sunglasses marketed by Oakley under the name "Grapevine". A true and correct
19 copy of U.S. Patent No. D561,814 is attached hereto as Exhibit 5. By statute, the
20 patent is presumed to be valid and enforceable under 35 U.S.C. § 282.

21 76. Defendants through its agents, employees and servants, manufactured,
22 imported, and sold, without any rights or license, sunglasses which fall within the
23 scope and claim of U.S. Patent No. D561,814.

24 77. Oakley is informed and believes, and thereupon alleges, that
25 Defendant has willfully infringed upon Oakley's exclusive rights under the patent,
26 with full notice and knowledge thereof. Defendant sold or is selling the infringing
27 sunglass and will continue to do so unless restrained therefrom by this Court, all
28 to the great loss and injury of Oakley.

1 78. Oakley is informed and believes and thereupon alleges that Defendant
2 has derived, received and will continue to derive and receive from its acts of
3 infringement, gains, profits and advantages in an amount not presently known to
4 Oakley. By reason of these acts of infringement, Oakley has been, and will
5 continue to be, greatly damaged.

6 79. Defendant will continue to infringe U.S. Patent No. D561,814 to the
7 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
8 at law unless said Defendant are enjoined by this court.

9 **SIXTH CLAIM FOR RELIEF**

10 80. The allegations of paragraphs 1 through 28 are repled and realleged as
11 though fully set forth herein.

12 81. This is a claim for patent infringement, and arises under 35 U.S.C. §§
13 271 and 281.

14 82. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

15 83. Oakley is the owner of U.S. Patent No. D557,325 which protects the
16 sunglasses marketed by Oakley under the name "Oil Drum". A true and correct
17 copy of U.S. Patent No. D557,325 is attached hereto as Exhibit 6. By statute, the
18 patent is presumed to be valid and enforceable under 35 U.S.C. § 282.

19 84. Defendant through its agents, employees and servants, manufactured,
20 imported, and sold, without any rights or license, sunglasses which fall within the
21 scope and claim contained in U.S. Patent No. D557,325.

22 85. Oakley is informed and believes, and thereupon alleges, that
23 Defendant has willfully infringed upon Oakley's exclusive rights under the patent,
24 with full notice and knowledge thereof. Defendant sold or is selling the infringing
25 sunglass and will continue to do so unless restrained therefrom by this Court, all
26 to the great loss and injury of Oakley.

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86. Oakley is informed and believes, and thereupon alleges, that Defendant, has derived, received and will continue to derive and receive from its acts of infringement, gains, profits and advantages in an amount not presently known to Oakley. By reason of these acts of infringement, Oakley has been, and will continue to be, greatly damaged.

87. Defendant will continue to infringe U.S. Patent No. D557,325 to the great and irreparable injury of Oakley, for which Oakley has no adequate remedy at law unless said Defendant are enjoined by this Court.

SEVENTH CLAIM FOR RELIEF

88. The allegations of paragraphs 1 through 28 are repled and realleged as though fully set forth herein.

89. This is a claim for patent infringement, and arises under 35 U.S.C. §§ 271 and 281.

90. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

91. Oakley is the owner of U.S. Patent No. D557,326 which protects the sunglasses marketed by Oakley under the name "Oil Drum". A true and correct copy of U.S. Patent No. D557,326 is attached hereto as Exhibit 7. By statute, the patent is presumed to be valid and enforceable under 35 U.S.C. § 282.

92. Defendant through its agents, employees and servants, manufactured, imported, and sold, without any rights or license, sunglasses which fall within the scope and claim contained in U.S. Patent No. D557,326.

93. Oakley is informed and believes, and thereupon alleges, that Defendant has willfully infringed upon Oakley's exclusive rights under the patent, with full notice and knowledge thereof. Defendant sold or is selling such infringing sunglasses and will continue to do so unless restrained therefrom by this Court, all to the great loss and injury of Oakley.

... ..

1 94. Oakley is informed and believes, and thereupon alleges, that
2 Defendant has derived, received and will continue to derive and receive from its
3 acts of infringement, gains, profits and advantages in an amount not presently
4 known to Oakley. By reason of these acts of infringement, Oakley has been, and
5 will continue to be, greatly damaged.

6 95. Defendant will continue to infringe U.S. Patent No. D557,326 to the
7 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
8 at law unless said Defendant are enjoined by this court.

9 **EIGHTH CLAIM FOR RELIEF**

10 96. The allegations of paragraphs 1 through 28 are repled and realleged as
11 though fully set forth herein.

12 97. This is a claim for patent infringement, and arises under 35 U.S.C. §§
13 271 and 281.

14 98. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

15 99. Oakley is the owner of U.S. Patent No. D561,812 which protects the
16 sunglasses marketed by Fox, and manufactured by Oakley, under the name
17 "Median". A true and correct copy of U.S. Patent No. D561,812 is attached
18 hereto as Exhibit 8. By statute, the patent is presumed to be valid and enforceable
19 under 35 U.S.C. § 282.
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21 100. Defendant, through its agents, employees and servants, manufactured,
22 imported, and sold, without any rights or license, sunglasses which fall within the
23 scope and claim contained in U.S. Patent No. D561,812.

24 101. Oakley is informed and believes, and thereupon alleges, that
25 Defendant has willfully infringed upon Oakley's exclusive rights under the patent,
26 with full notice and knowledge thereof. Defendant sold or is selling such
27 infringing sunglasses and will continue to do so unless restrained therefrom by
28 this Court, all to the great loss and injury of Oakley.

1 102. Oakley is informed and believes, and thereupon alleges, that
2 Defendant, has derived, received and will continue to derive and receive from its
3 acts of infringement, gains, profits and advantages in an amount not presently
4 known to Oakley. By reason of these acts of infringement, Oakley has been, and
5 will continue to be, greatly damaged.

6 103. Defendant will continue to infringe U.S. Patent No. D561,812 to the
7 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
8 at law unless said Defendant are enjoined by this court.

9 WHEREFORE, Plaintiff Oakley, Inc. prays as follows:

10 1. That Defendant Asia Pacific be held in civil contempt by this Court for
11 the violation of this court's Final Consent Judgment entered on May 18, 2007;

12 2. For an order that (1) this Court's Final Consent Judgment entered on
13 May 18, 2007 remains in full force and effect, (2) that Defendant shall comply
14 fully and immediately with the provisions of the 2007 Final Consent Judgment,
15 and (3) that Defendant recall and deliver to Oakley for destruction all sunglasses
16 and materials distributed in violation of the 2007 Final Consent Judgment;

17 3. For an order from this court requiring Defendant to obtain and maintain
18 a performance bond in an amount to be determined to secure Defendants
19 compliance with the 2007 Final Consent Judgment;

20 4. That Defendant be adjudicated to have infringed Oakley's Registered
21 Trademark Nos. 1,984,501 and 2,146,295, and that said trademarks are valid and
22 enforceable and are owned by Oakley;

23 5. That Defendant, as well as its agents, servants, employees, and
24 attorneys and all persons in active concert and participation with them, be
25 enjoined and restrained, during the pendency of this action and permanently
26 thereafter from:
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- A. Using Oakley's Registered Trademark Nos. 1,984,501 and 2,146,295, or any mark similar thereto in connection with the sale of any goods;
- B. Committing any acts which may cause purchasers to believe that the Defendant or the products Defendant is selling are sponsored or authorized by, or are in any way associated with Plaintiff;
- C. Selling, passing off, or inducing or enabling others to sell or pass off any products as products produced by Plaintiff, which products are not Plaintiff's or are not produced under the control and supervision and approved by Plaintiff; and
- D. Infringing Plaintiff's trademark rights;

6. That Defendant, its agents, servants, employees and attorneys and all persons in active concert or participation with them, be enjoined and restrained, during the pendency of this action, and permanently thereafter from advertising or selling products in any manner that does or tends to dilute the distinctive value of Oakley's famous ellipsoid "o" trademark;

7. That Defendant be adjudicated to have infringed Oakley's U.S. Patent Nos. D561,814, D557,325, D557,326 and D561,812 and that these patents are valid and enforceable and owned by Oakley;

8. That Defendant, as well as its agents, servants, employees, and attorneys, and all these persons in active concert or participation with Defendant, be forthwith preliminary and thereafter permanently enjoined from infringing U.S. Patent Nos. D561,814, D557,325, D557,326 and D561,812;

9. That Defendant be directed to file with this Court and serve upon Oakley within 30 days after the service of the injunction, a report in writing under oath, setting forth in detail the manner and form in which Defendant has complied with the injunction;

1 10. That Oakley be awarded an assessment of damages for Defendant's
2 infringement of U.S. Patent Nos. D561,814, D557,325, D557,326 and D561,812,
3 together with an award of such damages, all in accordance with 35 U.S.C. § 284;

4 11. That Oakley be awarded an assessment of interest against Defendant,
5 together with an award of such interest, in accordance with 35 U.S.C. § 284;

6 12. That Oakley be awarded treble damages against the Defendant for
7 their willful infringement of Oakley's patents, pursuant to 35 U.S.C. § 284;

8 13. For all of Defendant's profits derived from its infringement of
9 Plaintiff's patent and trademark rights in accordance with 15 U.S.C. § 1117 and 35
10 U.S.C. § 289;

11 14. That Defendant be required to account to Oakley for any and all
12 profits derived by it, and all damages sustained by Oakley by reason of
13 Defendants' trademark infringement, unfair competition and false designation of
14 origin, together with interest and costs;

15 15. For all of Defendants' profits derived from their infringement of
16 Plaintiff's patent and trademark rights;

17 16. For an order requiring Defendant to deliver up and destroy all
18 infringing products;

19 17. That an award of reasonable costs, expenses, and attorney's fees be
20 awarded against Defendant pursuant to 15 U.S.C. § 1116(a);

21 18. That an award of reasonable costs, expenses and attorneys' fees be
22 awarded against Defendant pursuant to 35 U.S.C. § 285;

23 19. That an award of statutory damages be awarded against Defendant
24 pursuant to 15 U.S.C. § 1117;

25 20. For punitive damages resulting from Defendant's civil contempt of
26 this court's 2007 Final Consent Judgment;

27 21. For an award of reasonable costs, expenses, and attorneys' fees
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incurred as a result of Defendant's noncompliance with the 2007 Final Consent Judgment;

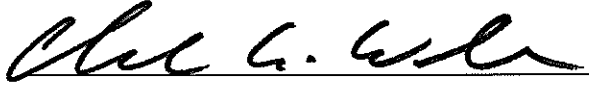
22. For direct and consequential damages arising from Defendant's breach of the 2007 Settlement Agreement;

23. For an award of reasonable attorneys' fees associated with the breach of contract claim, pursuant to the terms of the 2007 Settlement Agreement;

24. That Oakley have such other and further relief as the circumstances of this case may require and as this Court may deem just and proper.

