

ORIGINAL

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2007 SEP 28 PM 1:04

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIABY                      DEPUTY

Kit M. Stetina (SBN 82,977)  
 Stephen Z. Vegh (SBN 174,713)  
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Attorneys for Plaintiff  
 SPY OPTIC, INC.

IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SPY OPTIC, INC., a California corporation,

Plaintiff

vs.

BLUE GEM SUNGLASSES, INC., a  
 California corporation; and DOES 1 through  
 5, inclusive

Defendants

Case No.

**'07 CV 1909 BEN POR**  
**COMPLAINT FOR PATENT**  
**INFRINGEMENT OF U.S.**  
**PATENT NO. D534,573**

DEMAND FOR JURY TRIAL

**COMPLAINT**

Plaintiff, Spy Optic, Inc., for its Complaint against Blue Gem Sunglasses, Inc.  
 states and alleges as follows:

**PARTIES**

1. Plaintiff, Spy Optic, Inc. (hereinafter "Spy Optic" or "Plaintiff") is a  
 corporation organized and existing under the laws of the state of California, and  
 having a principal place of business at 2070 Las Palmas Drive, Carlsbad, California

1 92009.

2 2. Upon information and belief, Defendant Blue Gem Sunglasses, Inc.  
3 (hereinafter "Blue Gem") is a corporation organized and existing under the laws of  
4 the state of California, and having a principal place of business at 6381 B. Rose Lane,  
5 Carpinteria, California 93013.

6 3. The true names and capacities of the Defendants named herein as DOES  
7 1 through 5, whether individual, corporate, associate, or otherwise, are unknown to  
8 Plaintiff, who therefore sues said Defendants by said fictitious names. Plaintiff is  
9 informed and believes, and thereon alleges, that each of the Defendants designated  
10 herein as DOE is legally responsible for the events and happenings hereinafter  
11 alleged and legally caused injury and damages proximately thereby to Plaintiff as  
12 herein alleged. Plaintiff will seek leave to amend the Complaint when the true names  
13 and capacities of said DOE Defendants have been ascertained. Blue Gem and DOES  
14 1 through 10 are hereinafter collectively referred to as "Defendants."

15 4. Plaintiff is informed and believes, and on that basis alleges, that each of  
16 the Defendants participated in and is in some manner responsible for the acts  
17 described in this Complaint and any damages resulting therefrom.

18 5. Plaintiff is informed and believes, and on that basis alleges, that each of  
19 the Defendants has acted in concert and participation with each other concerning each  
20 of the claims in this Complaint.

21 6. Plaintiff is informed and believes, and on that basis alleges, that each of  
22 the Defendants were empowered to act as the agent, servant and/or employees of each  
23 of the other Defendants, and that all the acts alleged to have been done by each of  
24 them were authorized, approved, and/or ratified by each of the other Defendants.

25 **JURISDICTION AND VENUE**

26 7. This action, as hereinafter more fully appears, arises under the patent  
27 laws of the United States of America (35 U.S.C. §§ 1 *et seq.*), and is for patent  
28 infringement. Jurisdiction for all counts is based upon 28 U.S.C. 21§1331, 1338(a)

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1 and (b).

2 8. Venue is proper under 28 U.S.C. §§1391(b) and (c) as Defendants have  
3 committed acts of infringement in this judicial district.

4 **BACKGROUND OF THE CONTROVERSY**

5 9. Plaintiff is the owner of all right, title and interest in and to United States  
6 Design Patent No. D534,573 entitled "Sunglass" (hereinafter "the '573 patent"). A  
7 true and correct copy of the '573 patent is attached hereto as Exhibit 1. The '573  
8 patent was duly and lawfully issued on January 2, 2007 and is presently valid and in  
9 full effect.

10 10. Upon information and belief, Defendants have been and are infringing  
11 the '573 patent within this district and elsewhere in the United States by making,  
12 using, selling, importing, distributing and/or offering for sale products that infringe  
13 the claim of the '573 patent. A digital photo of Defendants' product is attached  
14 hereto as Exhibit 2.

15 11. Upon information and belief, by the acts of patent infringement herein  
16 complained of, the Defendants have made substantial profits to which they are not  
17 equitably entitled.

18 12. By reason of the aforementioned acts of the Defendants, the Plaintiff has  
19 suffered great detriment in a sum which exceeds this Court's jurisdictional amount,  
20 but which cannot be ascertained at this time.

