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SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'09 CV 1491 W JMA

OAKLEY, INC., a Washington
Corporation,

Plaintiff,

vs.

MARSALLE, INC. dba NEW YORK
SHADES and dba NYS
COLLECTION, a New York
corporation, and SUNGLASS PLUS, an
unknown corporate entity,

Defendant.

) Case No.:

) COMPLAINT FOR PATENT

) INFRINGEMENT, TRADE DRESS

) INFRINGEMENT AND UNFAIR

) COMPETITION

) DEMAND FOR JURY TRIAL

Plaintiff Oakley, Inc. (hereinafter referred to as "Oakley") hereby complains
of Defendants Marsalle, Inc. dba New York Shades and dba NYS Collection
(hereinafter referred to as "Marsalle") and Sunglass Plus and alleges as follows:

JURISDICTION AND VENUE

1. Jurisdiction over this action is founded upon 15 U.S.C. § 1121, and 28
U.S.C. § 1331. Venue is proper under 28 U.S.C. §§ 1391(b) and (c), this claim
having arisen and Defendants doing business in this district.

Complaint

THE PARTIES

2. Plaintiff Oakley is a corporation organized and existing under the laws of the State of Washington, having its principal place of business at One Icon, Foothill Ranch, California 92610, residing and doing business within this judicial district.

3. Oakley is informed and believes, and thereupon alleges, that Defendant Marsalle, Inc. dba New York Shades and dba NYS Collection is a New York corporation with its principal place of business located at 230 Liberty Street, Metuchen, New Jersey 09940. Oakley is also informed and believes, and thereupon alleges, that Defendant Marsalle is doing business within this judicial district, has diverted sales and marketing efforts into this district, and/or has put its products, including those accused of infringement in this action, into the stream of commerce intending and knowing that such products would be sold in this district.

4. Oakley is informed and believes, and thereupon alleges, that Defendant Sunglass Plus is a corporate entity doing business at 324 Horton Plaza, San Diego, California 92101. Oakley is informed and believes, and thereupon alleges, that Defendant Sunglass Plus has a regional or corporate office located at 5620 Paseo Del Norte, Carlsbad, California 92008. Oakley is also informed and believes, and thereupon alleges, that Defendant Sunglass Plus regularly conducts business within this judicial district.

FACTUAL BACKGROUND

Patent Infringement

5. Since as early as 1976, Oakley has been in business and has come to be known as an industry leader in high performance eyewear and other products. As early as 1985, Oakley has been and continues to be actively engaged in the manufacture and sale of high quality sport and leisure sunglasses under various product lines. Oakley is the manufacturer and retailer of several lines of sunglasses, including its *Gascan*®, *Fives 3.0*®, *Radar*®, *Flak Jacket*®, and *M*

1 *Frame*[®] sunglass lines. Oakley has a robust patent portfolio associated with its
2 designs and technological advancements embodied by these, and its other, sunglass
3 lines.

4 6. Plaintiff Oakley is the owner by assignment of U.S. Patent No.
5 D547,794 duly and lawfully issued on July 31, 2007, describing and claiming the
6 invention entitled "Eyeglasses," protecting the design and ornamentation of an
7 eyeglass embodied and marketed by Oakley under the name *Gascan*. A correct
8 copy of U.S. Patent No. D547,794 is attached hereto as Exhibit 1.

9 7. Plaintiff Oakley is the owner by assignment of U.S. Patent No.
10 D554,689 duly and lawfully issued on November 6, 2007, describing and claiming
11 the invention entitled "Eyeglass Frame," protecting the design and ornamentation
12 of an eyeglass frame embodied and marketed by Oakley under the name *Gascan*.
13 A correct copy of U.S. Patent No. D554,689 is attached hereto as Exhibit 2.

14 8. Plaintiff Oakley is the owner by assignment of U.S. Patent No.
15 D556,818 duly and lawfully issued on December 4, 2007, describing and claiming
16 the invention entitled "Eyeglass Components", protecting the design and
17 ornamentation of eyeglass components embodied and marketed by Oakley under
18 the name *Gascan*. A correct copy of U.S. Patent No. D556,818 is attached hereto
19 as Exhibit 3.

20 9. Oakley is informed and believes, and thereupon alleges, that
21 Defendants are selling eyeglasses that infringe Oakley's U.S. Patent Nos.
22 D547,794, D554,689 and D556,818. Specifically, Oakley alleges that at least
23 Defendants' *Gascan* copy sunglass, identified as NYS Model No. 8520, embodies
24 the subject matter claimed in Oakley's U.S. Patent Nos. D547,794, D554,689 and
25 D556,818 without any license thereunder, and is thereby infringing the patents.
26 Oakley is informed and believes and based thereon alleges that at least Defendant
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1 Marsalle supplied these infringing sunglasses to various distributors, retailers, and
2 retail customers.

3 10. Plaintiff Oakley is the owner by assignment of U.S. Patent No.
4 D572,749 duly and lawfully issued on July 8, 2008, describing and claiming the
5 invention entitled "Eyeglass Front," protecting the design and ornamentation of an
6 eyeglass front embodied and marketed by Oakley under the name *Fives 3.0*. A
7 correct copy of U.S. Patent No. D572,749 is attached hereto as Exhibit 4.

8 11. Oakley is informed and believes, and thereupon alleges, that
9 Defendants are selling eyeglasses that infringe its U.S. Patent No. D572,749.
10 Specifically, Oakley alleges that Defendants' *Fives 3.0* copy sunglass, NYS Model
11 No. 8477, embodies the subject matter claimed in Oakley's U.S. Patent No.
12 D572,749, without any license thereunder, and is thereby infringing the patent.
13 Oakley is informed and believes, and based thereon alleges, that at least Defendant
14 Marsalle supplied the infringing sunglasses to various distributors, retailers, and
15 retail customers.

16 12. Plaintiff Oakley is the owner by assignment of U.S. Patent No.
17 D581,443, duly and lawfully issued on November 25, 2008, describing and
18 claiming the invention entitled "Eyeglasses Components," protecting the design
19 and ornamentation of an eyeglass component embodied and marketed by Oakley
20 under the name *Radar*. A correct copy of U.S. Patent No. D581,443 is attached
21 hereto as Exhibit 5.

22 13. Plaintiff Oakley is the owner by assignment of U.S. Patent No.
23 D581,444, duly and lawfully issued on November 25, 2008, describing and
24 claiming the invention entitled "Eyeglasses Components," protecting the design
25 and ornamentation of an eyeglass component embodied and marketed by Oakley
26 under the name *Radar*. A correct copy of U.S. Patent No. D581,444 is attached
27 hereto as Exhibit 6.
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1 14. Plaintiff Oakley is the owner by assignment of U.S. Patent No.
2 7,347,545, duly and lawfully issued on March 25, 2008, describing and claiming
3 the invention entitled "Sports-Specific Shield", protecting the technology
4 associated with an interchangeable sport shield, such as the *Radar* glass marketed
5 by Oakley. A correct copy of U.S. Patent No. 7,347,545 is attached hereto as
6 Exhibit 7.

7 15. Oakley is informed and believes, and thereupon alleges, that
8 Defendants are selling eyeglasses that infringe its U.S. Patent Nos. D581,443,
9 D581,444, and 7,347,545. Specifically, Oakley alleges that Defendants' *Radar*
10 copy sunglass, NYS Model No. 3503, embodies the subject matter claimed in
11 Oakley's U.S. Patent Nos. D581,443, D581,444, and 7,347,545, without any
12 license thereunder, and is thereby infringing the patents. Oakley is informed and
13 believes and based thereon alleges that at least Defendant Marsalle supplied the
14 infringing sunglasses to various distributors, retailers, and retail customers.

15 16. Plaintiff Oakley is the owner by assignment of U.S. Patent No.
16 D564,571, duly and lawfully issued on March 18, 2008, describing and claiming
17 the invention entitled "Eyeglass and Eyeglass Components," protecting the design
18 and ornamentation of an eyeglass embodied and marketed by Oakley under the
19 name *Flak Jacket*. A correct copy of U.S. Patent No. D564,571 is attached hereto
20 as Exhibit 8.