DATED: *May 12, 08*

WEEKS, KAUFMAN, NELSON & JOHNSON



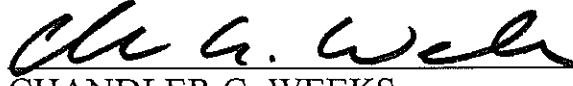
CHANDLER G. WEEKS
Attorney for Plaintiff, Oakley, Inc.

JURY DEMAND

Plaintiff Oakley, Inc. hereby requests a trial by jury in this matter.

DATED: *may 12, 08*

WEEKS, KAUFMAN, NELSON & JOHNSON



CHANDLER G. WEEKS
Attorney for Plaintiff, Oakley, Inc.

From:

05/08/2007 09:02 #013-P.002/005

1 Gregory L. Weeks, CSB 58584
 2 Janet R. Kaufman, CSB 116143
 3 Gregory K. Nelson, CSB 203029
 4 Chandler G. Weeks, CSB 245503
 5 WEEKS, KAUFMAN, NELSON & JOHNSON
 6 462 Stevens Ave., Suite 310
 7 Solana Beach, CA 92075
 8 Telephone: (858) 794-2140
 9 Facsimile: (858) 794-2141
 10 Email: office@wknjlaw.com

11 Attorneys for Plaintiff,
12 Oakley, Inc.

SEND/JS-6/ENTER

ENTERED CLERK, U.S. DISTRICT COURT <div style="border: 1px solid black; padding: 5px; margin: 5px auto; width: 80%;">MAY 18 2007</div> CENTRAL DISTRICT OF CALIFORNIA BY _____ DEPUTY	FILED - SOUTHERN DIVISION CLERK, U.S. DISTRICT COURT <div style="border: 1px solid black; padding: 5px; margin: 5px auto; width: 80%;">MAY 18 2007</div> CENTRAL DISTRICT OF CALIFORNIA BY _____ DEPUTY
--	--

13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA

15 OAKLEY, INC., a Washington
16 corporation,

17 Plaintiff,

18 vs.

19 ASIA PACIFIC TRADING CO.,
20 INC., a California corporation,

21 Defendant.

22 AND COUNTERCLAIMS

23 CIVIL ACTION NO.
 24 CV 06-2321 AHS (ANx)
 25 FINAL CONSENT JUDGMENT

26 This case having come on before this Court upon the pleadings and it being
 27 represented to the Court that Plaintiff Oakley, Inc. (hereinafter referred to as
 28 "Oakley") and Defendant Asia Pacific Trading Co., Inc. (hereinafter referred to as
 "Asia Pacific") have settled their differences with respect to the matters in
 dispute. On the consent of Oakley and its attorneys and Asia Pacific and its
 attorneys, and good cause having been shown,

IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED:

1. This Court has jurisdiction over these parties and the subject matter of this lawsuit.

SOUTHERN DIVISION
 CLERK, U.S. DISTRICT COURT
 DEPUTY

9:00

MAY 11 2007

SML

THIS CONSTITUTES NOTICE OF ENTRY
 AS REQUIRED BY FRCP, RULE 77(d) Final Consent Judgment

From:

05/08/2007 09:03 #013.P.003/005

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- 2. Venue is proper in this judicial district.
- 3. Oakley is a corporation duly organized and existing under the laws of the State of Washington having its principal place of business located at One Icon, Foothill Ranch, California 92610.
- 4. Defendant Asia Pacific is a California corporation with its principal place of business located at 721 S. San Pedro Street, Los Angeles, California 90014.
- 5. Defendant agrees not to contest the validity and enforceability of Oakley's United States Patent Nos. 5,137,342, D473,583, D508,515, D496,680, D478,929, D477,623, and D446,803. Defendant also acknowledges and agrees that United States Patent Nos. 5,137,342, D473,583, D508,515, D496,680, D478,929, D477,623, and D446,803 are valid and enforceable.
- 6. Asia Pacific acknowledges and agrees that U.S. Trademark Registration Nos. 1,984,501 and 2,146,925 are valid and enforceable.
- 7. Asia Pacific acknowledges and agrees that Oakley's unregistered trade dress in its "Zero" and "Half Wire" sunglass configurations are valid and enforceable.
- 8. Defendant, and its officers, employees, agents, and successors in interest, is hereby permanently enjoined and restrained as of the date of this order from making, importing, using, offering to sell, or selling any sunglasses that infringe any one or more of the designs or claims of United States Patent Nos. 5,137,342, D473,583, D508,515, D496,680, D478,929, D477,623, or D446,803 during their terms, without license or other authority from Oakley, and from offering or advertising to do so, and from aiding or abetting in any way or inducing or contributing to the infringement of these patents.

AS

From:

05/07/2007 09:03 #013 P.004/005

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- 9. Defendant, and its officers, employees, agents, and successors in interest, is hereby permanently enjoined and restrained as of the date of this order from making, importing, using, offering to sell, or selling any sunglasses that infringe U.S. Trademark Registrations Nos. 1,984,501 and 2,146,925 during their terms, without license or other authority from Oakley, and from offering or advertising to do so, and from aiding or abetting in any way or inducing or contributing to the infringement of these trademarks.
- 10. Defendant, and its officers, employees, agents, and successors in interest, is hereby permanently enjoined and restrained as of the date of this order from making, importing, using, offering to sell, or selling any sunglasses that infringe upon the unregistered trade dress configuration of Oakley's "Zero" or "Half Wire" sunglasses during their terms, without license or other authority from Oakley, and from offering or advertising to do so, and from aiding or abetting in any way or inducing or contributing to the infringement of these trademarks.
- 11. As compensation to Oakley in this matter, Asia Pacific has agreed to pay Oakley the sum of seventy-five thousand dollars (\$75,000.00) as damages. The parties have agreed that Asia Pacific shall pay thirty-five thousand dollars (\$35,000.00) at this time, twenty thousand dollars (\$20,000.00) on or before July 20, 2007, and another twenty thousand dollars (\$20,000.00) on or before October 20, 2007.
- 12. All claims, defenses, and counterclaims of Oakley and Defendant are dismissed with prejudice. However, jurisdiction is retained by this Court for the purpose of ensuring compliance with the terms of this Order and its related settlement agreement, and enabling the parties to apply to this Court for further orders.

Final Consent Judgment

From:

05/07/2007 09:57 #014 P.005/005

1 13. Asia Pacific specifically agrees to immediately cease the sale of its
 2 PC3020SD, PC1729PM, KP383SD, PC1729AM, PC99370SD, *Aut*
 3 PC4476FM, PC097FM/RV, KP9304F/AR. Asia Pacific agrees that
 4 if it has any remaining inventory of these models, it shall
 5 immediately destroy any remaining inventory. Asia Pacific also
 6 agrees that it will never sell the presently embodied sunglass models
 7 listed in this paragraph in the future.
 8

9 IT IS HEREBY ORDERED.

10 DATED: MAY 18 2007

[Signature]
 11 _____
 12 JUDGE, U.S. DISTRICT COURT

13
14 Approved as to form and content:

15 WEEKS, KAUFMAN, NELSON & JOHNSON

16
 17 *[Signature]*
 18 _____

19 GREGORY K. NELSON
20 Attorney for Plaintiff Oakley, Inc.

21 LAW OFFICES OF FRANK T. OO

22
 23 *[Signature]*
 24 _____ *5/7/07 Weeks*

25 FRANK T. OO
26 Attorney for Defendant Asia Pacific Trading Co., Inc.

[Signature]
 James [Name]

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PROOF OF SERVICE

I, the undersigned, hereby certify and declare under penalty of perjury that the following statements are true and correct:

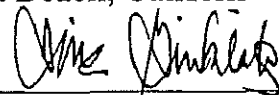
- 1. I am over the age of 18 years and am not a party to the within cause.
- 2. My business address is 462 Stevens Avenue, Suite 310, Solana Beach, CA 92075.
- 3. On May 10, 2007 I served the attached documents entitled: FINAL

CONSENT JUDGMENT as follows:

- (by mail) I caused such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Solana Beach, California.
- (by personal delivery) I personally delivered a copy of the attached document to the address listed below.
- (by Federal Express) I am readily familiar with the practice of Weeks, Kaufman & Johnson for collection and processing of correspondence for overnight delivery and know that the document described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- (by facsimile) The above-referenced document was transmitted by facsimile transmission and the transmission was reported as complete and without error.

Frank T. Oo
2609 W. Beverly Blvd., Suite 5
Montebello, CA 90640

Executed May 10, 2007 at Solana Beach, California.



Tina Giublato

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Agreement") dated as of the last date of execution below, is entered into by and between Oakley, Inc., on the one hand, a Washington corporation with its principal place of business located at One Icon, Foothill Ranch, California, (hereinafter referred to as "Oakley") and Asia Pacific Trading Co., Inc., a California corporation with its principal place of business located at 5132 S. Alameda Street, Los Angeles, California (hereinafter referred to as "Asia Pacific"), collectively referred to as "the Parties."

Recitals

A. WHEREAS, Oakley filed a lawsuit in the U.S. District Court, Central District of California, on or about April 17, 2006, entitled Oakley, Inc. v. Asia Pacific Trading Co., Inc., Case No. CV 06-2321 AHS (ANx) (hereinafter the "Lawsuit");

B. WHEREAS, Oakley alleges in the Lawsuit that Asia Pacific have infringed Oakley's U.S. Patent Nos. 5,137,342 by its sales of its PC3020SD and PC1729PM models, and D473,583, D508,515, D496,680, D478,929, D477,623 and D446,803, by its sale of its KP383SD, PC1729PM, PC99370SD, PC4476FM, PC097FM/RV, and KP9304F/AR models respectively;

C. WHEREAS, Oakley also alleges in the Lawsuit that Asia Pacific violated a Final Consent Judgment entered on March 30, 2001 by its sale of its PC3020SD and PC1729PM models, which Oakley asserts infringe U.S. Patent No. 5,137,342;

D. WHEREAS, Oakley also alleges in the Lawsuit that Asia Pacific breached a settlement agreement entered into on March 16, 2001, by its sale of its PC3020SD and PC1729PM models, which Oakley asserts infringe U.S. Patent No. 5,137,342;

E. WHEREAS, Oakley also alleges in the Lawsuit that Asia Pacific infringed Oakley's U.S. Trademark Nos. 1,984,501 and 2,146,295 by its sales of its PC99370SD and PC4476FM models;

F. WHEREAS, Oakley also alleges in the Lawsuit that Asia Pacific infringed Oakley's "Half Wire" and "Zero" trade dress by its sale of its PC3020SD and PC1729PM models, respectively;

G. WHEREAS, Asia Pacific denies all allegations of the Lawsuit and any wrongdoing on its part;



H. WHEREAS, the Parties now desire to settle this matter, the Parties agree to the following.

AGREEMENT AND MUTUAL RELEASE

NOW, THEREFORE, in consideration of the covenants, agreements, obligations and promises set forth below, the parties agree as follows:

1. Consideration. In consideration of payment by Asia Pacific to Oakley in the amount of Seventy five thousand dollars (\$75,000.00) and the full and faithful performance by Asia Pacific of all the terms and conditions of this Agreement, Oakley agrees to dismiss the Lawsuit with prejudice and to release Asia Pacific of all liabilities arising out of this dispute, as set forth fully in the Recitals. Asia Pacific will pay Oakley thirty five thousand dollars (\$35,000.00) at signing of this Agreement. Asia Pacific will pay Oakley the sum of twenty thousand dollars (\$20,000.00) on or before July 20, 2007, and another twenty thousand dollars (\$20,000.00) on or before October 20, 2007. All payments shall be by check, made payable to "Oakley, Inc." and delivered to the offices of counsel for Oakley, Weeks, Kaufman, Nelson & Johnson, 462 Stevens Ave., Suite 310, Solana Beach, California 92075, for delivery to Oakley.