21 13. Upon information and belief, Defendants continue to infringe Plaintiff's  
22 '573 patent, and will continue to infringe Plaintiff's '573 patent, and will continue to  
23 infringe Plaintiff's '573 patent to Plaintiff's irreparable harm, unless enjoined by this  
24 Court.

25 14. Upon information and belief, Defendants' were aware of the '573 patent  
26 and the past and continuing infringement of the '573 patent by Defendants is willful,  
27 entitling Plaintiff to enhanced damages.

28 ///

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- A. A judgment that Defendants have infringed the patent-in-suit.
- B. A judgment that Defendants' infringement of the patent-in-suit has been willful.
- C. A preliminary and permanent injunction, pursuant to 35 U.S.C. §283, enjoining Defendants, and all persons in active concert or participation with them, from any further acts of infringement of the patent-in-suit.
- D. An order, pursuant to 35 U.S.C. 21284, awarding Plaintiff damages adequate to compensate Plaintiff for Defendants' infringement of the patent-in-suit, in an amount to be determined at trial, but in no event less than a reasonable royalty.
- E. An order, pursuant to 35 U.S.C. §284, trebling all damages awarded to Plaintiff based on Defendants' willful infringement of the patent-in-suit.
- F. An order, pursuant to 35 U.S.C. §285, finding that this is an exceptional case and awarding to Plaintiff its reasonable attorneys' fees incurred in this action.
- G. That Plaintiff have such other and further relief that the court may deem just and proper.

Dated: September 28, 2007

STETINA BRUNDA GARRED & BRUCKER

By:  

Kit M. Stetina  
Attorneys for Plaintiff  
SPY OPTIC, INC.

**DEMAND FOR JURY TRIAL**

Plaintiff, Spy Optic, Inc., hereby demands a jury trial in this action.

Dated: September 28, 2007

STETINA BRUNDA GARRED & BRUCKER

By: 

Kit M. Stetina

Attorneys for Plaintiff

SPY OPTIC, INC.

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US00D534573S

(12) **United States Design Patent**  
**Mage**

(10) **Patent No.:** **US D534,573 S**

(45) **Date of Patent:** **\*\* Jan. 2, 2007**

(54) **SUNGLASS**

(75) **Inventor:** **Jerome J. M. Mage**, Beverly Hills, CA (US)

(73) **Assignee:** **Spy Optics, Inc.**, Carlsbad, CA (US)

(\*\*) **Term:** **14 Years**

(21) **Appl. No.:** **29/234,271**

(22) **Filed:** **Jul. 15, 2005**

(51) **LOC (8) Cl.** ..... **16-06**

(52) **U.S. Cl.** ..... **D16/326; D16/335**

(58) **Field of Classification Search** ..... D16/300-330,  
D16/101, 332-338; D29/109-110; D24/110.2;  
351/41, 44, 51-52, 62, 158, 92, 103-111,  
351/130, 61, 114-119, 121-123; 2/426-432,  
2/447-449, 441, 434-437

See application file for complete search history.

(56)

**References Cited**

**U.S. PATENT DOCUMENTS**

D213,595 S \* 3/1969 Simon ..... D16/326  
D220,291 S \* 3/1971 Simon ..... D16/320  
D410,022 S \* 5/1999 Conway ..... D16/327

D420,035 S \* 2/2000 Hartman ..... D16/325  
D434,789 S \* 12/2000 Lane ..... D16/337  
D456,038 S \* 4/2002 Arnette ..... D16/326  
D488,499 S \* 4/2004 Mage ..... D16/326  
D500,781 S \* 1/2005 Mage ..... D16/335

\* cited by examiner

*Primary Examiner*—Raphael Barkai

(74) *Attorney, Agent, or Firm*—Stetina Brunda Garred & Brucker

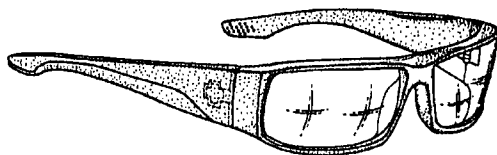
(57) **CLAIM**

The ornamental design for a sunglass, as shown and described.

**DESCRIPTION**

FIG. 1 is a front perspective view of the sunglass of the present invention showing my new design with the broken lines forming no part of the claimed design;  
FIG. 2 is a front elevational view thereof;  
FIG. 3 is left side elevational view thereof with the broken lines forming no part of the claimed design;  
FIG. 4 is rear plan view thereof;  
FIG. 5 is a top plan view thereof; and,  
FIG. 6 is bottom plan view thereof.

