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3:02-CV-00136 OAKLEY INC V. RIVIERA TRADING INC

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02 JAN 22 AM 9:13

BY: *[Signature]* DEPUTY

6 Attorneys for Plaintiff
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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 **OAKLEY, INC.**, a Washington)
12 corporation,)
13 Plaintiff,)
14 vs.)
15 **RIVIERA TRADING INC.**, a)
Delaware corporation, and)
16 **OCEAN PACIFIC APPAREL CORP.**,)
a Delaware corporation,)
17)
18 Defendants.)

CIVIL ACTION NO.
'02 CV 00136 J' (RBB)
COMPLAINT FOR PATENT
INFRINGEMENT AND TRADE
DRESS INFRINGEMENT
DEMAND FOR JURY TRIAL

19 Plaintiff, Oakley, Inc. (hereinafter referred to as
20 "Oakley") complains of Defendants Riviera Trading Inc.
21 (hereinafter referred to as "Riviera") and Ocean Pacific Apparel
22 Corp. (hereinafter referred to as "Op"), and collectively
23 referred to as "the Defendants," and alleges as follows:

24 **JURISDICTION AND VENUE**

25 1. Jurisdiction over this action is founded upon 28
26 U.S.C. §§ 1331 and 1338. Venue is proper under 28 U.S.C. §§
27 1391(b) and (c) and 28 U.S.C. § 1400(b). Defendants have sold
28 infringing products in this district, directed sales and

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1 marketing efforts toward this district, and routinely conduct
2 business within this district.

3 **THE PARTIES**

4 2. Plaintiff Oakley, Inc. is a corporation organized and
5 existing under the laws of the state of Washington having its
6 principal place of business located at One Icon, Foothill Ranch,
7 California 92610.

8 3. Oakley is informed and believes, and thereupon
9 alleges, that Defendant Riviera was and is a corporation duly
10 organized and existing under the laws of the state of Delaware,
11 with its principal place of business located at 90 Park Avenue,
12 New York, New York 10016. Oakley asserts by way of this
13 complaint, as set forth in detail below, that Defendant Riviera
14 is importing and selling sunglasses for and in behalf of
15 Defendant Op, which sunglasses infringe certain patents and
16 trade dress of Oakley's.

17 4. Oakley is informed and believes, and thereupon
18 alleges, that Defendant Op is a corporation duly organized and
19 existing under the laws of the state of Delaware, with its
20 principal place of business located at 3 Studebaker, Irvine,
21 California 92618. Oakley asserts by way of this complaint, as
22 set forth in detail below, that Defendant Riviera is selling
23 that infringe certain patents and trade dress of Oakley's.

24 **FACTUAL BACKGROUND**

25 5. Since the mid-1970's, Oakley has been and continues to
26 be actively engaged in the manufacture and sale of high quality
27 sunglasses, eyewear, goggles, and other eye protection
28 equipment. Two of Oakley's hottest sunglass lines over the last

1 couple years have been its "Minute" and "A Wire" sunglass lines.
2 These products have enjoyed enormous commercial success in the
3 United States, and world-wide, which success is expected to
4 continue.

5 6. Oakley is the owner by assignment of U.S. Patent No.
6 D415,188 (hereinafter referred to as the "'188 Patent") duly and
7 lawfully issued on October 12, 1999, describing and claiming the
8 invention entitled "EYEGLASSES," and embodied Oakley's "Minute"
9 sunglass. A true and correct copy of U.S. Patent No. D415,188
10 is attached hereto as Exhibit 1.

11 7. Oakley is informed and believes, and thereupon alleges
12 that the Defendants are selling eyeglasses that copy the
13 D415,188 design patent of Oakley. Eyeglasses sold by the
14 Defendants, and identified by them on the hang tag with "121-
15 016" and "2690401", embody the subject matter claimed in
16 Oakley's '188 Patent without any license thereunder and is
17 thereby infringing said patent. Oakley is informed and believes
18 and thereon alleges that Defendant supplied these eyeglasses to
19 various distributors, retailers, and retail customers.

20 8. Oakley is the owner by assignment of U.S. Patent No.
21 D420,036 (hereinafter referred to as the "'036 Patent") duly and
22 lawfully issued on February 1, 2000, describing and claiming the
23 invention entitled "EYEGLASS COMPONENTS," and embodied Oakley's
24 "A Wire" sunglass. A true and correct copy of U.S. Patent No.
25 D420,036 is attached hereto as Exhibit 2.

26 9. Oakley is informed and believes, and thereupon alleges
27 that the Defendants are selling eyeglasses that copy the
28 D420,036 design patent of Oakley. Eyeglasses sold by the

1 Defendants, and identified by them on the hang tag with "111-
2 016" and "2690468", embody the subject matter claimed in
3 Oakley's '036 Patent without any license thereunder and is
4 thereby infringing said patent. Oakley is informed and believes
5 and thereon alleges that Defendant supplied these eyeglasses to
6 various distributors, retailers, and retail customers.

7 10. Defendants have received written notice of Oakley's
8 proprietary rights in its patents by way of actual written
9 notice. Further, Defendants received constructive notice of
10 Oakley's patents as Oakley has caused said patent numbers to be
11 placed plainly on the product and/or packaging. Despite actual
12 and constructive knowledge, Defendants have continued to
13 infringe Oakley's rights. On information and belief, Defendants
14 have willfully and wantonly infringed Oakley's '188 and '036
15 Patents.

16 11. Oakley is informed and believes and thereupon alleges
17 that the sale of Defendants infringing sunglasses has resulted
18 in lost sales, has reduced the business and profit of Oakley,
19 and has greatly injured the goodwill and reputation associated
20 with Oakley, all to Oakley's damage in an amount not yet fully
21 determined.

22 12. Moreover, the Defendants wrongfully profited from
23 Oakley's invention by selling sunglasses that infringe Oakley's
24 '188 and '036 Patents. The exact amount of profits realized by
25 Defendants as a result of their infringing activities are
26 presently unknown to Oakley, as are the exact amount of damages
27 suffered by Oakley as a result of these activities. These
28

1 profits and damages cannot be accurately ascertained without an
2 accounting.

3 13. Since the introduction of both Oakley's "Minute" and
4 "A Wire" sunglasses, Oakley has expended large sums of money in
5 the promotion of these lines of eyeglasses. As a result, both
6 eyeglass lines have become and are now widely known and
7 recognized in this District and elsewhere as emanating from and
8 authorized by Oakley.

9 14. Oakley is informed and believes and thereupon alleges
10 that the Defendant's copies are designed, manufactured,
11 packaged, advertised, displayed and sold expressly to deceive
12 customers desirous of purchasing products authorized by Oakley
13 or to profit from the demand created by Oakley for the
14 ornamental and inherently distinctive features of the Oakley
15 eyeglasses.

16 15. Oakley is informed and believes and based thereon
17 alleges that Defendant's copy "Minute" and "A Wire" sunglasses
18 are inferior products to the authentic Oakley eyeglasses.
19 Oakley is further informed and believes and thereupon alleges
20 that as a result of the inferior quality of the Defendants
21 eyeglasses, they are sold in the marketplace at a lower price
22 than are the authentic Oakley eyeglasses. As a result, Oakley
23 has been damaged significantly in the eyeglass market.

24 16. Oakley is further informed and believes and thereupon
25 alleges that the presence of Defendants' eyeglass copies in the
26 marketplace damages the value of Oakley's exclusive rights. The
27 presence of the copies in the marketplace are likely to diminish
28 the apparent exclusivity of the genuine Oakley products thereby

1 dissuading potential customers who otherwise would have sought
2 the distinctive Oakley eyeglass designs. Upon information and
3 belief, such deception has misled and continues to mislead and
4 confuse many of said purchasers to buy the products sold by
5 Defendants and/or has misled non-purchasers to believe the
6 eyeglass copies emanate from or are authorized by Oakley.

7 17. Oakley is informed and believes and thereupon alleges
8 that the sale of the copy eyeglasses has resulted in lost sales,
9 has reduced the business and profit of Oakley, and has greatly
10 injured the general reputation of Oakley due to the inferior
11 quality of the copies, all to Oakley's damage in an amount not
12 yet fully determined.