2. Mutual Release. The Parties mutually agree to fully release, and by their execution of this Agreement, they do hereby fully release, each other and their respective officers, directors, principals, agents, representatives, distributors, servants, employees, attorneys, direct and indirect customers, predecessors, successors, and assigns from any and all claims arising from or relating to any and all matters or actions, causes of action, suits, debts, dues, sums of money, accountings, reckonings, bonds, bills, controversies, agreements, promises, variances, trespasses, infringements, damages, judgments, claims, and demands as of this date that could have been asserted against the other Party, whether known or unknown, with respect to all claims, defenses, counterclaims, or causes of actions which could have been asserted against the other Party.

The Parties hereby expressly waive any and all rights and benefits conferred on it by the provisions of Section 1542 of the Civil Code of the State of California, which states as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3. Patent Validity. Asia Pacific acknowledges and agrees that the claims of U.S. Patent Nos. 5,137,342, D473,583, D508,515, D496,680, D478,929, D477,623 and D446,803, are valid and enforceable. Asia Pacific agrees to not

challenge or contest the validity or enforceability of U.S. Patent Nos. 5,137,342, D473,583, D508,515, D496,680, D478,929, D477,623 and D446,803, or their foreign equivalents, continuations, or divisionals, either directly or indirectly, and to not cooperate with any third party in challenging or contesting the validity or enforceability of said patents, or their foreign equivalents, continuations, or divisionals, either directly or indirectly.

4. Trademark and Trade Dress Validity. Asia Pacific acknowledges and agrees that U.S. Trademark Nos. 1,984,501 and 2,146,295, and Oakley's unregistered trade dress in its "Zero" and "Half Wire" sunglasses, are valid and enforceable. Asia Pacific agrees to not challenge or contest the validity or enforceability of U.S. Trademark Nos. 1,984,501 and 2,146,295, or the "Zero" or "Half Wire" trade dress, and to not cooperate with any third party in challenging or contesting the validity or enforceability of the trademarks and trade dress.

5. Asia Pacific Restrained From Infringing Oakley's Patents. Effective with the execution of this Agreement, Asia Pacific agrees not to make, use, offer to sell, or sell in the United States eyewear that infringe upon the valid claims of Oakley's U.S. Patent Nos. 5,137,342, D473,583, D508,515, D496,680, D478,929, D477,623 and D446,803 during its respective terms, without license or other authority from Oakley, and to refrain from offering or advertising to do so and from aiding or abetting in any way or inducing or contributing to the infringement of said patents.

6. Asia Pacific Restrained From Infringing Oakley's Trademarks. Effective with the execution of this Agreement, Asia Pacific agrees not to make, use, offer to sell, or sell in the United States eyewear that infringe upon the U.S. Trademark Nos. 1,984,501 and 2,146,295, without license or other authority from Oakley, and to refrain from offering or advertising to do so and from aiding or abetting in any way or inducing or contributing to infringement of said trademarks.

7. Asia Pacific Restrained From Infringing Oakley's Trade Dress. Asia Pacific acknowledge Oakley's "Half Wire" and "Zero" trade dress rights and agree not to make, use, offer to sell, or sell in the United States eyewear that infringe upon the valid trade dress rights of Oakley, without license or other authority from Oakley, and to refrain from offering or advertising to do so and from aiding or abetting in any way or inducing or contributing to infringement of said trade dress.

8. Cessation Of Sales Of Accused Products. Asia Pacific specifically agrees to immediately cease the sale of its PC3020SD, PC1729PM, KP383SD, PC1729AM, PC99370SD, PC4476FM, PC097FM/RV, KP9304F/AR. Asia Pacific agrees that if it has any remaining inventory of these models, it shall immediately destroy any remaining inventory. Asia Pacific also agrees that it will



never sell the presently embodied sunglass models listed in this paragraph in the future.

9. Dismissal. Within ten (10) business days of the signing of this Agreement by the Parties the Parties shall submit to the Court for entry in the Lawsuit a Stipulated Order of Dismissal.

10. Miscellaneous Items

10.1. Binding Effect

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective officers, directors, principals, agents, servants, employees, suppliers, parents, subsidiaries, affiliates, successors, assigns, and all those in active concert or participation with them.

10.2. Severance of Provisions

Should any part or provision of this Agreement be held unenforceable or in conflict with any law or jurisdiction, the validity of the remaining parts or provisions shall not be affected by such holdings so long as the primary purposes and intentions of the parties can still be accomplished.

10.3. Drafting Ambiguities

Each of the Parties represents, warrants, and agrees that it has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement, have reviewed this Agreement, and have been fully involved in the negotiation of the terms and conditions of this Agreement. Accordingly, no provision of this Agreement shall be construed against any of the Parties merely because they prepared this Agreement.

10.4. No Other Representations

Each of the Parties represents, warrants, and agrees that, in executing this Agreement, it has relied solely on the statements expressly set forth within this Agreement. Each of the Parties further represents, warrants, and agrees that, in executing this Agreement, it has placed no reliance whatsoever on any statement, representation, or promise of any other Party, or any other person or entity, that is not expressly set forth within this Agreement, or upon the failure of any other Party, or any other person or entity, to make any statement, representation, or disclosure.

10.5. Sole Ownership of Claims

All Parties covenant and warrant that they have not and shall not assign any rights they may have in the subject matter of the instant dispute to any third party. In the event of a breach of this paragraph, the Parties shall indemnify and hold harmless each other from any costs, attorneys' fees, or damages arising therefrom.

10.6. Full and Complete Integration

This Agreement is the final written expression and the complete and exclusive statement of all agreements, conditions, promises, representations, and covenants between the Parties with respect to the subject matter of this Agreement. This Agreement replaces and supersedes all prior, former, or contemporaneous agreements, negotiations, understandings, representations, discussions, or warranties between and among the Parties.

10.7. Modification or Amendment

Any modification, alteration, or amendment of this Agreement shall be non-binding, ineffective, and invalid, unless it in writing specifically refers to this Agreement and is signed by the Party, or a duly authorized representative of that Party, to be charged with the modification, alteration, or amendment.

10.8. Future Disputes - Controlling Law, Jurisdiction, and Attorney's Fees

This Agreement shall be construed and controlled in accordance with the laws of the State of California. The Parties agree that any dispute regarding this Agreement shall be filed in a court of competent jurisdiction in Orange County, California, and the Parties specifically waive their right to have any dispute arising from this Agreement brought or tried anywhere else. The Parties further agree that in any subsequent action to enforce the provisions of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees, in addition to costs and other relief of the court.

10.9. No Admission Of Liability

Nothing in this Agreement shall be construed as an admission of liability as against either Party as to the merits or claims of any of the Parties.



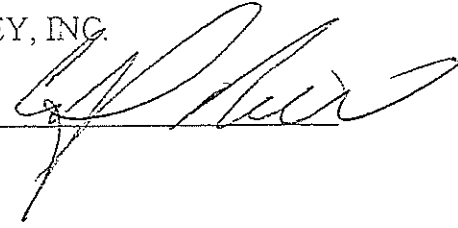
[CONTINUED ON NEXT PAGE]

IN WITNESS THEREOF, the Parties have caused their names to be subscribed and this agreement was executed and shall be effective as of the date set forth below.

Dated: 5/10, 2007

OAKLEY, INC.

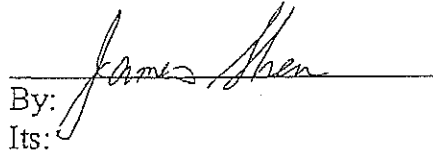
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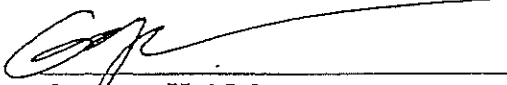
Dated: 5/7, 2007

ASIA PACIFIC TRADING CO., INC.

By:
Its:



Approved as to form and content:



Gregory K. Nelson
Weeks, Kaufman, Nelson & Johnson



Frank Oo
Law Offices of Frank Oo

5/7/07
11:25 AM

Int. Cls.: 9 and 25

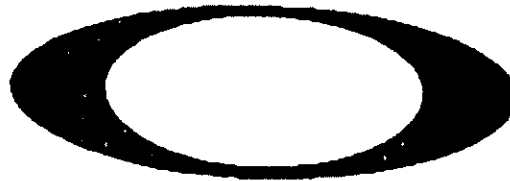
Prior U.S. Cls.: 21, 22, 23, 26, 36, 38, and 39

Reg. No. 1,984,501

United States Patent and Trademark Office

Registered July 2, 1996

**TRADEMARK
PRINCIPAL REGISTER**



OAKLEY, INC. (CALIFORNIA CORPORATION)
10 HOLLAND
IRVINE, CA 92718

FOR: PROTECTIVE AND/OR ANTI-GLARE EYEWEAR, NAMELY SUNGLASSES, GOGGLES, SPECTACLES AND THEIR PARTS AND ACCESSORIES, NAMELY REPLACEMENT LENSES, EARSTEMS, FRAMES, NOSE PIECES AND FOAM STRIPS; CASES SPECIALLY ADAPTED FOR PROTECTIVE AND/OR ANTI-GLARE EYEWEAR AND THEIR PARTS AND ACCESSORIES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 11-0-1993; IN COMMERCE 11-0-1993.

FOR: CLOTHING AND HEADWEAR, NAMELY T-SHIRTS, SWEATSHIRTS, JACKETS, HATS, AND CAPS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 11-0-1993; IN COMMERCE 11-0-1993.

SN 74-485,534, FILED 2-2-1994.

DAVID H. STINE, EXAMINING ATTORNEY

Int. Cl.: 9

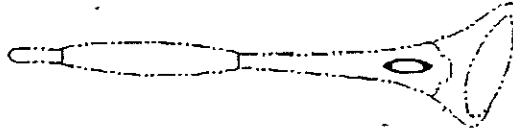
Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,146,295

United States Patent and Trademark Office

Registered Mar. 24, 1998

**TRADEMARK
PRINCIPAL REGISTER**



OAKLEY, INC. (WASHINGTON CORPORATION)
ONE ICON
FOOTHILL RANCH, CA 92610

FOR: PROTECTIVE AND/OR ANTI-GLARE EYEWEAR, NAMELY, SUNGLASSES, GOGGLES, SPECTACLES AND THEIR PARTS AND ACCESSORIES, NAMELY, REPLACEMENT LENSES, EARSTEMS, FRAMES, NOSE PIECES AND FOAM STRIPS; CASES SPECIALLY ADAPTED FOR PROTECTIVE AND/OR ANTI-GLARE EYEWEAR AND THEIR PARTS AND ACCESSORIES. IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 12-0-1994; IN COMMERCE 12-0-1994.

OWNER OF U.S. REG. NOS. 1,904,181, 1,990,262 AND OTHERS.

THE MARK CONSISTS OF AN ELLIPSE. THE MATTER SHOWN BY THE DOTTED LINES ON THE DRAWING IS NOT PART OF THE MARK AND SERVES ONLY TO SHOW THE RELATIVE POSITION OF THE MARK ON THE GOODS.

SER. NO. 75-259,669. FILED 3-18-1997.

ESTHER BELENKER, EXAMINING ATTORNEY



US00D561814S

(12) **United States Design Patent** (10) Patent No.: **US D561,814 S**
 Thixton et al. (45) Date of Patent: **** Feb. 12, 2008**

(54) **EYEGLASS AND EYEGLASS FRAME**
 (75) Inventors: **Lek Thixton, Orcas, WA (US); Peter Yee, Irvine, CA (US); Colin Baden, Irvine, CA (US)**
 (73) Assignee: **Oakley, Inc., Foothill Ranch, CA (US)**
 (**) Term: **14 Years**

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 D550,755 S * 9/2007 Fuchs D16/335

(21) Appl. No.: **29/255,069**
 (22) Filed: **Mar. 3, 2006**

(51) **LOC (8) Cl.** 16-06
 (52) **U.S. Cl.** D16/326; 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, 62, 158, 92, 103-111,
 351/156, 61, 114-119, 121-123; 2/426-432,
 2/447-449, 441, 436, 434-437
 See application file for complete search history.

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 La_Donna/pd/p/169.html.

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

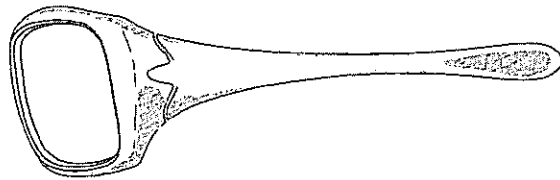
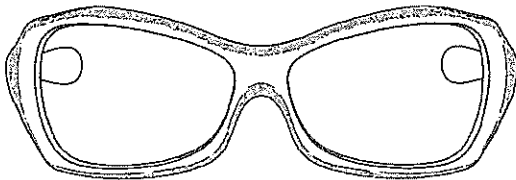
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 D408,048 S 4/1999 Jannard et al.
 D414,796 S * 10/1999 Arnette D16/326

(57) **CLAIM**
 The ornamental design for an eyeglass and eyeglass frame,
 as shown and described.

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

1 Claim, 4 Drawing Sheets



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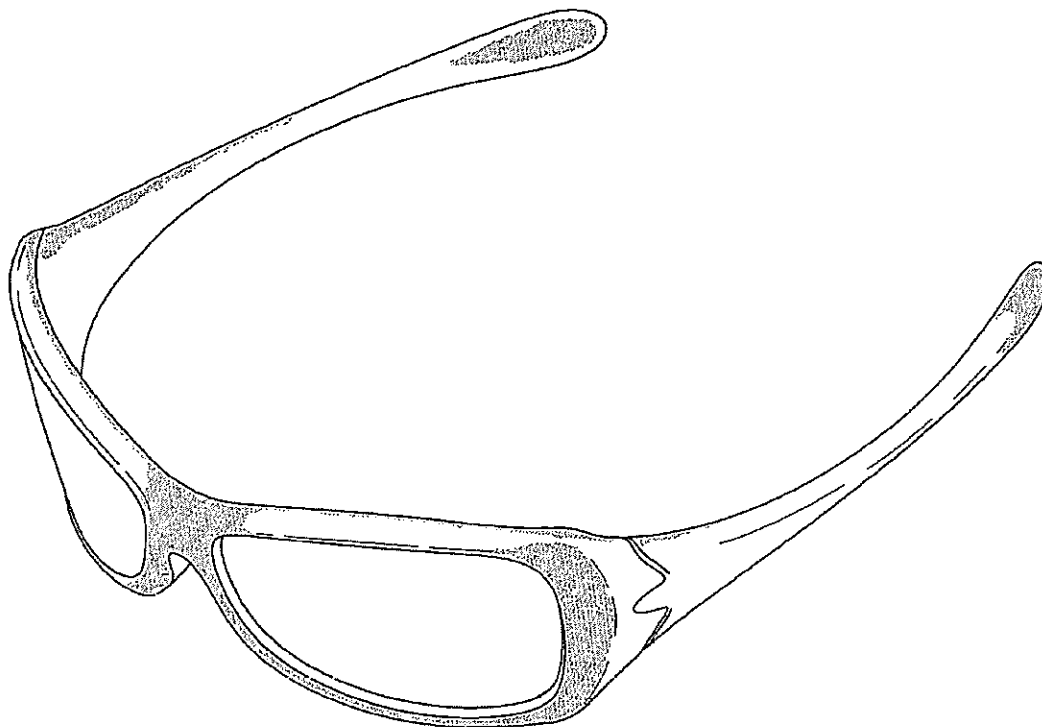


FIG. 1

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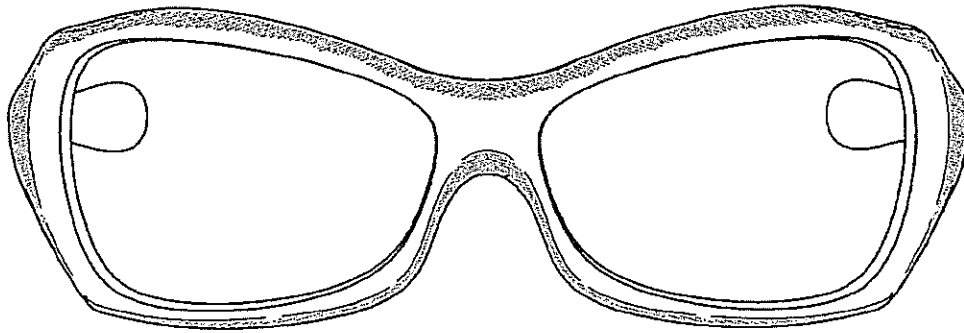


FIG. 2



FIG. 3

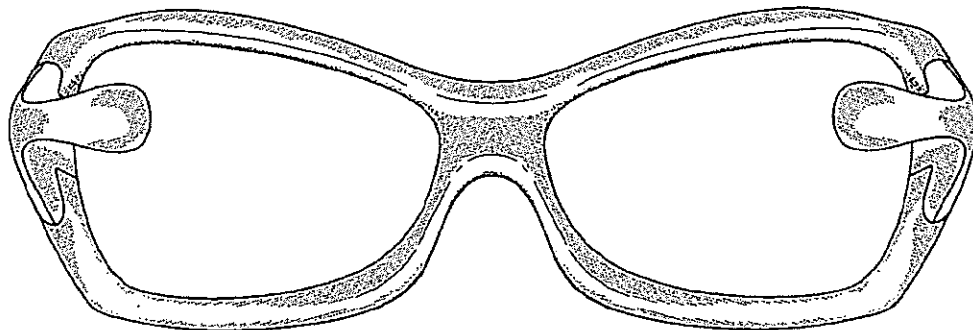


FIG. 4

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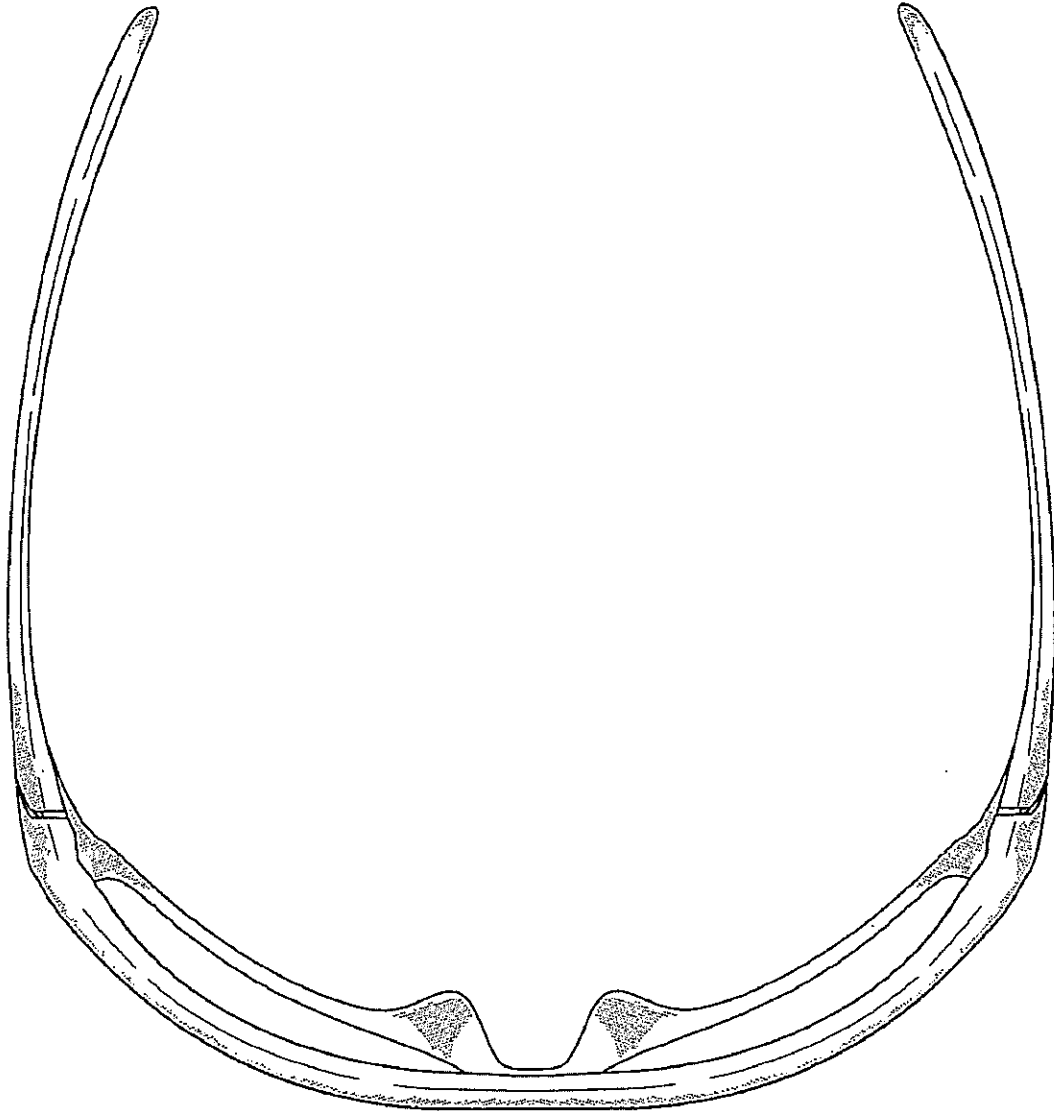


