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ORIGINAL  
FILED

JAN 28 2005

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

5 Attorneys for Plaintiff  
6 DIOPTICS MEDICAL PRODUCTS, INC.

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10  
11 DIOPTICS MEDICAL PRODUCTS, INC.,  
12 a California corporation,

13 Plaintiff,

14 v.

15 EYE OJO CORPORATION  
16 dba GREATTECH VISION,  
a California corporation,

17 Defendant.

CASE NO. **C05 00436 HRL**

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**E-FILING**

**with DEMAND FOR JURY TRIAL**

ADP

18 Plaintiff Dioptics Medical Products, Inc. ("Dioptics"), for its claims for relief herein  
19 against defendant Eye Ojo Corporation, dba Greattech Vision ("Eye Ojo"), avers as follows:

20 **PARTIES**

21 1. Dioptics is, and at all times material hereto was, a corporation organized and  
22 existing under the laws of the State of California with its principal place of business in San Luis  
23 Obispo, California.

24 2. On information and belief, Eye Ojo is, and at all times material hereto was, a  
25 corporation organized and existing under the laws of the State of California with its principal  
26 place of business in Ontario, California.

27 ///

28 **COMPLAINT FOR PATENT  
INFRINGEMENT**

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ATTORNEYS AT LAW  
PALO ALTO

**JURISDICTION AND VENUE**

3. The court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

4. Venue is proper in this federal district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b) in that, Eye Ojo is a California company and, on information and belief, has done business in California and in this judicial district, has committed acts of infringement nationwide and in this judicial district, and continues to commit acts of infringement nationwide and in this judicial district, entitling Dioptics to relief.

**INTRADISTRICT ASSIGNMENT**

5. This is an Intellectual Property Action and shall therefore be assigned on a district-wide basis in accordance with Local Rule 3-2(c).

**INFRINGEMENT OF U.S. PATENT NO. D447,507 S**

6. On September 4, 2001, United States Patent No. D447,507 S (the “507 patent”) was duly and legally issued for an invention entitled “Eyeglasses.” Dioptics was assigned the ‘507 patent and Dioptics continues to hold all rights and interest in the ‘507 patent. A true and correct copy of the ‘507 patent is attached hereto as Exhibit A.

7. Upon information and belief, Eye Ojo has infringed and continues to infringe the ‘507 patent. The infringing acts include, but are not limited to, the manufacture, use, sale, importation and/or offer for sale of infringing sunglasses and inducement of others to manufacture, use, sell, import and/or offer for sale of such sunglasses, including but not limited to Eye Ojo’s “Renegade” sunglass product. Eye Ojo therefore is liable for infringement of the ‘507 patent pursuant to 35 U.S.C. § 271.

8. Upon information and belief, Eye Ojo has sold and/or made offers to sell products infringing the ‘507 patent both nationwide and within this jurisdiction.

9. Eye Ojo’s infringement of Dioptics’ exclusive rights under the ‘507 patent have and will continue to harm Dioptics, causing irreparable injury, for which there is no adequate remedy at law unless enjoined by this Court.

MCDERMOTT WILL & EMERY LLP  
ATTORNEYS AT LAW  
PALO ALTO

1 10. Upon information and belief, Eye Ojo's infringement of the '507 patent is willful  
2 and deliberate, entitling Dioptics to attorney's fees and costs incurred in prosecuting this action  
3 under 35 U.S.C. § 285.

4 11. Dioptics has complied with the requirements of 35 U.S.C. § 287(a) and is entitled  
5 to collect damages for infringement occurring prior to suit with respect to the '507 patent.

6 **PRAYER FOR RELIEF**


7 WHEREFORE, Plaintiff Dioptics Medical Products, Inc. requests entry of judgment in its  
8 favor and against Eye Ojo as follows:

- 9 a) Declaring that Eye Ojo has infringed U.S. Patent No. D447,507 S.
- 10 b) Preliminarily and permanently enjoining Eye Ojo, its officers, agents, employees,  
11 and those acting in privity with them, from further infringement, contributory infringement,  
12 and/or inducing the infringement of U.S. Patent No. D447,507 S.
- 13 c) Awarding damages according to proof, including attorneys' fees pursuant to 35  
14 U.S.C. § 285 or as otherwise permitted by law and punitive damages; and
- 15 e) Granting such other costs and further relief as the Court may deem just and proper.

16 Dated: January 28, 2005

Respectfully Submitted,

McDermott Will & Emery LLP

19 By:   
David S. Bloch  
Jennifer L. Ishimoto

22 Attorneys for Plaintiff  
DIOPTICS MEDICAL PRODUCTS, INC.

MCDERMOTT WILL & EMERY LLP  
ATTORNEYS AT LAW  
PALO ALTO

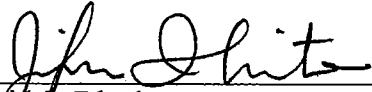
**DEMAND FOR JURY TRIAL**

Plaintiff DIOPTICS MEDICAL PRODUCTS, INC. hereby demands a trial by jury on all issues properly triable to a jury in this action.

Dated: January 28, 2005

Respectfully submitted,

McDermott Will & Emery LLP

By:   
David S. Bloch  
Jennifer L. Ishimoto

Attorneys for Plaintiff  
DIOPTICS MEDICAL PRODUCTS, INC.

MCDERMOTT WILL & EMERY LLP  
ATTORNEYS AT LAW  
PALO ALTO

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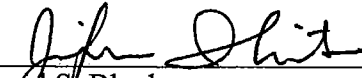
**CERTIFICATION OF INTERESTED ENTITIES OR PARTIES**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: January 28, 2005

Respectfully submitted,

McDermott Will & Emery LLP

By: 

David S. Bloch  
Jennifer L. Ishimoto

Attorneys for Plaintiff  
DIOPTICS MEDICAL PRODUCTS, INC.

MPK 86008-1.070302.0016

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ATTORNEYS AT LAW  
PALO ALTO

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**EXHIBIT A**



US00D447507B1

(12) **United States Design Patent** (10) Patent No.: **US D447,507 S**  
 Lane (45) Date of Patent: **\*\* Sep. 4, 2001**

(54) **EYEGLASSES**  
 (75) Inventor: **Henry Welling Lane, San Luis Obispo, CA (US)**  
 (73) Assignee: **Dioptrics Medical Products, Inc., San Luis Obispo, CA (US)**  
 (\*\*) Term: **14 Years**

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(21) Appl. No.: **29/135,882**  
 (22) Filed: **Jan. 19, 2001**  
 (51) **LOC (7) Cl.** ..... **16-06**  
 (52) **U.S. Cl.** ..... **D16/321; D16/326**  
 (58) **Field of Search** ..... **D16/101, 300-330, D16/335-337, 339-340, 900; D29/109, 110; 351/41, 44, 51, 52, 57-61, 121, 123, 153, 156-158; 2/448, 449, 428, 430, 436, 444**

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*Primary Examiner*—Raphael Barkai  
 (74) *Attorney, Agent, or Firm*—Haverstock & Owens LLP

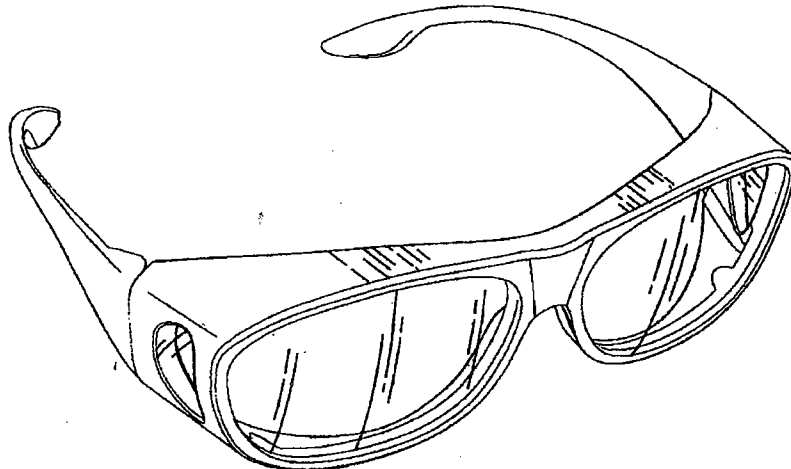
(57) **CLAIM**

I claim the ornamental design for eyeglasses, as shown and described.

**DESCRIPTION**

FIG. 1 is a top perspective view of eyeglasses showing of my new design;  
 FIG. 2 is a front elevation view of eyeglasses thereof;  
 FIG. 3 is a rear elevation view of eyeglasses thereof;  
 FIG. 4 is a bottom view of eyeglasses thereof;  
 FIG. 5 is a top view of eyeglasses thereof; and,  
 FIG. 6 is a left side elevation view of eyeglasses thereof, the right side being a mirror image of the right side.

**1 Claim, 5 Drawing Sheets**



## US D447,507 S

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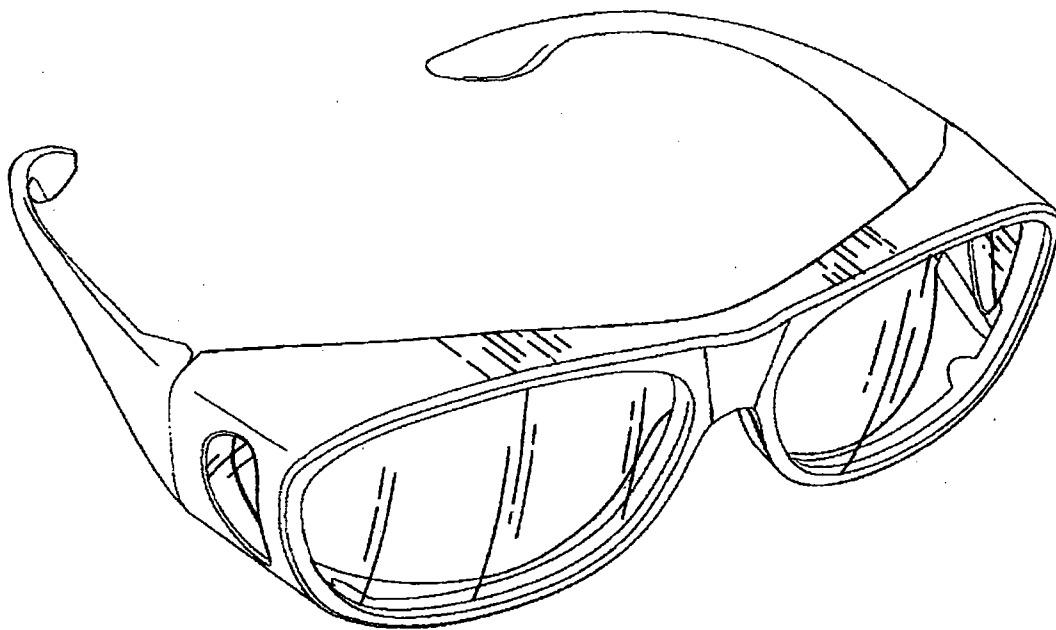


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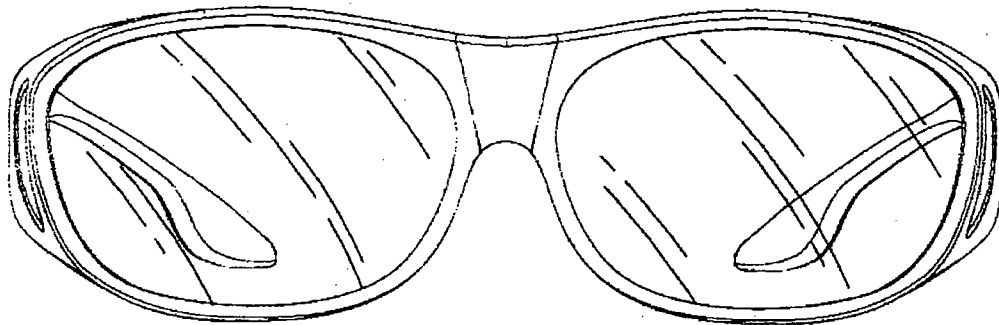
*Fig. 1*

**U.S. Patent**

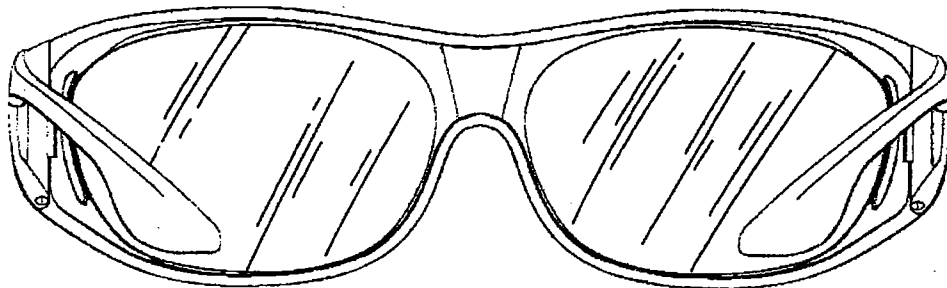
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*Fig. 2*