13 18. The exact amount of profits realized by the Defendants
14 as a result of its infringing activities, are presently unknown
15 to Oakley, as are the exact amount of damages suffered by Oakley
16 as a result of said activities. These profits and damages
17 cannot be accurately ascertained without an accounting.
18 Further, Defendant's actions are irreparably injuring Oakley and
19 will continue unless and until enjoined by this court.

20 **FIRST CLAIM FOR RELIEF**

21 **(PATENT INFRINGEMENT)**

22 19. The allegations of paragraphs 1 through 18 of the
23 complaint are repled and realleged as though fully set forth at
24 this point.

25 20. This is a claim for patent infringement against both
26 Defendants, and arises under 35 U.S.C. Sections 271 and 281.

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

1 22. Oakley is the owner of U.S. Patent No. D415,188 which
2 protects the design and ornamentation of eyeglasses embodied by
3 Oakley's "Minute" line of sunglasses. A true and correct copy
4 of U.S. Patent No. D415,188 is attached hereto as Exhibit 1. By
5 statute, the patent is presumed valid and enforceable under 35
6 U.S.C. § 282.

7 23. Defendants, through their agents, employees and
8 servants, manufactured, imported, and sold, without any rights
9 or license, sunglasses that fall within the scope and claims
10 contained in U.S. Patent No. D415,188.

11 24. Oakley is informed and believes, and thereupon
12 alleges, that Defendants willfully infringed upon Oakley's
13 exclusive rights under the '188 Patent with full notice and
14 knowledge thereof.

15 25. Oakley is informed and believes, and thereupon
16 alleges, that Defendants have derived, received, and will
17 continue to derive and receive from these acts of infringement,
18 gains, profits, and advantages in an amount not presently known
19 to Oakley. By reason of the these acts of infringement, Oakley
20 has been, and will continue to be, greatly damaged. Oakley is
21 suffering immediate and irreparable harm by Defendants' acts of
22 infringement.

23 26. Defendants may continue to infringe U.S. Patent No.
24 D415,188 to the great and irreparable injury of Oakley, for
25 which Oakley has no adequate remedy at law unless Defendant is
26 enjoined by this court.

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SECOND CLAIM FOR RELIEF

(PATENT INFRINGEMENT)

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3 27. The allegations of paragraphs 1 through 18 of the
4 complaint are repled and realleged as though fully set forth at
5 this point.

6 28. This is a claim for patent infringement against both
7 Defendants, and arises under 35 U.S.C. Sections 271 and 281.

8 29. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and
9 1338.

10 30. Oakley is the owner of U.S. Patent No. D420,036 which
11 protects the design and ornamentation of eyeglasses embodied by
12 Oakley's "A Wire" line of sunglasses. A true and correct copy
13 of U.S. Patent No. D420,036 is attached hereto as Exhibit 2. By
14 statute, the patent is presumed valid and enforceable under 35
15 U.S.C. § 282.

16 31. Defendants, through their agents, employees and
17 servants, manufactured, imported, and sold, without any rights
18 or license, sunglasses that fall within the scope and claims
19 contained in U.S. Patent No. D420,036.

20 32. Oakley is informed and believes, and thereupon
21 alleges, that Defendants willfully infringed upon Oakley's
22 exclusive rights under the '036 Patent with full notice and
23 knowledge thereof.

24 33. Oakley is informed and believes, and thereupon
25 alleges, that Defendants have derived, received, and will
26 continue to derive and receive from these acts of infringement,
27 gains, profits, and advantages in an amount not presently known
28 to Oakley. By reason of the these acts of infringement, Oakley

1 has been, and will continue to be, greatly damaged. Oakley is
2 suffering immediate and irreparable harm by Defendants' acts of
3 infringement.

4 34. Defendants may continue to infringe U.S. Patent No.
5 D420,036 to the great and irreparable injury of Oakley, for
6 which Oakley has no adequate remedy at law unless Defendant is
7 enjoined by this court.

8 **THIRD CLAIM FOR RELIEF**

9 **(TRADE DRESS INFRINGEMENT)**

10 35. Oakley realleges paragraphs 1 through 34 as replied and
11 realleged as though set forth fully at this point.

12 36. This is an action for trade dress infringement and
13 false designation of origin pursuant to 15 U.S.C. § 1125(a)
14 against both Defendants.

15 37. Since at least mid-1998, Oakley has its "Minute" lines
16 of sunglasses. This model has been one of Oakley's best sellers
17 over the past few years. The configuration of Oakley's "Minute"
18 sunglass is distinctive and well-recognized by the industry and
19 consumers as emanating from Oakley. The "Minute" sunglass has
20 enjoyed enormous commercial success which is expected to
21 continue, and have become, through wide-spread recognition, an
22 indicator of Oakley as the source of the products.

23 38. Oakley is informed and believes and thereupon alleges
24 that the Defendants' sale of copies of Oakley's "Minute" sunglass
25 configuration constitutes trade dress infringement and unfair
26 competition, as a false designation of origin, a false
27 description or representation of goods, and false representation
28 to the consuming public that the Defendants sunglasses

1 originated from or somehow are authorized by or affiliated with
2 Oakley.

3 39. Oakley is informed and believes and thereupon alleges
4 that the actions of Defendants were done willfully, knowingly
5 and maliciously with the intent to trade upon the good will of
6 Oakley and to injure Oakley.

7 40. The Defendants' acts are in violation of 15 U.S.C. §
8 1125 (a) and will continue to the great and irreparable injury
9 of Oakley until enjoined by this Court.

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

11 1. That a judgment be entered that Oakley's U.S. Patent
12 No. D415,188 is valid, in full force and effect, and owned by
13 Oakley;

14 2. That a judgment be entered that Oakley's U.S. Patent
15 No. D420,036 is valid, in full force and effect, and owned by
16 Oakley;

17 3. That Defendants be adjudicated to have infringed
18 Oakley's U.S. Patent No. D415,188;

19 4. That Defendants be adjudicated to have infringed
20 Oakley's U.S. Patent No. D420,036;

21 5. That Plaintiff Oakley, Inc. be awarded an assessment
22 of damages for Defendants' infringement of U.S. Patent Nos.
23 D415,188 and D420,036, together with an award of such damages,
24 in accordance with 35 U.S.C. §§ 284 and 289;

25 6. That Plaintiff Oakley, Inc. be awarded an assessment
26 of treble damages for Defendants' willful infringement of U.S.
27 Patent No. D415,188 and D420,036, together with an award of such
28 damages, in accordance with 35 U.S.C. § 284;

1 7. That judgment be entered that the configuration of
2 Oakley's "Minute" line of sunglasses is protected trade dress
3 within the meaning of 15 U.S.C. § 1125(a);

4 8. That Defendants be adjudicated to have infringed the
5 trade dress of Oakley's "Minute" sunglass, within the meaning of
6 § 1125(a);

7 9. That Plaintiff Oakley, Inc. be awarded an assessment
8 of damages equal to Defendants' profits from their trade dress
9 infringement and false designation of origin, together with an
10 award of such damages, all in accordance with 15 U.S.C. § 1117;

11 10. That all damages for trade dress infringement against
12 the Defendants be awarded in an amount up to three times the
13 amount of damages found or assess to compensate Oakley for the
14 willful, deliberate, and intentional acts of trade dress
15 infringement and false designation of origin by the Defendants,
16 pursuant to 15 U.S.C. § 1117;

17 11. That Defendants, and their owners, directors,
18 officers, agents, servants, employees and attorneys, and all
19 those persons in active concert or participation with them, be
20 forthwith preliminarily and thereafter permanently enjoined from
21 infringing United States Patent Nos. D415,188 and D420,036;

22 12. That Defendants, and their respective agents,
23 servants, employees, attorneys and all those in active concert
24 or participation with them, be enjoined and restrained during
25 the pendency of this action, and permanently thereafter, from
26 infringing the trade dress of Oakley's distinctive "Minute"
27 sunglass configurations;

28

1 13. That Defendants be directed to file with this court
2 and serve upon Oakley within 30 days after the issuance of the
3 injunction, a report in writing under oath, setting forth in
4 detail the manner and form in which Defendants have complied
5 with the injunction;

6 14. That Plaintiff Oakley, Inc. be awarded an assessment
7 of prejudgment and post-judgment interest and costs against
8 Defendants, together with an award of such interest and costs,
9 all in accordance with 35 U.S.C. § 284 and 15 U.S.C. § 1117;

10 15. For an order requiring Defendants to deliver up and
11 destroy all sunglass models that infringing Oakley's patents or
12 trade dress, as set forth in this complaint;

13 16. That an award of reasonable costs, expenses, and
14 attorney's fees be awarded against Defendants, pursuant to 35
15 U.S.C. §285 and 15 U.S.C. § 1117; and

16 17. That Oakley have such other and further relief as the
17 circumstances of this case may require and as this court may
18 deem just and proper.