21 17. Oakley is informed and believes, and thereupon alleges, that
22 Defendants are selling eyeglasses that infringe its U.S. Patent No. D564,571.
23 Oakley alleges that Defendants' *Flak Jacket* copy sunglass, NYS Model No.
24 C272PP, embodies the subject matter claimed in Oakley's U.S. Patent No.
25 D564,571, without any license thereunder, and is thereby infringing the patent.
26 Oakley is informed and believes and based thereon alleges that at least Defendant
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1 Marsalle supplied the infringing sunglasses to various distributors, retailers, and
2 retail customers.

3 18. Plaintiff Oakley is the owner by assignment of U.S. Patent No.
4 D384,364, duly and lawfully issued on September 30, 1997 describing and
5 claiming the invention entitled "Eyeglass Frame Front," protecting the design and
6 ornamentation of an eyeglass embodied and marketed by Oakley under the name
7 *M Frame*. A correct copy of U.S. Patent No. D384,364 is attached hereto as
8 Exhibit 9.

9 19. Plaintiff Oakley is the owner by assignment of U.S. Patent No.
10 D399,866, duly and lawfully issued on October 20, 1998, describing and claiming
11 the invention entitled "Eyeglass Component," protecting the design and
12 ornamentation of an eyeglass component embodied and marketed by Oakley under
13 the name *M Frame*. A correct copy of U.S. Patent No. D399,866 is attached hereto
14 as Exhibit 10.

15 20. Oakley is informed and believes, and thereupon alleges, that
16 Defendants are selling eyeglasses that infringe its U.S. Patent Nos. D384,364 and
17 D399,866. Specifically, Oakley alleges that Defendants' *M Frame* copy sunglass,
18 NYS Model No. 9101, embodies the subject matter claimed in Oakley's U.S.
19 Patent Nos. D384,364 and D399,866, without any license thereunder, and is
20 thereby infringing the patent. Oakley is informed and believes, and based thereon
21 alleges, that at least Defendant Marsalle supplied the infringing sunglasses to
22 various distributors, retailers, and retail customers.

23 21. Plaintiff Oakley is the owner by assignment of U.S. Patent No.
24 5,054,903, duly and lawfully issued on October 8, 1991, describing and claiming
25 the invention entitled "Improved Eyewear Traction Device," protecting the
26 technology for an improved elastomeric traction device used by Oakley in
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1 association with many of its eyewear lines. A correct copy of U.S. Patent No.
2 5,054,903 is attached hereto as Exhibit 11.

3 22. Plaintiff Oakley is the owner by assignment of U.S. Patent No.
4 5,137,342, duly and lawfully issued on August 11, 1992, describing and claiming
5 the invention entitled "Improved Eyewear Traction Device," protecting the
6 technology for an improved elastomeric traction device used by Oakley in
7 association with many of its eyewear lines. A correct copy of U.S. Patent No.
8 5,137,342 is attached hereto as Exhibit 12.

9 23. Oakley is informed and believes, and thereupon alleges that the
10 Defendants are selling sunglasses that embody one or more claims of its U.S.
11 Patent Nos. 5,054,903 and 5,137,342, without any license thereunder, and is
12 thereby infringing said patent. Oakley is informed and believes, and based thereon
13 alleges, that Defendants' sale of NYS Model Nos. 3503, C272PP, and 9101 to
14 various distributors, retailers, and retail customers infringes these patents.

15 24. Plaintiff Oakley is the owner by assignment of U.S. Patent No.
16 5,387,949, duly and lawfully issued on February 7, 1995, describing and claiming
17 the invention entitled "Eyeglass Connection Device," protecting the technology for
18 an improved eyeglass connection device. A correct copy of U.S. Patent No.
19 5,387,949 is attached hereto as Exhibit 13.

20 25. Oakley is informed and believes, and thereupon alleges that the
21 Defendants are selling sunglasses that embody U.S. Patent No. 5,387,949, without
22 any license thereunder, and is thereby infringing said patent. Oakley is informed
23 and believes and based thereon alleges that Defendants' sale of NYS Model No.
24 0160 to various distributors, retailers, and retail customers infringes this patent.

25 26. Defendants are aware of Oakley's proprietary rights in its patents
26 because Defendant received constructive notice of Oakley's patents as Oakley
27 caused its patents to be placed plainly on the product and/or packaging. Further,
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1 the Defendants were put on notice of Oakley's patent rights by way of at least this
2 lawsuit. Despite actual and constructive knowledge, Defendants continue to
3 infringe Oakley's patent rights. On information and belief, such infringement by
4 Defendants have been willful and wanton.

5 27. The exact amount of profits realized by Defendants as a result of their
6 patent infringing activities, are presently unknown to Oakley, as are the exact
7 amount of damages suffered by Oakley as a result of Defendants' infringing
8 manufacture, importation, use, offers to sell and/or sales. These profits and
9 damages cannot be accurately ascertained without an accounting. Further,
10 Defendants' actions are irreparably injuring Oakley and will continue unless and
11 until enjoined by this court.

12 **Trademark Infringement**

13 28. Oakley is the owner of U.S. Registered Trademark No. 2,393,107
14 duly registered on October 10, 2000 claiming the rights in a stylized trade dress
15 associated with Oakley's famous *M Frame* configuration. A true and correct copy
16 of such trademark registration is attached hereto and incorporated herein by
17 reference as Exhibit 14.

18 29. The trademark registration referred to above is in full force and effect.
19 The trademark and the good will of the business of Oakley in connection with
20 which this trademark has been used and not been abandoned. Oakley continues to
21 preserve and maintain its rights with respect to this trademark registration.

22 30. The trademark above is inherently distinctive in appearance and has
23 become, through widespread public acceptance, a distinctive designation of the
24 source of origin of goods offered by Oakley. It has acquired secondary meaning in
25 the marketplace and constitutes an asset of incalculable value as a symbol of
26 Oakley and its quality goods and good will.

27 31. Plaintiff is informed and believes, and based thereon alleges, that
28 Defendants and their agents, employees, and servants have advertised and sold

1 products appropriating this registered trade dress, which advertisements and
2 products are confusingly similar to that of the Oakley's trademark, and are,
3 therefore, an infringement of Oakley's trademark. Oakley specifically alleges that
4 Defendants' sale of NYS Model No. 9101 infringes Oakley's rights in this
5 registered trademark, as this model is likely to cause confusion as to the source of
6 goods. Defendants' products are available at retail and otherwise in similar
7 channels and in competition with Oakley.

8 32. Defendants were put on notice of Oakley's trademark rights at least
9 by way of this lawsuit, as well as Oakley's famous design being sold in the market.
10 Despite actual and constructive knowledge, Defendants have continued to infringe
11 Oakley's trademark rights. On information and belief, such infringements by
12 Defendants have been willful and wanton.

13 33. Since at least 1996, Oakley has expended large sums of money in the
14 promotion of all of its *M Frame* sunglass line represented by this trade dress. As a
15 result of said promotional efforts, this configuration has become and is now widely
16 known and is recognized in this district, and elsewhere, as emanating from and
17 authorized by Oakley.

18 34. Oakley's products embodied by this trade dress has become, through
19 widespread public acceptance, a distinctive designation of the source of origin of
20 goods offered by Oakley and an asset of incalculable value as a symbol of Oakley
21 and its quality goods and good will.

22 35. Oakley is informed and believes and thereupon alleges that the
23 Defendants' line of eyewear products using this trade dress is designed,
24 manufactured, packaged, advertised, displayed and sold expressly to deceive
25 customers desirous of purchasing products authorized by Oakley or to profit from
26 the demand created by Oakley for the ornamental and inherently distinctive
27 features of the Oakley products.

1 36. Oakley is further informed and believes and thereupon alleges that the
 2 presence of Defendants' products in the marketplace damages the value of
 3 Oakley's exclusive rights. The presence of the products in the marketplace is likely
 4 to diminish the apparent exclusivity of the genuine Oakley products thereby
 5 dissuading potential customers who otherwise would have sought Oakley products.
 6 Upon information and belief, Oakley alleges that such deception has misled and
 7 continues to mislead and confuse many of said purchasers to buy the products sold
 8 by Defendants and/or has misled non-purchasers to believe the products emanate
 9 from or are authorized by Oakley.

10 37. Oakley is informed and believes and thereupon alleges that the sale of
 11 Defendants' product has resulted in lost sales, has reduced the business and profit
 12 of Oakley, and has greatly injured the general reputation of Oakley, all to Oakley's
 13 damage in an amount not yet fully determined.

14 **FIRST CLAIM FOR RELIEF**

15 **PATENT INFRINGEMENT**

16 38. The allegations of paragraphs 1 through 37 are repled and realleged as
 17 though fully set forth herein.