FIG. 5

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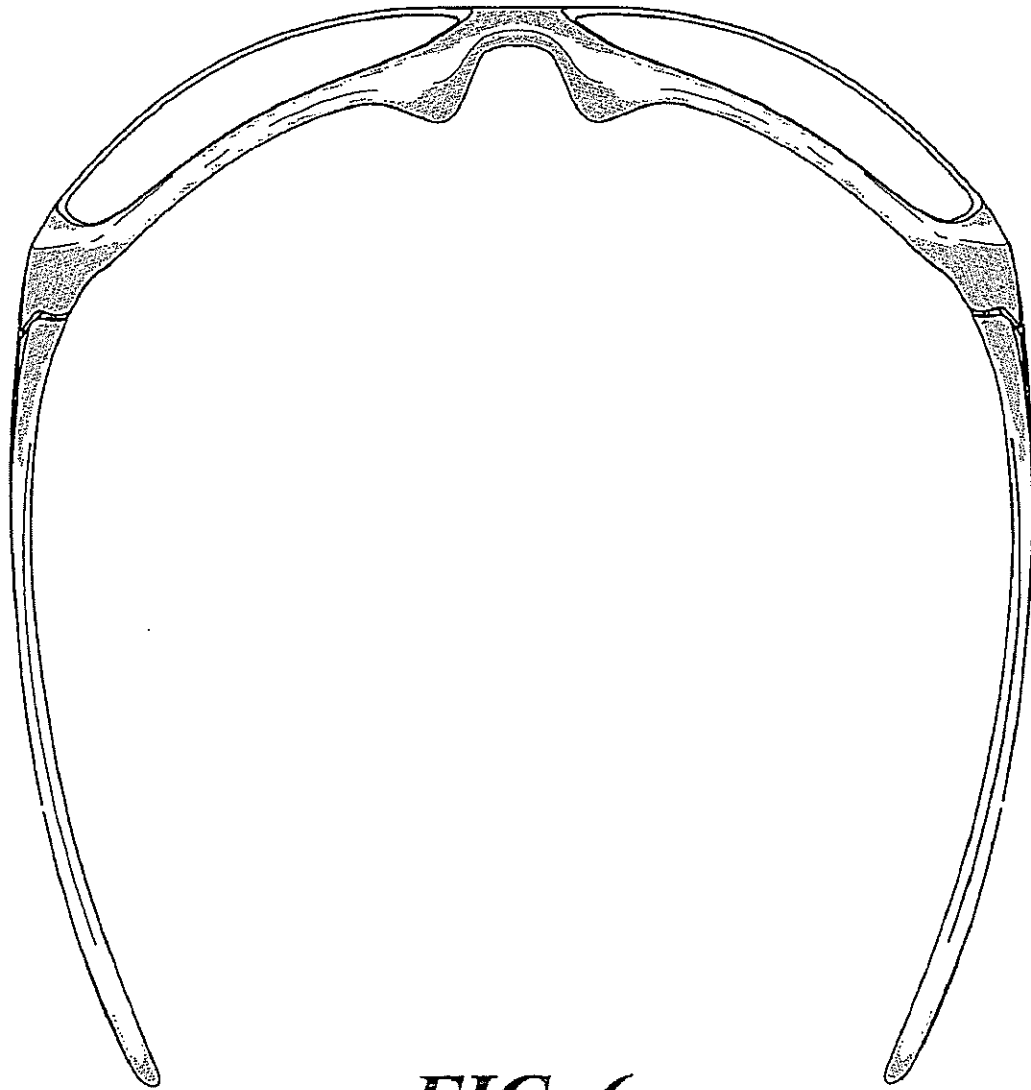


FIG. 6



US00D557325S

(12) **United States Design Patent** (10) Patent No.: **US D557,325 S**
Jannard et al. (45) Date of Patent: **** Dec. 11, 2007**

(54) **EYEGLASS FRONT**
 (75) Inventors: **James H. Jannard**, Spieden Island, WA (US); **Hans Karsten Moritz**, Foothill Ranch, CA (US); **Colin Baden**, Irvine, CA (US)
 (73) Assignee: **Oakley, Inc.**, Foothill Ranch, CA (US)
 (**) Term: **14 Years**
 (21) Appl. No.: **29/288,122**
 (22) Filed: **May 30, 2007**

Related U.S. Application Data

(62) Division of application No. 29/262,974, filed on Jul. 14, 2006.
 (51) **LOC (8) CL.** **16-06**
 (52) **U.S. CL.** **D16/326**
 (58) **Field of Classification Search** **D16/101, D16/300-334, 335, 336-330, 332-338, 341, D16/342; D21/190; D24/110.2; 2/12, 13, 2/426, 432, 434-437, 441, 447-449, 453; 351/41, 44, 47, 51, 61-63, 83, 89, 90, 158; D14/137, 156, 157, 168, 169, 188, 189-199, D14/265, 446; D27/148; 359/618; 381/327**
 See application file for complete search history.

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 D462,375 S * 9/2002 Baden et al. D16/326
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 D470,166 S * 2/2003 Yee et al. D16/326
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 D489,394 S 5/2004 Teng
 D497,380 S * 10/2004 Thixton et al. D16/326
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 D514,613 S 2/2006 Jannard et al.
 D523,461 S 6/2006 Jannard et al.
 7,182,459 B1 * 2/2007 Chen 351/158
 D539,830 S * 4/2007 Saderholm et al. D16/326
 D542,330 S * 5/2007 Elmore D16/326

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(Continued)

Primary Examiner—T. Chase Nelson
Assistant Examiner—Barbara B. Lohr
 (74) *Attorney, Agent, or Firm*—Gregory K. Nelson

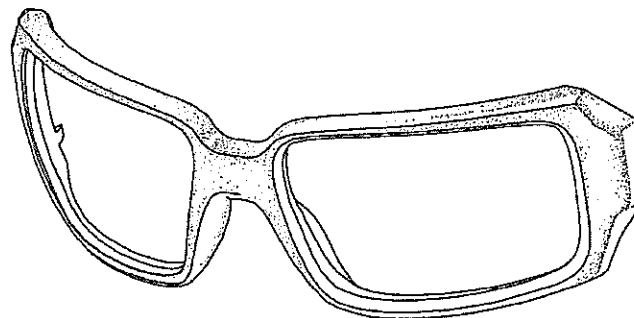
(57) **CLAIM**

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

DESCRIPTION

FIG. 1 is a front perspective view of the eyeglass front 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 plan view thereof; and
 FIG. 6 is a top plan view thereof.

1 Claim, 3 Drawing Sheets



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Pending U.S. Appl. No. 29/262.974, Jannard, et al.

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U.S. Patent

Dec. 11, 2007

Sheet 1 of 3

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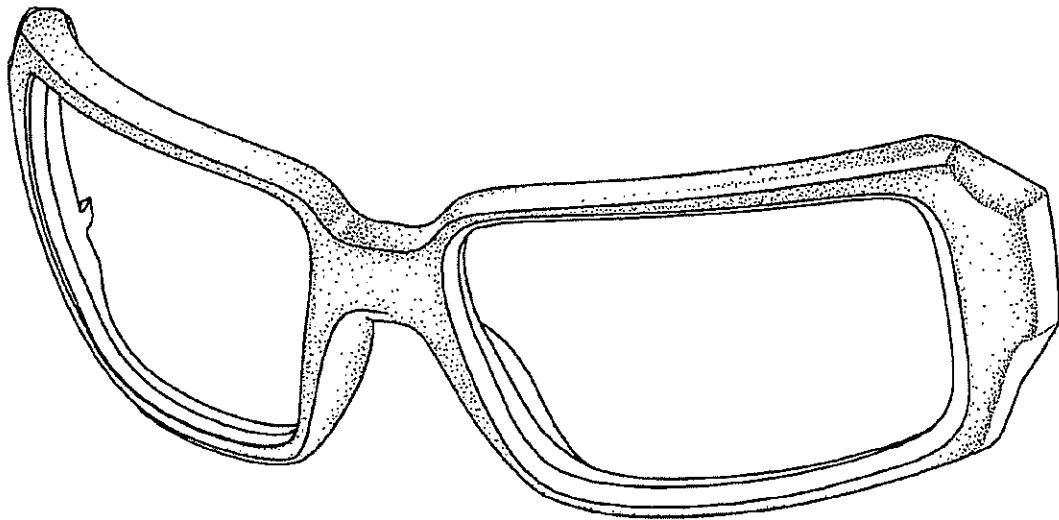


FIG. 1

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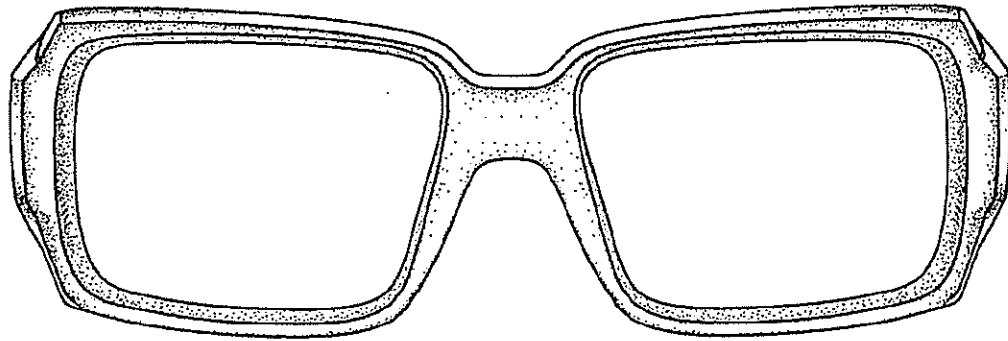


