

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

CV

JOHNSON, J.  
GOLD, M.J.  
02 5323

MARCHON EYEWEAR, INC., AND  
ROTHANDBERG, INC.

Plaintiffs,

v.

GLOBAL OPTICAL RESOURCES, INC.,

Defendant.

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
\* OCT 02 2002 \*  
BROOKLYN OFFICE

02 Civ. \_\_\_\_\_

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs Marchon Eyewear, Inc. ("Marchon") and Rothandberg, Inc. ("Rothandberg"), by and through their attorneys, allege the following against defendant Global Optical Resources, Inc. ("Global"):

**THE PARTIES**

1. Marchon is a corporation of the state of New York having its principal place of business at 35 Hub Drive, Melville, New York 11747.
2. Rothandberg is a corporation of the State of New York having its principal place of business at 35 Hub Drive, Melville, New York 11747.
3. On information and belief, defendant Global is a corporation or other business entity organized and existing under the laws of the United States with offices at 8385 Marsh Creek Road, St. Paul, Minnesota 55125.

**JURISDICTION AND VENUE**

4. This is a cause of action arising under the patent laws of the United States, 35 U.S.C. § 271 *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and

1

1338. On information and belief, this Court has personal jurisdiction over defendant Global in this district under the laws of New York, including but not limited to, N.Y. Civ. Prac. L. & R. 301, 302, by virtue of, among other things, Globals's contracting to supply goods or services in New York, offering to sell such goods in New York and selling substantial quantities of infringing product that have been introduced to and distributed in interstate commerce, including sales and offers to sell within the State of New York.

5. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) and § 1400(b).

#### **NATURE OF ACTION**

6. This is a patent infringement action brought for the infringement of U.S. Patent No. 4,896,955 entitled "Eyeglass Frame Including Shape-Memory Elements" (the "'955 patent", Exhibit 1). The '955 patent relates to eyeglass frames fabricated from nickel-titanium based shape-memory alloy components having, *inter alia*, greater than 3% elasticity over a usage temperature range of -20°C to +40°C.

#### **BACKGROUND**

7. On January 30, 1990, the '955 patent duly and legally issued. The '955 patent was assigned to CVI/Beta Ventures, Inc. ("Beta") and is entitled to a presumption of validity under 35 U.S.C. § 282.

8. Marchon is the owner of the '955 patent by an assignment from Beta dated September 6, 1995. Marchon has granted an exclusive license under the '955 patent to Rothandberg, which purchases, imports, distributes and sells eyeglass frames containing nickel-titanium shape-memory alloy components under the supervision, management and control of Marchon.

9. Rothandberg, under Marchon's supervision, has sold substantial numbers of eyeglass frames with nickel-titanium shape-memory alloy components in the state of New York and throughout the United States.

10. Marchon, as assignee, and Rothandberg, as exclusive licensee, have standing to bring claims for infringement of the '955 patent and for damages set forth herein.

11. On information and belief, Global has offered for sale and has sold eyeglass frames having nickel-titanium based shape-memory alloy components under the names Tech-Flex and Memory Titanium (the "Global NiTi frames") to customers throughout the United States, including in New York.

12. On information and belief, Global has offered for sale and has sold Global NiTi frames in the Eastern District of New York, including but not limited to a Target department store in Levittown, New York and a Sears store in Massapequa, New York.

13. Plaintiffs have conducted pre-suit tests and analyses on samples of the Global NiTi frames, the results of which show that the Global NiTi frames infringe one or more of the claims of the '955 patent.

14. The Global NiTi frames, upon information and belief, infringe one or more claims of the '955 patent.

## COUNT I

### **Infringement of '955 Patent**

15. Marchon and Rothandberg hereby incorporate paragraphs 1 through 14 above as if set forth in their entirety herein.

16. On information and belief, Global has imported, used, sold, offered to sell and/or distributed the Global NiTi frames to others in the United States and continues to do so.

17. Global has been and is now infringing one or more claims of the '955 patent by importing, using, selling, offering to sell and/or distributing the Global NiTi frames.

18. Marchon and Rothandberg have been, and continue to be, damaged and otherwise harmed by the past and continuing infringement by Global of the '955 patent.

19. On information and belief, Global's infringement has been and is being conducted with knowledge of the '955 patent. Further, Global began to sell and offer to sell the Global NiTi frames without first performing a sufficient investigation or any tests to determine whether the Global NiTi frames infringe the '955 patent. Therefore, Global's infringement has been and is willful. Marchon and Rothandberg have been and continue to be damaged and otherwise harmed by such willful infringement.

20. Marchon and Rothandberg will be irreparably harmed unless Global's infringing activities are enjoined.

21. Marchon and Rothandberg have no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Marchon and Rothandberg respectfully request the following relief:

- (a) A judgment declaring that the '955 patent is valid and enforceable, and has been infringed by defendant Global;
- (b) A judgment declaring that defendant Global's infringement has been willful;
- (c) A preliminary and a permanent injunction against any infringement by defendant Global of the '955 patent;
- (d) A judgment declaring that plaintiffs Marchon and Rothandberg be awarded their damages including, but not limited to, lost profits and an assessment of all pre-

judgment interest on such damages so computed for any patent infringement by defendant Global;

- (e) Plaintiffs Marchon and Rothandberg be awarded treble damages and attorneys' fees as a result of the willful patent infringement by defendant Global;
- (f) Plaintiffs Marchon and Rothandberg be awarded their attorneys' fees and costs, as this is an exceptional case under 35 U.S.C. §285;
- (g) Costs and expenses in this action; and
- (h) Such other and further relief as this Court deems appropriate.

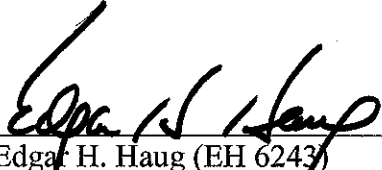
### JURY DEMAND

Pursuant to Fed.R.Civ.P. 38(b), Marchon and Rothandberg hereby request that all issues in this case be tried before a jury.

Dated: New York, New York  
October 2, 2002

FROMMER LAWRENCE & HAUG LLP  
745 Fifth Avenue  
New York, New York 10151  
(212) 588-0800

By: \_\_\_\_\_

  
Edgar H. Haug (EH 6243)  
John R. Lane (JL 6942)  
John G. Taylor (JT 8761)

ATTORNEYS FOR PLAINTIFFS  
Marchon Eyewear, Inc. and  
Rothandberg, Inc.