18 39. This is a claim for patent infringement, and arises under 35 U.S.C. §§
 19 271 and 281 against Defendants and each of them.

20 40. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

21 41. Oakley is the owner of U.S. Patent No. D547,794, which protects the
 22 design and ornamentation of an eyeglass embodied and marketed by Oakley in an
 23 eyeglass under the name *Gascan*. A true and correct copy of U.S. Patent No.
 24 D547,794 is attached hereto as Exhibit 1. By statute, the patent is presumed to be
 25 valid and enforceable under 35 U.S.C. § 282.

26 42. Defendants, through their respective agents, employees and servants,
 27 manufactured, imported, used, offered for sale and/or sold, without any rights or
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1 license, eyeglasses that fall within the scope and claim contained in U.S. Patent
2 No. D547,794.

3 43. Oakley is informed and believes, and thereupon alleges, that
4 Defendants have willfully infringed upon Oakley's exclusive rights under the
5 patent, with full notice and knowledge thereof. Defendants sold, and are selling,
6 infringing sunglasses, and will continue to do so unless restrained therefrom by this
7 court, all to the great loss and injury of Oakley.

8 44. Oakley is informed and believes, and thereupon alleges, that
9 Defendants have derived, received, and will continue to derive and receive from
10 their acts of infringement, gains, profits and advantages in an amount not presently
11 known to Oakley. By reason of these acts of infringement, Oakley has been, and
12 will continue to be, greatly damaged.

13 45. Defendants will continue to infringe U.S. Patent No. D547,794 to the
14 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
15 at law unless Defendants are enjoined by this court.

16 **SECOND CLAIM FOR RELIEF**

17 **PATENT INFRINGEMENT**

18 46. The allegations of paragraphs 1 through 37 are repled and realleged as
19 though fully set forth herein.

20 47. This is a claim for patent infringement, and arises under 35 U.S.C. §§
21 271 and 281 against Defendants and each of them.

22 48. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

23 49. Oakley is the owner of U.S. Patent No. D554,689, which protects the
24 design and ornamentation of an eyeglass frame embodied and marketed by Oakley
25 in an eyeglass under the name *Gascan*. A true and correct copy of U.S. Patent No.
26 D554,689 is attached hereto as Exhibit 2. By statute, the patent is presumed to be
27 valid and enforceable under 35 U.S.C. § 282.
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1 50. Defendants, through their respective agents, employees and servants,
2 manufactured, imported, used, offered for sale and/or sold, without any rights or
3 license, eyeglasses that fall within the scope and claim contained in U.S. Patent
4 No. D554,689.

5 51. Oakley is informed and believes, and thereupon alleges, that
6 Defendants have willfully infringed upon Oakley's exclusive rights under the
7 patent, with full notice and knowledge thereof. Defendants sold, and are selling,
8 infringing sunglasses, and will continue to do so unless restrained therefrom by this
9 court, all to the great loss and injury of Oakley.

10 52. Oakley is informed and believes, and thereupon alleges, that
11 Defendants have derived, received, and will continue to derive and receive from
12 their acts of infringement, gains, profits and advantages in an amount not presently
13 known to Oakley. By reason of these acts of infringement, Oakley has been, and
14 will continue to be, greatly damaged.

15 53. Defendants will continue to infringe U.S. Patent No. D554,689 to the
16 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
17 at law unless Defendants are enjoined by this court.

18 **THIRD CLAIM FOR RELIEF**

19 **PATENT INFRINGEMENT**

20 54. The allegations of paragraphs 1 through 37 are repled and realleged as
21 though fully set forth herein.

22 55. This is a claim for patent infringement, and arises under 35 U.S.C. §§
23 271 and 281 against Defendants and each of them.

24 56. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

25 57. Oakley is the owner of U.S. Patent No. D556,818, which protects the
26 design and ornamentation of an eyeglass component embodied and marketed by
27 Oakley in an eyeglass under the name *Gascan*. A true and correct copy of U.S.
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1 Patent No. D556,818 is attached hereto as Exhibit 3. By statute, the patent is
 2 presumed to be valid and enforceable under 35 U.S.C. § 282.

3 58. Defendants, through their respective agents, employees and servants,
 4 manufactured, imported, used, offered for sale and/or sold, without any rights or
 5 license, eyeglasses that fall within the scope and claim contained in U.S. Patent
 6 No. D556,818.

7 59. Oakley is informed and believes, and thereupon alleges, that
 8 Defendants have willfully infringed upon Oakley's exclusive rights under the
 9 patent, with full notice and knowledge thereof. Defendants sold, and are selling,
 10 infringing sunglasses, and will continue to do so unless restrained therefrom by this
 11 court, all to the great loss and injury of Oakley.

12 60. Oakley is informed and believes, and thereupon alleges, that
 13 Defendants have derived, received, and will continue to derive and receive from
 14 their acts of infringement, gains, profits and advantages in an amount not presently
 15 known to Oakley. By reason of these acts of infringement, Oakley has been, and
 16 will continue to be, greatly damaged.

17 61. Defendants will continue to infringe U.S. Patent No. D556,818 to the
 18 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
 19 at law unless Defendants are enjoined by this court.
 20

21 **FOURTH CLAIM FOR RELIEF**

22 **PATENT INFRINGEMENT**

23 62. The allegations of paragraphs 1 through 37 are repled and realleged as
 24 though fully set forth herein.

25 63. This is a claim for patent infringement, and arises under 35 U.S.C. §§
 26 271 and 281 against Defendants and each of them.

27 64. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

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1 65. Oakley is the owner of U.S. Patent No. D572,749 which protects the
2 design and ornamentation of an eyeglass front embodied and marketed by Oakley's
3 *Fives 3.0* sunglass. A true and correct copy of U.S. Patent No. D572,749 is
4 attached hereto as Exhibit 4. By statute, the patent is presumed to be valid and
5 enforceable under 35 U.S.C. § 282.

6 66. Defendants, through their respective agents, employees and servants,
7 manufactured, imported, used, offered for sale and/or sold, without any rights or
8 license, eyeglasses that fall within the scope and claim contained in U.S. Patent
9 No. D572,749.

10 67. Oakley is informed and believes, and thereupon alleges, that
11 Defendants have willfully infringed upon Oakley's exclusive rights under the
12 patent, with full notice and knowledge thereof. Defendants sold and are selling
13 infringing sunglasses, and will continue to do so unless restrained therefrom by this
14 court, all to the great loss and injury of Oakley.

15 68. Oakley is informed and believes, and thereupon alleges, that
16 Defendants have derived, received, and will continue to derive and receive from
17 their acts of infringement, gains, profits and advantages in an amount not presently
18 known to Oakley. By reason of these acts of infringement, Oakley has been, and
19 will continue to be, greatly damaged.

20 69. Defendants will continue to infringe U.S. Patent No. D572,749 to the
21 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
22 at law unless Defendants are enjoined by this court.

23 **FIFTH CLAIM FOR RELIEF**

24 **PATENT INFRINGEMENT**

25 70. The allegations of paragraphs 1 through 37 are repled and realleged as
26 though fully set forth herein.

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1 71. This is a claim for patent infringement, and arises under 35 U.S.C. §§
2 271 and 281 against Defendants and each of them.

3 72. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

4 73. Oakley is the owner of U.S. Patent No. D581,443 which protects the
5 design and ornamentation of an eyeglass component embodied and marketed by
6 Oakley in an eyeglass under the name *Radar*. A true and correct copy of U.S.
7 Patent No. D581,443 is attached hereto as Exhibit 5. By statute, the patent is
8 presumed to be valid and enforceable under 35 U.S.C. § 282.

9 74. Defendants, through their respective agents, employees and servants,
10 manufactured, imported, used, offered for sale and/or sold, without any rights or
11 license, eyeglasses that fall within the scope and claim contained in U.S. Patent
12 No. D581,443.

13 75. Oakley is informed and believes, and thereupon alleges, that
14 Defendants have willfully infringed upon Oakley's exclusive rights under the
15 patent, with full notice and knowledge thereof. Defendants sold and are selling
16 infringing sunglasses, and will continue to do so unless restrained therefrom by this
17 court, all to the great loss and injury of Oakley.

