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3:01-CV-01486 OAKLEY INC V. REPLICAWAREHOUSE

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\*AMDCMP.\*

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CLERK OF DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
*Alford*  
BY: DEPUTY

6 Attorneys for Plaintiff  
7  
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9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 **OAKLEY, INC.**, a Washington ) CIVIL ACTION NO.  
12 corporation, ) 01 CV 1486 K (JAH)  
13 Plaintiff, )  
14 vs. ) FIRST AMENDED COMPLAINT FOR  
15 **REPLICAWAREHOUSE.COM**, an ) TRADEMARK INFRINGEMENT,  
unknown entity, **UNITED ) PATENT INFRINGEMENT, AND**  
16 **RESEARCH**, a Utah corporation, ) DILUTION  
**DANIEL WEILACHER**, an )  
17 individual, and **BRICE ) DEMAND FOR JURY TRIAL**  
**WILLIAMS**, an individual, )  
18 Defendants. )  
19

20 Plaintiff **OAKLEY, INC.** (hereinafter referred to as  
21 "Oakley") hereby complains of Defendants **Replicawarehouse.com**  
22 (hereinafter referred to as "Replicawarehouse.com"), **United**  
23 **Research** (hereinafter referred to as "United Research"), **Daniel**  
24 **Weilacher** (hereinafter referred to as "Weilacher"), and **Brice**  
25 **Williams** (hereinafter referred to as "Williams"), collectively  
26 referred to as "Defendants," and alleges as follows:

27 ... ..  
28 ... ..

**JURISDICTION AND VENUE**

1  
2 1. Jurisdiction over this action is founded upon 15  
3 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338. Venue is proper  
4 under 28 U.S.C. §§ 1391(b) and (c), this claim having arisen  
5 and Defendant doing business in this district. Defendants sold  
6 infringing products in this district and directed sales and  
7 marketing efforts toward this district.

**THE PARTIES**

8  
9 2. Plaintiff Oakley is a corporation organized and  
10 existing under the laws of the State of Washington, having its  
11 principal place of business at One Icon, Foothill Ranch,  
12 California 92610 and doing business within this judicial  
13 district.

14 3. Oakley is informed and believes, and thereupon  
15 alleges that Defendant Replicawarehouse.com is an unknown  
16 business entity located in Utah, with its principal place of  
17 business located at 1780 West 9000 South #601, West Jordan,  
18 Utah 84088, and also doing business within this judicial  
19 district via the Internet. Oakley is informed and believes, and  
20 based thereon, alleges, that Replicawarehouse.com does business  
21 with United Research, and is owned by Daniel Weilacher and  
22 Brice Williams. If necessary, Oakley will amend this complaint  
23 upon gaining further information regarding the form and entity  
24 of the Replicawarehouse.com.

25 4. Oakley is informed and believes, and thereupon  
26 alleges, that Defendant United Research is a Utah business  
27 entity with its corporate offices located at 13018 Blackberry  
28 Circle, Draper, Utah 84020, and with its principal place of

1 business located at 126 East 4800 South, Suite 2, Murray, Utah  
2 84107. Oakley is informed and believes, and thereupon alleges,  
3 that United Research is in business with Replicawarehouse.com.  
4 In particular, Oakley is informed and believes, and thereupon  
5 alleges, that United Research receives orders on behalf of  
6 Replicawarehouse.com and subsequently fills those orders, ships  
7 those orders, and fields customer services questions and  
8 complaints on behalf of Replicawarehouse.com. Oakley is  
9 informed and believes, and thereupon alleges, that the chief  
10 officer for United Research is Daniel Weilacher. Payments for  
11 purchases of products from Replicawarehouse.com are directed by  
12 employees or agents of United Research to be made to "Daniel."  
13 If necessary, Oakley will amend this complaint upon gaining  
14 further information regarding the form and entity of the  
15 Replicawarehouse.com.

16 5. Oakley is informed and believes, and thereupon  
17 alleges, that Defendant Daniel Weilacher is a resident of Utah.  
18 Oakley is further informed and believes, and thereupon alleges,  
19 that Weilacher is the owner and/or officer of United Research.  
20 Additionally, Oakley is informed and believes, and thereupon  
21 alleges, that Weilacher is the owner of Replicawarehouse.com.  
22 Weilacher receives mail at a mail box at Mailboxes, Etc.,  
23 located at 1780 West 9000 South #601, West Jordan, Utah 84088,  
24 which is the same address as Replicawarehouse.com. If  
25 necessary, Oakley will amend this complaint upon gaining  
26 further information regarding the form and entity of the  
27 Replicawarehouse.com and United Research.

28 ... ..

1           6. Oakley is informed and believes, and thereupon  
2 alleges, that Brice Williams is a resident of Utah. Oakley is  
3 further informed and believes, and thereupon alleges, that  
4 Williams is the owner and/or officer of Replicawarehouse.com  
5 and/or United Research. Williams is registered as the owner of  
6 a mail box at Mailboxes, Etc., located at 1780 West 9000 South  
7 #601, West Jordan, Utah 84088. This mailbox is the same  
8 location that receives mail for Replicawarehouse.com. If  
9 necessary, Oakley will amend this complaint upon gaining  
10 further information regarding the form and entity of the  
11 Replicawarehouse.com and United Research.

12           7. Oakley is informed and believes, and thereupon  
13 alleges, that Defendants Weilacher and Williams are the alter  
14 egos of Replicawarehouse.com and United Research. Accordingly,  
15 Weilacher and Williams are personally liable for direct  
16 infringement and inducing infringement, under the theory of  
17 alter ego, as set forth more specifically below.

18           8. Oakley is informed and believes, and thereupon  
19 alleges, that Weilacher and Williams established  
20 Replicawarehouse.com to hide their real identities while  
21 transacting unlawful activities over the Internet. Oakley is  
22 informed and believes, and thereupon alleges, that  
23 Replicawarehouse.com and United Research are in business  
24 together wholly as a sham to hide the unlawful activities of  
25 Weilacher and Williams. Oakley is informed and believes, and  
26 thereupon alleges, that Weilacher and Williams have disregarded  
27 any corporate form and have dominated and controlled  
28 Replicawarehouse.com and United Research to such an extent that

1 the individuality and separateness of Replicawarehouse.com and  
2 United Research ceased.

3 9. Oakley is further informed and believes, and  
4 thereupon alleges, that injustice would occur if the corporate  
5 veil is not pierced because Defendants Weilacher and Williams  
6 never capitalized Replicawarehouse.com or United Research to  
7 satisfy major corporate liabilities, such as damages from  
8 patent infringement. They should have expected that where the  
9 business of Replicawarehouse.com and United Research is  
10 predicated upon the unlawful violation of Oakley's intellectual  
11 property rights, Replicawarehouse.com and United research may  
12 be forced to someday account for their unlawful activity.  
13 Allowing a sham to hide Weilacher and Williams from liability  
14 would result in inequity.

15 10. Oakley is informed and believes, and thereupon  
16 alleges, that since formation, Replicawarehouse.com and United  
17 Research have been used for no lawful purpose. Instead, Oakley  
18 is informed and believes, and thereupon alleges, that these  
19 companies have been used, dominated, and controlled by  
20 Weilacher and Williams to perpetuate frauds against consumers  
21 and to unlawfully trade on Oakley's intellectual property  
22 rights. Being thus undercapitalized and blatantly trading on  
23 Oakley's goodwill, reputation, image, and technology, Weilacher  
24 and Williams have fraudulently used Replicawarehouse.com and  
25 United Research.

26 11. Oakley is still gathering information regarding all  
27 four Defendants and their relationship with one another in  
28 their business ventures. Oakley will amend this complaint

1 further, if necessary, to clarify these relationships and its  
2 claim of alter ego liability against Weilacher and Williams.

3 **FACTUAL BACKGROUND**

4 12. As early as 1985, Oakley has been and continues to be  
5 actively engaged in the manufacture and sale of high quality  
6 sport sunglasses under various product lines. Oakley is the  
7 manufacturer and retailer of several lines of sunglasses,  
8 including its "Eye Jacket"<sup>®</sup>, "Straight Jacket"<sup>®</sup>, "Zeros"<sup>®</sup>, "M  
9 Frame"<sup>®</sup>, "Pro M Frame"<sup>®</sup>, "Juliet"<sup>®</sup>, "Moons"<sup>™</sup>, "Romeo"<sup>®</sup>, "Five"<sup>®</sup>,  
10 "Ten"<sup>®</sup>, "Twenty"<sup>®</sup>, "Minute"<sup>®</sup>, "e Wire"<sup>®</sup>, "Square Wire"<sup>®</sup>, "Square  
11 Wire 2.0"<sup>™</sup>, "C Wire"<sup>™</sup>, "A Wires"<sup>®</sup>, and "OO"<sup>™</sup> sunglass lines.  
12 As part of its routine sales practice, Oakley includes a black  
13 sunglass bag bearing the stylized trademark "Oakley", as well  
14 as imprinting its stylized trademarks "Oakley" and ellipsoid  
15 "O" on the sunglasses themselves.

16 13. Oakley is the owner of U.S. Registered Trademark No.  
17 1,980,039, duly registered on June 11, 1996, claiming the  
18 stretched trademark "Oakley" for use on good in Class 9. A  
19 true and correct copy of this trademark registration is  
20 attached hereto and incorporated by reference as Exhibit 1.

21 14. Oakley is the owner of U.S. Registered Trademark No.  
22 1,984,501 duly registered on July 2, 1996, claiming the Oakley  
23 ellipsoid "o" for goods in Class 9. A true and correct copy of  
24 this trademark registration is attached hereto and incorporated  
25 herein by reference as Exhibit 2.

26 15. Oakley is the owner of U.S. Registered Trademark No.  
27 2,146,295 duly registered on March 24, 1998, claiming the  
28 relative position of the ellipsoid "o" on goods in Class 9. A

1 true and correct copy of this trademark registration is  
2 attached hereto and incorporated herein by reference as Exhibit  
3 3.

4 16. The trademark registrations referred to above are in  
5 full force and effect. The trademarks and the good will of the  
6 business of Plaintiff Oakley in connection with which the  
7 trademarks have been used have never been abandoned. Oakley  
8 continues to preserve and maintain its rights with respect to  
9 said trademark registrations.

10 17. The trademarks above are inherently distinctive in  
11 appearance and have become, through widespread public  
12 acceptance, a distinctive designation of the source of origin  
13 of goods offered by Oakley and has acquired secondary meaning  
14 in the marketplace and constitute an asset of incalculable  
15 value as a symbol of Oakley and its quality goods and good  
16 will.

17 18. Oakley is informed and believes, and thereupon  
18 alleges, that the Defendants, and each of them, are selling  
19 Oakley copy sunglasses that use one or more of the trademarks  
20 set forth above. The Oakley copy sunglasses sold by Defendants,  
21 and each of them, include the stretched "Oakley" mark on the  
22 nose bridges, Oakley's ellipsoid "O", and place the ellipsoid  
23 "O" on the earstem. This unauthorized and unlawful use of  
24 Oakley's trademarks was done without Oakley's consent or  
25 permission and without any license from Oakley. Oakley is  
26 further informed and believes, and thereupon alleges, that  
27 Defendants, and each of them, supplied these Oakley copy  
28 sunglasses to various distributors, retailers, and consumers.



1           19. Plaintiff Oakley is the owner by assignment of U.S.  
2 Patent No. 5,137,342 duly and lawfully issued on August 11,  
3 1992 describing and claiming the invention entitled "EYEWEAR  
4 TRACTION DEVICE", protecting the technology for an improved  
5 elastomeric traction device. A correct copy of U.S. Patent No.  
6 5,137,342 is attached hereto as Exhibit 4.

7           20. Oakley is informed and believes, and thereupon  
8 alleges that the Defendants, and each of them, are selling  
9 sunglasses that copy U.S. Patent No. 5,137,342 of Oakley. The  
10 copy Oakley sunglasses sold by Defendants, and each of them,  
11 embody the subject matter claimed in Oakley's U.S. Patent No.  
12 5,137,342 without any license thereunder and is thereby  
13 infringing said patent. Oakley is informed and believes and  
14 based thereon alleges that Defendants, and each of them,  
15 supplied said imitation Oakley sunglasses to various  
16 distributors, retailers, and retail customers.

17           21. Oakley is the owner by assignment of U.S. Patent No.  
18 D369,375 duly and lawfully issued on April 30, 1996, describing  
19 and claiming the invention entitled "EYEGLASSES" protecting the  
20 sunglass design marketed by Oakley under the name "Eye Jacket".  
21 A correct copy of U.S. Patent No. D369,375 is attached hereto  
22 as Exhibit 5.

