

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

00 SEP 28 PM 3:26

Case No. **00-3639**
CIV - SEITZ

CLERK OF DIST. CT.
S.D. OF FLA - MIA

REGENT OPTICALS, INC.,

Plaintiff,

vs.

ASPEX EYEWEAR, INC.,

Defendant.

MAGISTRATE JUDGE
GARBER

COMPLAINT

Regent Optical, Inc. ("Regent"), plaintiff in the above-captioned action, alleges the following facts and bases for its Complaint against defendant Aspex Eyewear Inc. ("Aspex").

NATURE OF THE ACTION

1. In this action brought under the Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202, this Court is being asked to consider and compare Regent's Clippers eyeglass frame system with any valid claims of U.S. Patent Nos. 5,568,207 ("the '207 patent") and 5,882,101 ("the '101 patent"), in the context of applicable patent laws, 35 U.S.C. §§100, *et seq.*, and to declare that Regent has not infringed either the '207 patent or the '101 patent in any way.

JURISDICTION AND VENUE

2. This Court has personal jurisdiction over the parties based on Aspex's contacts with the forum, in that Aspex has a facility in this district located at 3950 Executive Way,

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Miramar, Florida 33025, and that Aspex has been authorized by the State of Florida to transact business in the state and has a Florida registered agent, and thereby has purposefully availed itself of the benefits and protections this forum affords.

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1338, 2201 & 2202.

4. This Court is a proper venue pursuant to 28 U.S.C. §§1391 & 1400.

THE PARTIES

5. Plaintiff Regent is a corporation organized under the laws of the State of Florida, with a principal place of business at 2200 NW102 Ave., Unit 2, Miami, Florida 33172.

6. Defendant Aspex is a corporation organized under the laws of the State of Delaware, with a principal place of business at 3950 Executive Way, Miramar, Florida 33025, which conducts business throughout the United States and in this judicial district. On information and belief, Aspex's registered agent for service of process is Arie Mrejen, P.A., 701 W. Cypress Creek Rd., #302, Fort Lauderdale, Florida 33309, upon whom Regent will serve these pleadings.

FACTUAL ALLEGATIONS

7. Regent has been and currently is in the business of designing, importing and distributing for retail sale optical products, including a recently designed eyeglass frame

system incorporating a standard eyeglass frame and a magnetically held matching “clip-on” sunglass portion, which is sold under the trademark Clippers (the “Clippers product”).

8. Upon information and belief, Aspex also is engaged in the business of selling eyeglass frame systems incorporating magnetic “clip-on” elements.

9. Upon information and belief, Aspex owns by assignment the '207 patent, which is entitled *Auxiliary Lenses for Eyeglasses* and which issued on October 22, 1996, and the '101 patent, which is entitled *Auxiliary Frames with Ears and Lateral Projections* and which issued on March 16, 1999.

10. Regent displayed the Clippers product in a trade show in Las Vegas, Nevada, on September 14-17, 2000.

11. During the Las Vegas trade show, representatives of Aspex came to the Regent booth and examined the Clippers product.

12. On Sunday, September 17, 2000, the president of Aspex, Nonu Ifergan, came to the Regent booth and stated that the Clippers product “is a violation of my patent.”

13. In addition, at least one of Regent’s customers has been threatened with an infringement suit if it purchased and sold the Clippers product. Specifically, Mike L. Y. Lo of Standard Optical had placed an order with Regent for the Clippers product, but advised Regent of the threat of lawsuit by Aspex and, as a result, withdrew the purchase order.

14. Upon information and belief, although Aspex owns a number of patents, Regent believes that either the '207 patent or the '101 patent is the patent on which Aspex was basing its threats.

15. Regent is being harmed by the threats of Aspex and will continue to be harmed unless the threat of a lawsuit under either the '207 patent or the '101 patent, or any other patent that Aspex may raise, is eliminated.

COUNT ONE

DECLARATORY JUDGMENT OF NON-INFRINGEMENT

16. Regent incorporates and realleges paragraphs 1-15 above as if each allegation in those paragraphs were set forth fully herein.

17. Regent has not infringed any of the claims of the '207 patent or the '101 patent.

18. An actual controversy exists between the parties with respect to the infringement of the claims of the '207 patent and the '101 patent.

19. Regent, therefore, is entitled to a declaration pursuant to 28 U.S.C. §2201 stating that none of the claims of the '207 patent and the '101 patent is or has been infringed.

WHEREFORE, PLAINTIFF PRAYS:

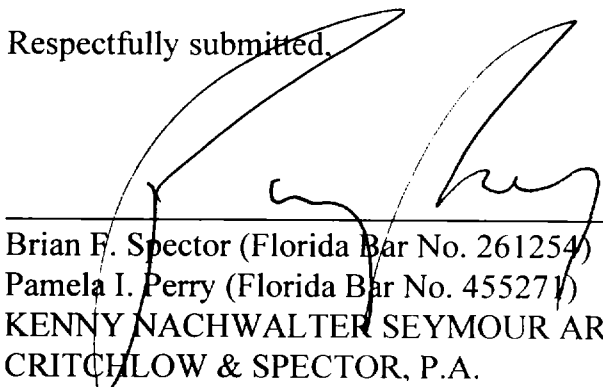
1. That the Court declare that Regent has not infringed the claims of U.S. Patent Nos. 5,568,207 and 5,882,101;
2. That Regent recover such other and further relief as the Court may deem just; and
3. That Regent recover the costs and fees for this action and any applicable prejudgment and post-judgment interest.

JURY TRIAL DEMANDED

Pursuant to Federal Rule of Civil Procedure 38, Regent requests a trial by jury on all issues triable of right by a jury.

Dated: This 28 day of September, 2000.

Respectfully submitted,



Brian F. Spector (Florida Bar No. 261254)
Pamela I. Perry (Florida Bar No. 455271)
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CIVIL COVER SHEET

00-2639

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing of a complaint or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1994, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Regent Optical, Inc.

DEFENDANTS

Aspex Eyewear, Inc.

CIV-SEITZ

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

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

Kenny Nachwalter Seymour Arnold Critchlow
& Spector, P.A., 201 S. Biscayne Blvd., #1100,
Miami, FL 33131. (305-373-1000)

ATTORNEYS (IF KNOWN)

(d) CIRCLE COUNTY WHERE ACTION AROSE: DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS	FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input checked="" type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input checked="" type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 A PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark B SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions A OR B
A REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input checked="" type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	A CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	A LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Declaratory Judgment Action seeking declaration of non-infringement pursuant to

LENGTH OF TRIAL 28 U.S.C. Sections 1391 and 1400.
via 7 days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

September 28, 2000

FOR OFFICE USE ONLY

RECEIPT 829205 AMOUNT \$750.00 APPLYING IFP 9/28/00 JUDGE MAG JUDGE