18 76. Oakley is informed and believes, and thereupon alleges, that
19 Defendants have derived, received, and will continue to derive and receive from
20 their acts of infringement, gains, profits and advantages in an amount not presently
21 known to Oakley. By reason of these acts of infringement, Oakley has been, and
22 will continue to be, greatly damaged.

23 77. Defendants will continue to infringe U.S. Patent No. D581,443 to the
24 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
25 at law unless said Defendants are enjoined by this court.
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SIXTH CLAIM FOR RELIEF
PATENT INFRINGEMENT

78. The allegations of paragraphs 1 through 37 are rep[re]sented and realleged as though fully set forth herein.

79. This is a claim for patent infringement, and arises under 35 U.S.C. §§ 271 and 281 against Defendants and each of them.

80. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

81. Oakley is the owner of U.S. Patent No. D581,444 which protects the design and ornamentation of an eyeglass component embodied and marketed by Oakley in an eyeglass under the name *Radar*. A true and correct copy of U.S. Patent No. D556,818 is attached hereto as Exhibit 6. By statute, the patent is presumed to be valid and enforceable under 35 U.S.C. § 282.

82. Defendants, through their respective agents, employees and servants, manufactured, imported, used, offered for sale and/or sold, without any rights or license, eyeglasses that fall within the scope and claim contained in U.S. Patent No. D581,443.

83. Oakley is informed and believes, and thereupon alleges, that Defendants have willfully infringed upon Oakley's exclusive rights under the patent, with full notice and knowledge thereof. Defendants sold and are selling infringing sunglasses, and will continue to do so unless restrained therefrom by this court, all to the great loss and injury of Oakley.

84. Oakley is informed and believes, and thereupon alleges, that Defendants have derived, received, and will continue to derive and receive from their acts of infringement, gains, profits and advantages in an amount not presently known to Oakley. By reason of these acts of infringement, Oakley has been, and will continue to be, greatly damaged.

... ..

1 85. Defendants will continue to infringe U.S. Patent No. D581,443 to the
2 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
3 at law unless said Defendants are enjoined by this court.

4 **SEVENTH CLAIM FOR RELIEF**
5 **PATENT INFRINGEMENT**

6 86. The allegations of paragraphs 1 through 37 are repeld and realleged as
7 though fully set forth herein.

8 87. This is a claim for patent infringement, and arises under 35 U.S.C. §§
9 271 and 281 against Defendants and each of them.

10 88. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

11 89. Oakley is the owner of U.S. Patent No. 7,347,545, which protects the
12 technology of an interchangeable sport shield, such as that embodied and marketed
13 by Oakley in an eyeglass under the name *Radar*. A true and correct copy of U.S.
14 Patent No. 7,347,545 is attached hereto as Exhibit 7. By statute, the patent is
15 presumed to be valid and enforceable under 35 U.S.C. § 282.

16 90. Defendants, through their respective agents, employees and servants,
17 manufactured, imported, used, offered for sale and/or sold, without any rights or
18 license, eyeglasses that fall within the scope and claim contained in U.S. Patent
19 No. 7,347,545.

20 91. Oakley is informed and believes, and thereupon alleges, that
21 Defendants have willfully infringed upon Oakley's exclusive rights under the
22 patent, with full notice and knowledge thereof. Defendants sold and are selling
23 infringing sunglasses, and will continue to do so unless restrained therefrom by this
24 court, all to the great loss and injury of Oakley.

25 92. Oakley is informed and believes, and thereupon alleges, that
26 Defendants have derived, received, and will continue to derive and receive from
27 their acts of infringement, gains, profits and advantages in an amount not presently
28

1 known to Oakley. By reason of these acts of infringement, Oakley has been, and
2 will continue to be, greatly damaged.

3 93. Defendants will continue to infringe U.S. Patent No. 7,347,545 to the
4 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
5 at law unless said Defendants are enjoined by this court.

6 **EIGHTH CLAIM FOR RELIEF**
7 **PATENT INFRINGEMENT**

8 94. The allegations of paragraphs 1 through 37 are repled and realleged as
9 though fully set forth herein.

10 95. This is a claim for patent infringement, and arises under 35 U.S.C. §§
11 271 and 281 against Defendants and each of them.

12 96. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

13 97. Oakley is the owner of U.S. Patent No. D564,571 which protects the
14 design and ornamentation of an eyeglass embodied and marketed by Oakley in an
15 eyeglass under the name *Flak Jacket*. A true and correct copy of U.S. Patent No.
16 D564,571 is attached hereto as Exhibit 8. By statute, the patent is presumed to be
17 valid and enforceable under 35 U.S.C. § 282.

18 98. Defendants, through their respective agents, employees and servants,
19 manufactured, imported, used, offered for sale and/or sold, without any rights or
20 license, eyeglasses that fall within the scope and claim contained in U.S. Patent
21 No. D564,571.

22 99. Oakley is informed and believes and thereupon alleges that
23 Defendants have willfully infringed upon Oakley's exclusive rights under the
24 patent, with full notice and knowledge thereof. Defendants sold and are selling
25 infringing sunglasses, and will continue to do so unless restrained therefrom by this
26 court, all to the great loss and injury of Oakley.

27
28

1 100. Oakley is informed and believes, and thereupon alleges, that
2 Defendants have derived, received, and will continue to derive and receive from
3 their acts of infringement, gains, profits and advantages in an amount not presently
4 known to Oakley. By reason of these acts of infringement, Oakley has been, and
5 will continue to be, greatly damaged.

6 101. Defendants will continue to infringe U.S. Patent No. D564,571 to the
7 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
8 at law unless said Defendants are enjoined by this court.

9 **NINTH CLAIM FOR RELIEF**
10 **PATENT INFRINGEMENT**

11 102. The allegations of paragraphs 1 through 37 are repled and realleged as
12 though fully set forth herein.

13 103. This is a claim for patent infringement, and arises under 35 U.S.C. §§
14 271 and 281 against Defendants and each of them.

15 104. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

16 105. Oakley is the owner of U.S. Patent No. D384,364, which protects the
17 design and ornamentation of an eyeglass frame front embodied and marketed by
18 Oakley in an eyeglass under the name *M Frame*. A true and correct copy of U.S.
19 Patent No. D384,364 is attached hereto as Exhibit 9. By statute, the patent is
20 presumed to be valid and enforceable under 35 U.S.C. § 282.

21 106. Defendants, through their respective agents, employees and servants,
22 manufactured, imported, used, offered for sale and/or sold, without any rights or
23 license, eyeglasses that fall within the scope and claim contained in U.S. Patent
24 No. D384,364.

25 107. Oakley is informed and believes, and thereupon alleges, that
26 Defendants have willfully infringed upon Oakley's exclusive rights under the
27 patent, with full notice and knowledge thereof. Defendants sold and are selling
28

1 infringing sunglasses, and will continue to do so unless restrained therefrom by this
 2 court, all to the great loss and injury of Oakley.

3 108. Oakley is informed and believes, and thereupon alleges, that
 4 Defendants have derived, received, and will continue to derive and receive from
 5 their acts of infringement, gains, profits and advantages in an amount not presently
 6 known to Oakley. By reason of these acts of infringement, Oakley has been, and
 7 will continue to be, greatly damaged.

8 109. Defendants will continue to infringe U.S. Patent No. D384,364 to the
 9 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
 10 at law unless said Defendants are enjoined by this court.

11 **TENTH CLAIM FOR RELIEF**
 12 **PATENT INFRINGEMENT**

13 110. The allegations of paragraphs 1 through 37 are repled and realleged as
 14 though fully set forth herein.

15 111. This is a claim for patent infringement, and arises under 35 U.S.C. §§
 16 271 and 281 against Defendants and each of them.

17 112. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

18 113. Oakley is the owner of U.S. Patent No. D399,866, which protects the
 19 design and ornamentation of an eyeglass component embodied and marketed by
 20 Oakley in an eyeglass under the name *M Frame*. A true and correct copy of U.S.
 21 Patent No. D399,866 is attached hereto as Exhibit 10. By statute, the patent is
 22 presumed to be valid and enforceable under 35 U.S.C. § 282.

23 114. Defendants, through their respective agents, employees and servants,
 24 manufactured, imported, used, offered for sale and/or sold, without any rights or
 25 license, eyeglasses that fall within the scope and claim contained in U.S. Patent
 26 No. D399,866.