23           22. Oakley is the owner by assignment of U.S. Patent No.  
24 D408,048 duly and lawfully issued on April 13, 1999 describing  
25 and claiming the invention entitled "EYEWEAR" protecting the  
26 sunglass design marketed by Oakley under the name "Eye Jacket".  
27 A correct copy of U.S. Patent No. D408,048 is attached hereto  
28 as Exhibit 6.

1           23. Oakley is informed and believes, and thereupon  
2 alleges that the Defendants, and each of them, are selling  
3 sunglasses that copy the above design patents of Oakley. The  
4 "Eye Jacket" copy sunglasses sold by Defendants embody the  
5 subject matter claimed in Oakley's design patents referred to  
6 above without any license thereunder and is thereby infringing  
7 said patents. Oakley is informed and believes and based  
8 thereon alleges that Defendants, and each of them, supplied  
9 said imitation Oakley sunglasses to various distributors,  
10 retailers, and retail customers.

11           24. Plaintiff is informed and believes and based thereon  
12 alleges that Defendants, collectively and individually, as well  
13 as their agents, employees, and servants, have advertised and  
14 sold products bearing one or more of the trademarks and patents  
15 referred to above, which advertisements and products sold are  
16 confusingly similar to that of Oakley's trademarks and patents,  
17 and are, therefore, an infringement of Oakley's above described  
18 trademarks and patents.

19           25. Defendants received written notice of Oakley's  
20 proprietary rights in its trademarks and patents by way of  
21 actual written notice. Defendants were warned by Oakley's  
22 attorneys of record regarding his sale of counterfeit Oakley  
23 products bearing Oakley's trademarks at least on July 5, 2001.  
24 Further, Defendants received constructive notice of Oakley's  
25 trademarks and patents as Oakley caused its trademarks and  
26 patents to be placed plainly on the product and/or packaging.  
27 Despite actual and constructive knowledge, Defendants continued  
28 to infringe Oakley's trademark rights. On information and

1 belief, such infringement by Defendants have been willful and  
2 wanton.

3 26. Since 1993, Oakley has expended large sums of money  
4 in the promotion of its "Eye Jacket"<sup>®</sup>, "Straight Jacket"<sup>®</sup>,  
5 "Zeros"<sup>®</sup>, "M Frame"<sup>®</sup>, "Pro M Frame"<sup>®</sup>, "Juliet"<sup>®</sup>, "Moons"<sup>™</sup>,  
6 "Romeo"<sup>®</sup>, "Five"<sup>®</sup>, "Ten"<sup>®</sup>, "Twenty"<sup>®</sup>, "Minute"<sup>®</sup>, "e Wire"<sup>®</sup>,  
7 "Square Wire"<sup>®</sup>, "Square Wire 2.0"<sup>™</sup>, "C Wire"<sup>™</sup>, "A Wires"<sup>®</sup>, and  
8 "OO"<sup>™</sup> lines of sunglasses. As a result of Oakley's promotional  
9 efforts, these sunglass lines have become and are now widely  
10 known and recognized in this District and elsewhere as  
11 emanating from and authorized by Oakley.

12 27. Oakley's product lines are inherently distinctive in  
13 appearance, and have become, through widespread public  
14 acceptance, a distinctive designation of the source of origin  
15 of goods offered by Oakley and an asset of incalculable value  
16 as a symbol of Oakley and its quality goods and good will.

17 28. Oakley is informed and believes and thereupon alleges  
18 that the Defendant's "Eye Jacket"<sup>®</sup>, "Straight Jacket"<sup>®</sup>,  
19 "Zeros"<sup>®</sup>, "M Frame"<sup>®</sup>, "Pro M Frame"<sup>®</sup>, "Juliet"<sup>®</sup>, "Moons"<sup>™</sup>,  
20 "Romeo"<sup>®</sup>, "Five"<sup>®</sup>, "Ten"<sup>®</sup>, "Twenty"<sup>®</sup>, "Minute"<sup>®</sup>, "e Wire"<sup>®</sup>,  
21 "Square Wire"<sup>®</sup>, "Square Wire 2.0"<sup>™</sup>, "C Wire"<sup>™</sup>, "A Wires"<sup>®</sup>, and  
22 "OO"<sup>™</sup> sunglass copies are designed, manufactured, packaged,  
23 advertised, displayed and sold expressly to profit from the  
24 demand created by Oakley for the ornamental and inherently  
25 distinctive features of the Oakley sunglasses and to trade on  
26 Oakley's goodwill and reputation.

27 29. Oakley is informed and believes, and thereupon  
28 alleges, that Defendants' copy sunglasses are inferior products

1 to the authentic Oakley sunglasses. Oakley is further informed  
2 and believes and thereupon alleges that as a result of the  
3 inferior quality Defendants' copies of Oakley's "Eye Jacket"<sup>®</sup>,  
4 "Straight Jacket"<sup>®</sup>, "Zeros"<sup>®</sup>, "M Frame"<sup>®</sup>, "Pro M Frame"<sup>®</sup>,  
5 "Juliet"<sup>®</sup>, "Moons"<sup>™</sup>, "Romeo"<sup>®</sup>, "Five"<sup>®</sup>, "Ten"<sup>®</sup>, "Twenty"<sup>®</sup>,  
6 "Minute"<sup>®</sup>, "e Wire"<sup>®</sup>, "Square Wire"<sup>®</sup>, "Square Wire 2.0"<sup>™</sup>, "C  
7 Wire"<sup>™</sup>, "A Wires"<sup>®</sup>, and "OO"<sup>™</sup> sunglasses, they are sold in the  
8 marketplace at a lower price than are the authentic Oakley  
9 sunglasses. As a result, Oakley has been damaged significantly  
10 in the sunglass market. Oakley contends and believes that its  
11 image and the reputation of its products has been tarnished and  
12 diminished by Defendants' sale of Oakley copy sunglasses of  
13 inferior quality.

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

26 31. Oakley is informed and believes and thereupon alleges  
27 that the Defendants' sale of the copy sunglasses has resulted  
28 in lost sales, has reduced the business and profit of Oakley,

1 and has greatly injured the general reputation of Oakley due to  
2 the inferior quality of the copies, all to Oakley's damage in  
3 an amount not yet fully determined.

4 32. The exact amount of profits realized by Defendants as  
5 a result of their infringing activities, are presently unknown  
6 to Oakley, as are the exact amount of damages suffered by  
7 Oakley as a result of said activities. These profits and  
8 damages cannot be accurately ascertained without an accounting.  
9 Further, Defendants' actions are irreparably injuring Oakley  
10 and will continue unless and until enjoined by this court.

11 **FIRST CLAIM FOR RELIEF**

12 33. The allegations of paragraphs 1 through 32 are replied  
13 and realleged as though fully set forth herein.

14 34. This is a claim for trademark infringement, and  
15 arises under 15 U.S.C. § 1125(a) against all Defendants, and  
16 each of them.

17 35. Jurisdiction is founded upon 15 U.S.C. § 1121.

18 36. Oakley is the owner of U.S. Registered Trademark No.  
19 1,980,039 which confer on Oakley the exclusive right to use  
20 these trademarks in commerce. A true and correct copy of U.S.  
21 registered Trademark No. 1,980,039 is attached hereto as  
22 Exhibit No. 1.

23 37. The mark has been in use in commerce in connection  
24 with the sale of Oakley products continuously since at least as  
25 early as their respective dates of issue. The mark appears  
26 clearly on all packaging, advertisements, product brochures,  
27 and on almost all Oakley sunglass products, in one way or  
28 another.

1 38. Defendants, and each of them, through their agents,  
2 employees and servants, manufactured, advertised, and sold  
3 products bearing Oakley's mark without authority from Oakley  
4 for doing so.

5 39. Oakley is informed and believes, and thereupon  
6 alleges, that Defendants' use of Oakley's mark in commerce  
7 constitutes trademark infringement, false designation or  
8 origin, a false description or representation of goods and  
9 wrongfully and falsely represents to the consuming public that  
10 the Defendants' advertising and products bearing the Oakley  
11 mark originated from or somehow are authorized by Oakley.

12 40. Oakley is informed and believes, and thereupon  
13 alleges, that Defendants' unauthorized use of Oakley's  
14 registered mark is likely to cause confusion and has caused  
15 confusion in the marketplace as to the source of origin of  
16 Defendants' products.

17 41. Oakley is informed and believes, and thereupon  
18 alleges, that Defendants willfully infringed upon Oakley's  
19 exclusive rights under its trademarks with the intent to trade  
20 upon the good will of Oakley and to injure Oakley.

21 42. Oakley is informed and believes, and thereupon  
22 alleges, that Defendants have derived, received, and will  
23 continue to derive and receive from the aforesaid acts of  
24 infringement, gains, profits, and advantages in an amount not  
25 yet ascertainable, but will be determined at the time of trial.

26 43. Oakley is informed and believes, and thereupon  
27 alleges, that Defendants will continue to infringe Oakley's  
28 mark to the great and irreparable injury of Oakley, for which

1 Oakley has no adequate remedy at law unless Defendant are  
2 enjoined by this court.

3 **SECOND CLAIM FOR RELIEF**

4 44. The allegations of paragraphs 1 through 32 are repled  
5 and realleged as though fully set forth herein.

6 45. This is a claim for trademark infringement, and  
7 arises under 15 U.S.C. § 1125(a) against all Defendants, and  
8 each of them.

9 46. Jurisdiction is founded upon 15 U.S.C. § 1121.

10 47. Oakley is the owner of U.S. Registered Trademark No.  
11 1,984,501 which confer on Oakley the exclusive right to use  
12 these trademarks in commerce. A true and correct copy of U.S.  
13 registered Trademark No. 1,984,501 is attached hereto as  
14 Exhibit No. 2.

15 48. The mark has been in use in commerce in connection  
16 with the sale of Oakley products continuously since at least as  
17 early as their respective dates of issue. The mark appears  
18 clearly on all packaging, advertisements, product brochures,  
19 and on almost all Oakley sunglass products, in one way or  
20 another.

21 49. Defendants, and each of them, through their agents,  
22 employees and servants, manufactured, advertised, and sold  
23 products bearing Oakley's mark without authority from Oakley  
24 for doing so.

25 50. Oakley is informed and believes, and thereupon  
26 alleges, that Defendants' use of Oakley's mark in commerce  
27 constitutes trademark infringement, false designation or  
28 origin, a false description or representation of goods and

1 wrongfully and falsely represents to the consuming public that  
2 the Defendants' advertising and products bearing the Oakley  
3 mark originated from or somehow are authorized by Oakley.

4 51. Oakley is informed and believes, and thereupon  
5 alleges, that Defendants' unauthorized use of Oakley's  
6 registered mark is likely to cause confusion and has caused  
7 confusion in the marketplace as to the source of origin of  
8 Defendants' products.

9 52. Oakley is informed and believes, and thereupon  
10 alleges, that Defendants willfully infringed upon Oakley's  
11 exclusive rights under its trademarks with the intent to trade  
12 upon the good will of Oakley and to injure Oakley.

13 53. Oakley is informed and believes, and thereupon  
14 alleges, that Defendants have derived, received, and will  
15 continue to derive and receive from the aforesaid acts of  
16 infringement, gains, profits, and advantages in an amount not  
17 yet ascertainable, but will be determined at the time of trial.

18 54. Oakley is informed and believes, and thereupon  
19 alleges, that Defendants will continue to infringe Oakley's  
20 mark to the great and irreparable injury of Oakley, for which  
21 Oakley has no adequate remedy at law unless Defendant are  
22 enjoined by this court.

23 **THIRD CLAIM FOR RELIEF**

24 55. The allegations of paragraphs 1 through 32 are repled  
25 and realleged as though fully set forth herein.

26 56. This is a claim for trademark infringement, and  
27 arises under 15 U.S.C. § 1125(a) against all Defendants, and  
28 each of them.



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

2 58. Oakley is the owner of U.S. Registered Trademark No.  
3 2,146,295 which confer on Oakley the exclusive right to use  
4 these trademarks in commerce. A true and correct copy of U.S.  
5 registered Trademark No. 2,146,295 is attached hereto as  
6 Exhibit No. 3.

7 59. The mark has been in use in commerce in connection  
8 with the sale of Oakley products continuously since at least as  
9 early as their respective dates of issue. The mark appears  
10 clearly on all packaging, advertisements, product brochures,  
11 and on almost all Oakley sunglass products, in one way or  
12 another.

13 60. Defendants, and each of them, through their agents,  
14 employees and servants, manufactured, advertised, and sold  
15 products bearing Oakley's mark without authority from Oakley  
16 for doing so.

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

24 62. Oakley is informed and believes, and thereupon  
25 alleges, that Defendants' unauthorized use of Oakley's  
26 registered mark is likely to cause confusion and has caused  
27 confusion in the marketplace as to the source of origin of  
28 Defendants' products.

1           63. Oakley is informed and believes, and thereupon  
2 alleges, that Defendants willfully infringed upon Oakley's  
3 exclusive rights under its trademarks with the intent to trade  
4 upon the good will of Oakley and to injure Oakley.