19 DATED: 1/17/02

WEEKS, KAUFMAN & JOHNSON



GREGORY K. NELSON
Attorney for Plaintiff Oakley, Inc.

JURY DEMAND

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

26 DATED: 1/17/02

WEEKS, KAUFMAN & JOHNSON



GREGORY K. NELSON

United States Patent [19]

[11] Patent Number: Des. 415,188

Thixton et al.

[45] Date of Patent: Oct. 12, 1999

[54] EYEGLASSES

[75] Inventors: Lek H. Thixton, Eastsound, Wash.;
Colin Baden, Irvine, Calif.; James H.
Jannard, Eastsound, Wash.; Peter Yee,
Irvine, Calif.

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[73] Assignee: Oakley, Inc., Foothill Ranch, Calif.

[**] Term: 14 Years

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[21] Appl. No.: 29/087,390

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[51] LOC (6) CL 16-06

[52] U.S. Cl. D16/326; D16/321

[58] Field of Search D16/101, 300-330,
D16/335; 351/41, 44, 51, 52, 111, 121,
158; 2/428, 430, 452, 447-449

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Primary Examiner—Raphael Barkai
Attorney, Agent, or Firm—Knobbe, Martens, Olson & Bear,
LLP

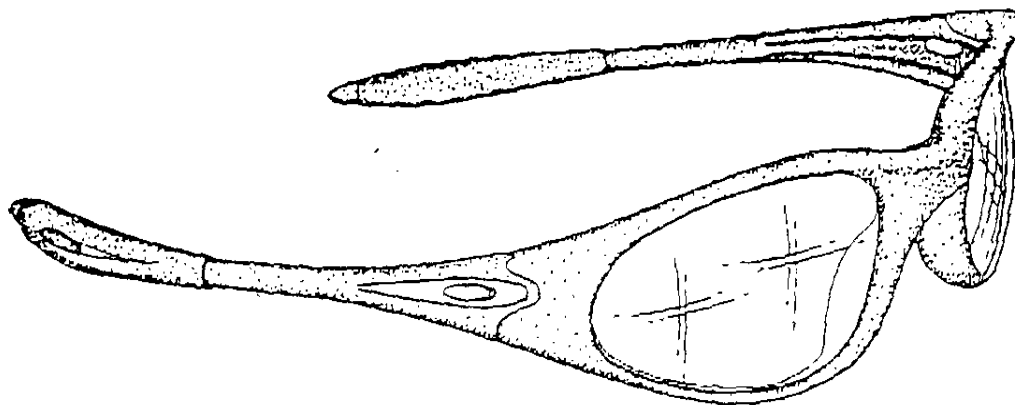
[57] CLAIM

The ornamental design for eyeglasses, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view of the eyeglasses 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



Des. 415,188

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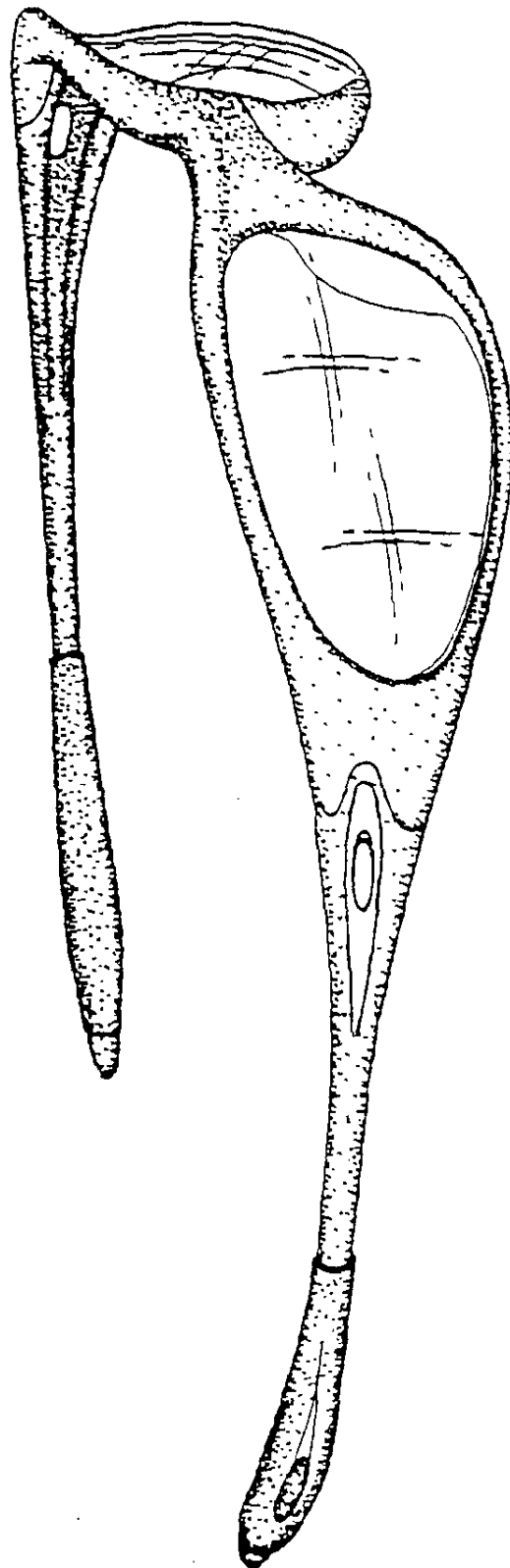