FIG. 2

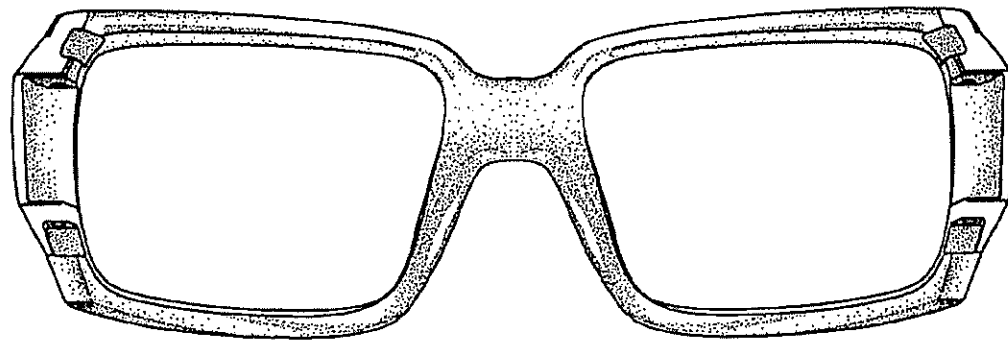


FIG. 3

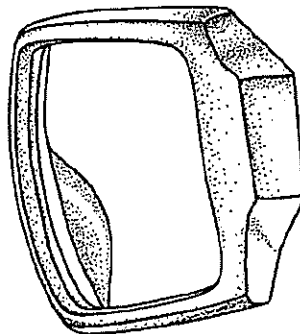


FIG. 4

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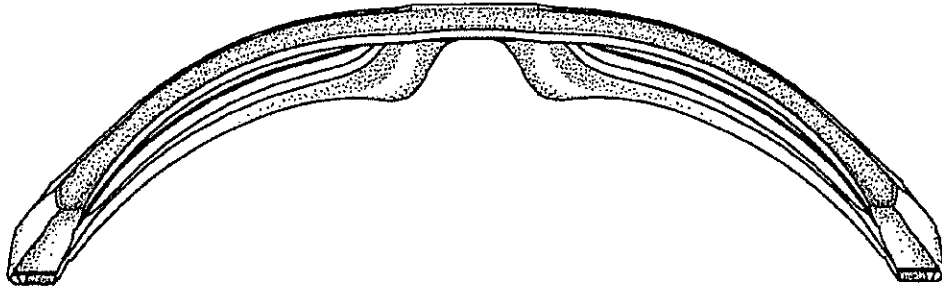


FIG. 5



FIG. 6



US00D557326S

(12) **United States Design Patent** (10) Patent No.: **US D557,326 S**
Jannard et al. (45) Date of Patent: **** Dec. 11, 2007**

(54) **EYEGLASS COMPONENTS**
 (75) Inventors: **James H. Jannard**, Spieden Island, WA (US); **Hans Karsten Moritz**, Foothill Ranch, CA (US); **Colin Baden**, Irvine, CA (US)
 (73) Assignee: **Oakley, Inc.**, Foothill Ranch, CA (US)
 (**) Term: **14 Years**
 (21) Appl. No.: **29/288,607**
 (22) Filed: **Jun. 15, 2007**

Related U.S. Application Data

(62) Division of application No. 29/262,974, filed on Jul. 14, 2006.

(51) **LOC (8) Cl.** **16-06**
 (52) **U.S. Cl.** **D16/326**
 (58) **Field of Classification Search** **D16/101, D16/300-334, 335, 336-330, 332-338, 341, D16/342; D21/190; D24/110.2; 2/12, 13, 2/426, 432, 434-437, 441, 447-449, 453; 351/41, 44, 47, 51, 61-63, 83, 89, 90, 158; D14/137, 156, 157, 168, 169, 188, 189-199, D14/265, 446; D27/148; 359/618; 381/327**
 See application file for complete search history.

(56) **References Cited**

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D192,884 S	5/1962	Pettito	
D198,939 S	8/1964	Huggins	
D200,734 S	3/1965	Zurich	
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D372,726 S	8/1996	Simioni	
D399,866 S *	10/1998	Yee	D16/330
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D461,834 S *	8/2002	Jannard et al.	D16/326
D462,375 S *	9/2002	Baden et al.	D16/326
D464,669 S *	10/2002	Thixton et al.	D16/326
D470,166 S *	2/2003	Yee et al.	D16/326
D473,892 S *	4/2003	Thixton et al.	D16/314
D484,173 S	12/2003	Jannard et al.	
D485,570 S *	1/2004	Teng	D16/314
D489,394 S	5/2004	Teng	
D497,380 S *	10/2004	Thixton et al.	D16/326
D505,151 S *	5/2005	Windham	D16/326
D514,613 S	2/2006	Jannard et al.	
D523,461 S	6/2006	Jannard et al.	
7,182,459 B1 *	2/2007	Chen	351/158
D539,830 S *	4/2007	Saderholm et al.	D16/326
D542,330 S *	5/2007	Elmore	D16/326

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(Continued)

Primary Examiner—T. Chase Nelson
Assistant Examiner—Barbara B Lohr
 (74) *Attorney, Agent, or Firm*—Gregory K. Nelson

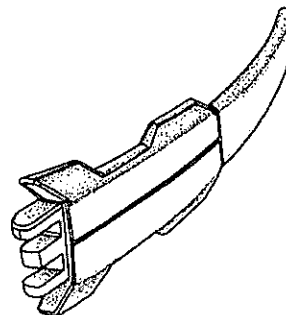
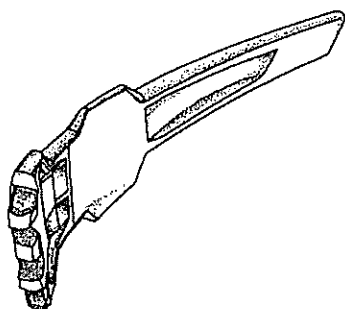
(57) **CLAIM**

The ornamental design for eyeglass components, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of the eyeglass components 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 plan view thereof; and,
 FIG. 6 is a bottom plan view thereof.

1 Claim, 4 Drawing Sheets



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Asia Pacific Trading Co., Inc. *Metal & Plastic Combination V*, Asia Pacific Trading Co. Catalogue 1999-2000, p. 2.

Berthet-Bondet. *B.B. sol 1968*, Sunglass Catalogue, p. 2, 10.

Optical Journal & Review of Optometry, Nov. 1, 1971, p. 12.

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Sheet 1 of 4

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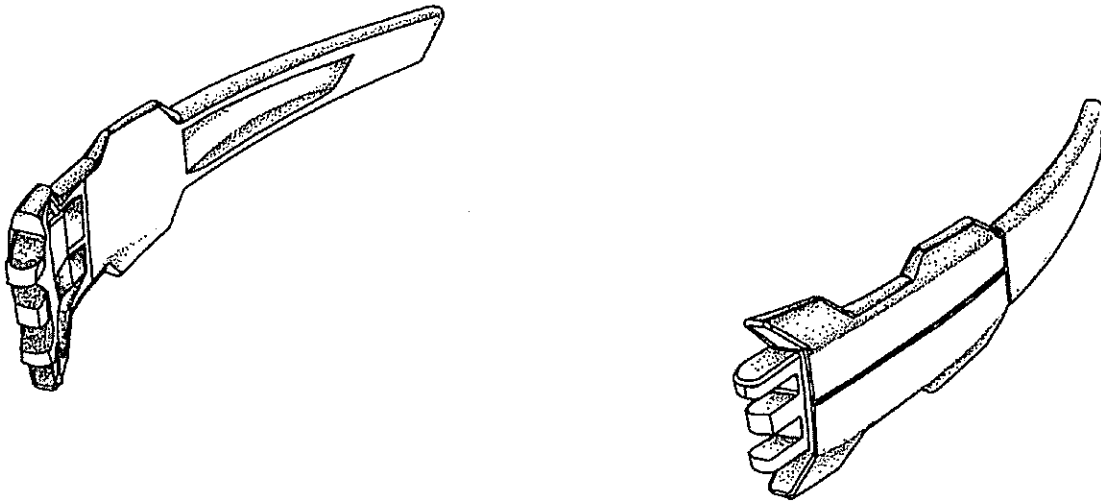


FIG. 1

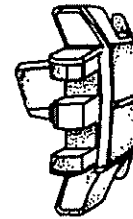
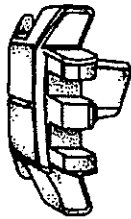