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

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

15                               **FOURTH CLAIM FOR RELIEF**

16          66. The allegations of paragraphs 1 through 32 are repled  
17 and realleged as though fully set forth herein.

18          67. This is a cause of action for dilution under 15  
19 U.S.C. § 1125(c) against all Defendants, and each of them.

20          68. Jurisdiction is founded upon 15 U.S.C. § 1121.

21          69. Oakley is the owner of the famous trademarks "Oakley"  
22 and the ellipsoid "O" in association with the sale of  
23 sunglasses and eyeglasses. As set forth above, Oakley has used  
24 these trademarks for numerous years and has spent vast amounts  
25 of money in advertising its products with these trademarks.  
26 Consequently, the trademarks "Oakley" and the ellipsoid "O"  
27 have become associated with high-quality, unique, and  
28 innovative sunglasses emanating from Oakley.

1           70. Defendants' use of these trademarks on their Oakley  
2 copy sunglasses dilutes the distinctiveness and value of  
3 Oakley's trademarks. In particular, Defendants' use of  
4 "Oakley" and the ellipsoid "O" blurs the uniqueness of Oakley's  
5 products and tarnishes Oakley's image through the sale of low-  
6 quality, cheap products intended to trade on the value of  
7 Oakley's famous trademarks.

8           71. Oakley's products have been in commerce for many  
9 years. Consequently, Defendants' subsequent sale of Oakley  
10 copy products in interstate commerce causes dilution of  
11 Oakley's famous trademarks.

12           72. Oakley is informed and believes, and thereupon  
13 alleges, that Defendants' advertisement and sale of cheap,  
14 Oakley copy sunglasses will continue to dilute the value of  
15 Oakley's famous, registered trademarks to the great and  
16 irreparable injury of Oakley, for which Oakley has no adequate  
17 remedy at law unless Defendants are enjoined by this court.

18   **FIFTH CLAIM FOR RELIEF**

19           73. The allegations of paragraphs 1 through 32 are repled  
20 and realleged as though fully set forth herein.

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

23           75. Jurisdiction is founded upon 28 U.S.C. § § 1331 and  
24 1338.

25           76. Oakley is the owner of U.S. Patent No. 5,137,342  
26 which protects technology for an improved elastomeric traction  
27 device. A true and correct copy of U.S. Patent No. 5,137,342  
28 ... ..

1 is attached hereto as Exhibit 4. By statute, the patent is  
2 presumed to be valid and enforceable under 35 U.S.C. § 282.

3 77. Defendants, and each of them, through their agents,  
4 employees and servants, manufactured, imported, and sold,  
5 without any rights or license, sunglasses which fall within the  
6 scope and claim contained in U.S. Patent No. 5,137,342.

7 78. Oakley is informed and believes and thereupon alleges  
8 that Defendants, and each of them, have willfully infringed  
9 upon Oakley's exclusive rights under said patent, with full  
10 notice and knowledge thereof. Defendants, and each of them, are  
11 presently selling such infringing sunglasses, have refused to  
12 cease the sale thereof, and will continue to do so unless  
13 restrained therefrom by this court, all to the great loss and  
14 injury of Oakley.

15 79. Oakley is informed and believes and thereupon alleges  
16 that Defendants, and each of them, have derived, received, and  
17 will continue to derive and receive from its acts of  
18 infringement, gains, profits and advantages in an amount not  
19 presently known to Oakley. By reason of these acts of  
20 infringement, Oakley has been, and will continue to be, greatly  
21 damaged.

22 80. Defendants will continue to infringe U.S. Patent No.  
23 5,137,342 to the great and irreparable injury of Oakley, for  
24 which Oakley has no adequate remedy at law unless said  
25 Defendants are enjoined by this court.

26 **SIXTH CLAIM FOR RELIEF**

27 81. The allegations of paragraphs 1 through 32 are repled  
28 and realleged as though fully set forth herein.

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

3           83. Jurisdiction is founded upon 28 U.S.C. § § 1331 and  
4 1338.

5           84. Oakley is the owner of U.S. Patent No. D369,375 which  
6 protects the design and ornamentation of sunglasses marketed by  
7 Oakley under the name "Eye Jacket". A true and correct copy of  
8 U.S. Patent No. D369,375 is attached hereto as Exhibit 5. By  
9 statute, the patent is presumed to be valid and enforceable  
10 under 35 U.S.C. § 282.

11           85. Defendants, and each of them, through their agents,  
12 employees and servants, manufactured, imported, and sold,  
13 without any rights or license, sunglasses which fall within the  
14 scope and claim contained in U.S. Patent No. D369,375.

15           86. Oakley is informed and believes and thereupon alleges  
16 that Defendants, and each of them, have willfully infringed  
17 upon Oakley's exclusive rights under said patent, with full  
18 notice and knowledge thereof. Defendants, and each of them,  
19 are presently selling such infringing sunglasses, have refused  
20 to cease the sale thereof, and will continue to do so unless  
21 restrained therefrom by this court, all to the great loss and  
22 injury of Oakley.

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

1 infringement, Oakley has been, and will continue to be, greatly  
2 damaged.

3 88. Defendants will continue to infringe U.S. Patent No.  
4 D369,375 to the great and irreparable injury of Oakley, for  
5 which Oakley has no adequate remedy at law unless said  
6 Defendant are enjoined by this court.

7 **SEVENTH CLAIM FOR RELIEF**

8 89. The allegations of paragraphs 1 through 32 are repled  
9 and realleged as though fully set forth herein.

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

12 91. Jurisdiction is founded upon 28 U.S.C. § § 1331 and  
13 1338.

14 92. Oakley is the owner of U.S. Patent No. D408,048 which  
15 protects the sunglasses marketed by Oakley under the name "Eye  
16 Jacket". A true and correct copy of U.S. Patent No. D408,048  
17 is attached hereto as Exhibit 6. By statute, the patent is  
18 presumed to be valid and enforceable under 35 U.S.C. § 282.

19 93. Defendants, and each of them, through their agents,  
20 employees and servants, manufactured, imported, and sold,  
21 without any rights or license, sunglasses which fall within the  
22 scope and claim contained in U.S. Patent No. D408,048.

23 94. Oakley is informed and believes and thereupon alleges  
24 that Defendants, and each of them, have willfully infringed  
25 upon Oakley's exclusive rights under said patent, with full  
26 notice and knowledge thereof. Defendants, and each of them,  
27 are presently selling such infringing sunglasses, have refused  
28 to cease the sale thereof, and will continue to do so unless

1 restrained therefrom by this court, all to the great loss and  
2 injury of Oakley.

3 95. Oakley is informed and believes and thereupon alleges  
4 that Defendants, and each of them, have derived, received and  
5 will continue to derive and receive from its acts of  
6 infringement, gains, profits and advantages in an amount not  
7 presently known to Oakley. By reason of these acts of  
8 infringement, Oakley has been, and will continue to be, greatly  
9 damaged.

10 96. Defendants will continue to infringe U.S. Patent No.  
11 D408,048 to the great and irreparable injury of Oakley, for  
12 which Oakley has no adequate remedy at law unless said  
13 Defendant are enjoined by this court.

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

15 1. That Defendants, and each of them, be adjudicated to  
16 have infringed Oakley's Registered Trademark No. 1,980,039, and  
17 that said trademark is valid and enforceable and is owned by  
18 Oakley;

19 2. That Defendants, and each of them, be adjudicated to  
20 have infringed Oakley's Registered Trademark No. 1,984,501, and  
21 that said trademark is valid and enforceable and is owned by  
22 Oakley;

23 3. That Defendants, and each of them, be adjudicated to  
24 have infringed Oakley's Registered Trademark No. 2,146,295, and  
25 that said trademark is valid and enforceable and is owned by  
26 Oakley;

27 4. That Defendants, and each of them, be adjudicated to  
28 have diluted the distinctive value and inherent nature of

1 Oakley's famous and well-known "Oakley" and ellipsoid "O"  
2 trademarks;

3 5. That Defendants, and each of them, be adjudicated to  
4 have infringed Oakley's U.S. Patent No. 5,137,342 and that said  
5 patent is valid and enforceable and is owned by Oakley;

6 6. That Defendants, and each of them, be adjudicated to  
7 have infringed Oakley's U.S. Patent No. D369,375 and that said  
8 patent is valid and enforceable and is owned by Oakley;

9 7. That Defendants, and each of them, be adjudicated to  
10 have infringed Oakley's U.S. Patent No. D408,048 and that said  
11 patent is valid and enforceable and is owned by Oakley;

12 8. That Defendants, and each of them, as well as their  
13 agents, servants, employees, and attorneys and all persons in  
14 active concert and participation with them, be enjoined and  
15 restrained, during the pendency of this action and permanently  
16 thereafter from:

17 a. Using the Oakley's Registered Trademark Nos.  
18 1,980,039, 1,984,501, and 2,146,295, or any mark  
19 similar thereto in connection with the sale of  
20 any goods;

21 b. Committing any acts which may cause purchasers  
22 to believe that the Defendant or the products  
23 Defendant is selling are sponsored or authorized  
24 by, or are in any way associated with Plaintiff;

25 c. Selling, passing off, or inducing or enabling  
26 others to sell or pass off any products as  
27 products produced by Plaintiff, which products  
28 are not Plaintiff's or are not produced under



1 the control and supervision and approved by  
2 Plaintiff; and

3 d. Infringing Plaintiff's trademark rights;

4 9. That Defendants, and each of them, as well as their  
5 agents, servants, employees, and attorneys, and all these  
6 persons in active concert or participation with Defendant, be  
7 forthwith preliminary and thereafter permanently enjoined from  
8 infringing U.S. Patent Nos. 5,137,342, D369,375 and D408,048;

9 10. That Defendants, and each of them, as well as their  
10 agents, servants, employees and attorneys and all persons in  
11 active concert or participation with them, be enjoined and  
12 restrained, during the pendency of this action, and permanently  
13 thereafter from advertising or selling products in any manner  
14 that does or tends to dilute the distinctive value of Oakley's  
15 famous trademarks "Oakley" and the ellipsoid "O";

16 11. That Defendants be directed to file with this Court  
17 and serve upon Oakley within 30 days after the service of the  
18 injunction, a report in writing under oath, setting forth in  
19 detail the manner and form in which Defendants have complied  
20 with the injunction;

21 12. That Oakley be awarded an assessment of damages for  
22 Defendants' infringement of U.S. Patent Nos. 5,137,342,  
23 D369,375 and D408,048, together with an award of such damages,  
24 all in accordance with 35 U.S.C. § 284;

25 13. That Oakley be awarded an assessment of interest  
26 against Defendants, together with an award of such interest, in  
27 accordance with 35 U.S.C. § 284;

28 ... ..

1 14. For all of Defendants' profits derived from his  
2 infringement of Plaintiff's patent and trademark rights in  
3 accordance with 15 U.S.C. § 1117 and 35 U.S.C. § 289;


4 15. For an order requiring Defendants to deliver up and  
5 destroy all infringing sunglasses;

6 16. That an award of reasonable costs, expenses, and  
7 attorney's fees be awarded against Defendants pursuant to 15  
8 U.S.C. § 1116(a) and ; and

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

12 DATED: 9/13/01

WEEKS, KAUFMAN & JOHNSON


13  
14   
15 \_\_\_\_\_  
GREGORY K. NELSON  
Attorney for Plaintiff

16  
17 JURY DEMAND

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

20 DATED: 9/13/01

WEEKS, KAUFMAN & JOHNSON

21  
22   
23 \_\_\_\_\_  
GREGORY K. NELSON  
Attorney for Plaintiff

24  
25  
26  
27  
28

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

Reg. No. 1,980,039

**United States Patent and Trademark Office** Registered June 11, 1996

**TRADEMARK  
PRINCIPAL REGISTER**



OAKLEY, INC. (CALIFORNIA CORPORATION)  
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, HEADWEAR AND FOOTWEAR, NAMELY T-SHIRTS, SWEATSHIRTS,

BLOUSES, SWEATERS, SPORT SHIRTS, JERSEYS, SHORTS, TROUSERS, PANTS, SWEAT-PANTS, SKI PANTS, RACING PANTS, JEANS, COATS, VESTS, JACKETS, SWIMWEAR, HATS, VISORS, CAPS, GLOVES, BELTS, SOCKS, SANDALS AND SHOES, IN CLASS 25 (U.S. CLS. 22 AND 39).

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

OWNER OF U.S. REG. NOS. 1,169,945, 1,552,583, AND OTHERS.

SN 74-485,652, FILED 2-2-1994.