FIG. 1

Oct. 12, 1999

Sheet 2 of 4

Des. 415,188

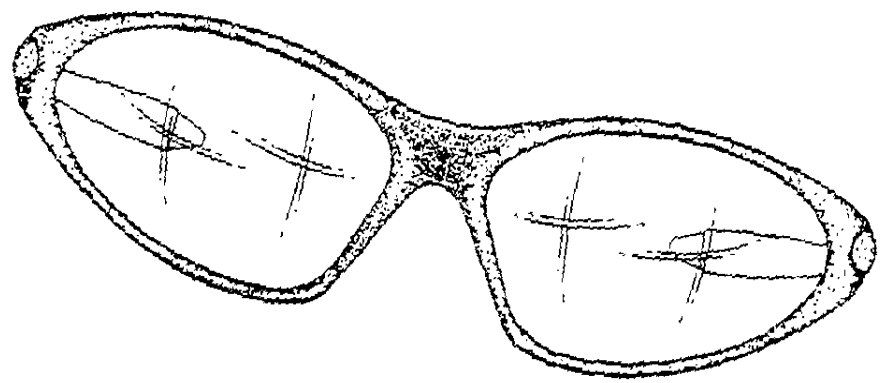


FIG. 2

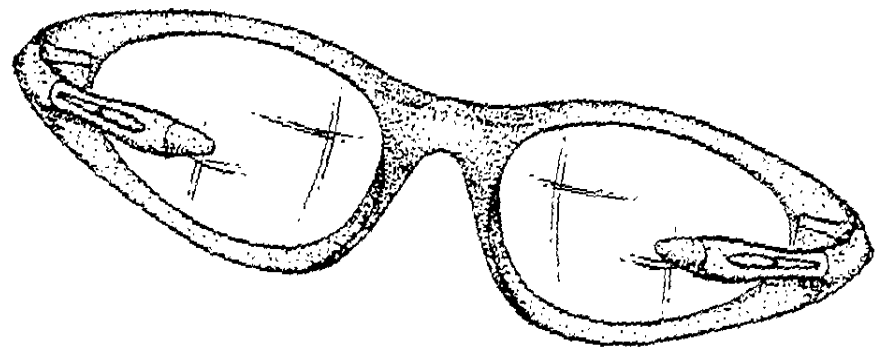


FIG. 3

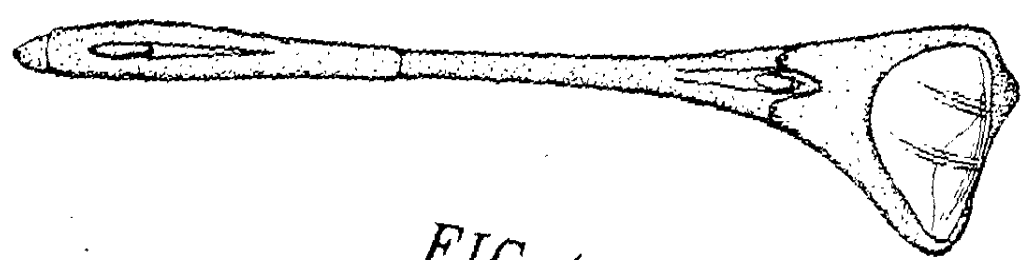


FIG. 4

FIG. 5

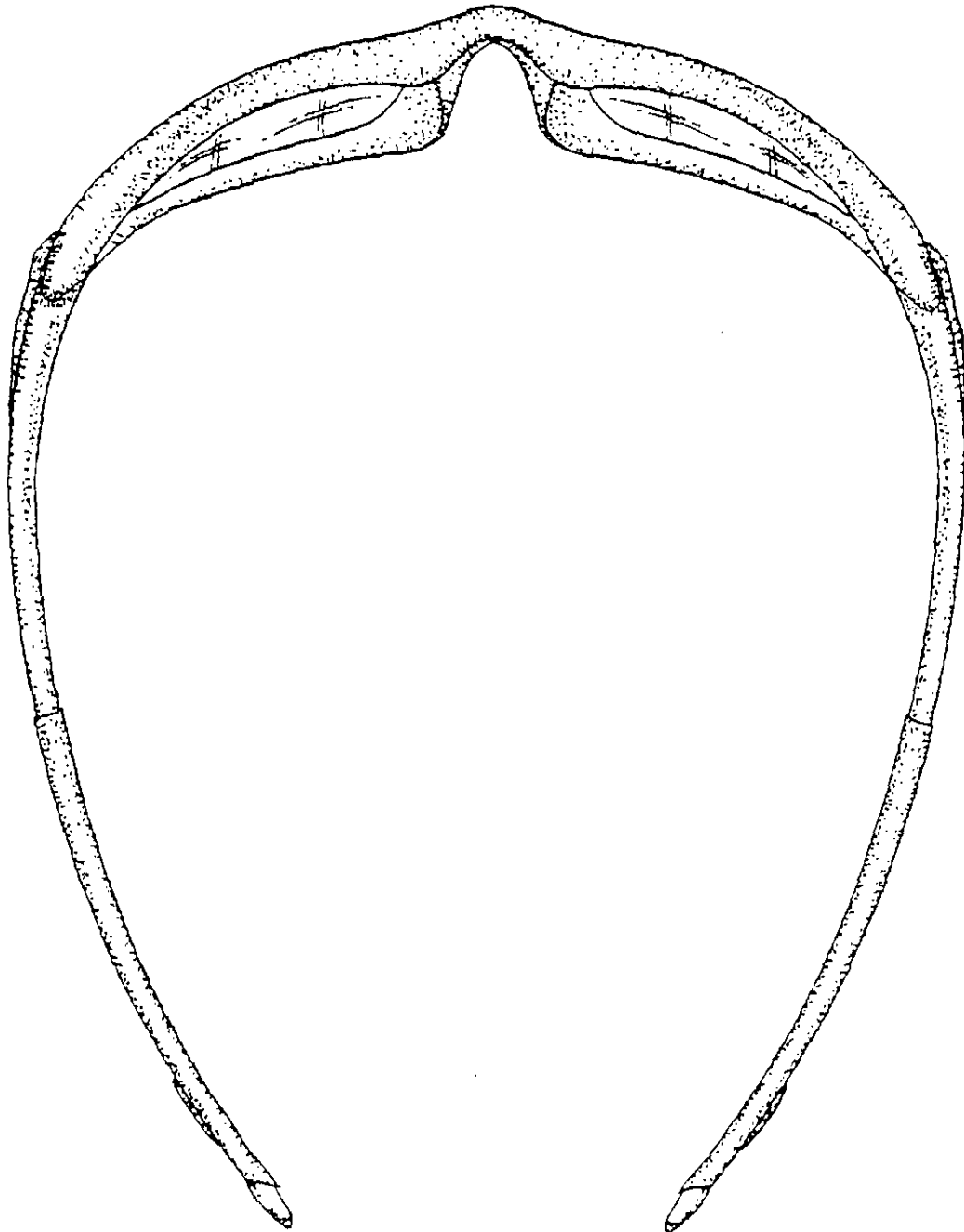
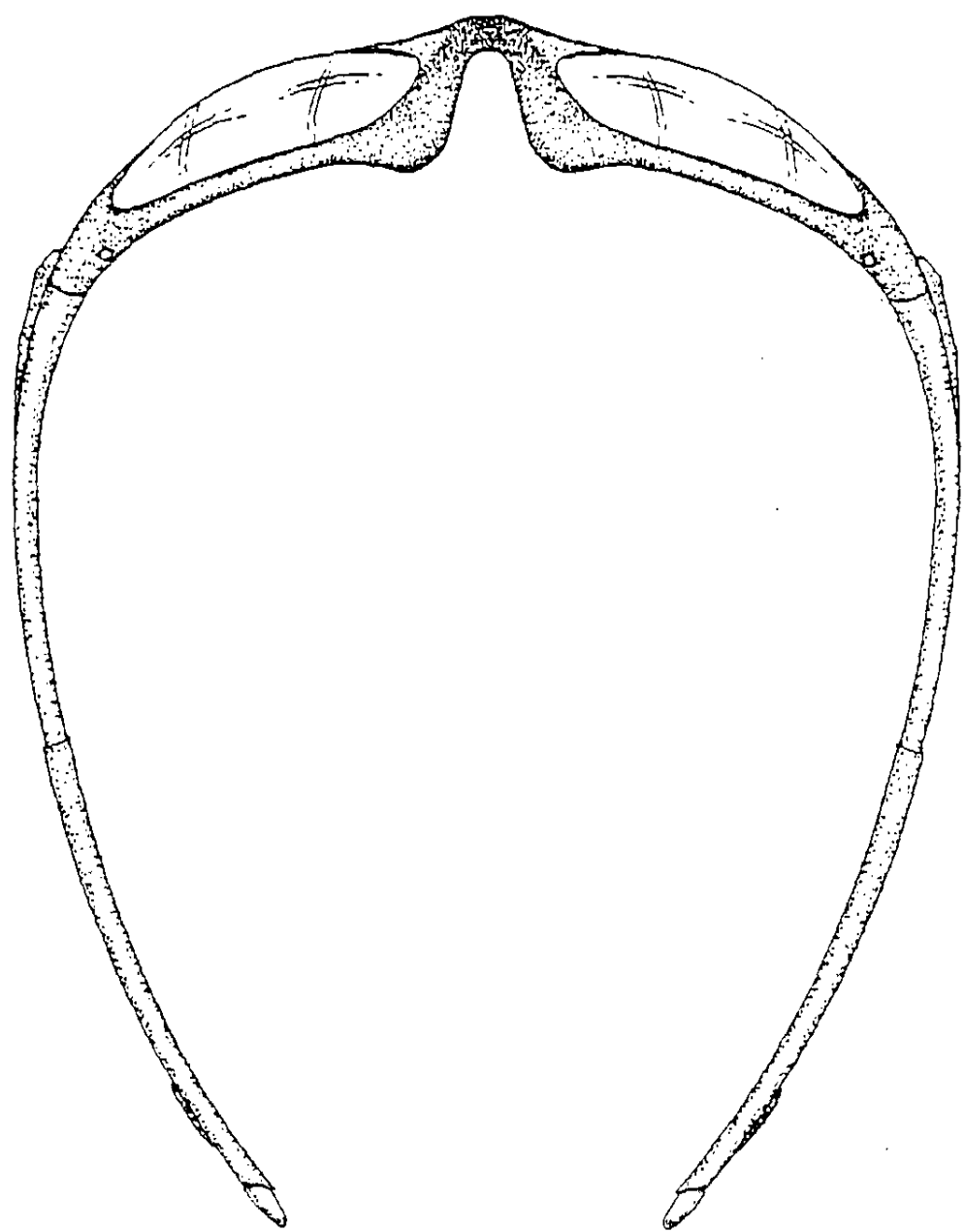


FIG. 6





US00D420036S

United States Patent [19]

[11] Patent Number: Des. 420,036

Yee et al.