FIG. 2

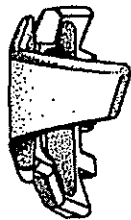


FIG. 3

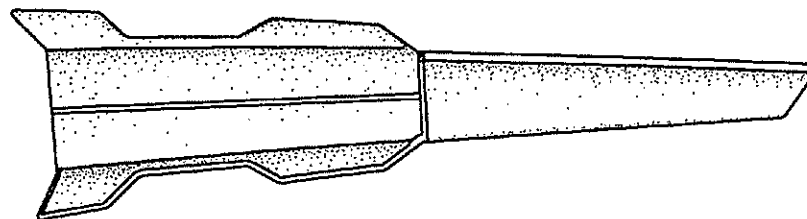


FIG. 4

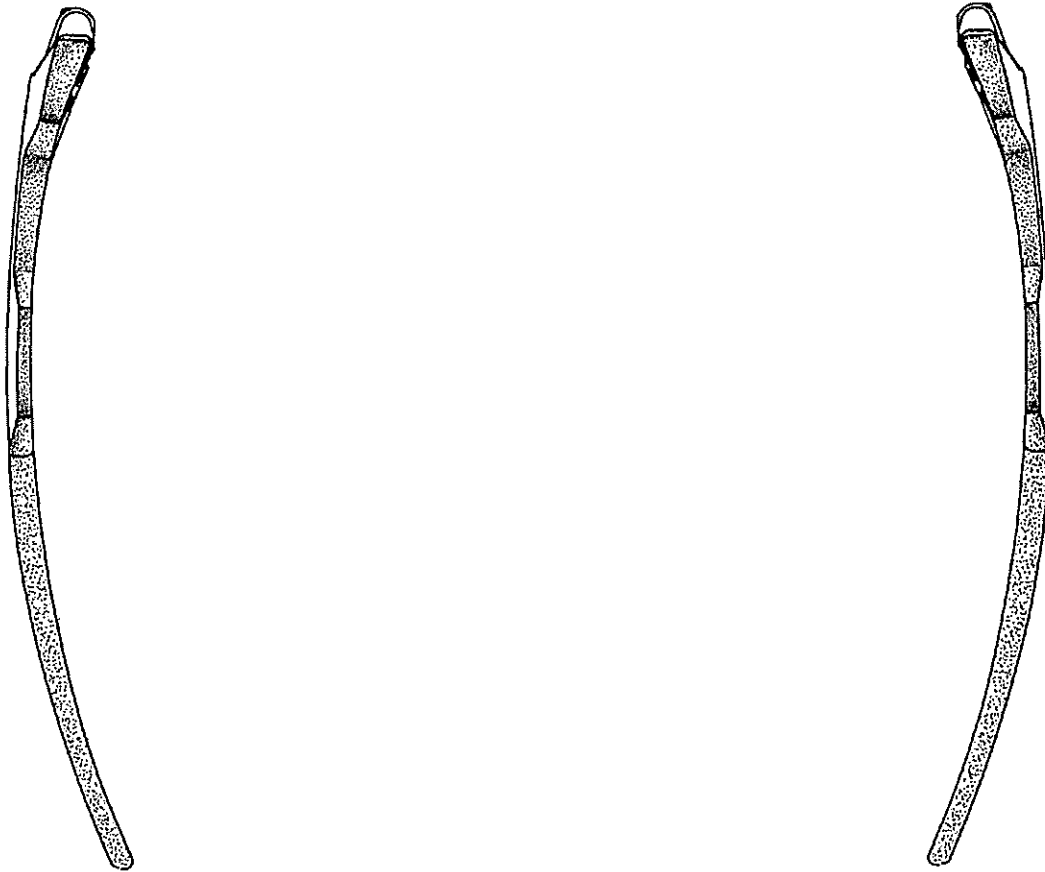


FIG. 5

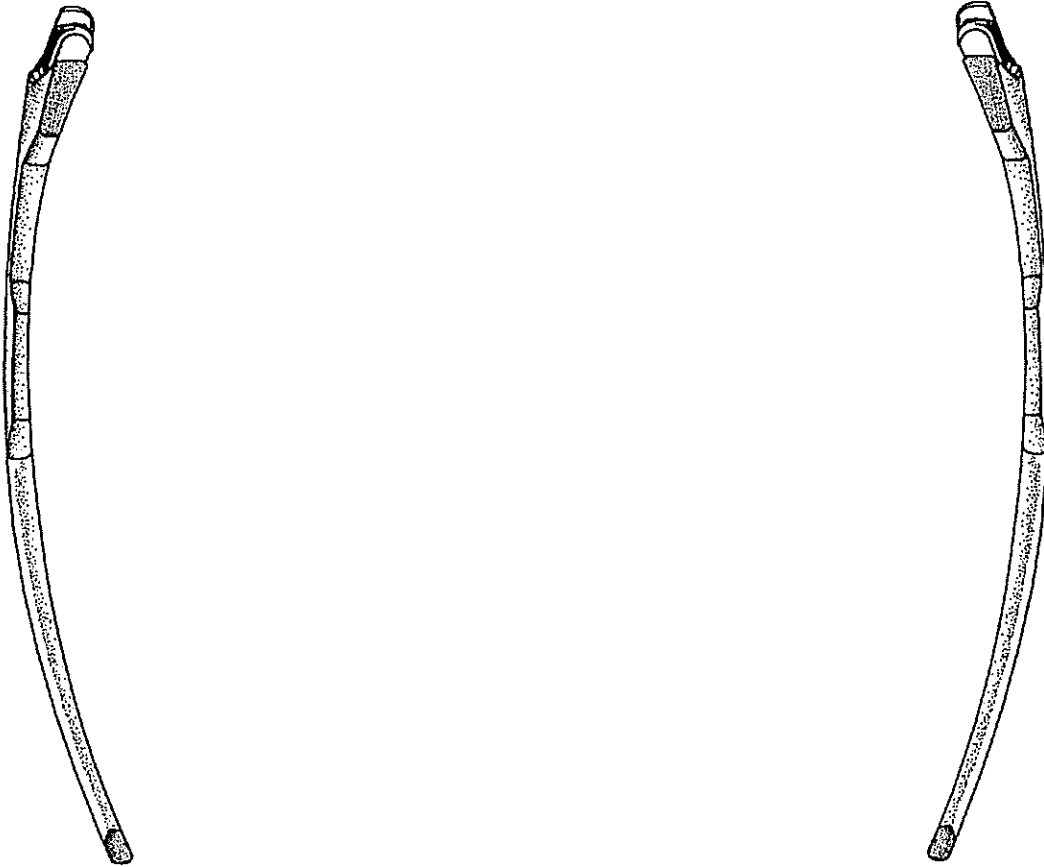


FIG. 6



US00D561812S

(12) **United States Design Patent** (10) Patent No.: **US D561,812 S**
Fox et al. (45) Date of Patent: **** Feb. 12, 2008**

(54) **EYEGLASS AND EYEGLASS FRONT**

(75) Inventors: **Peter Campbell Fox**, San Jose, CA (US); **Colin Baden**, Irvine, CA (US)

(73) Assignee: **Oakley, Inc.**, Foothill Ranch, CA (US)

(**) Term: **14 Years**

(21) Appl. No.: **29/254,337**

(22) Filed: **Feb. 21, 2006**

(51) **LOC (8) CL** 16-06

(52) **U.S. Cl.** **D16/325; D16/326**

(58) **Field of Classification Search** **D16/300 330;**
 D16/101, 332-338; D29/109-110; D24/110.2;
 351/41, 44, 51-52, 62, 158, 92, 103-111,
 351/156, 61, 114-119, 121-123; 2/426-432,
 2/447-449, 441, 434-437

See application file for complete search history.

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 D545,348 S * 6/2007 Chen et al. D16/326
 D547,793 S * 7/2007 Baden et al. D16/326
 D547,794 S * 7/2007 Jannard et al. D16/326
 D550,758 S * 9/2007 Cheng D16/325

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

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 D392,308 S 3/1998 Simioni
 D397,351 S 8/1998 Simioni
 D414,796 S 10/1999 Arnette

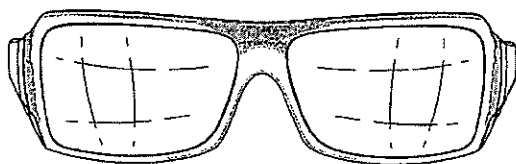
(57) **CLAIM**

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

DESCRIPTION

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

1 Claim, 4 Drawing Sheets



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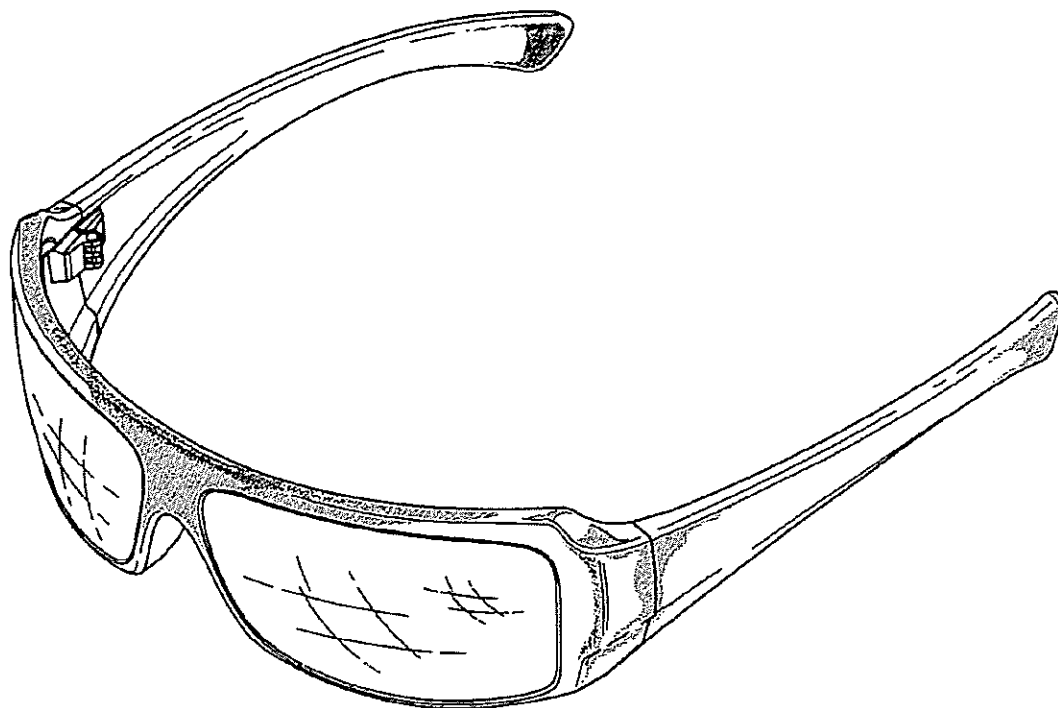


FIG. 1

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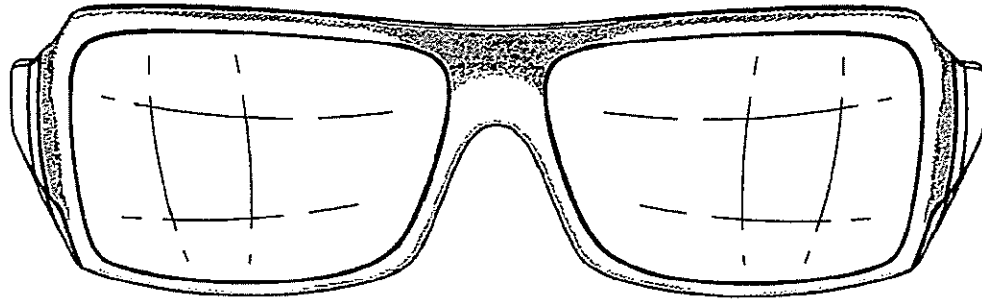