DAVID H. STINE, EXAMINING ATTORNEY

EXHIBIT 1

PAGE 1 OF 1

Int. Cls.: 9 and 25

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

**United States Patent and Trademark Office**

Reg. No. 1,984,501

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, GOG-  
GLES, 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, JACK-  
ETS, 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

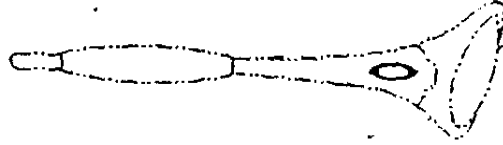
EXHIBIT 2

PAGE 1 OF 1

**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

EXHIBIT 3

PAGE 1 OF 1

[54] EYEWEAR TRACTION DEVICE  
[75] Inventors: James H. Jannard, San Juan Capistrano; Gregory F. Arnette, South Laguna Beach, both of Calif.  
[73] Assignee: Oakley, Inc., Irvinc, Calif.  
[\*] Notice: The portion of the term of this patent subsequent to Oct. 8, 2008 has been disclaimed.

2,949,638 8/1960 Butler .  
3,684,356 8/1972 Bates .  
3,741,635 6/1973 Wortman .  
4,074,932 2/1978 Thill ..... 351/123  
4,563,066 1/1986 Bononi .  
4,662,729 5/1987 Dobson .  
4,732,465 3/1988 Field .  
4,786,158 11/1988 Barfus-Shanks .

[21] Appl. No.: 695,683  
[22] Filed: May 3, 1991

FOREIGN PATENT DOCUMENTS

62-12123 1/1987 Japan .

Primary Examiner—Paul M. Dzierzynski  
Attorney, Agent, or Firm—Knobbe, Martens, Olson & Bear

Related U.S. Application Data

[63] Continuation of Ser. No. 436,474, Nov. 20, 1989, Pat. No. 5,054,903.  
[51] Int. Cl.: ..... G02S 5/14  
[52] U.S. Cl.: ..... 351/123; 351/122; 351/111  
[58] Field of Search ..... 351/122, 123, 111, 119, 351/121

[57] ABSTRACT

In eyewear employing temples, a substantially cylindrical elastomeric traction member is disposed in a recessed seat which extends along a length of each temple to provide a contact area between the temple and the head. The traction member and seat may be sized so that the traction member is substantially flush with the adjacent temple or alternatively, the traction member may extend beyond the periphery of the temple. In either configuration, the traction device extends substantially parallel to the length of the temple.

[56] References Cited  
U.S. PATENT DOCUMENTS

2,031,771 2/1935 Grier ..... 351/123  
2,561,402 7/1951 Nelson .

32 Claims, 1 Drawing Sheet

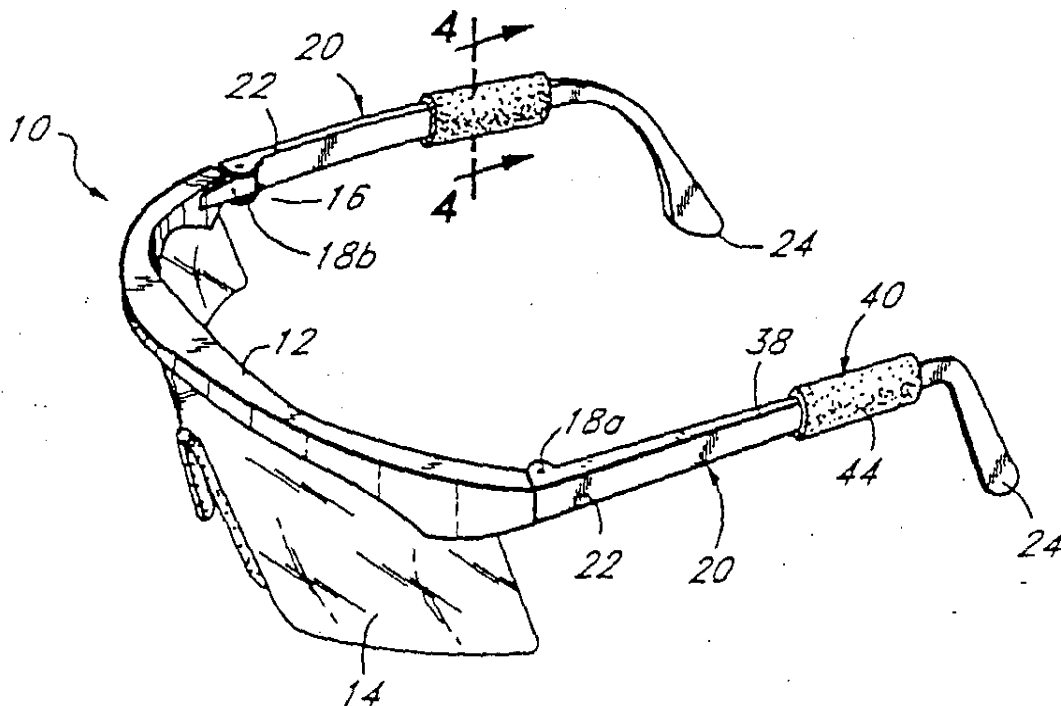


EXHIBIT 4

PAGE 1 OF 7

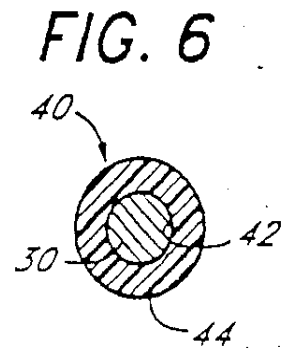
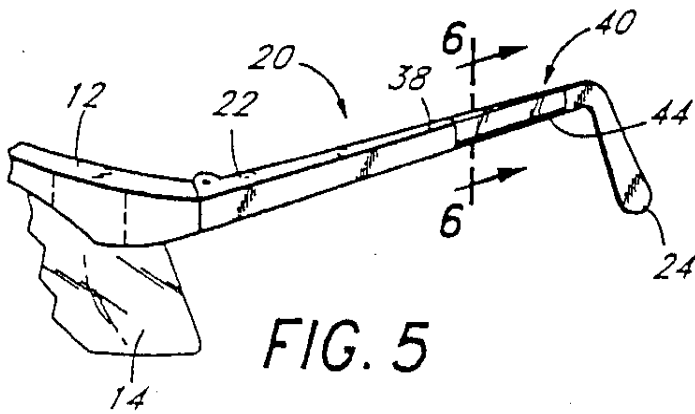
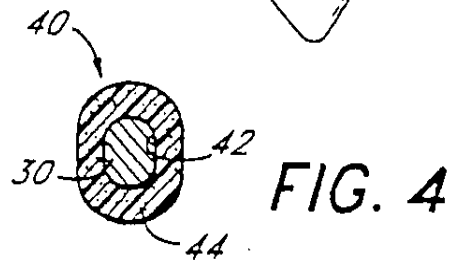
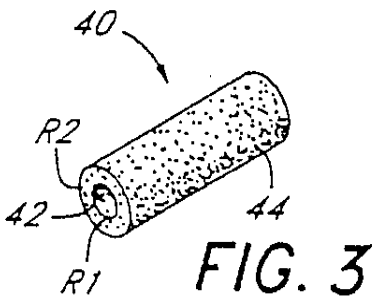
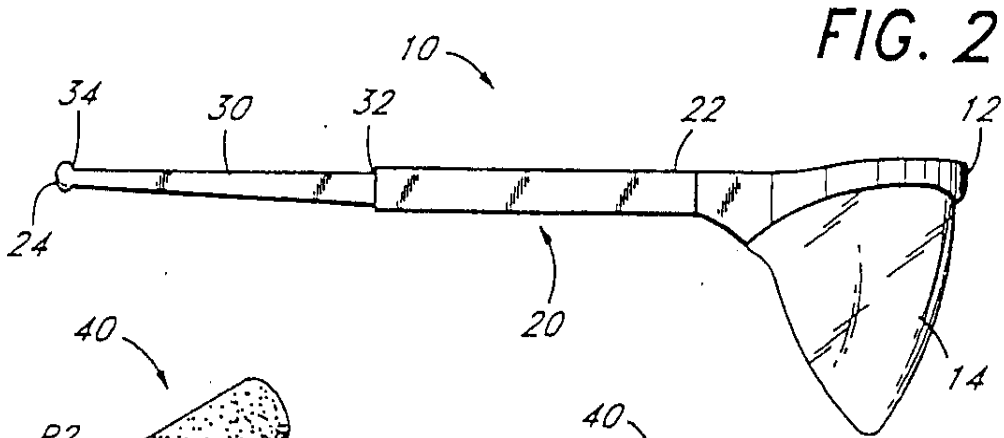
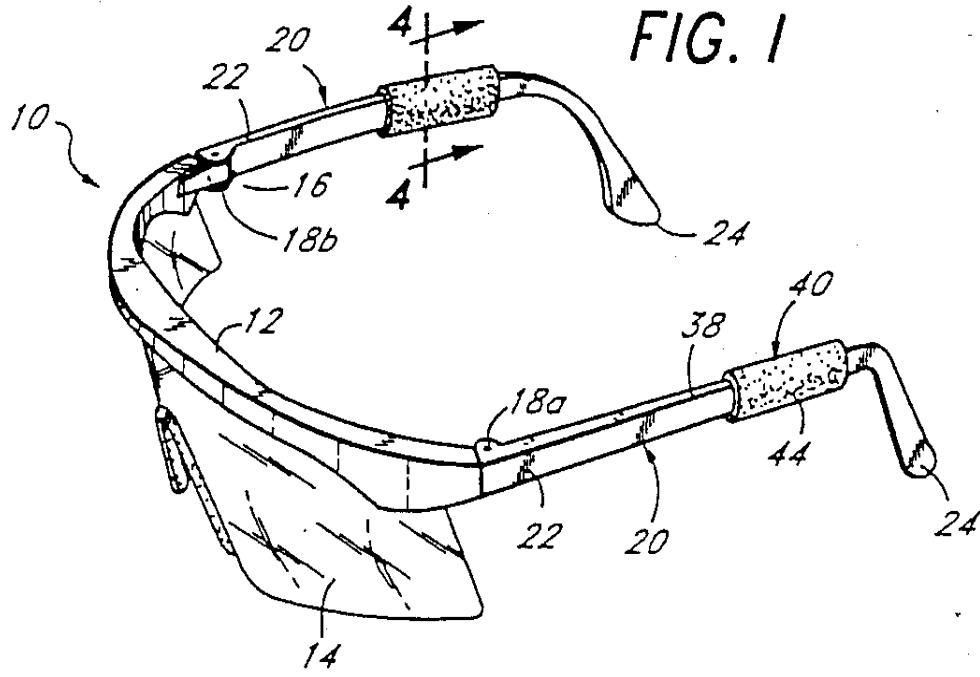


EXHIBIT 4

This application is a continuation of application Ser. No. 436,474 filed Nov. 20, 1989, now U.S. Pat. No. 5,054,90.

### BACKGROUND OF THE INVENTION

The present invention relates to eyewear and, more particularly, to a selectively attachable traction device for improving the retention of the eyewear about the head and a method for using the same.

While corrective lenses are specifically crafted to accommodate the unique vision defects of an individual, the frames used to retain the lenses are typically a standard size and not crafted to conform to the particular contours of an individual's head. Lenses which are employed in filtering eyewear such as sunglasses are also typically retained in stock frames. However, it is virtually impossible to mass produce stock frames which fit every individual's head; therefore, stock frames are constructed to conform to an idealized "standard" adult head.

As a result, such frames often result in a fit which is either too tight or too loose about the head of an individual. A tight fitting frame may cause localized pain and headaches, while a loose fitting frame may allow the eyewear to fall from the head and damage the frame or the lens. This is particularly disadvantageous for protective eyewear such as sunglasses which are to be used in active sports, such as bicycle racing or skiing. Additionally, in the event that corrective lenses vary in weight between the lenses, the uneven weight distribution may cause frames to locally abrade the skin.

A variety of means have been employed to improve the securing of eyewear to the head. These devices have included the use of loose strings which connect the temples of the eyewear around the back of the wearer's head, thereby preventing the glasses from becoming completely displaced from the body. Alternatively, an elastic strap connecting the temples has been employed to engage the wearer's head and secure the eyewear in the desired position.

Perhaps most frequently used, temples have been provided with a hook at the posterior end for engaging the wearer behind the ears. However, due to the significant variation among individuals in the distance from the appropriate position of an eyeglass lens and the back of the ear, the traditional ear hook is frequently either too far back or too far forward of the appropriate position on the wearer's ear. This causes either a painful or irritating friction if the hook is too far forward, or a loose fit if too far back.

The prior attempts to improve the retention of eyewear about the wearer's head have also included the use of rubber or rubber-like plastic boots applied to the free ends of the temples for increasing the friction between the eyeglasses and the head, such as shown in Bates U.S. Pat. No. 3,684,356. The Bates device, however, appears somewhat clumsy and awkward and, therefore, detracts from the appearance of the eyewear. In addition, the Bates device is limited in that it may not be adjusted relative to the eyewear; that is, the closed end of the boot prevents forward adjustment to a more anterior point of contact between the temples and the head, while an unsupported length of boot extending beyond the earpiece is undesirable.