**1 Claim, 2 Drawing Sheets**

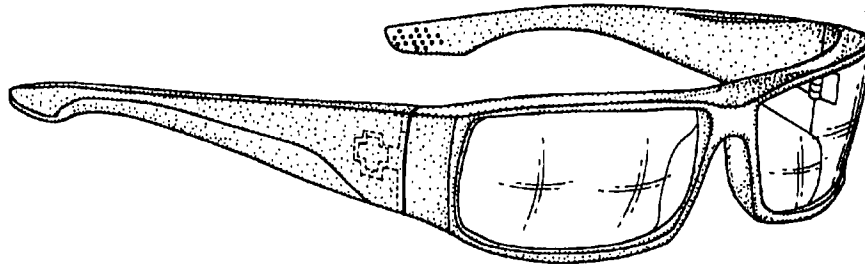


U.S. Patent

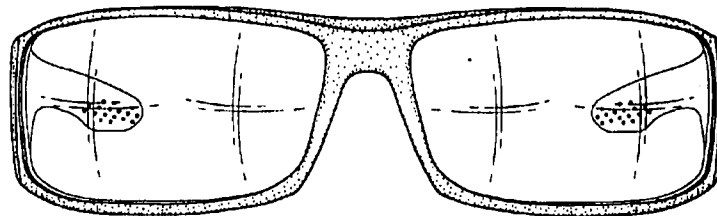
Jan. 2, 2007

Sheet 1 of 2

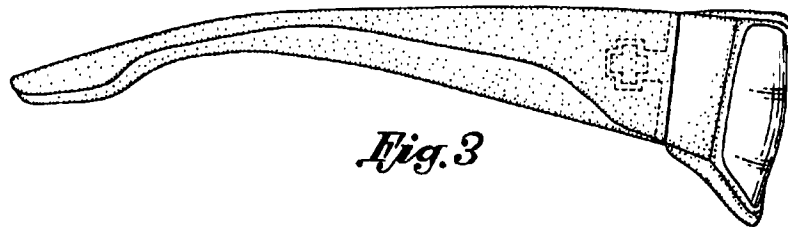
US D534,573 S



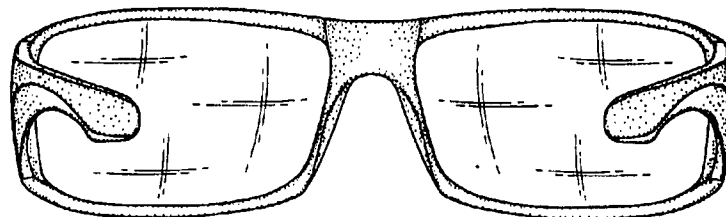
*Fig. 1*



*Fig. 2*



*Fig. 3*



*Fig. 4*

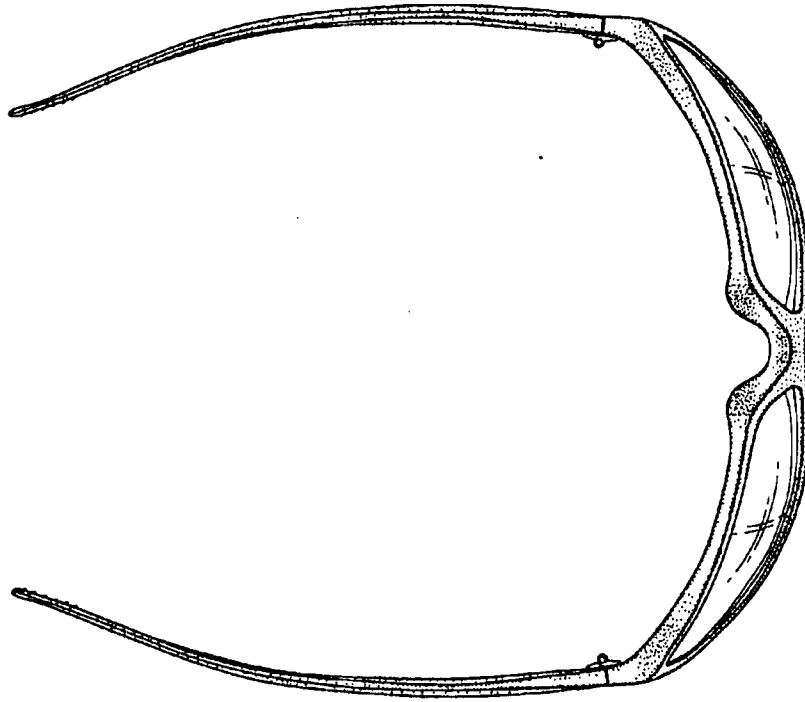


U.S. Patent

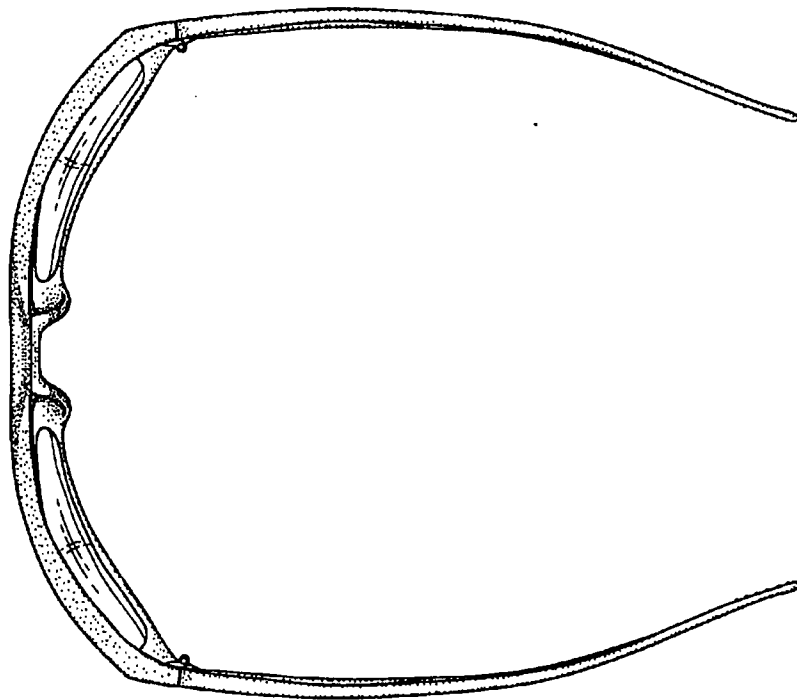
Jan. 2, 2007

Sheet 2 of 2

US D534,573 S



*Fig. 6*



*Fig. 5*





JS44

(Rev. 07/89)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings 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 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

## I (a) PLAINTIFFS

SPY OPTIC, INC., a California corporation

## DEFENDANTS

BLUE GEM SUNGLASSES, INC., a California corporation, and  
DOES 1 through 5, inclusive.

FILED

2007 SEP 28 PM 1:03

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY) BY                      DEPUTY                     

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

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

Kit M. Stetina/Stephen Z. Vegh  
Stetina Brunda Garred & Brucker  
75 Enterprise, Suite 250  
Aliso Viejo, CA 92656 (949) 855-1246

## ATTORNEYS (IF KNOWN)

'07 CV 1 90 9

BEN POR

## 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 (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PT	DEF		PT	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. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY). Patent Infringement - 35 U.S.C. §§ 1 et seq.

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	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 type="checkbox"/> 152 Recovery of Defaulted Student Loans (Exd Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury Mad Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <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 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 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395M) <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 RSI (405(a))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<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 <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input 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	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motion 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			

## VI. 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

## VII. REQUESTED IN COMPLAINT:

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

## DEMAND \$

Proof at Trial

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE

SIGNATURE OF ATTORNEY OF RECORD

#142928 9350  
9/28/07

\\ODMA\PCDOCS\WORDPERFECT\228161 January 24, 2000 (3:10pm)

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 142928 - SR  
\* \* C O P Y \* \*  
September 28, 2007  
13:05:53**

**Civ Fil Non-Pris**  
USAO #: 07CV1909 CIV. FIL  
Judge.: ROGER T BENITEZ  
Amount.: \$350.00 CK  
Check#: BC#0062501

**Total-> \$350.00**

FROM: SPY OPTIC V. BLUE GEM  
DOES 1 - 5  
CIVIL FILING

AO 120 (Rev. 3/04)

<b>TO:</b> <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Southern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT Southern District of California
PLAINTIFF SPY OPTIC, INC., a California Corporation		DEFENDANT BLUE GEMS SUNGLASSES, INC., a California Corporation; and DOES 1 through 5, inclusive
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 D534,573	1/2/2007	Spy Optics, Inc.
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY		
	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill
	<input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy