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 10 Attorneys for Plaintiff
 11 SPY OPTIC, INC.

12
 13 IN THE UNITED STATES DISTRICT COURT
 14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

15 SPY OPTIC, INC., a California corporation,

16 Plaintiff

17 vs.

18 PEPPER'S PERFORMANCE EYEWEAR,
 19 INC., a Pennsylvania corporation; and
 20 DOES 1 through 5, inclusive

21 Defendants

Case No. 07CV1160 JLS (JMAx)

**FIRST AMENDED COMPLAINT
 FOR PATENT INFRINGEMENT
 OF U.S. PATENT NOS. D534,573
 AND D552,665**

DEMAND FOR JURY TRIAL

22 **FIRST AMENDED COMPLAINT**

23 Plaintiff, Spy Optic, Inc., for its First Amended Complaint against Pepper's
 24 Performance Eyewear, Inc. states and alleges as follows:

25 **PARTIES**

26 1. Plaintiff, Spy Optic, Inc. (hereinafter "Spy Optic" or "Plaintiff") is a
 27 corporation organized and existing under the laws of the state of California, and
 28 having a principal place of business at 2070 Las Palmas Drive, Carlsbad, California

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1 92009.

2 2. Upon information and belief, Defendant Pepper’s Performance Eyewear,
3 inc. (hereinafter “Pepper’s”) is a corporation organized and existing under the laws of
4 the state of Pennsylvania, and having a principal place of business at 3001 Pulawski
5 Way, Pittsburgh, Pennsylvania 15219.

6 3. The true names and capacities of the Defendants named herein as DOES
7 1 through 5, whether individual, corporate, associate, or otherwise, are unknown to
8 Plaintiff, who therefore sues said Defendants by said fictitious names. Plaintiff is
9 informed and believes, and thereon alleges, that each of the Defendants designated
10 herein as DOE is legally responsible for the events and happenings hereinafter
11 alleged and legally caused injury and damages proximately thereby to Plaintiff as
12 herein alleged. Plaintiff will seek leave to amend the Complaint when the true names
13 and capacities of said DOE Defendants have been ascertained. Pepper’s and DOES 1
14 through 10 are hereinafter collectively referred to as “Defendants.”

15 4. Plaintiff is informed and believes, and on that basis alleges, that each of
16 the Defendants participated in and is in some manner responsible for the acts
17 described in this Complaint and any damages resulting therefrom.

18 5. Plaintiff is informed and believes, and on that basis alleges, that each of
19 the Defendants has acted in concert and participation with each other concerning each
20 of the claims in this Complaint.

21 6. Plaintiff is informed and believes, and on that basis alleges, that each of
22 the Defendants were empowered to act as the agent, servant and/or employees of each
23 of the other Defendants, and that all the acts alleged to have been done by each of
24 them were authorized, approved, and/or ratified by each of the other Defendants.

25 **JURISDICTION AND VENUE**

26 7. This action, as hereinafter more fully appears, arises under the patent
27 laws of the United States of America (35 U.S.C. §§ 1 *et seq.*), and is for patent
28 infringement. Jurisdiction for all counts is based upon 28 U.S.C. 21§1331, 1338(a)

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1 and (b).

2 8. Venue is proper under 28 U.S.C. §§1391(b) and (c) as Defendants have
3 committed acts of infringement in this judicial district.

4 **BACKGROUND OF THE CONTROVERSY**

5 9. Plaintiff is the owner of all right, title and interest in and to United States
6 Design Patent No. D534,573 entitled "Sunglass" (hereinafter "the '573 patent"). A
7 true and correct copy of the '573 patent is attached hereto as Exhibit 1. The '573
8 patent was duly and lawfully issued on January 2, 2007 and is presently valid and in
9 full effect.

10 10. Plaintiff is the owner of all right, title and interest in and to United States
11 Design Patent No. D552,665 entitled "Sunglass" (hereinafter "the '665 patent"). A
12 true and correct copy of the '665 patent is attached hereto as Exhibit 2. The '655
13 patent was duly and lawfully issued on October 9, 2007 and is presently valid and in
14 full effect.

15 11. Upon information and belief, Defendants have been and are infringing
16 the '573 and/or '665 patents within this district and elsewhere in the United States by
17 making, using, selling, importing, distributing and/or offering for sale products that
18 infringe the claims of the '573 and/or '665 patent. A photocopy of Defendants'
19 products are attached hereto as Exhibits 3 and 4.

20 12. Upon information and belief, by the acts of patent infringement herein
21 complained of, the Defendants have made substantial profits to which they are not
22 equitably entitled.

23 13. By reason of the aforementioned acts of the Defendants, the Plaintiff has
24 suffered great detriment in a sum which exceeds this Court's jurisdictional amount,
25 but which cannot be ascertained at this time.

26 14. Upon information and belief, Defendants continue to infringe Plaintiff's
27 '573 and/or '665 patents, and will continue to infringe Plaintiff's '573 and/or '665
28 patents, and will continue to infringe Plaintiff's '573 and/or '665 patents to Plaintiff's

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1 irreparable harm, unless enjoined by this Court.

2 15. Upon information and belief, Defendants' were aware of the '573 and/or
3 '665 patents and the past and continuing infringement of the '573 and/or '665 patents
4 by Defendants is willful, entitling Plaintiff to enhanced damages.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- 7 A. A judgment that Defendants have infringed the patents-in-suit.
- 8 B. A judgment that Defendants' infringement of the patents-in-suit has been
9 willful.
- 10 C. A preliminary and permanent injunction, pursuant to 35 U.S.C. §283,
11 enjoining Defendants, and all persons in active concert or participation
12 with them, from any further acts of infringement of the patents-in-suit.
- 13 D. An order, pursuant to 35 U.S.C. 21284, awarding Plaintiff damages
14 adequate to compensate Plaintiff for Defendants' infringement of the
15 patents-in-suit, in an amount to be determined at trial, but in no event
16 less than a reasonable royalty.
- 17 E. An order, pursuant to 35 U.S.C. §284, trebling all damages awarded to
18 Plaintiff based on Defendants' willful infringement of the patents-in-suit.
- 19 F. An order, pursuant to 35 U.S.C. §285, finding that this is an exceptional
20 case and awarding to Plaintiff its reasonable attorneys' fees incurred in
21 this action.

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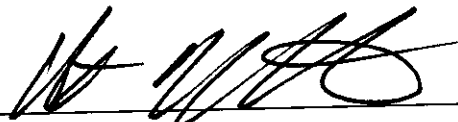
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G. That Plaintiff have such other and further relief that the court may deem just and proper.

Dated: October 9, 2007

STETINA BRUNDA GARRED & BRUCKER

By: 

Kit M. Stetina
Attorneys for Plaintiff
SPY OPTIC, INC.

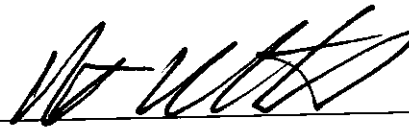
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DEMAND FOR JURY TRIAL

Plaintiff, Spy Optic, Inc., hereby demands a jury trial in this action.

Dated: October 9, 2007

STETINA BRUNDA GARRED & BRUCKER

By: 

Kit M. Stetina
Attorneys for Plaintiff
SPY OPTIC, INC.

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