

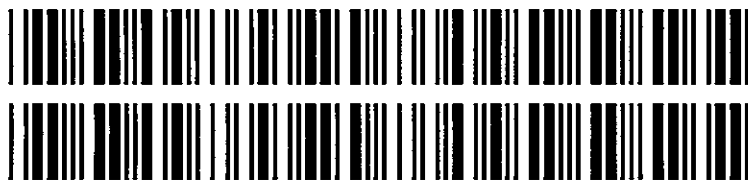
CV-S-00-1116



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8 Attorneys for Plaintiffs

9 **UNITED STATES DISTRICT COURT**  
 10 **DISTRICT OF NEVADA**

11 CV-S-00-1116-PMP----

12 ASPEX EYEWEAR, INC., and  
 13 CONTOUR OPTIK, INC.,

14 Plaintiffs,

15 vs.

16 E'LITE OPTIK, INC.,

17 Defendant.

**COMPLAINT**

18 The Plaintiffs, Aspex Eyewear, Inc. ("Aspex") and Contour Optik, Inc. ("Contour")  
 19 (collectively referred to as "Plaintiffs"), by their attorneys, as and for their Complaint  
 20 herein against Defendant E'lite Optik, Inc. ("E'lite"), allege the following:

21 Jurisdiction and Venue

- 22 1. This is a civil action for patent infringement arising under the patent laws of  
 23 the United States, 35 U.S.C. §§ 271, 281 and 283.  
 24 2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1338(a),  
 25 as this action arises under an Act of Congress relating to patents.  
 26 3. Venue is properly established in this Court pursuant to 28 U.S.C. §1391(b)  
 27 and (c) and §1400, as, upon information and belief, Defendant resides in this Judicial  
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1 District and has committed acts of infringement within the jurisdiction of this Court,  
2 including this Judicial District, which acts are the subject of this Complaint.

3 Parties

4 4. Aspex is a corporation duly organized and existing under the laws of the  
5 state of Delaware having its principal place of business at: 3950 Executive Way,  
6 Miramar, Florida 33025.

7 5. Contour is a corporation of Taiwan, whose post office address is 6  
8 Industrial Fifth Road, Tou Chiau Industrial Park, Chiayi 621, Taiwan.

9 6. Upon information and belief, E'lite is a corporation organized and existing  
10 under the laws of Texas, with a principal place of business in Dallas Texas.

11 Count I - Patent Infringement - The '811 Patent

12 7. Plaintiffs repeat and reallege the allegations of paragraphs 1-6, as if fully  
13 set forth in this paragraph.

14 8. On January 11, 2000, the United States Patent and Trademark Office  
15 issued United States Patent No. 6,012,811 entitled "Eyeglass Frames with Magnets at  
16 Bridges for Attachment," incorporated herein by referenced and attached hereto as  
17 Exhibit A (the "'811 Patent"). Contour is the record owner of the '811 Patent.

18 9. Aspex is the exclusive licensee of the '811 Patent within the United States.  
19 The exclusive rights held by Aspex include the right to make, use and sell products  
20 including eyeglass primary frames and auxiliary frames, both with magnetic members at  
21 the bridge region, according to the '811 Patent. The magnetic members of the primary  
22 frames are magnetically coupled to the magnetic members of the auxiliary frames in the  
23 horizontal position, so as to allow the auxiliary frames to be supported in a stable  
24 manner on the primary frames. The auxiliary frames can function as a sunglass clip-on  
25 attachment. Such rights also include the right to sue for infringement of the '811 Patent  
26 in the United States.

27 10. The invention described and claimed in U.S. Patent No. 6,012,811 has  
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1 been accepted by the eyewear and fashion eyewear industries and is of great utility and  
2 value.

3 11. Defendant, well knowing of the '811 Patent, has been infringing thereon by  
4 offering for sale, and on information and belief, selling magnetic eyeglass frames and  
5 clip on attachments as described in said patent, within this district and on information  
6 and belief, elsewhere as well.

7 12. These infringing articles, as alleged above, have not been manufactured or  
8 authorized in any manner by Aspex or Contour, nor has Defendant ever been authorized  
9 or otherwise granted the right to manufacture, offer for sale, sell or otherwise distribute  
10 devices made according to the '811 Patent.

11 13. Defendant has notice of its infringement, as prescribed in 35 U.S.C. §287.

12 14. Upon information and belief, Defendant will continue to infringe upon the  
13 '811 Patent to the irreparable damage of Plaintiffs, unless enjoined by the Court.  
14 Plaintiffs have no adequate remedy at law.

15 Count II - Patent Infringement - The '054 Patent

16 15. The Plaintiffs repeat and reallege the allegations of paragraphs 1-14, as if  
17 fully set forth in this paragraph.

18 16. On April 7, 1998, the United States Patent and Trademark Office issued  
19 United States Patent No. 5,737,054 entitled "Auxiliary Lenses for Eyeglasses,"  
20 incorporated by reference herein and attached hereto as Exhibit B (the "'054 Patent").  
21 Contour is the record owner of the '054 Patent.

22 17. Aspex is the exclusive licensee of the '054 Patent within the United States.  
23 The exclusive rights held by Aspex include the right to make, use and sell products  
24 including eyeglass primary frames and auxiliary frames, both with magnetic members at  
25 the bridge region, according to the '054 Patent. The magnetic members of the primary  
26 frames are magnetically coupled to the magnetic members of the auxiliary frames in the  
27 horizontal position, so as to allow the auxiliary frames to be supported in a stable  
28 manner on the primary frames. The auxiliary frames can function as a sunglass clip-on

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1           b.       Enjoins the Defendant, its directors, officers, agents, employees,  
2 representatives, and all other persons in active participation with them, to recall from all  
3 distributors, wholesalers, retailers and all others known to Defendant, all products which  
4 infringe upon the '811 Patent and the '054 Patent, and requires Defendant to file with  
5 this Court and to serve upon the Plaintiffs, within 30 days after service of the Court's  
6 Order as herein prayed, a report in writing under oath setting forth in detail the manner  
7 and form in which Defendant has complied with the Court's Order;

8           4.       Require the Defendant to account to Plaintiffs for all profits and expenses  
9 realized by Defendant and any subsidiary of Defendant;

10          5.       Award the Plaintiffs their actual damages suffered as a result of  
11 Defendant's infringement of the '207 Patent, the '811 Patent and the '054 Patent and the  
12 rights held by Plaintiffs in said patents, and, pursuant to a finding of willful infringement,  
13 order that such damages be trebled;

14          6.       Award the Plaintiffs any profits realized by Defendant as a result of its  
15 infringement of the '811 Patent and the '054 Patent and the exclusive rights held by  
16 Plaintiffs in said patents; and

17          7.       Grant such other and further relief as the equity of the case may require  
18 and as this Court may deem just and proper, together with costs and disbursements of  
19 this action, including Attorneys' fees.

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1 An early trial is respectfully requested.

2 A jury trial is hereby requested.

3 Respectfully Submitted,

4  
5 By: 

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18 Attorneys for Plaintiff

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20 Dated: September 15, 2000  
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# EXHIBIT A