

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-61468-CIV-ZLOCH/SELTZER

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

Plaintiffs,

vs.

ZENNI OPTICAL, LLC,

Defendant.

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**PLAINTIFFS' NOTICE OF APPEAL TO THE  
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

On March 21, 2012, Magistrate Judge Barry Seltzer issued his Report and Recommendation (DE 195) regarding Defendant Zenni Optical, LLC's motion for summary judgment on the basis of collateral estoppel (DE 178). In his Report and Recommendation, Judge Seltzer recommended:

- (i) that the Court enter final judgment in Zenni's favor with respect to Plaintiffs' U.S. Patent No. 5,737,054 ("the '054 Patent"), based on the United States District Court for the District of Massachusetts' decision that the '054 Patent was invalid in the case *Aspex Eyewear, Inc. et al. v. Altair Eyewear Inc.*,<sup>1</sup> and
- (ii) that the Court enter final judgment in Zenni's favor for Plaintiffs' claim for infringement of their U.S. Patent Nos. 6,021,811 ("the '811 Patent") and 6,092,896 ("the '896 Patent"), based on collateral estoppel following the Federal Circuit's 2008 opinion in the *Altair* Action.

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<sup>1</sup> That decision is currently pending on appeal before the Federal Circuit as Cause No. 2012-1102, -1137.

Plaintiffs timely objected to Judge Seltzer's Report and Recommendation on March 28, 2012.<sup>2</sup> The Court overruled Plaintiffs' objections and approved, adopted and ratified Judge Seltzer's Report and Recommendation without modification on March 30, 2012 (DE 204, 206). The Court further denied all pending motions between the parties as moot. The Court entered final judgment for each of Plaintiffs' patents-in-suit in favor of Defendant Zenni immediately thereafter, for the reasons set forth in the Report and Recommendation (DE 205).

This matter now being ripe for appeal, Plaintiffs, pursuant to Fed. R. Civ. P. 54(b), hereby appeal to the Court of Appeals for the Federal Circuit the March 21, 2012 Report and Recommendation (DE 195), the Court's March 30, 2012 Order overruling Plaintiffs' objections, and approving, adopting, and ratifying without modification the March 21 Report and Recommendation (DE 204, 206), and the final Judgment (DE 205)<sup>3</sup> as well as all other related Orders of this Court.

Dated: April 2, 2012

Respectfully submitted,

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and Contour Optik, Inc.*

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<sup>2</sup> Objections to the Report and Recommendation were due on or before noon, March 28, 2012, which was seven calendar days after service, pursuant to the Court's *sua sponte* March 21 Order (DE 197).

<sup>3</sup> Copies of these Court documents are attached hereto as Exhibits A, B, C, and D, respectively.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of April 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Jacqueline Becerra  
JACQUELINE BECERRA

**SERVICE LIST**

Aspex Eyewear, Inc., et al., v. Zenni Optical, LLC,

Case No. 09-61468-CIV-Zloch/Seltzer

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