27
 28

1 115. Oakley is informed and believes, and thereupon alleges, that
2 Defendants have willfully infringed upon Oakley's exclusive rights under the
3 patent, with full notice and knowledge thereof. Defendants sold and are selling
4 infringing sunglasses, and will continue to do so unless restrained therefrom by this
5 court, all to the great loss and injury of Oakley.

6 116. Oakley is informed and believes, and thereupon alleges, that
7 Defendants have derived, received, and will continue to derive and receive from
8 their acts of infringement, gains, profits and advantages in an amount not presently
9 known to Oakley. By reason of these acts of infringement, Oakley has been, and
10 will continue to be, greatly damaged.

11 117. Defendants will continue to infringe U.S. Patent No. D399,866 to the
12 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
13 at law unless said Defendants are enjoined by this court.

14 **ELEVENTH CLAIM FOR RELIEF**
15 **PATENT INFRINGEMENT**

16 118. The allegations of paragraphs 1 through 37 are repled and realleged as
17 though fully set forth herein.

18 119. This is a claim for patent infringement, and arises under 35 U.S.C. §§
19 271 and 281 against Defendants and each of them.

20 120. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

21 121. Oakley is the owner of U.S. Patent No. 5,054,903 which protects the
22 technology for an improved elastomeric traction device incorporated by Oakley in
23 most of its eyewear. A true and correct copy of U.S. Patent No. 5,054,903 is
24 attached hereto as Exhibit 11. By statute, the patent is presumed to be valid and
25 enforceable under 35 U.S.C. § 282.

26 122. Defendants, through their respective agents, employees and servants,
27 manufactured, imported, used, offered for sale and/or sold, without any rights or
28

1 license, eyeglasses that fall within the scope and claim contained in U.S. Patent
2 No. 5,054,903.

3 123. Oakley is informed and believes, and thereupon alleges, that
4 Defendants have willfully infringed upon Oakley's exclusive rights under the
5 patent, with full notice and knowledge thereof. Defendants sold and are selling
6 infringing sunglasses, and will continue to do so unless restrained therefrom by this
7 court, all to the great loss and injury of Oakley.

8 124. Oakley is informed and believes, and thereupon alleges, that
9 Defendants have derived, received, and will continue to derive and receive from
10 their acts of infringement, gains, profits and advantages in an amount not presently
11 known to Oakley. By reason of these acts of infringement, Oakley has been, and
12 will continue to be, greatly damaged.

13 125. Defendants will continue to infringe U.S. Patent No. 5,054,903 to the
14 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
15 at law unless said Defendants are enjoined by this court.

16 **TWELFTH CLAIM FOR RELIEF**

17 **PATENT INFRINGEMENT**

18 126. The allegations of paragraphs 1 through 37 are repled and realleged as
19 though fully set forth herein.

20 127. This is a claim for patent infringement, and arises under 35 U.S.C. §§
21 271 and 281 against Defendants and each of them.

22 128. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

23 129. Oakley is the owner of U.S. Patent No. 5,137,342 which protects the
24 technology for an improved elastomeric traction device incorporated by Oakley in
25 most of its eyewear. A true and correct copy of U.S. Patent No. 5,137,342 is
26 attached hereto as Exhibit 12. By statute, the patent is presumed to be valid and
27 enforceable under 35 U.S.C. § 282.
28

1 130. Defendants, through their respective agents, employees and servants,
2 manufactured, imported, used, offered for sale and/or sold, without any rights or
3 license, eyeglasses that fall within the scope and claim contained in U.S. Patent
4 No. 5,137,342.

5 131. Oakley is informed and believes, and thereupon alleges, that
6 Defendants have willfully infringed upon Oakley's exclusive rights under the
7 patent, with full notice and knowledge thereof. Defendants sold and are selling
8 infringing sunglasses, and will continue to do so unless restrained therefrom by this
9 court, all to the great loss and injury of Oakley.

10 132. Oakley is informed and believes, and thereupon alleges, that
11 Defendants have derived, received, and will continue to derive and receive from
12 their acts of infringement, gains, profits and advantages in an amount not presently
13 known to Oakley. By reason of these acts of infringement, Oakley has been, and
14 will continue to be, greatly damaged.

15 133. Defendants will continue to infringe U.S. Patent No. 5,137,342 to the
16 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
17 at law unless said Defendants are enjoined by this court.

18 **THIRTEENTH CLAIM FOR RELIEF**

19 **PATENT INFRINGEMENT**

20 134. The allegations of paragraphs 1 through 37 are repled and realleged as
21 though fully set forth herein.

22 135. This is a claim for patent infringement, and arises under 35 U.S.C. §§
23 271 and 281 against Defendants and each of them.

24 136. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

25 137. Oakley is the owner of U.S. Patent No. 5,387,949, which protects the
26 technology for a lens connection device incorporated by Oakley in its *Flak Jacket*
27 and other models. A true and correct copy of U.S. Patent No. 5,387,949 is
28

1 attached hereto as Exhibit 13. By statute, the patent is presumed to be valid and
2 enforceable under 35 U.S.C. § 282.

3 138. Defendants, through their respective agents, employees and servants,
4 manufactured, imported, used, offered for sale and/or sold, without any rights or
5 license, eyeglasses that fall within the scope and claim contained in U.S. Patent
6 No. 5,387,949.

7 139. Oakley is informed and believes, and thereupon alleges, that
8 Defendants have willfully infringed upon Oakley's exclusive rights under the
9 patent, with full notice and knowledge thereof. Defendants sold and are selling
10 infringing sunglasses, and will continue to do so unless restrained therefrom by this
11 court, all to the great loss and injury of Oakley.

12 140. Oakley is informed and believes, and thereupon alleges, that
13 Defendants have derived, received, and will continue to derive and receive from
14 their acts of infringement, gains, profits and advantages in an amount not presently
15 known to Oakley. By reason of these acts of infringement, Oakley has been, and
16 will continue to be, greatly damaged.

17 141. Defendants will continue to infringe U.S. Patent No. 5,387,949 to the
18 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
19 at law unless said Defendants are enjoined by this court.
20

21 **FOURTEENTH CLAIM FOR RELIEF**

22 **TRADEMARK INFRINGEMENT**

23 142. The allegations of paragraphs 1 through 37 are repled and realleged as
24 though fully set forth herein.

25 143. This is a claim for trademark infringement, and arises under 15 U.S.C.
26 § 1114 against Defendant Marsalle.

27 144. Jurisdiction is founded upon 15 U.S.C. § 1121.

28 145. Oakley is the owner of U.S. Registered Trademark No. 2,393,107,
which confers on Oakley the exclusive right to use this trade dress in commerce.

1 A true and correct copy of U.S. registered Trademark No. 2,393,107 is attached
2 hereto as Exhibit 14.

3 146. The mark has been in use in commerce in connection with the trade
4 dress configuration of Oakley's *M Frame* eyeglass continuously since at least as
5 1996. The mark appears clearly on packaging, advertisements, product brochures,
6 and on Oakley products.

7 147. Defendants, through their agents, employees and servants, have
8 manufactured, imported, advertised, offered for sale, and/or sold products
9 incorporating Oakley's registered trade dress without authority from Oakley for
10 doing so. Specifically, Defendant's use of the asserted trade dress constitutes
11 infringement of Oakley's registered trademark.

12 148. Oakley is informed and believes, and thereupon alleges, that
13 Defendants' use of Oakley's registered trade dress in commerce constitutes
14 trademark infringement, false designation or origin, a false description or
15 representation of goods and wrongfully and falsely represents to the consuming
16 public that the Defendants' advertising and products incorporating the trade dress
17 originated from or somehow are authorized by Oakley.

18 149. Oakley is informed and believes, and thereupon alleges, that
19 Defendants' unauthorized use of Oakley's registered trade dress has caused
20 confusion in the marketplace as to the source of origin of Defendants' products and
21 has caused damage to Oakley within this jurisdictional district.

22 150. Oakley is informed and believes, and thereupon alleges, that
23 Defendants' willfully infringed upon Oakley's exclusive rights under its trade dress
24 with the intent to trade upon the good will of Oakley and to injure Oakley.

25 151. Oakley is informed and believes, and thereupon alleges, that
26 Defendants have derived, received, and will continue to derive and receive from
27 these acts of infringement, gains, profits, and advantages in an amount not yet
28 ascertainable, but will be determined at the time of trial.

1 152. Oakley is informed and believes, and thereupon alleges, that
2 Defendants will continue to infringe Oakley's registered trade dress to the great and
3 irreparable injury of Oakley, for which Oakley has no adequate remedy at law
4 unless Defendant is enjoined by this court.

5 153. Oakley has been damaged in this judicial district as a result of the
6 Defendants', individually and collectively, infringement of its trade dress.

7 **FIFTEENTH CLAIM FOR RELIEF**

8 **UNFAIR COMPETITION & FALSE DESIGNATION OF ORIGIN**

9 154. The allegations of paragraphs 1 through 37 are repled and realleged as
10 though fully set forth herein.

11 155. This is an action for unfair competition, false designation of origin of
12 goods, and false description or representation of goods against Defendant Marsalle
13 pursuant to 15 U.S.C. § 1125(a).

14 156. Jurisdiction is founded upon 15 U.S.C. § 1121.

15 157. Oakley is informed and believes and thereupon alleges that
16 Defendants' use of its registered trade dress and general copying of Oakley's
17 designs, constitutes a false designation of origin, a false description or
18 representation of goods, and wrongfully and falsely represents to the consuming
19 public that the Defendants' products originated from or somehow are authorized by
20 Oakley. These acts amount to utilizing a false designation of origin and a false
21 description or representation in interstate commerce to compete unfairly with
22 Oakley.

23 158. Oakley is informed and believes and thereupon alleges that the actions
24 of Defendants were done willfully, knowingly and maliciously with the intent to
25 trade upon the good will of Oakley and to injure Oakley.

26 159. The Defendant's acts are in violation of 15 U.S.C. § 1125(a), and will
27 continue to the great and irreparable injury of Oakley unless enjoined by this
28 Court.

1 WHEREFORE, Plaintiff Oakley, Inc. prays as follows:

2 1. That Defendants Marsalle and Sunglass Plus be adjudicated to
3 have infringed U.S. Patent No. D547,794, and that this patent is valid,
4 enforceable and owned by Oakley;

5 2. That Defendants Marsalle and Sunglass Plus be adjudicated to
6 have infringed U.S. Patent No. D554,689, and that this patent is valid,
7 enforceable and owned by Oakley;

8 3. That Defendants Marsalle and Sunglass Plus be adjudicated to
9 have infringed U.S. Patent No. D556,818, and that this patent is valid,
10 enforceable and owned by Oakley;

11 4. That Defendants Marsalle and Sunglass Plus be adjudicated to
12 have infringed U.S. Patent No. D572,749, and that this patent is valid,
13 enforceable and owned by Oakley;

14 5. That Defendants Marsalle and Sunglass Plus be adjudicated to
15 have infringed U.S. Patent No. D581,443, and that this patent is valid,
16 enforceable and owned by Oakley;

17 6. That Defendants Marsalle and Sunglass Plus be adjudicated to
18 have infringed U.S. Patent No. D581,444, and that this patent is valid,
19 enforceable and owned by Oakley;

20 7. That Defendants Marsalle and Sunglass Plus be adjudicated to
21 have infringed U.S. Patent No. 7,347,545, and that this patent is valid,
22 enforceable and owned by Oakley;

23 8. That Defendants Marsalle and Sunglass Plus be adjudicated to
24 have infringed U.S. Patent No. D564,571, and that this patent is valid,
25 enforceable and owned by Oakley;

26 9. That Defendants Marsalle and Sunglass Plus be adjudicated to
27 have infringed U.S. Patent No. D384,364, and that this patent is valid,
28 enforceable and owned by Oakley;

1 10. That Defendants Marsalle and Sunglass Plus be adjudicated to
2 have infringed U.S. Patent No. D399,866, and that this patent is valid,
3 enforceable and owned by Oakley;

4 11. That Defendants Marsalle and Sunglass Plus be adjudicated to
5 have infringed U.S. Patent No. 5,054,903, and that this patent is valid,
6 enforceable and owned by Oakley;

7 12. That Defendants Marsalle and Sunglass Plus be adjudicated to
8 have infringed U.S. Patent No. 5,137,342, and that this patent is valid,
9 enforceable and owned by Oakley;

10 13. That Defendants be required to account to Oakley for any and
11 all lost profits suffered by Oakley and in no event less than a reasonable
12 royalty by reason of Defendants' infringement of U.S. Patent Nos.
13 D547,794, D554,689, D556,818, D572,749, D581,443, D581,444,
14 7,347,545, D564,571, D384,364, D399,866, 5,054,903 and 5,137,342;

15 14. That Defendants be required to account for all of its profits and
16 Oakley be awarded Defendant's profits pursuant to 35 U.S.C. § 289;

17 15. That patent infringement damages be awarded in an amount up
18 to three times the amount of damages found or assessed to compensate
19 Oakley for the willful, deliberate and intentional acts of infringement by
20 Defendants, pursuant to 35 U.S.C. § 284;

21 16. That Defendants and each of them be adjudicated to have
22 infringed Oakley's Registered Trademark No. 2,393,107, and that this
23 trademark is valid and enforceable and has acquired secondary meaning as
24 being associated with Oakley;

25 17. That Defendants Marsalle, and their agents, servants,
26 employees, and attorneys and all persons in active concert and participation
27 with them, be enjoined and restrained, during the pendency of this action
28 and permanently thereafter from:

1 A. Using the Oakley's Registered Trademark No. 2,393,107 or any
2 mark similar thereto in connection with the sale of any goods;

3 B. Committing any acts which may cause purchasers to believe
4 that the Defendants, or the products Defendants are selling, are
5 sponsored or authorized by, or are in any way associated with
6 Plaintiff;

7 C. Selling, passing off, or inducing or enabling others to sell or
8 pass off any products as products produced by Plaintiff, which
9 products are not Plaintiff's or are not produced under the control and
10 supervision and approved by Plaintiff; and

11 D. Infringing Plaintiff's trademark rights;

12 18. That Defendants and their agents, servants, employees and
13 attorneys and all persons in active concert or participation with them, be
14 enjoined and restrained, during the pendency of this action, and permanently
15 thereafter from advertising or selling products in any manner that does or
16 tends to dilute the distinctive value of Oakley's 2,393,107 trademark;

17 19. That Defendants and their agents, suppliers, servants, partners,
18 employees, managers, and officers, and all those persons in active concert or
19 participation with them, be forthwith preliminarily and thereafter
20 permanently enjoined from making, using, offering for sale or selling any
21 eyewear that infringes U.S. Patent Nos. D547,794, D554,689, D556,818,
22 D572,749, D581,443, D581,444, 7,347,545, D564,571, D384,364,
23 D399,866, 5,054,903 and 5,137,342;

24 20. That Defendants, and each of them, be directed to file with this
25 court and serve upon Oakley within 30 days after the service of the
26 injunction, a report in writing under oath, setting forth in detail the manner
27 and form in which Defendant has complied with the injunction;
28

1 21. That Defendants be required to account to Oakley for any and
2 all profits derived by it, and all damages sustained by Oakley by reason of
3 Defendants' trademark infringement, unfair competition and false
4 designation of origin, together with interest and costs;

5 22. For all of Defendants' profits derived from its infringement of
6 Plaintiff's trademark rights;

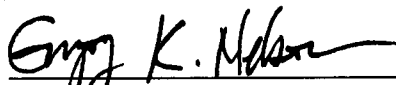
7 23. For an order requiring Defendants to deliver up and destroy all
8 infringing eyewear;

9 24. That an award of reasonable costs, expenses, and attorney's
10 fees be awarded against Defendants pursuant to 15 U.S.C. § 1116(a), 35
11 U.S.C. § 285 and 35 U.S.C. § 285; and

12 25. That Oakley have such other and further relief as the
13 circumstances of this case may require and as this court may deem just and
14 proper.

15 DATED: June 22, 2009

WEEKS, KAUFMAN, NELSON & JOHNSON

17 

18 Gregory K. Nelson

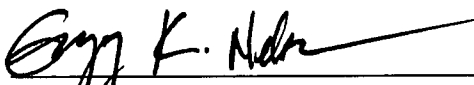
19 Attorney for Plaintiff, Oakley, Inc.

20 JURY DEMAND

21 Plaintiff Oakley, Inc. hereby requests a trial by jury in this matter.

22
23 DATED: June 22, 2009

WEEKS, KAUFMAN, NELSON & JOHNSON

24 

25 Gregory K. Nelson

26 Attorney for Plaintiff Oakley, Inc.



US00D547794S

(12) **United States Design Patent**
Jannard et al.

(10) **Patent No.:** **US D547,794 S**

(45) **Date of Patent:** **** Jul. 31, 2007**

(54) **EYEGLASSES**

(75) **Inventors:** **James H. Jannard**, Spieden Island, WA (US); **Hans Karsten Moritz**, Foothill Ranch, CA (US); **Colin Baden**, Irvine, CA (US)

(73) **Assignee:** **Oakley, Inc.**, Foothill Ranch, CA (US)

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

(21) **Appl. No.:** **29/227,719**

(22) **Filed:** **Apr. 13, 2005**

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

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

(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,
351/156, 61, 114-119, 121-123; 2/426-432,
2/447-449, 441, 436, 434-437

See application file for complete search history.

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* cited by examiner

Primary Examiner—Raphael Barkai

(74) *Attorney, Agent, or Firm*—Gregory K. Nelson

(57) **CLAIM**

The ornamental design for an eyeglasses, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of the eyeglasses of the present invention;

FIG. 2 is a left-side elevational view of the eyeglasses, the right side elevational view being a mirror image thereof;

FIG. 3 is a front elevational view thereof;

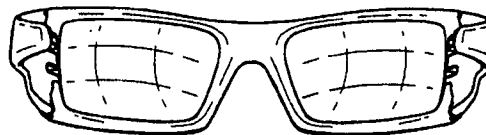
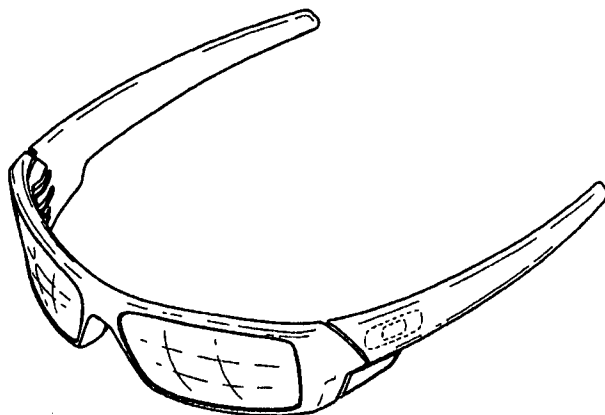
FIG. 4 is a rear elevational view thereof;

FIG. 5 is a top plan view thereof; and,

FIG. 6 is a bottom plan view thereof.

Phantom lining, where utilized, is for illustrative purposes only and is not intended to limit the claimed design to the features shown in phantom.

1 Claim, 4 Drawing Sheets



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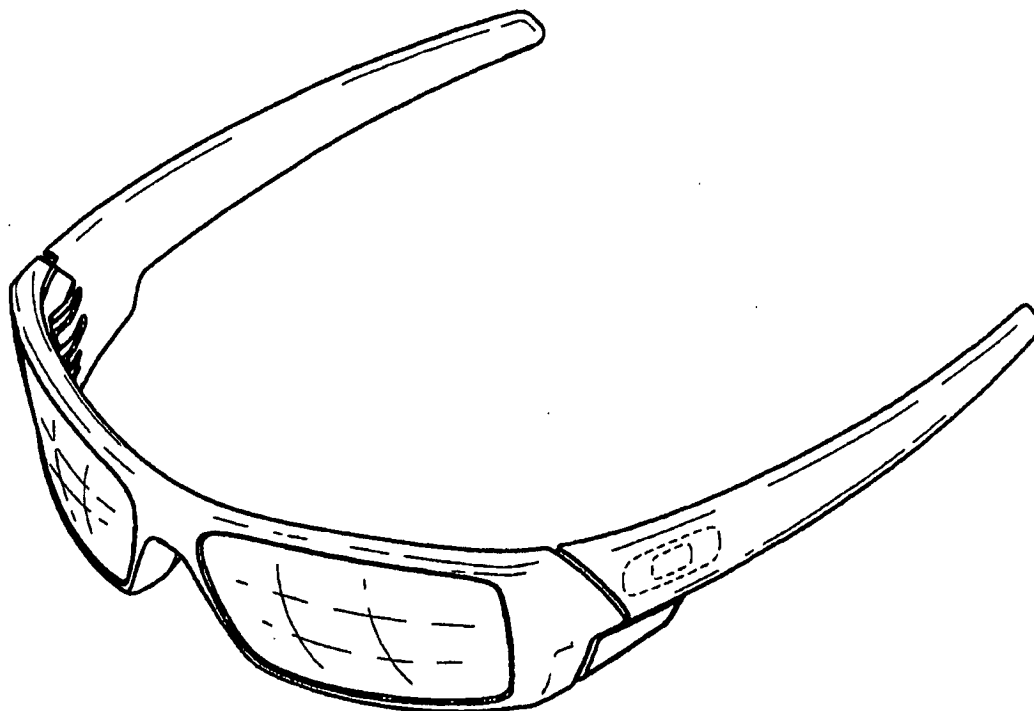


FIG. 1

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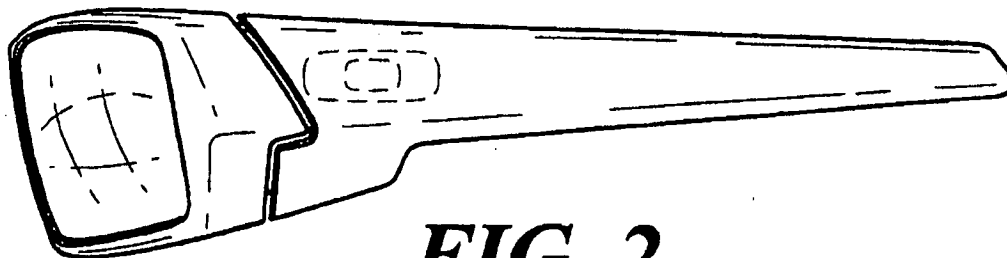