FIG. 2

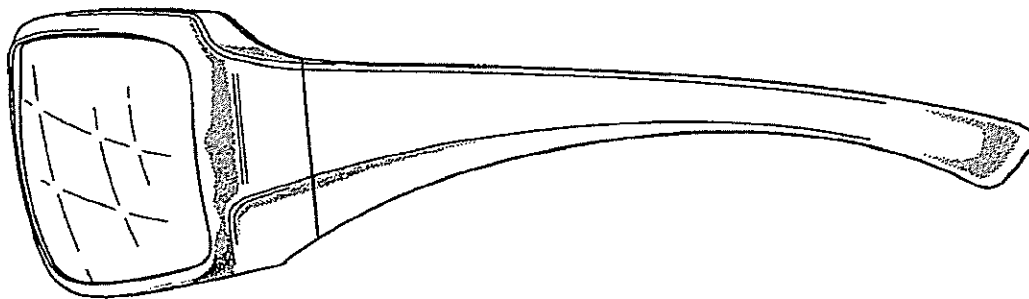


FIG. 3

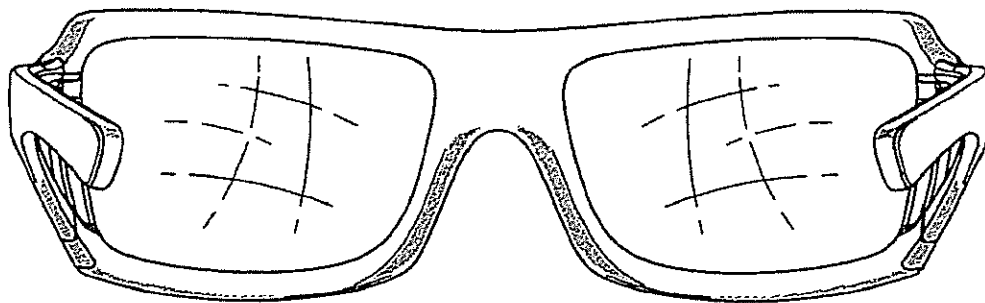


FIG. 4

U.S. Patent

Feb. 12, 2008

Sheet 3 of 4

US D561,812 S

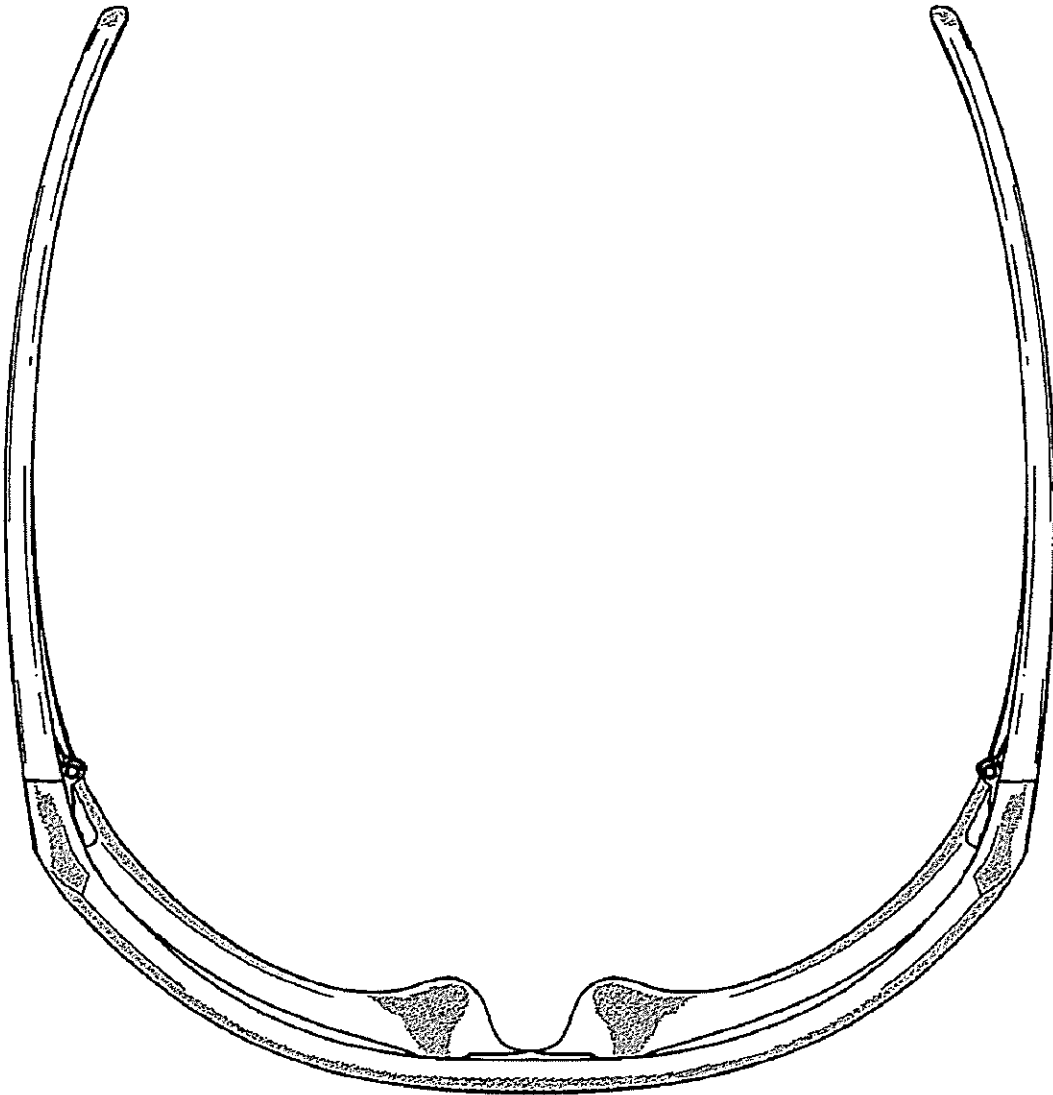


FIG. 5

U.S. Patent

Feb. 12, 2008

Sheet 4 of 4

US D561,812 S

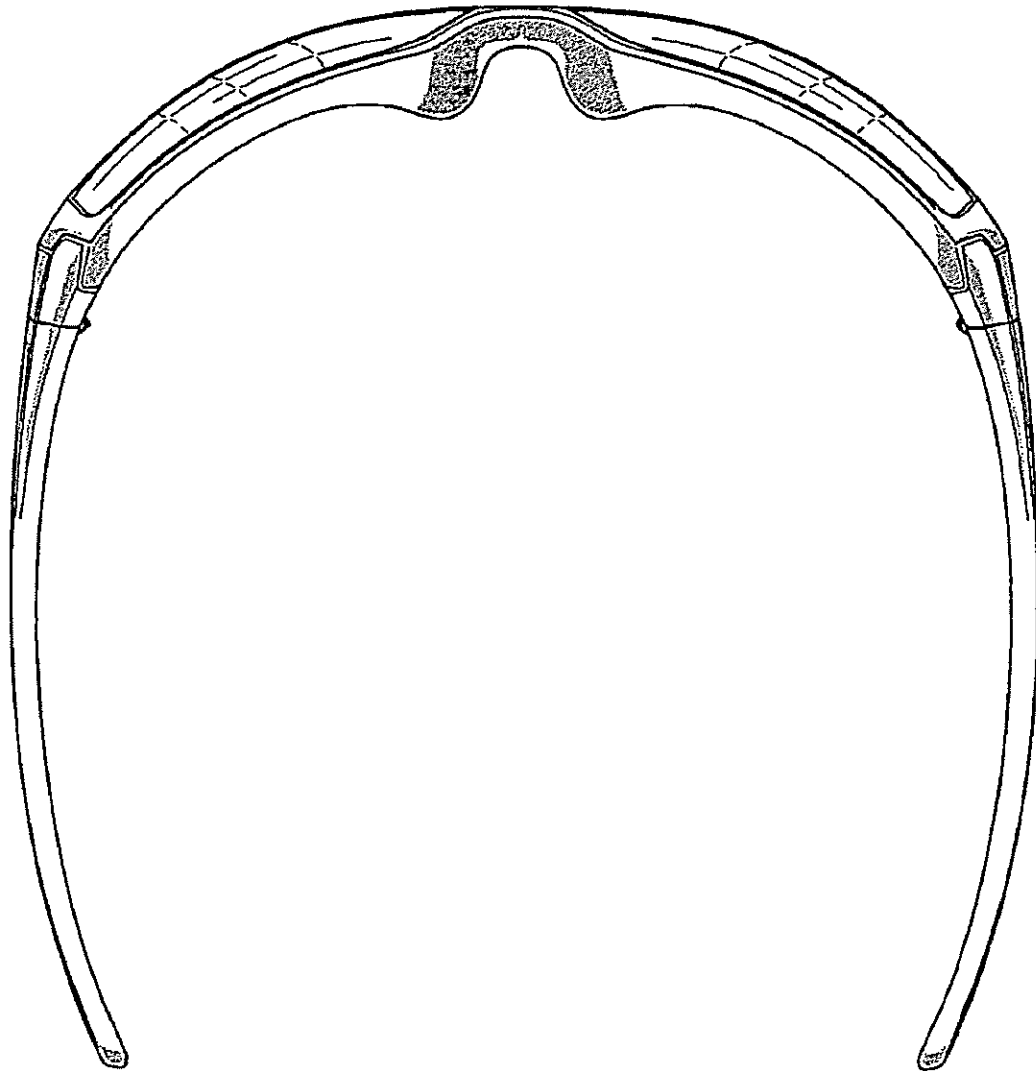


FIG. 6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Alicemarie H. Stotler and the assigned discovery Magistrate Judge is Arthur Nakazato.

The case number on all documents filed with the Court should read as follows:

SACV08- 535 AHS (ANx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT

Central District of California

OAKLEY, INC., a Washington corporation

SUMMONS IN A CIVIL CASE

V.

ASIA PACIFIC TRADING CO., INC., a California corporation

CASE NUMBER: SACV08-00535 AHS (ANx)

TO: (Name and address of Defendant)

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Chandler G. Weeks, Esq.
Weeks, Kaufman, Nelson & Johnson
462 Stevens Avenue, Suite 310
Solana Beach, CA 92075

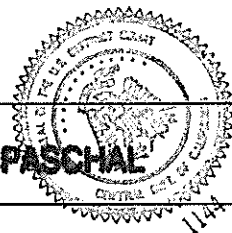
an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

SHERRI R. CARTER

CLERK

ROLLS ROYCE PASCHAL

(By) DEPUTY CLERK



MAY 13 2008

DATE

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) OAKLEY, INC., a Washington corporation	DEFENDANTS ASIA PACIFIC TRADING CO., INC., a California corporation
(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): Orange County, California	County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only): Los Angeles County, California
(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Weeks, Kaufman, Nelson & Johnson 462 Stevens Avenue, Suite 310 Solana Beach, CA 92075 (858) 794-2140	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;">Citizen of This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:30%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2</td> <td>DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td>PTF <input type="checkbox"/> 5</td> <td>DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3</td> <td>DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6</td> <td>DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6														

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This is a cause of action for Patent Infringement under 35 U.S.C. Sections 271 and 281

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities /Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standard Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

FOR OFFICE USE ONLY: Case Number: SACV08-00535 AHS (ANx)

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? No Yes

If yes, list case number(s): See attached Notice of Related Cases

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which EACH named plaintiff resides (Use an additional sheet if necessary)

Check here if the U.S. government, its agencies or employees is a named plaintiff.
Orange County, California

List the California County, or State if other than California, in which EACH named defendant resides. (Use an additional sheet if necessary).

Check here if the U.S. government, its agencies or employees is a named defendant.
Los Angeles County, California

List the California County, or State if other than California, in which EACH claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.
Orange County, California

X. SIGNATURE OF ATTORNEY (OR PRO PER): *Cher G. Weber* Date 5/12/08

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))