[45] Date of Patent: ** Feb. 1, 2000

[54] **EYEGGLASS COMPONENTS**

[75] Inventors: Peter Yee, Irvine, Calif.; Koji Nagayoshi, Sabac, Japan

[73] Assignee: Oakley, Inc., Foothill Ranch, Calif.

[**] Term: 14 Years

[21] Appl. No.: 29/087,188

[22] Filed: Apr. 28, 1998

[51] LOC (7) Cl. 16-06

[52] U.S. Cl. D16/326

[58] Field of Search D16/101, 300-330; D29/109, 110; 351/41, 44, 51, 52, 158; 2/447, 448

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(List continued on next page.)

Primary Examiner—Raphael Barkai

Attorney, Agent, or Firm—Knobbe, Martens, Olson & Bear, LLP

[57] **CLAIM**

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

DESCRIPTION

FIG. 1 is a perspective view of eyeglass components showing our new design;

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 top plan view thereof;

FIG. 6 is a bottom plan view thereof;

FIG. 7 is a perspective view of a modified embodiment of the design shown in FIGS. 1-6;

FIG. 8 is a front elevational view thereof;

FIG. 9 is a rear elevational view thereof;

FIG. 10 is a left side elevational view thereof, the right side elevational view being a mirror image thereof;

FIG. 11 is top plan view thereof;

FIG. 12 is a bottom plan view thereof;

FIG. 13 is a perspective view of a second modified embodiment of the design shown in FIGS. 1-6;

FIG. 14 is a front elevational view thereof;

FIG. 15 is a rear elevational view thereof;

FIG. 16 is a left side elevational view thereof, the right side elevational view being a mirror image thereof;

FIG. 17 is top plan view thereof;

FIG. 18 is a bottom plan view thereof;

FIG. 19 is a perspective view of a third modified embodiment of the design shown in FIGS. 1-6;

FIG. 20 is a front elevational view thereof;

FIG. 21 is a rear elevational view thereof;

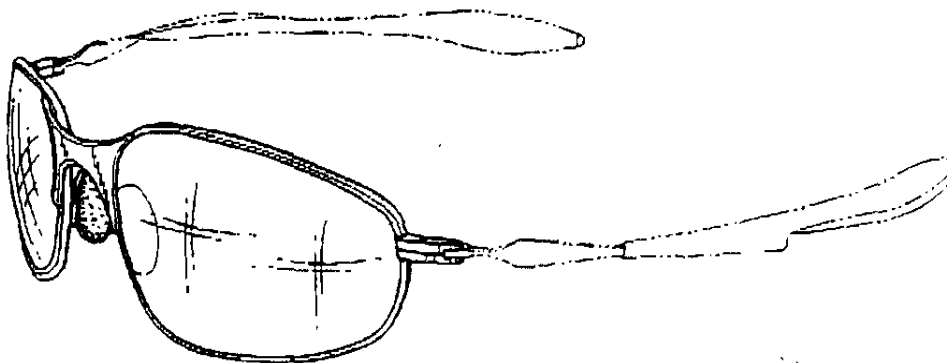
FIG. 22 is a left side elevational view thereof, the right side elevational view being a mirror image thereof;

FIG. 23 is top plan view thereof; and

FIG. 24 is a bottom plan view thereof.

The broken lines shown in FIGS. 1, 7, 13 and 19 are for illustrative purposes only and forms no part of the claimed design.

1 Claim, 12 Drawing Sheets



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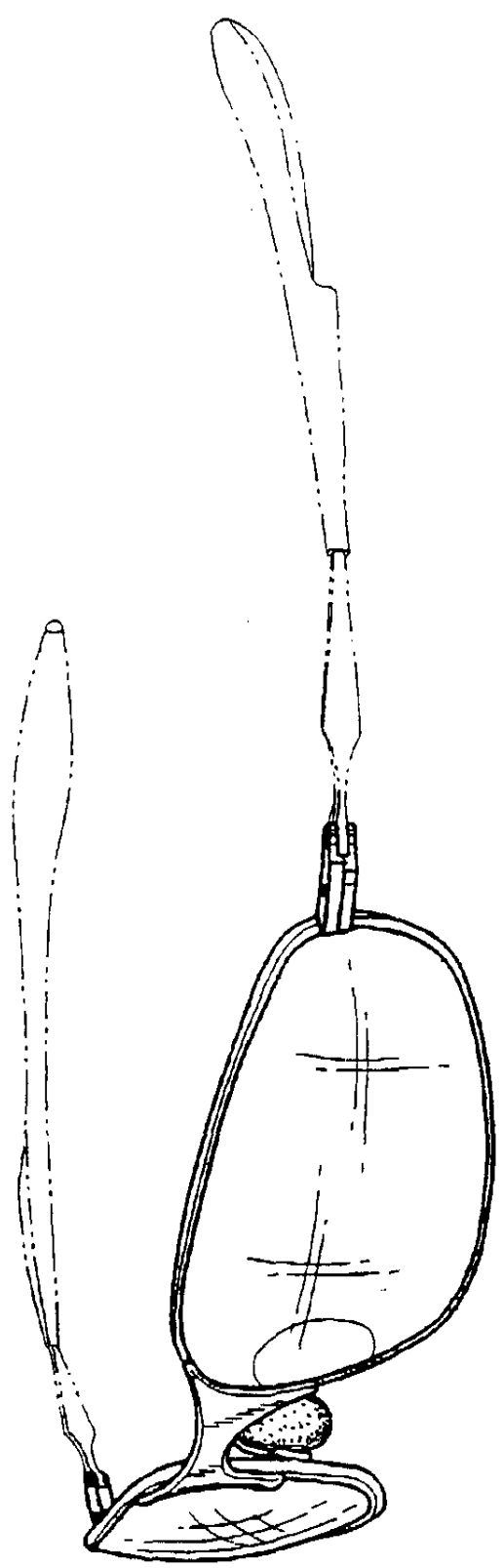


FIG. 1

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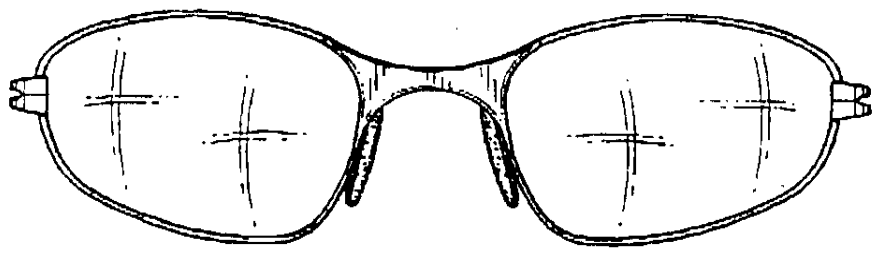