Another prior attempt to improve eyewear retention is disclosed in the Nelson patent (U.S. Pat. No. 2,561,402), which discloses use of relatively complicated fluid chambers at the interface of the free end of the temples and the head. Nelson uses the fluid chambers in an effort to evenly distribute pressure between the temple and the head. As the fluid chambers of Nelson are permanently affixed to the temple in a predetermined orientation, modification for specific individuals is unavailable. In addition, the fluid retained within the chambers adds an undesired weight to the eyewear. Further, even if the fluid chambers were removable, such removal would substantially alter the fit of the eyewear, rendering the eyewear substantially unwearable.

Notwithstanding the foregoing, there remains a need for providing a means of improving the compatibility of eyewear and the wearer so as to improve retention of the eyewear. Preferably, the eyewear retention means will enable one size to comfortably and securely fit a much larger population than can one size eyewear having the traditional ear hook.

A need also exists for a device which improves retention of eyewear without permanently altering the configuration of the eyewear. A further need exists for a retaining device which may be easily disengaged or recombined with the eyewear without drastically changing the functioning or the appearance of the eyewear. In addition to the functional requirements of the traction device, an aesthetic requirement exists so that the device may be employed as a portion of eye wear in either an unobtrusive or distinctive, but attractive, mode.

### SUMMARY OF THE INVENTION

There is provided in accordance with one aspect of the present invention an improved eyewear temple of the type for retaining a pair of eyeglasses on the head of the wearer, by extending from the eyeglass frame in a posterior, i.e., distal, direction over the top of the ears of the wearer. The improved eyeglass temple of the present invention permits the elimination of the traditional hook on the posterior end of traditional temples, and allows a single size set of eyewear temples to comfortably and securely fit on a broader cross section of anatomical variations.

The eyeglass temple comprises an elongate eyeglass temple body, having a first proximal end for attaching the temple to the frame of the eyeglasses, and a second end, distal from the first end, for engaging the head of the wearer. Optionally, the first end of the temple is adapted for securing directly to the lens, such as in a single lens eyeglass system. Preferably, the first end on the temple is provided with a means for releasably pivotably engaging the eyeglass lens or eyeglass frame.

A recessed seat is disposed on the elongate temple body, in between the first and second ends, the recessed seat having a smaller cross-sectional area than the cross-sectional area of the temple body adjacent to the seat. Preferably, the recessed seat comprises an annular recess having first and second shoulders at the first and second axial ends thereof. Preferably, the axial length of the annular recess is less than about one-half of the axial length of the temple, and most preferably, less than about one-third the axial length of the temple.

The eyeglass temple is preferably additionally provided with at least one tubular traction member disposed within the recessed seat. The traction member



preferably comprises an elastomeric material which enables radial expansion to fit over the distal end of the temple body, and relaxation back to provide a snug fit within the recess on the temple. The traction member is preferably made from an elastomeric material which exhibits improved retention properties when the material is wet, and, most preferably, the exterior surface of the traction member is provided with friction enhancing structures, such as annular ridges or other patterned textures.

There is provided in accordance with another aspect of the present invention, an improved eyeglass having at least one lens, and a frame for supporting the lens in front of the eyes of the wearer. The eyeglass is further provided with a first and a second temple produced in accordance with the present invention. Preferably, the distal end of the temple is substantially straight, so that the temple does not wrap around behind the ear of the wearer.

Further features and advantages of the present invention will become apparent from the detailed description of preferred embodiments which follow, when taken together with the appended figures and claims.

**BRIEF DESCRIPTION OF THE DRAWINGS**

FIG. 1 is a perspective view of eyewear in accordance with one embodiment of the present invention.

FIG. 2 is a side elevational view of a second embodiment of eyewear in accordance with the present invention, with the traction member removed.

FIG. 3 is a perspective view of a traction member in accordance with the present invention.

FIG. 4 is a cross-sectional view taken along line 4—4 of FIG. 1.

FIG. 5 is a perspective view showing an alternative embodiment of the traction member.

FIG. 6 is a cross-sectional view taken along line 6—6 of FIG. 5.

**DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENT**

As used in the present application, "eyewear" is a general term intended to embrace optical devices containing corrective lenses for defects in vision or lenses for such special purposes as filters for absorbing or blocking portions of the electromagnetic spectrum, providing physical shields for the eyes or making available other physical or optical functions for protective or visual assisting purposes.

As shown in FIG. 1, eyewear 10 adapted to position a lens in a predetermined orientation relative to the eyes includes a frame 12, lens 14 and temples 20. Preferably, the lens 14 is joined to the frame 12 so as to position the lens 14 before the eyes. As shown in FIGS. 1, 2 and 6, the temples 20 may be pivotally affixed or joined to the frame 12. Although the temples 20 are shown in FIG. 1 as pivotally affixed to the frame 12, the temples 20 may be permanently attached in a predetermined orientation or selectively engageable with the frame 12 without circumventing the scope of the present invention. Alternatively, the frame 12 may be eliminated entirely by securing the temples 20 with or without temple hinges directly to the lens 14 by thermoplastic bonding, adhesives screws or other known fastening means which are suitable for the material of the lens and temples.

As is well known in the art, the frame 12 and temples 20 may be conveniently made of molded plastic or a variety of other materials. The lens 14 may take any of

a number of configurations and may be formed of sheet plastic molded to fit the lens 14 as defined by the application of the lens.

Each temple 20 is defined by a proximal end 22 and a distal end 24 wherein the proximal end 22 is affixed either permanently or detachably to the frame 12. The permanent attachment of the temples to the frame 12 may be accomplished through molding or thermoplastic bonding. The detachable engagement of the temples 20 and the frame 12 is provided by the use of a snap fit or fasteners including screws or pins, as are known in the art.

Although the earstems shown in FIG. 1 are affixed to the frame 12, the earstem 20 may be attached directly to the lens 14. Preferably, the earstems 20 are hingeably attached to the frame 12 or lens 14 and most preferably, hingeably and removably attached, as well known in the art.

As shown in FIG. 1, in a typical hingeable connection, the frame 12 or lens 14 includes a hinge aperture (not illustrated) extending through a protruding flange 16. The earstem 20 includes a pair of parallel apertured flanges 18a, 18b spaced so as to receive the flange 16 of the frame 12 or lens 14 therebetween. The apertures in the earstem 20 are aligned with the apertures of the frame 12 or lens 14 and a pin is inserted so as to permit rotation of the frame 12 or lens 14 relative to the earstem 20, thereby providing a hingeable connection. In a typically readily detachable hinge, the aperture in the flange 16 of the frame 12 or lens 14 is replaced by an integral pin (not illustrated) which extends away from the flange 16 in opposite directions along the same axis as the aperture. The pinned flange 16 is inserted by deformation between the opposing flanges 18a, 18b and the integral pin snaps into the aperture on the flanges 18a, 18b, thereby providing a readily detachable hinge.

As shown in FIGS. 1 and 5, the distal end 24 may be curved so as to provide loops which are disposed behind the ears when the eyewear is worn. However, as the looped temples shown in FIGS. 1 and 5 may impinge upon the head in undesired locations when employed on heads of different sizes, the looped temples are not well suited to accommodate a wide variety of head sizes. Thus, the preferred embodiment shown in FIG. 2 includes a straight temple which, when used in conjunction with the present invention, provides more universally fitting eyewear and eliminates the traditional ear hook which can cause discomfort or distraction for many wearers.

As shown in FIG. 2, a recessed seat 30 is disposed intermediate of the proximal and distal ends 22, 24. As shown in FIG. 2, the seat 30 is preferably located adjacent the distal end 24 of the temple 20, so that the posterior shoulder 34 is substantially coincident with the distal end 24. However, as will be apparent, if it is desired to extend the temples in a posterior direction well beyond the ears, the distance between posterior shoulder 34 and distal end 24 can be proportionately increased to maintain seat 30 near the ear.

The recessed seat 30 is defined by posterior shoulder 34 and preferably an anterior shoulder 32, such that the anterior shoulder 32 is disposed between the posterior shoulder 34 and the proximal end 22. Preferably the cross-sectional dimension of the seat 30 between the anterior and posterior shoulders 32, 34 is smaller than the cross-sectional dimension of the adjacent temple 20.

Preferably, the posterior shoulder 34 is a sufficient distance from the anterior shoulder 32 so that at least

However, the seat 30 may be configured so as to extend substantially the entire length of the temple. Alternatively, the seat 30 may extend only a portion of the overall length of the temple. Typically, the seat extends less than about one-half or one-third the length of the temple and is disposed on the posterior portion of the temple.

Although the seat is shown as defined by an anterior shoulder 32 and a posterior shoulder 34, the present invention may be practiced with a seat 30 defined only by a posterior shoulder 34 for preventing unintended axial displacement of the traction member in the posterior direction.

When the seat 30 is defined by only the posterior shoulder 34, the cross-sectional area of the seat may taper from being substantially coincident with an anterior cross-sectional area of the temple to the reduced cross-sectional area at the posterior shoulder 34. The posterior shoulder thereby prevents unintentional axial displacement of the traction member in the posterior direction. Axial displacement of the traction member in the anterior direction is inhibited by the expanding cross-sectional area of the seat in a tapered embodiment, as the seat extends in the anterior direction, or simply by a friction fit in the absence of a taper or an anterior shoulder.

Preferably, the seat 30 is located so that upon operable engagement of the traction member 40 within the seat 30, the traction member 40 provides an interface between the eyewear and the head. That is, the traction member 40 contacts the head.

Referring to FIG. 3, an elongate tubular traction member 40 is shown. In the preferred embodiment, the traction member 40 is formed substantially in the shape of a hollow cylinder having an inner surface 42 of radius R1 and outer surface 44 of radius R2, wherein radius R1 is less than radius R2. Preferably, radius R1 is expandable to permit passage of the distal end 24 of the temple 20 through the interior of the traction member 40 without exceeding the elastic limits of deformation of the traction member 40.

As shown in FIG. 4, the traction member 40 is preferably comprised of a material having sufficient elasticity that the inner surface 42 of the traction member 40 snugly contacts the surface of a seat 30 having an oblong or rectangular cross-section with a cross-sectional area greater than that of R1 in the unexpanded state. Referring to FIG. 6, the inner surface 42 will also preferably conform snugly to the surface of a seat 30 having a substantially circular cross-section.

Other embodiments of the traction member 40 may be employed, such as one having an open rectangular or triangular cross-sectional configuration having a bias so that the open legs of the triangle or rectangle are biased towards one another to tend to form a tubular element. Thus, traction devices can take the form of an elongate body which is split axially along one wall so that it does not form a complete tube. The bias should be sufficient so that the opposing inner surfaces 42 of the traction member 40 cooperatively engage the periphery of the recessed seat 30.

The traction member 40 may be formed by molding or extruding processes, as well known in the art. Preferably, the outer surface 44 is configured to enhance the coefficient of static friction between the eyewear and the head. The outer surface 44 may be formed to exhibit a variety of static friction coefficient enhancing configurations, such as a grid, waffle, or ribbed pattern (not

shown). Typically, the inner surface 42 produced by extrusion will exhibit axially oriented patterns, while the outer surface 44 may exhibit radial and/or axially oriented patterns.

As discussed infra, the traction member 40 is preferably formed of an elastomeric material exhibiting sufficient flexibility or elasticity to allow the traction member 40 to expand while being slipped over the temple distal end 24 and to contract back within seat 30 after passing over the distal end.

In a particularly preferred embodiment, the traction member 40 is formed of a relatively soft elastomeric material having a coefficient of sliding friction that increases when the material is wetted. Such a material, sometimes referred to as hydrophilic, tends to enhance retention of the traction member 40 in position on the wearer's head as the wearer perspires or encounters moisture, as during skiing. One suitable material which can be readily molded by conventional techniques is marketed under the name KROTON G™, a product of the Shell Oil Company.

The traction member 40 may comprise a resilient sponge-like elastomeric material, having a relatively high porosity, as shown in FIGS. 3 and 4. Alternatively, as shown in FIG. 6, the traction member 40 may comprise a substantially solid, i.e., fine or no porosity, yet flexible material. In addition, the traction member 40 may be made of materials having different densities, thereby providing traction members 40 having different weights, which may be employed to counterbalance lenses of differing weights, so as to distribute the weight of the eyewear 10 more evenly about the head.

The length of the traction member 40 is preferably no greater than and most preferably substantially equal to the distance between the anterior and posterior shoulders 32, 34. Although the traction member 40 is illustrated as extending roughly one-third or one-half the overall length of the temple, the traction members 40 within the present invention can extend anywhere from substantially the entire length of the temple 20 to only a relatively small portion thereof, as depending upon the configuration of the seat 30. Alternatively, a plurality of traction members 40 may be axially aligned within the seat 30. The traction members 40 may be selected so that a combined length of the members 40 substantially equals the distance between the anterior and the posterior shoulders 32, 34 or alternatively, the combined axial length of the members 40 may be such that an axial space separates adjacent traction members 40 within the seat.