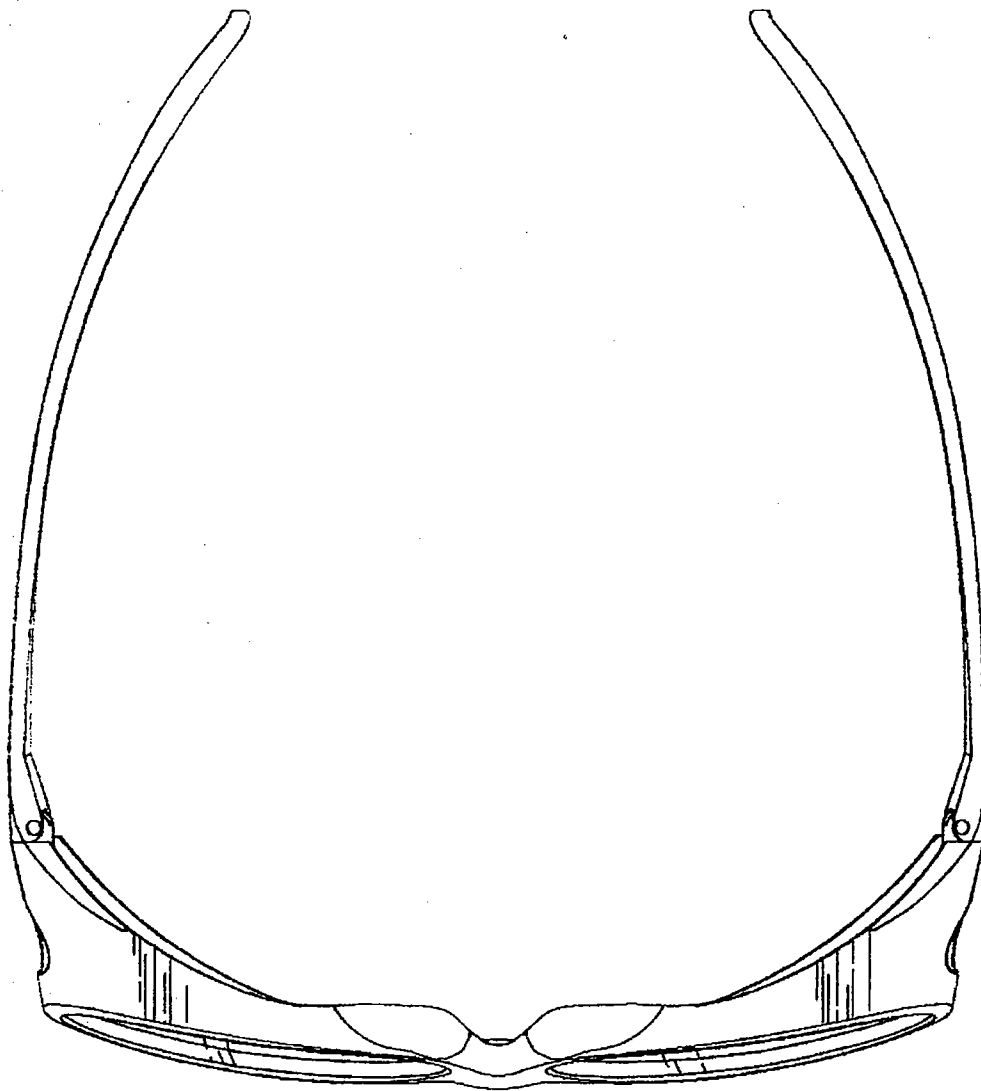
*Fig. 3*

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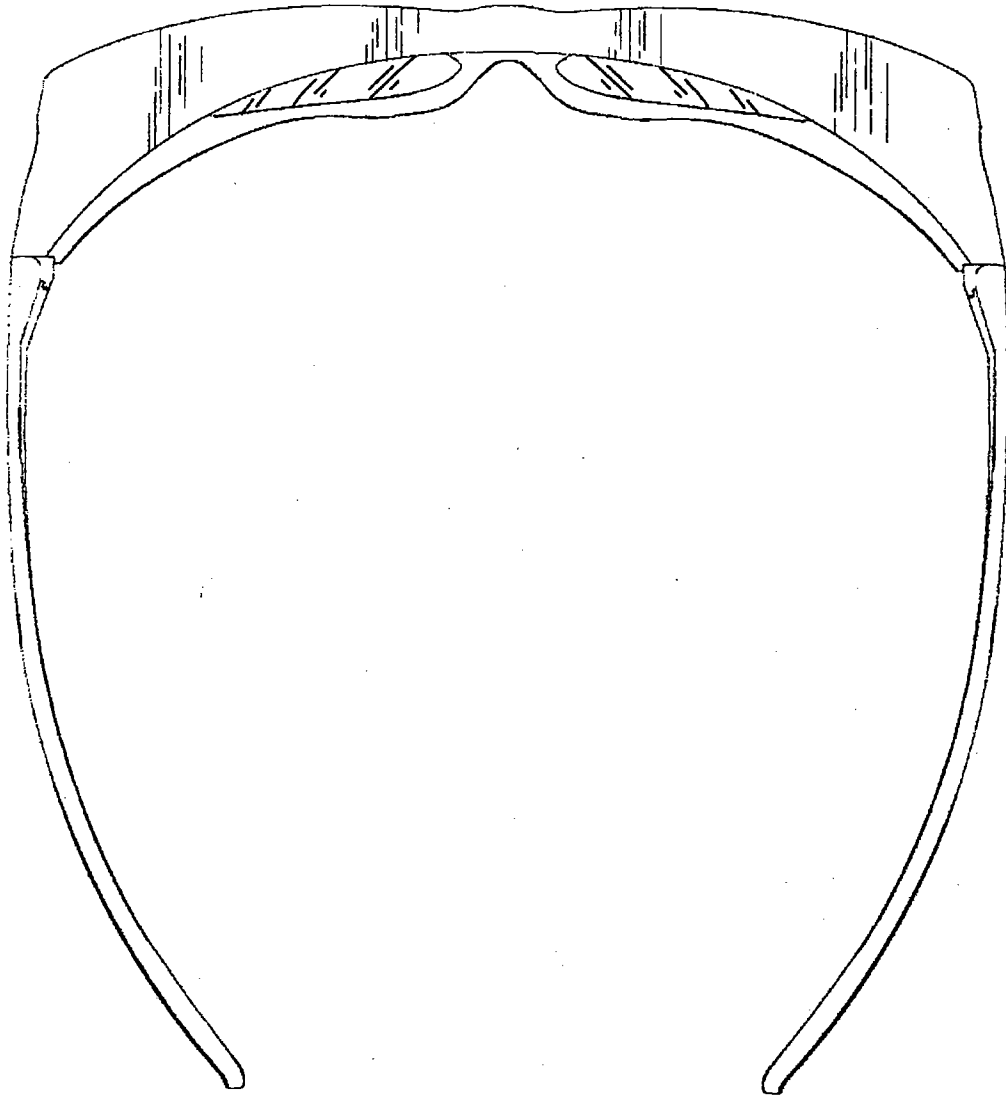
*Fig. 4*

**U.S. Patent**