FIG. 2

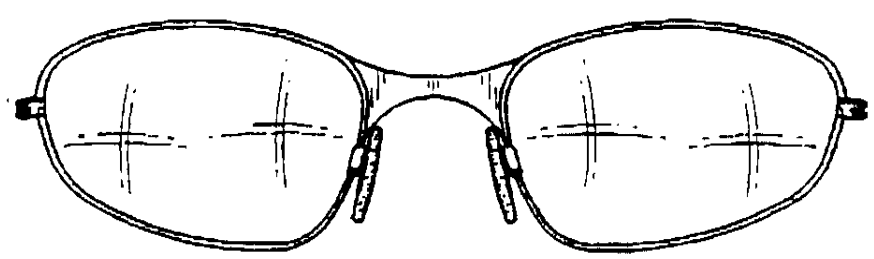


FIG. 3

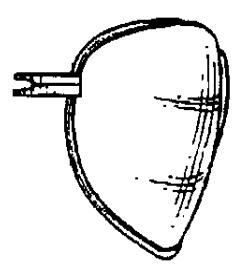


FIG. 4

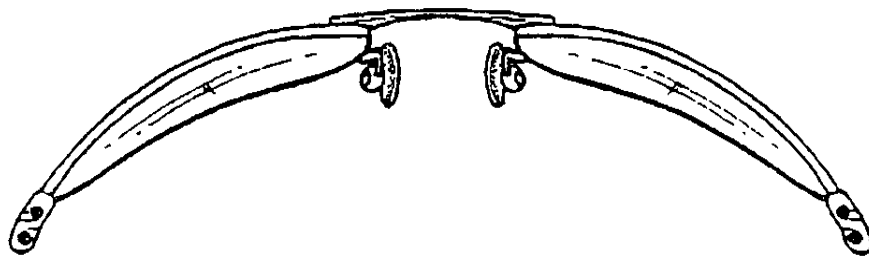


FIG. 5

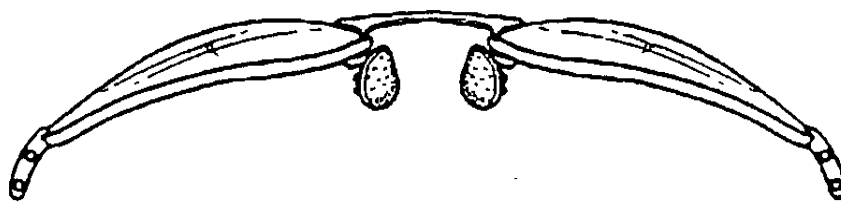


FIG. 6

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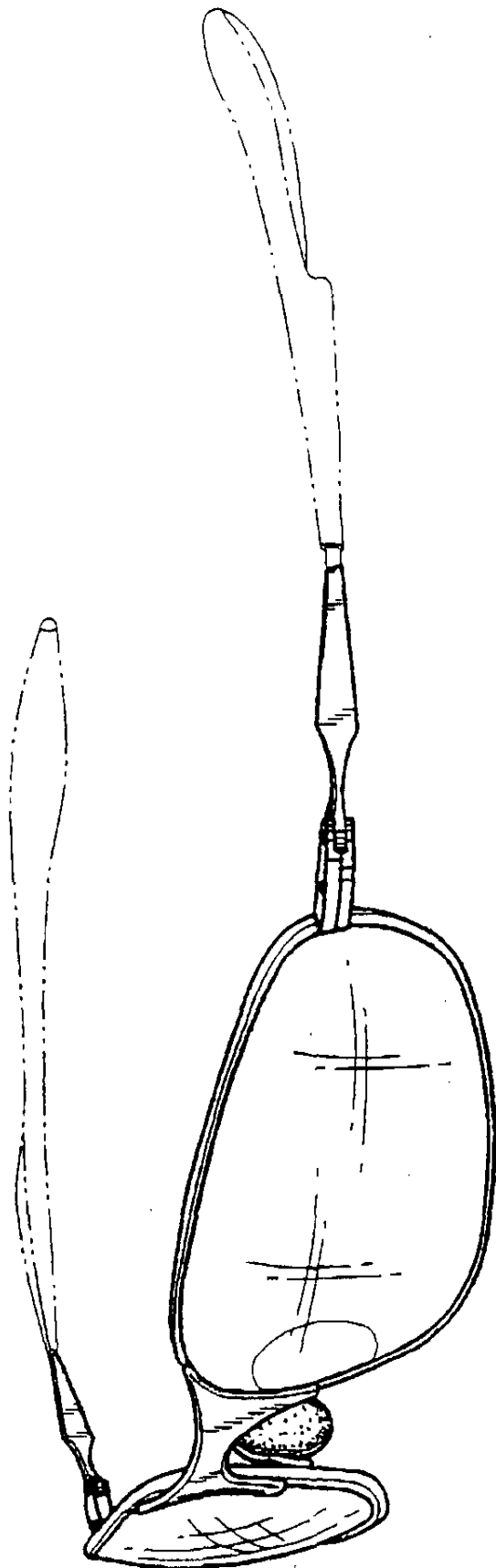


FIG. 7

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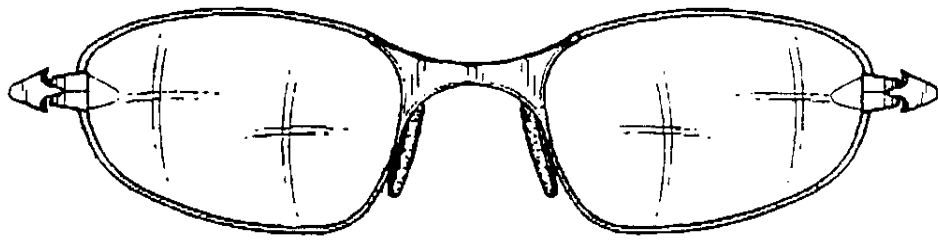


FIG. 8

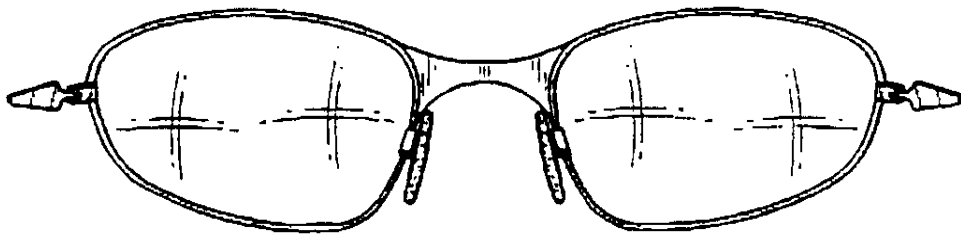


FIG. 9

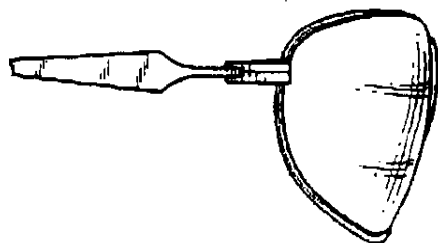


FIG. 10

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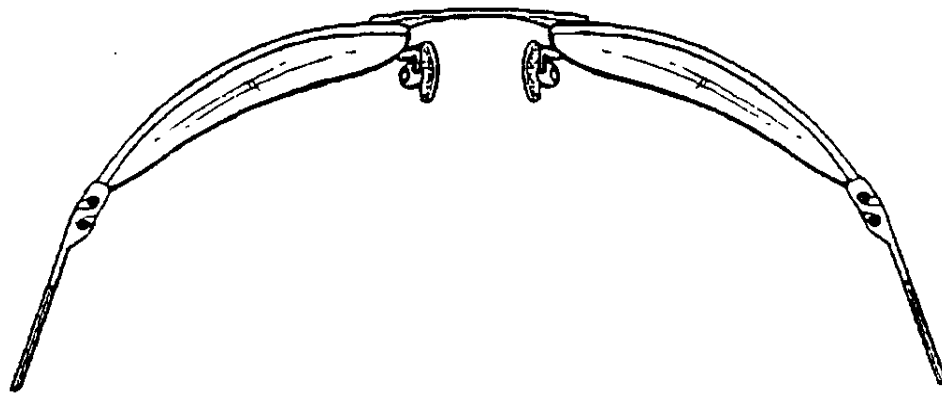


FIG. 11

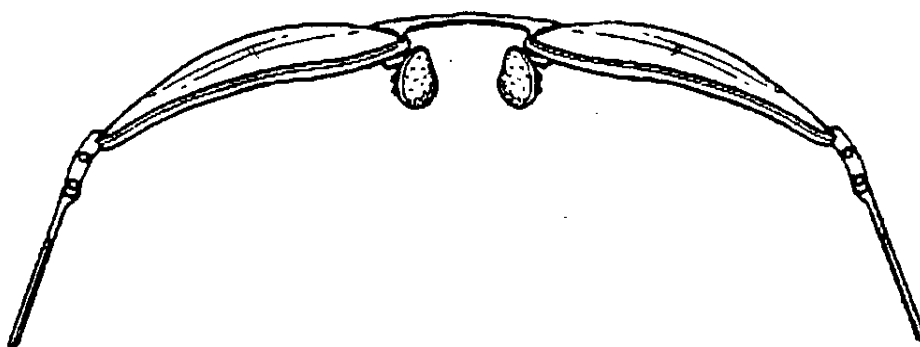


FIG. 12

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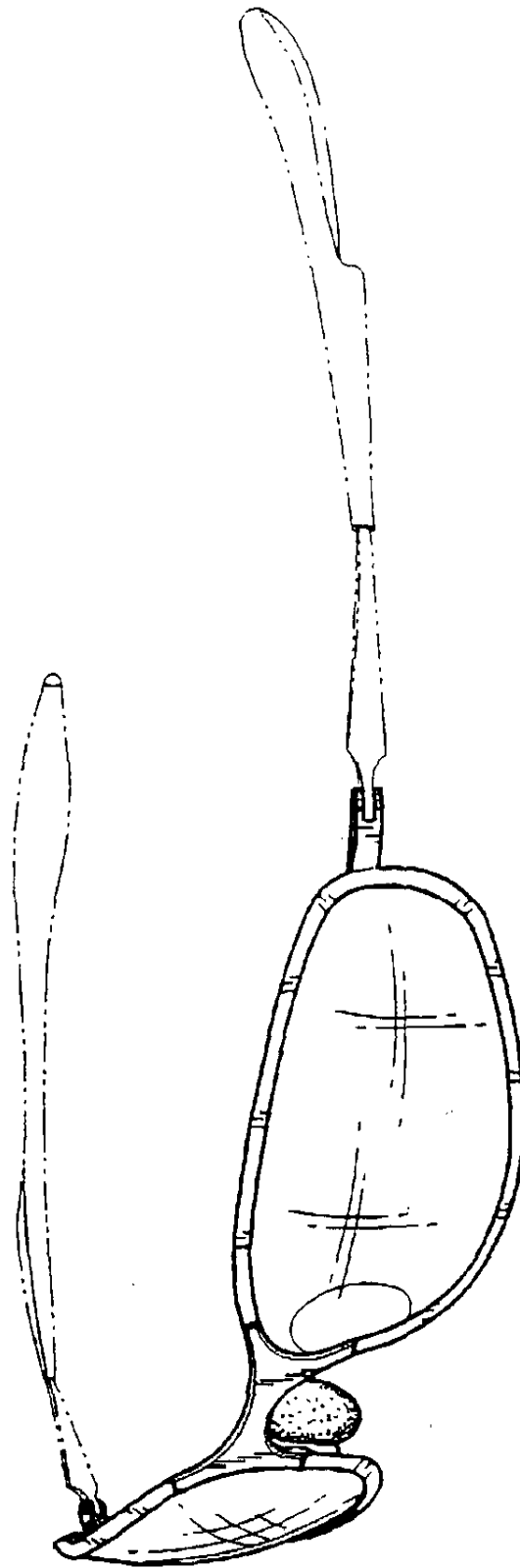


FIG. 13

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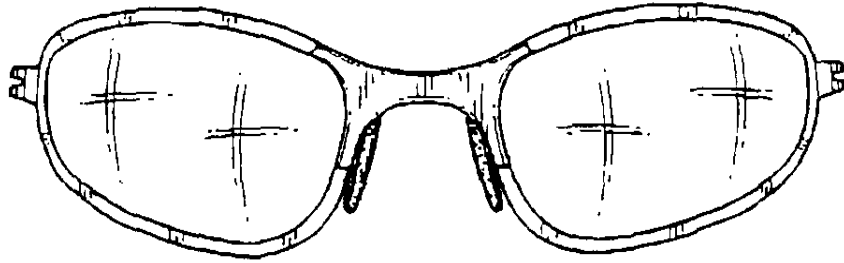


FIG. 14

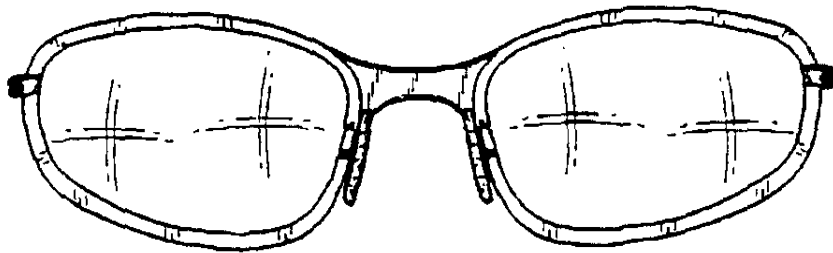


FIG. 15

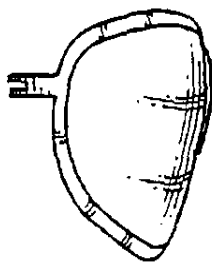


FIG. 16

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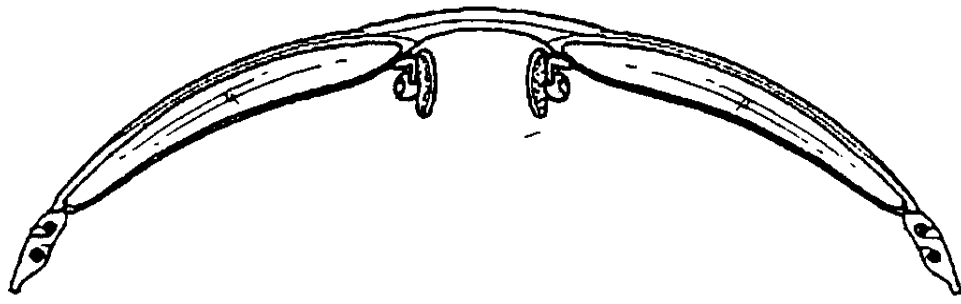


FIG. 17

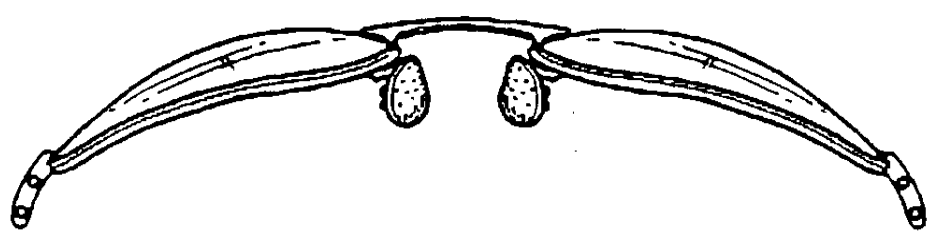


FIG. 18

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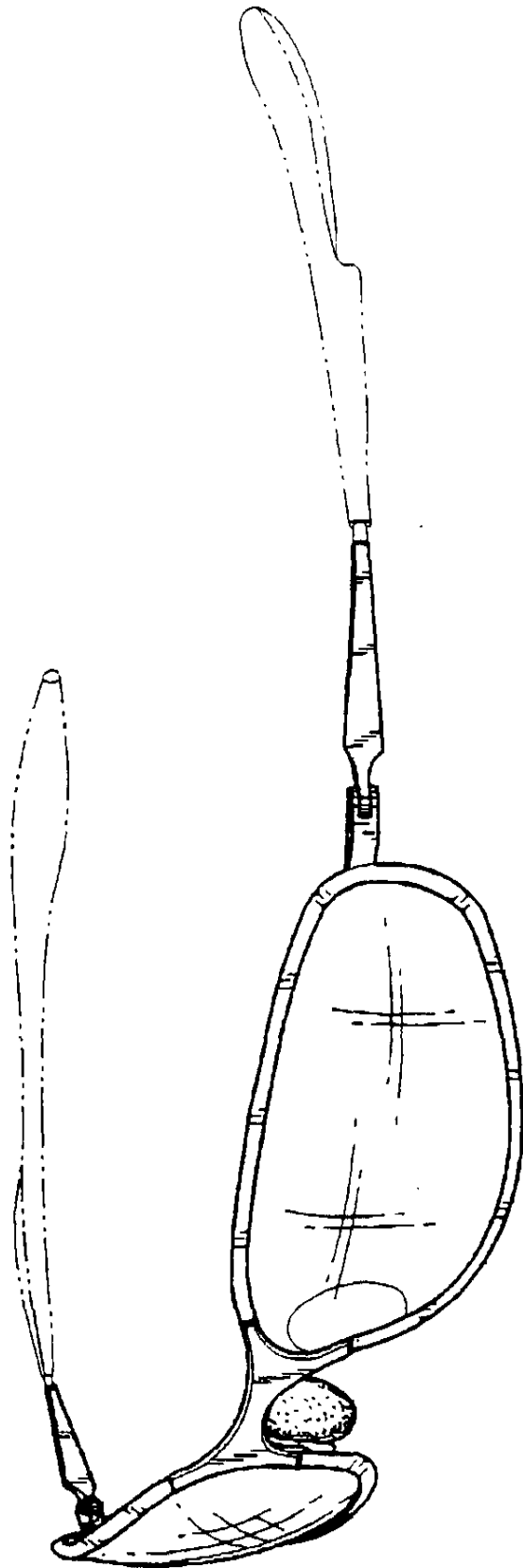


FIG. 19

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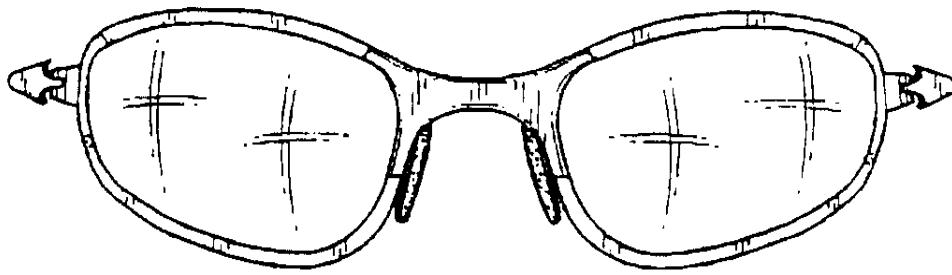


FIG. 20

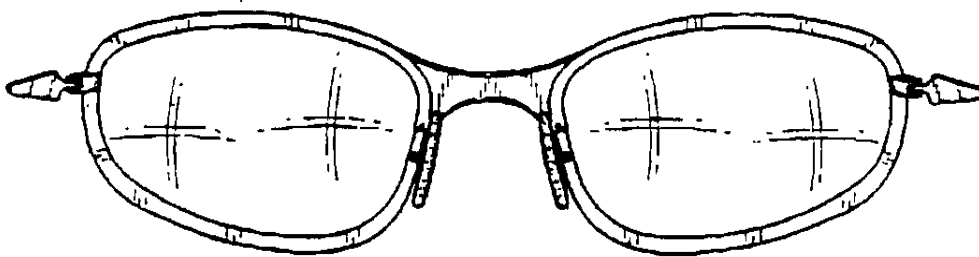


FIG. 21

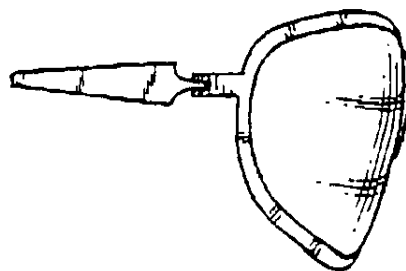


FIG. 22

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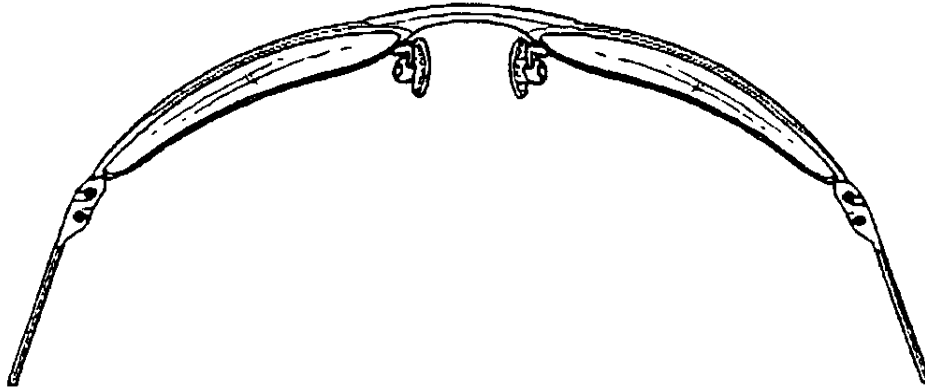


FIG. 23

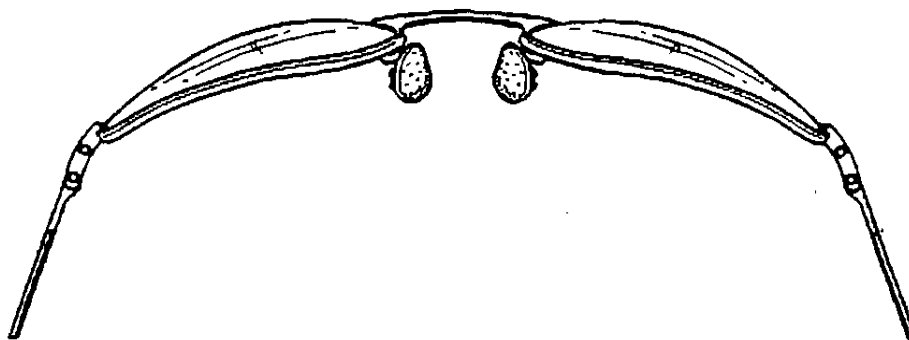


FIG. 24

TO: Commissioner of Patents and Trademarks Washington, D.C. 20231	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT
--	--

In compliance with the Act of July 19, 1952 (66 Stat. 814; 35 U.S.C. 290) you are hereby advised that a court action has been filed on the following patent(s) in the U.S. District Court:

DOCKET NO. 02cv136J (RBB)	DATE FILED 1/22/02	U.S. DISTRICT COURT United States District Court, Southern District of California
PLAINTIFF Oakley Inc		DEFENDANT Riviera Trading Inc
PATENT NO.	DATE OF PATENT	PATENTEE
1. Des 415,188	Oct 12, 1999	Lek H Thixton
2. Des 420,036	Feb 1, 2000	Peter Yee
3.		
4.		
5.		

In the above-entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading			
PATENT NO.	DATE OF PATENT	PATENTEE		
1				
2				
3				
4				
5				

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1 - Upon initiation of action, mail this copy to Commissioner Copy 3 - Upon termination of action, mail this copy to Commissioner
 Copy 2 - Upon filing document adding patent(s), mail this copy to Commissioner Copy 4 - Case file copy

OAKLEY, INC., a Washington

corporation Case 3:02-cv-00136-J-RBB Document 1 Filed 01/22/02 Page 35 of 35

RIVIERA TRADING INC., a Delaware corporation and OCEAN PACIFIC APPAREL CORP., a Delaware corporation New York, NY

(IN U.S. PLAINTIFF CASES ONLY) 02 JUL 22 AM 9:10

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Orange, CA (EXCEPT IN U.S. PLAINTIFF CASES)

ATTORNEYS (IF KNOWN)

(c) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

WEEKS, KAUFMAN & JOHNSON
462 Stevens Ave., Suite 310
Solana Beach, CA 92075
(858) 794-2140

02 CV 00136 J (RBB)

I. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE FOR DEFENDANT)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

- PTF DEF Citizen of This State
PTF DEF Citizen of Another State
PTF DEF Citizen or Subject of a Foreign Country
PTF DEF Incorporated or Principal Place of Business In This State
PTF DEF Incorporated and Principal Place of Business In Another State
PTF DEF Foreign Nation

V. 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 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

V. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F.R.C.P. 23

Check YES only if demanded in complaint: JURY DEMAND: X YES NO

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 case for patent infringement under 35 U.S.C. §271 and §281

VII. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

Table with columns: OTHER STATUTES, CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE / PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS. Includes various legal categories like Personal Injury, Contract, and Property Rights.

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

If yes, list case number(s):

#078681 \$150,000.00

FOR OFFICE USE ONLY: Pro Hac Vice fee: paid not paid

Applying IFP Judge Mag. Judge

Handwritten initials/signature