In assembling the present invention, the traction member 40 is engaged with a temple 20 by passing the distal end 24 of the temple 20 through the tubular passageway within traction member 40. Alternatively, the temple 20 may be detached from the frame 12 or lens 14 and the proximal end 22 may be passed through the tubular passageway of the traction member 40. Therefore, the preferred construction of the traction member 40 which elastically passes over the distal end may be obviated. The traction member 40 is then moved along the temple 20 until the inner surface 42 engages the seat 30. In an embodiment in which the seat 30 has a length substantially equal to the length of the traction member 40, as the traction member 40 is received within the seat 30, further unintended motion along the temple 20 is prevented by engagement of the anterior and posterior shoulders 32, 34 with the traction member 40.

Alternatively, the seat 30 may have a sufficient axial length so that the traction members 40 between the anterior and posterior shoulders 32, 34. The use of multiple traction members 40 allows for accommodating fashion considerations as well as high retaining forces for active uses, such as volleyball or basketball. Upon engagement of the traction member 40 within the seat 30, the outer surface 44 of the traction member 40 may be disposed outside of the periphery of the temple 20, as shown in FIG. 1 or, alternatively, may be substantially flush with the periphery 38 of the adjacent temple 20, as shown in FIG. 5. Traction members are preferably provided having a variety of wall thicknesses, i.e., the difference between R1 and R2. Thus, the wearer can select a flush fitting traction member as illustrated in FIG. 5 or a radially enlarged traction member as illustrated in FIG. 1, depending upon that wearer's perception of the need for enhanced traction or sleek appearance.

As the majority of the length of the temple 20 in the preferred embodiment is dominated by the periphery of the temple 20 rather than the seat 30, if the traction members 40 are removed from the temples 20, the fitting of the eyewear 10 will not be substantially denigrated. However, the length of the traction member 40, when engaged in the seat 30, provides a sufficient contact area to increase the resistance to movement of the eyewear 10 relative to the head.

This present invention has been described in detail in connection with the preferred embodiments, but these are examples only and the present invention is not restricted thereto. It will be easily understood by those skilled in the art that other variations and modifications can be easily made within the scope of this invention, which is defined by the following claims.

It is claimed:

1. Improved eyewear, comprising:
  - at least one temple piece having a recessed seat along a length thereof such that the seat defines a periphery which is smaller than the periphery of the adjacent temple portion, said seat having an axial length of less than about one-half the axial length of the temple; and
  - at least one substantially tubular traction member disposed within the recessed seat having an inner surface, an outer surface, and a central passageway running axially therethrough, said inner surface removably engaging the periphery of the seat, and said outer surface adapted to provide a contact surface with the head of the wearer.
2. Improved eyewear, comprising:
  - a frame;
  - at least one temple having proximal and distal ends and being joined to the frame at the proximal end thereof, having a recessed seat interposed between said proximal and distal ends, said seat having a smaller cross-sectional area than the cross-sectional area of said temple portion adjacent said seat, and said seat having an axial length of less than about one-half of the axial length of the temple; and
  - a substantially tubular elastomeric traction member having an inner surface and an outer surface, such that the inner surface is adapted to circumferentially contact the temple, and the outer surface is adapted to engage the head of a wearer, wherein the traction member is disposed in the recessed seat region on the temple.

3. An improved eyewear temple for retaining eyeglasses to the head of a wearer and preventing slippage caused by movement of said eyewear, comprising:

- an elongate eyewear temple body;
  - a first end on the temple for attaching the temple to the frame of the eyeglasses;
  - a second end on the temple, distal said first end, for engaging the head of the wearer; and
  - a recessed seat interposed between said first and second ends having a smaller cross-sectional area than that of said temple portion adjacent said seat, said seat being separated from the remainder of said temple by first and second shoulders, such that the axial length of the recessed seat between the first and second shoulders is less than about one-half of the axial length of the temple, said recessed seat being situated toward the distal end of the temple such that at least one substantially tubular traction member removably disposed within the recessed seat can engage the head of the wearer.
4. An eyewear temple as in claim 3, wherein at least one substantially tubular traction member is disposed within the recessed seat between the first and second shoulders, said member having an inner surface, an outer surface, and a central passageway running axially therethrough, said inner surface removably engaging the periphery of the seat, and said outer surface adapted to provide a contact surface with the head of the wearer.
  5. An eyewear temple as in claim 4, wherein the tubular traction member comprises a resilient elastomeric material.
  6. An improved eyewear temple as in claim 5, wherein said elastomeric material exhibits a coefficient of sliding friction that increases when the material is wetted.
  7. An eyewear temple as in claim 5, wherein the thickness of the traction member is such that the outer surface of the traction member is substantially flush with the periphery of the adjacent portion of the temple.
  8. An eyewear temple as in claim 7, wherein the outer cross-sectional shape of the traction member approximates the outer cross-sectional shape of the adjacent portion of the temple.
  9. An eyewear temple as in claim 5, wherein the traction member extends radially outward beyond the surface of the adjacent portion of the temple.
  10. An eyewear temple as in claim 5, wherein at least one tubular traction member disposed within the recessed seat extends substantially the entire distance between said first and second shoulders of the temple.
  11. An eyewear temple as in claim 5, wherein the traction member is removable and comprises a hollow, elastomeric member adapted to allow elastic radial expansion for sliding over the distal end of said temples and into engagement with said recessed seat.
  12. An eyewear temple as in claim 3, wherein the shoulders extend substantially perpendicularly from the seat.
  13. An eyewear temple as in claim 3, wherein the recessed seat consists of a tapering that extends axially and radially from the distal end of the recessed seat to the proximal end, wherein the cross-sectional area of the seat tapers from the smaller periphery at the distal end to being substantially coincident with the cross-sectional area of the temple at the proximal end of the recessed seat.

EXHIBIT 4

axial length of the recessed seat extends no more than about one-third the length of the temple.

15. An eyewear temple as in claim 3 further comprising an attachment means on the first end thereof for pivotably removably attaching the temple to an eyeglass frame.

16. An improved eyewear temple for retaining eyeglasses on the head of the wearer and reducing abrasion caused by movement of said eyewear, comprising:

- an elongate eyewear temple body, wherein the body is substantially linear through the axial length of the temple;
- a first end on the temple for attaching the temple to the frame of the eyeglasses;
- a second end on the temple, distal said first end, for engaging the head of the wearer;
- a recessed seat interposed between said first and second ends having a smaller cross-sectional area than that of said temple portion adjacent said seat, said seat being separated from the remainder of said temple by first and second shoulders; and
- at least one tubular traction member disposed within the recessed seat.

17. An eyewear temple as in claim 16, wherein at least one substantially tubular traction member is disposed within the recessed seat between the first and second shoulders, said member having in inner surface, an outer surface, and a central passageway running axially therethrough, said inner surface removably engaging the periphery of the seat, and said outer surface adapted to provide a contact surface with the head of the wearer.

18. An eyewear temple as in claim 17, wherein the tubular traction member comprises a resilient elastomeric material.

19. An improved eyewear temple as in claim 18, wherein said elastomeric material exhibits a coefficient of sliding friction that increases when the material is wetted.

20. An eyewear temple as in claim 18, wherein the thickness of the traction member is such that the outer surface of the traction member is substantially flush with the periphery of the adjacent portion of the temple.

21. An eyewear temple as in claim 20, wherein the outer cross-sectional shape of the traction member approximates the outer cross-sectional shape of the adjacent portion of the temple.

22. An eyewear temple as in claim 18, wherein the traction member extends radially outward beyond the surface of the adjacent portion of the temple.

23. An eyewear temple as in claim 16, wherein the shoulders extend substantially perpendicularly from the seat.

24. An eyewear temple as in claim 16, wherein the recessed seat consists of a tapering that extends axially and radially from the distal end of the recessed seat to the proximal end, wherein the cross-sectional area of the seat tapers from the smaller periphery at the distal end to being substantially coincident with the cross-sectional area of the temple at the proximal end of the recessed seat.

25. An eyewear temple as in claim 16, wherein the axial length of the recessed seat extends no more than about one-third the length of the temple.

26. An eyewear temple as in claim 16, wherein the axial length of the recessed seat extends no more than about one-half the length of the temple.

27. An eyewear temple as in claim 16, wherein at least one tubular traction member disposed within the recessed seat extends substantially the entire distance between said first and second shoulders of the temple.

28. An eyewear temple as in claim 16, wherein the traction member is removable and comprises a hollow, elastomeric member adapted to allow elastic radial expansion for sliding over the distal end of said temples and into engagement with said recessed seat.

29. An eyewear temple as in claim 16, further comprising an attachment means on the first end thereof for pivotably removably attaching the temple to an eyeglass frame.

30. Improved eyewear, comprising:

- at least one temple piece being substantially linear throughout the axial length of the temple and having a recessed seat along a length thereof such that the seat defines a periphery which is smaller than the periphery of the adjacent temple portion; and
- at least one substantially tubular traction member disposed within the recessed seat having an inner surface, an outer surface, and a central passageway running axially therethrough said inner surface removably engaging the periphery of the seat, and said outer surface adapted to provide a contact surface with the head of the wearer.

31. Improved eyewear, comprising:

- a frame;
- at least one temple having proximal and distal ends and being joined to the frame at the proximal end thereof, said temple being substantially linear throughout the axial length of the temple, said temple having a recessed seat interposed between said proximal and distal ends, said seat having a smaller cross-sectional area than that of said temple portion adjacent said seat; and
- a substantially tubular elastomeric traction member having an inner surface and an outer surface, such that the inner surface is adapted to circumferentially contact the temple, and the outer surface is adapted to engage the head of a wearer, wherein the traction member is disposed in the recessed seat region on the temple.

32. Improved eyewear having a lens, a frame supporting said lens for positioning the lens before the eyes of a wearer, and first and second temples for securing said eyewear to the head of the wearer, said temples having a proximal end joined to said frame and a distal end spaced from said proximal end, the improvement comprising:

- said first and second temples being substantially linear throughout the axial length of the temple member, said temples having disposed between said proximal and distal ends a radially recessed seat having a smaller cross-sectional area than that of said temple portion adjacent said seat; and
- at least one traction member releasably secured on said first and second temples within the seat, whereby said traction member frictionally engages the wearer's head.

. . . . .

[54] EYEGLASSES

D. 206,353	11/1966	Bloch	.....	D16/326
D. 209,095	10/1967	Ramp	.....	D16/328
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[75] Inventors: James H. Jannard, Eastsound, Wash.; Peter Yee, Huntington Beach; M. Neil Houston, Foothill Ranch, both of Calif.

Primary Examiner—Ted Shoeman  
Assistant Examiner—R. Barkai  
Attorney, Agent, or Firm—Knobbe, Martens, Olson & Bear

[73] Assignee: Oakley, Inc., Irvine, Calif.

[57] CLAIM

[\*\*] Term: 14 Years

The ornamental design for eyeglasses, as shown and described.

[21] Appl. No.: 30,825

DESCRIPTION

[22] Filed: Nov. 9, 1994

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

[58] Field of Search ..... D16/300, 306,  
D16/309-311, 315-317, 323-330, 340,  
341; 351/44, 50, 51, 103-110, 158

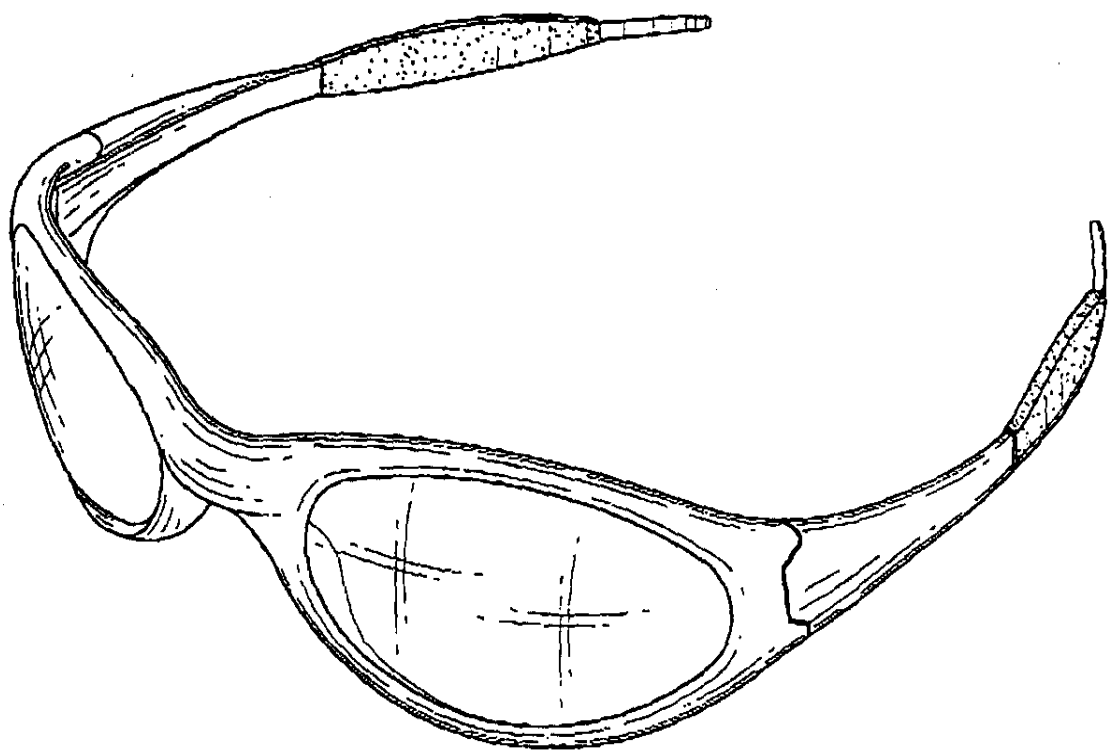
FIG. 1 is a front perspective view of the eyeglasses of the present invention;  
FIG. 2 is a front elevational view of the eyeglasses of FIG. 1;  
FIG. 3 is a rear elevational view of the eyeglasses of FIG. 1;  
FIG. 4 is a left side elevational view of the eyeglasses of FIG. 1, the right side elevational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

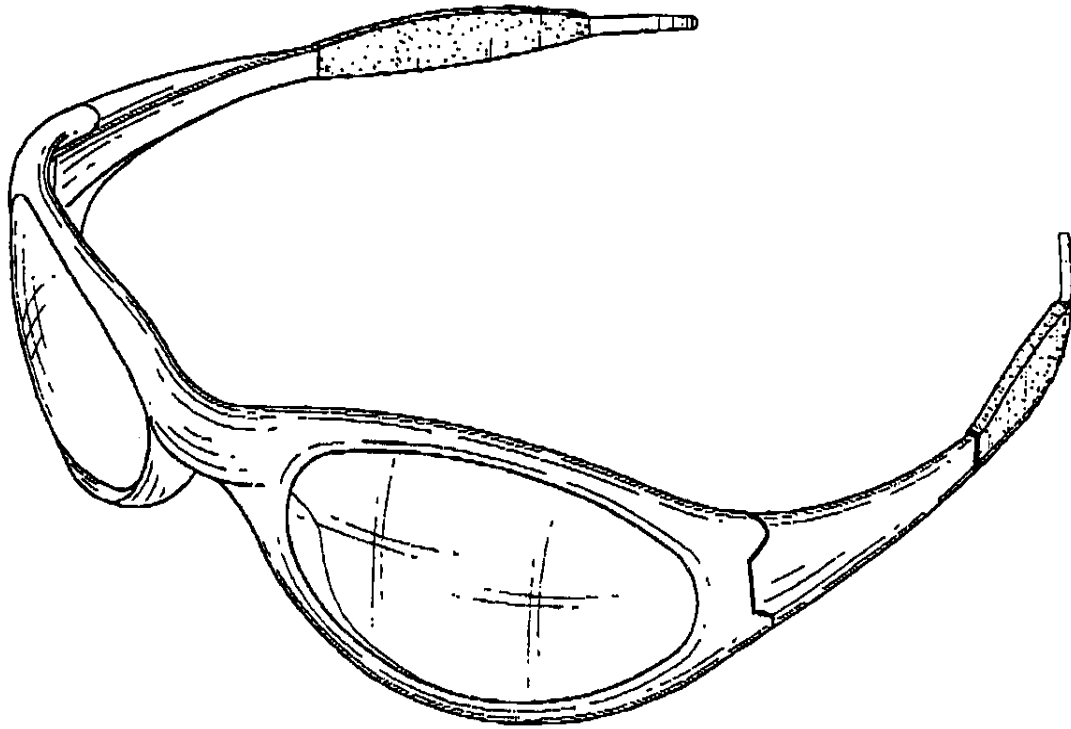
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1 Claim, 3 Drawing Sheets



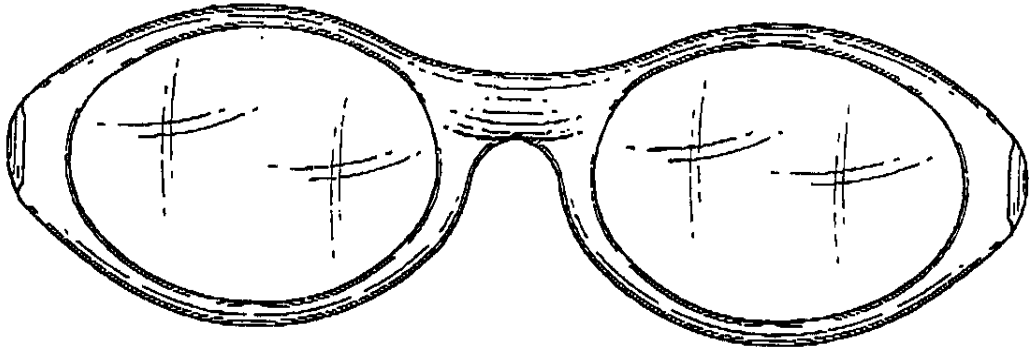


*Fig. 1*

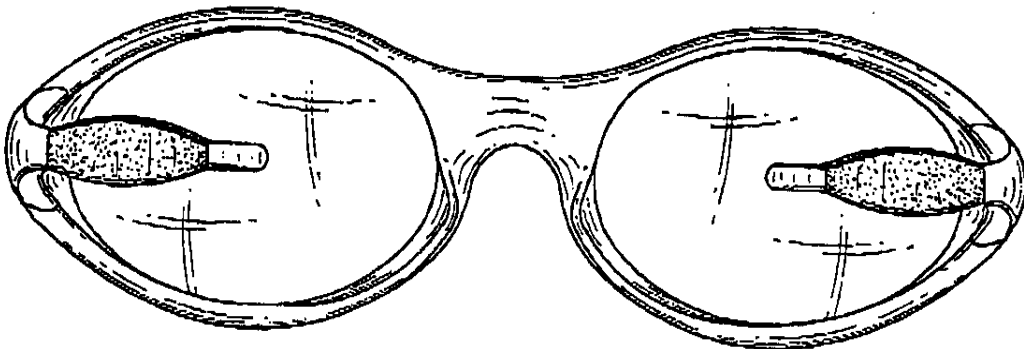
EXHIBIT 5

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*Fig. 2*



*Fig. 3*



*Fig. 4*

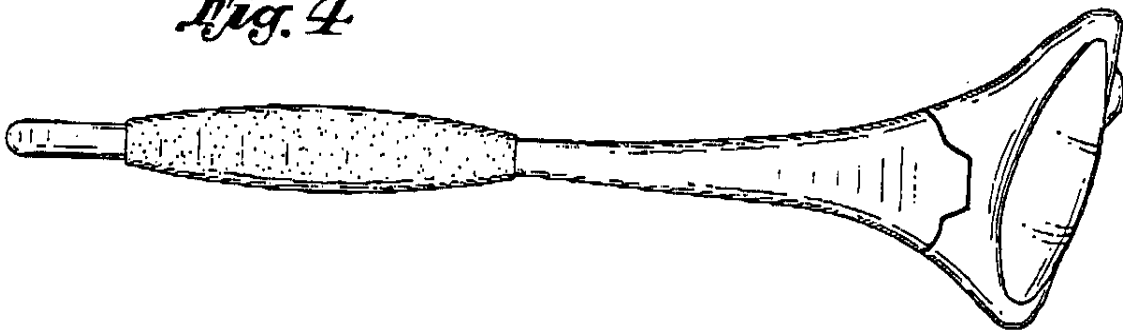
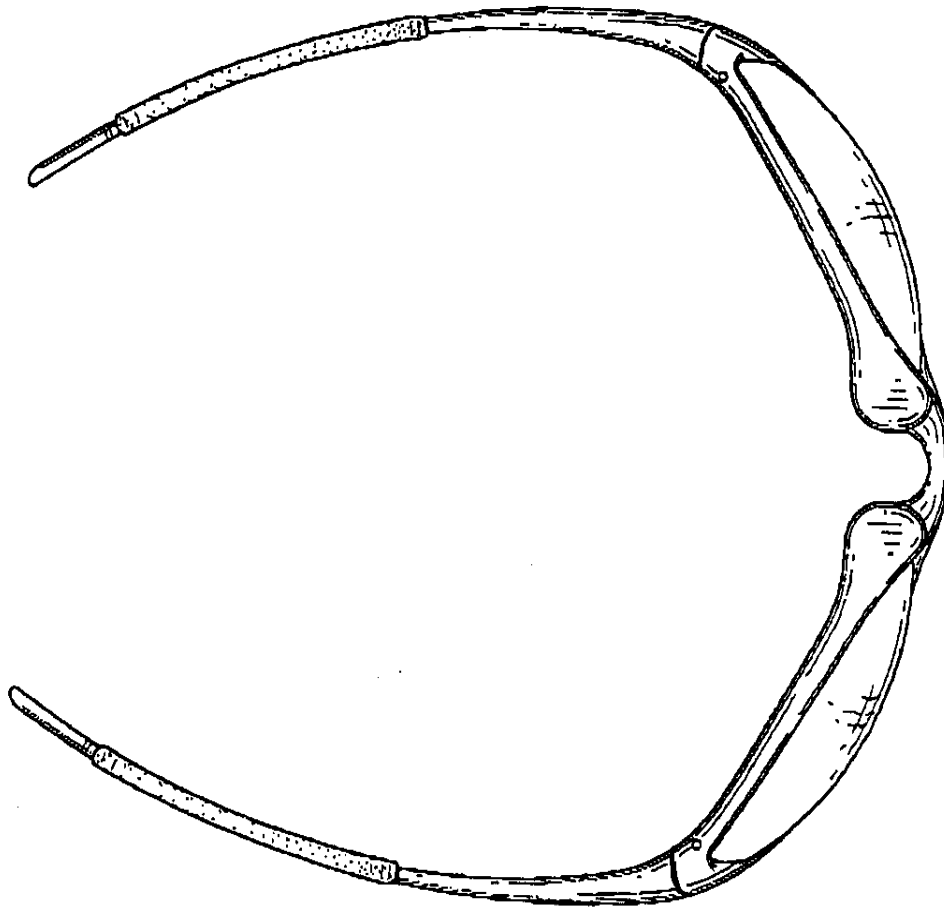
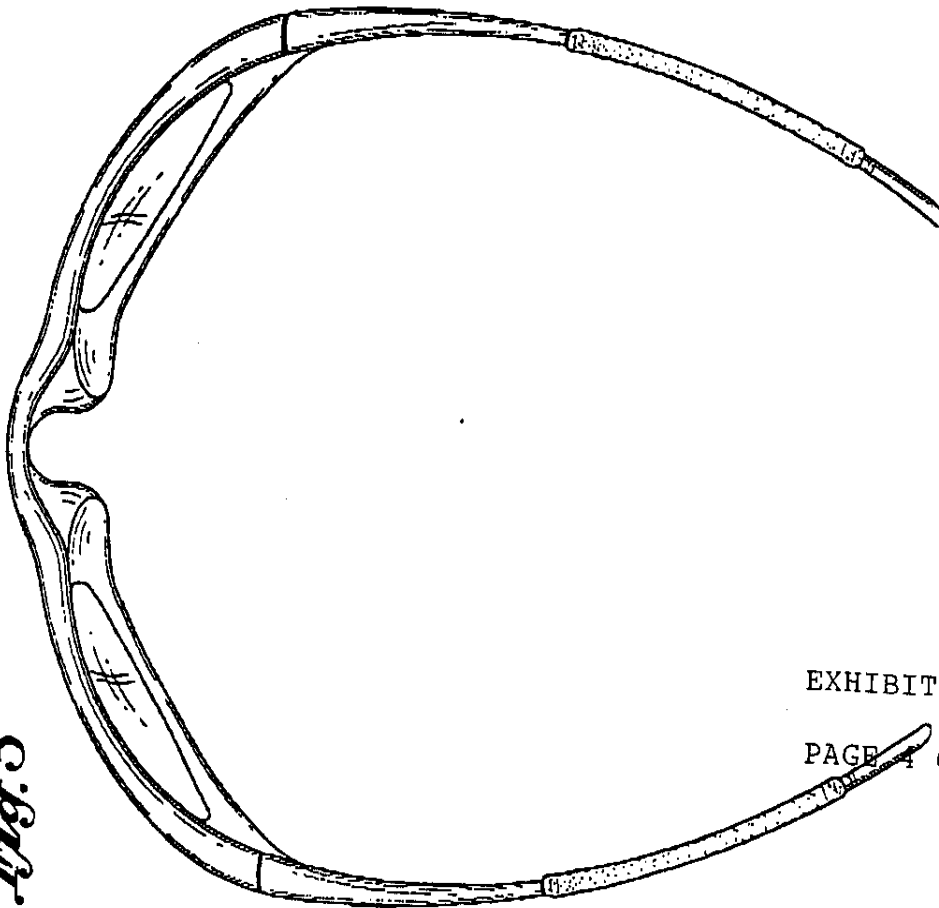


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*Fig. 6*



*Fig. 5*

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[54] EYEWEAR

[75] Inventors: James H. Jannard, Eastsound, Wash.; Peter Yee, Huntington Beach; M. Neil Houston, Foothill Ranch, both of Calif.