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**US D447,507 S**



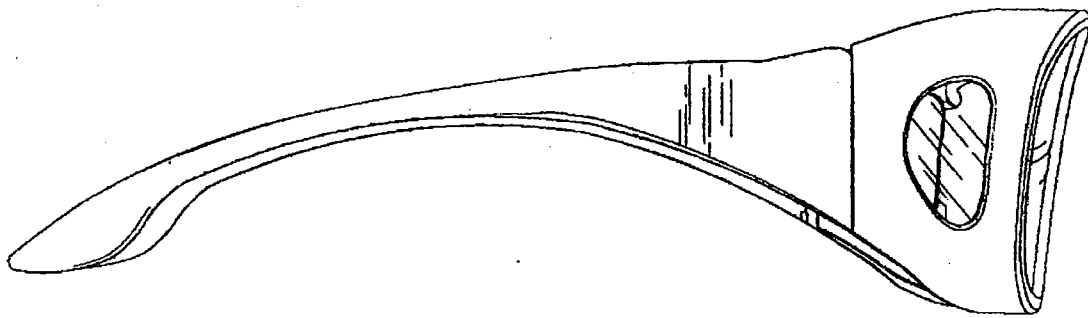
*Fig. 5*

**U.S. Patent**

**Sep. 4, 2001**

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*Fig. 6*