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

[\*\*] Term: 14 Years

[21] Appl. No.: 29/053,675

[22] Filed: Apr. 29, 1996

Related U.S. Application Data

[62] Division of application No. 29/030,825, Nov. 9, 1994, Pat. No. Des. 369,375.

[51] LOC (6) CL 16-06

[52] U.S. CL D16/326

[58] Field of Search D16/300, 101, D16/301-330; 351/41, 44, 51, 52, 158; 2/447, 448

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

[57] CLAIM

The ornamental design for eyewear, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of the eyewear 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. The broken line showing of the eyewear temple in FIG. 1 is for illustrative purposes only and forms no part of the claimed design.

1 Claim, 3 Drawing Sheets

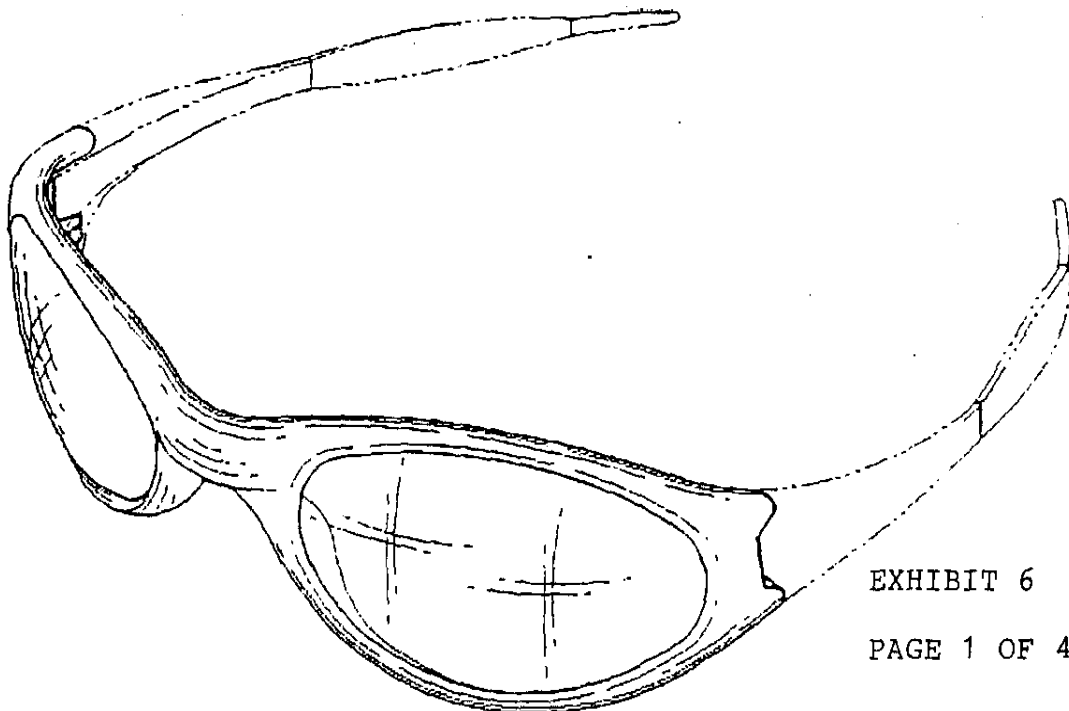
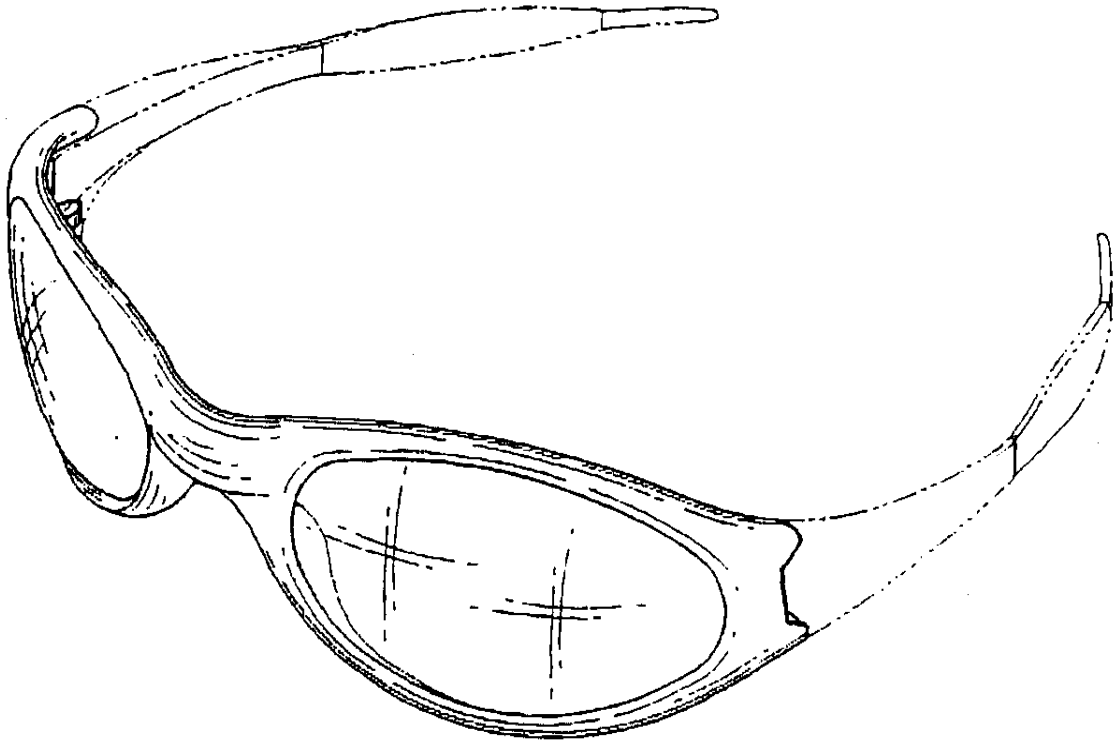


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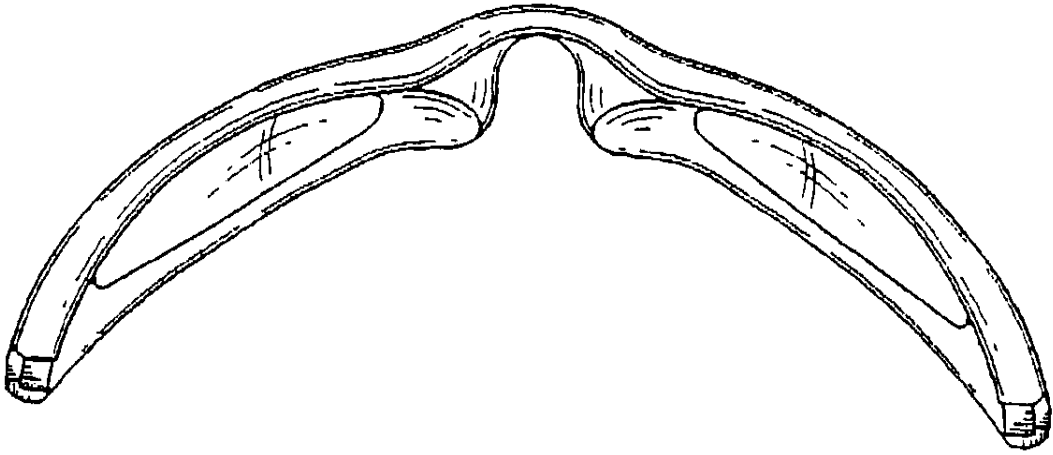


*Fig. 1*

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*Fig. 2*



*Fig. 3*

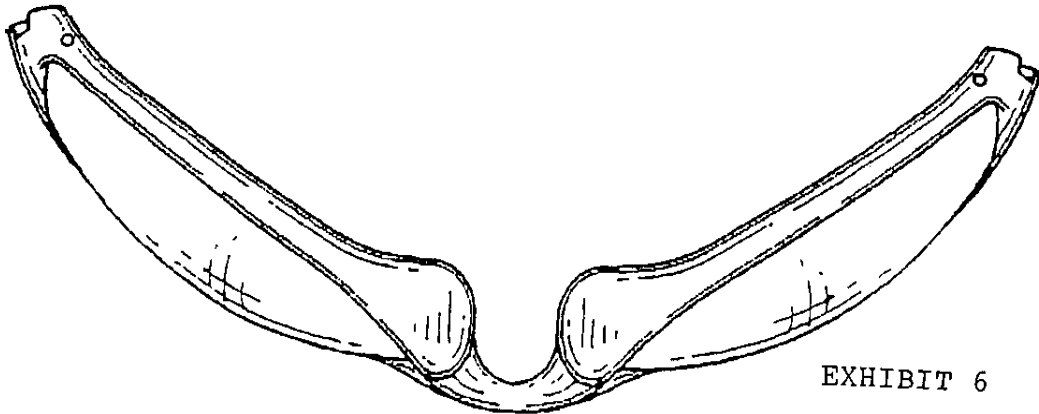
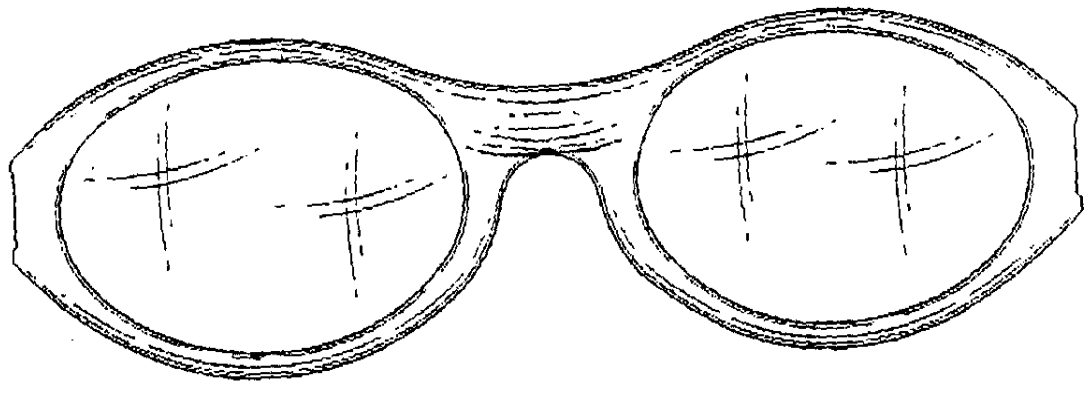


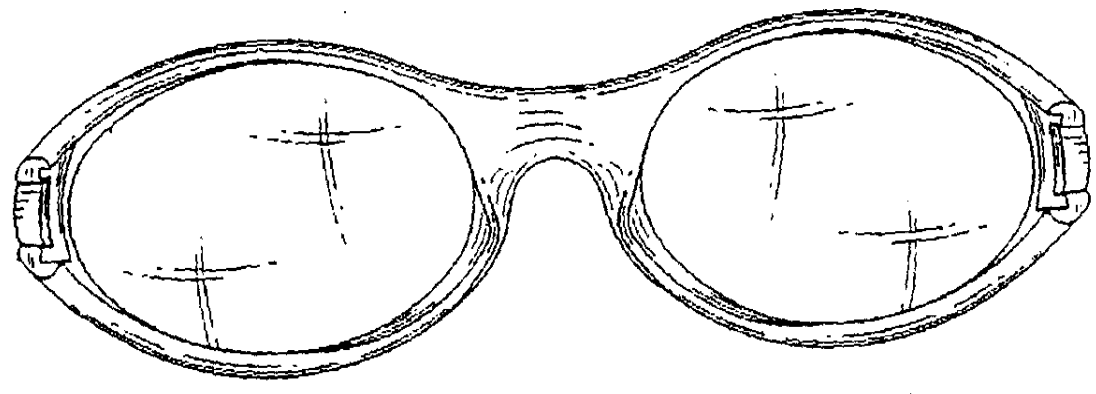
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*Fig. 4*



*Fig. 5*



*Fig. 6*