FIG. 2

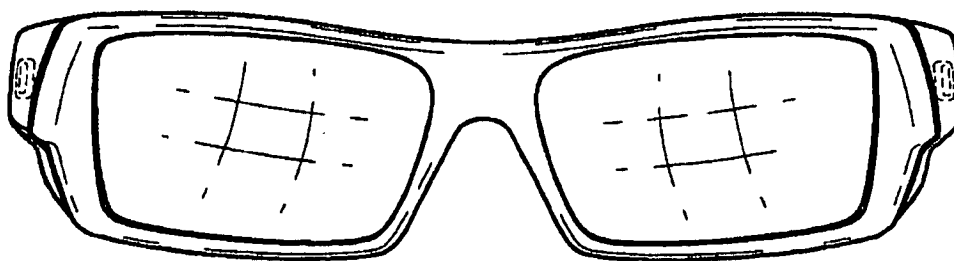


FIG. 3

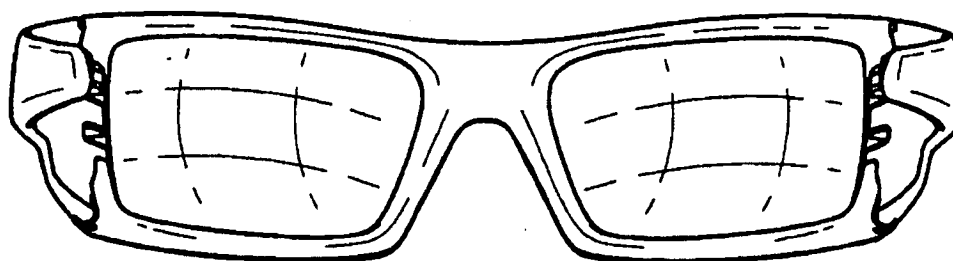


FIG. 4

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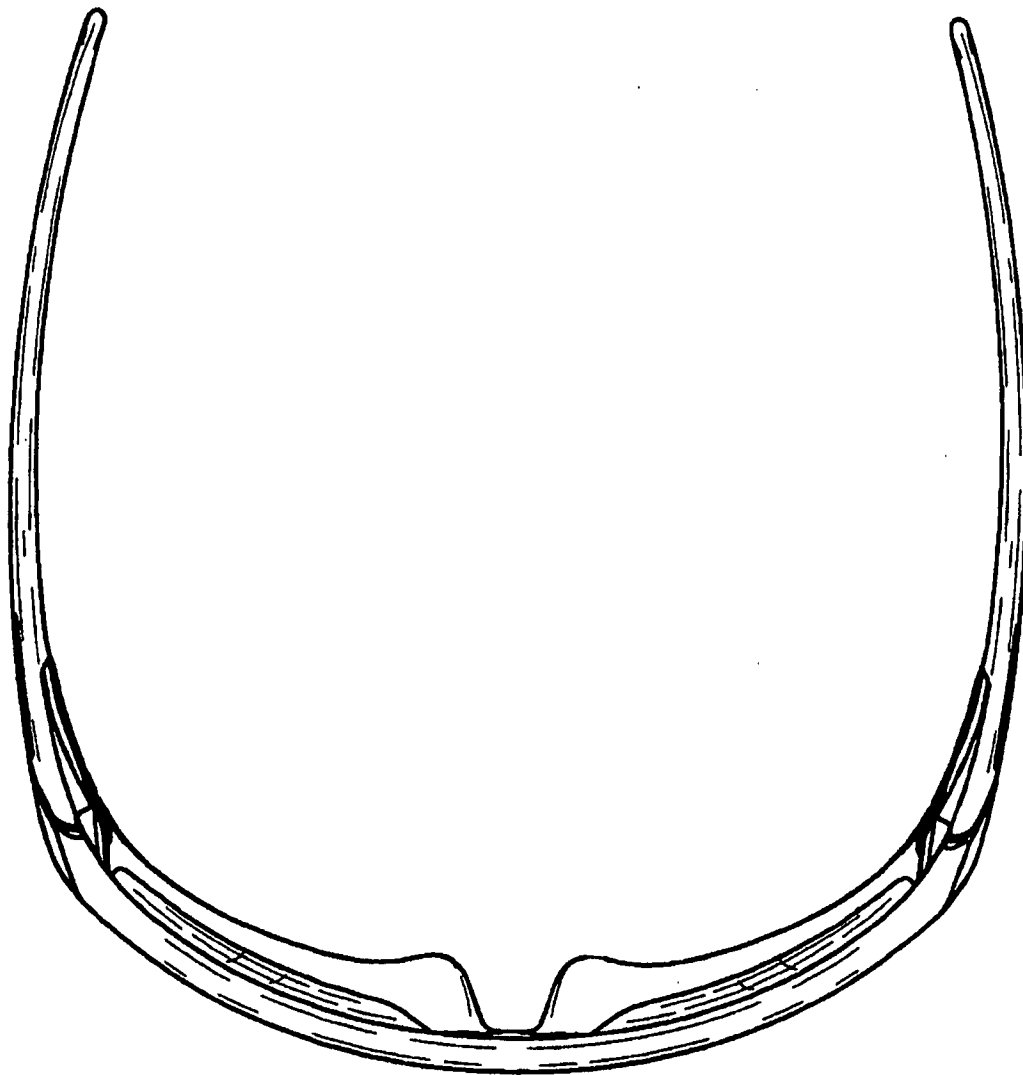


FIG. 5

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Jul. 31, 2007

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US D547,794 S

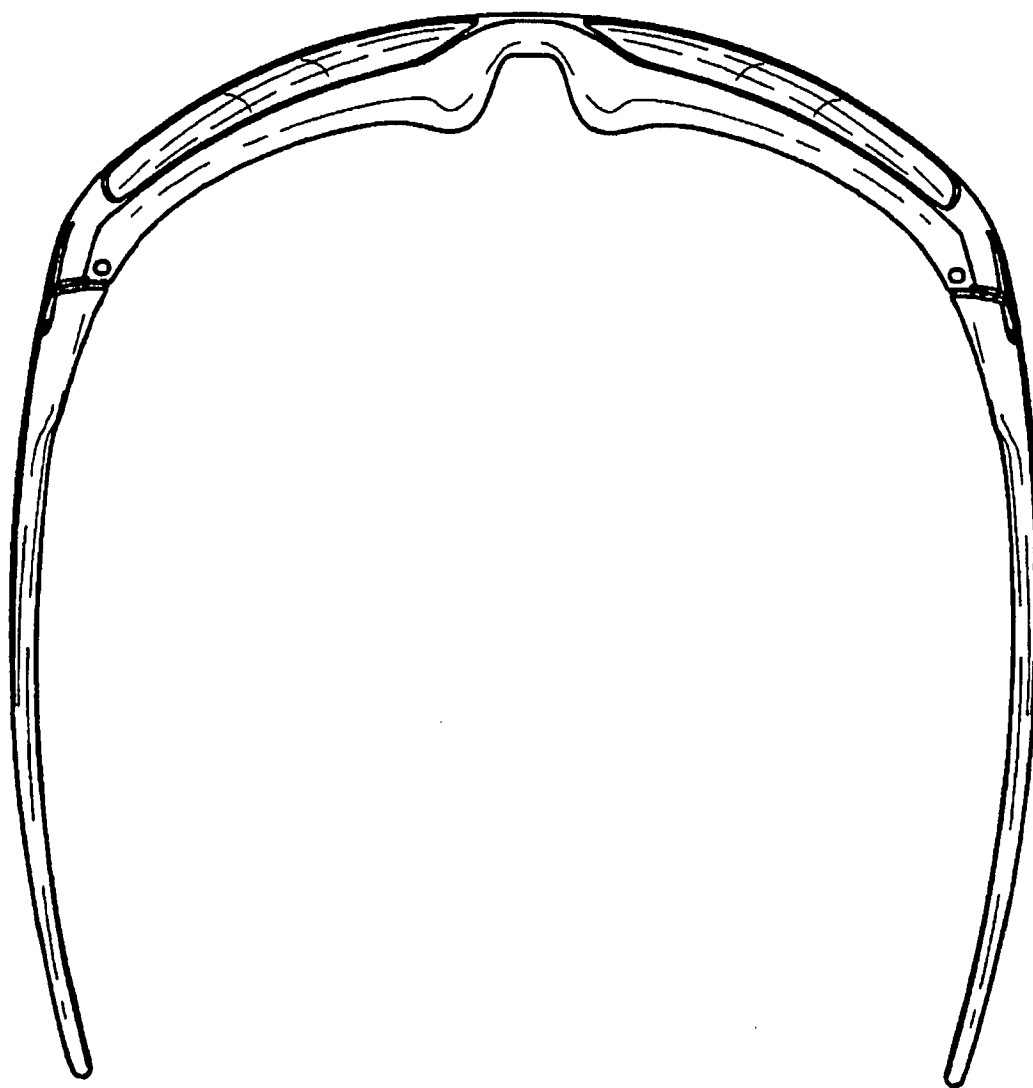


FIG. 6

(12) United States Design Patent
Jannard et al.**(10) Patent No.: US D554,689 S****(45) Date of Patent: ** Nov. 6, 2007****(54) EYEGLASS FRAME****(75) Inventors:** James H. Jannard, Spieden Island, WA (US); Hans Karsten Moritz, Foothill Ranch, CA (US); Colin Baden, Irvine, CA (US)**(73) Assignee:** Oakley, Inc., Foothill Ranch, CA (US)**(**) Term:** 14 Years**(21) Appl. No.:** 29/272,776**(22) Filed:** Feb. 15, 2007**Related U.S. Application Data****(62)** Division of application No. 29/227,719, filed on Apr. 13, 2005.**(51) LOC (8) Cl. 16-06****(52) U.S. Cl. D16/326****(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, 351/156, 61, 114-119, 121-123; 2/426-432, 2/447-449, 441, 436, 434-437**

See application file for complete search history.

(56) References Cited**U.S. PATENT DOCUMENTS**

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D209,862 S	1/1968	McCracken	
D210,418 S *	3/1968	Bloch	D16/326
D218,569 S *	9/1970	McCracken	D16/325
D264,094 S *	4/1982	Morris	D16/325
D268,683 S	4/1983	Tenny	
D285,020 S	8/1986	Schmidthaler	
D372,726 S	8/1996	Simioni	
D390,589 S	2/1998	Simioni	
D397,351 S	8/1998	Simioni	

D399,238 S *	10/1998	Simioni	D16/326
D407,099 S	3/1999	Wang	
D414,796 S	10/1999	Arnette	
D420,035 S *	2/2000	Hartman	D16/325
D449,641 S *	10/2001	Arnette	D16/326
D488,499 S *	4/2004	Mage	D16/326
D500,781 S *	1/2005	Mage	D16/326
D518,847 S *	4/2006	Teng	D16/326
D532,033 S *	11/2006	Mangum	D16/326
D534,572 S *	1/2007	Teng	D16/326
D534,573 S *	1/2007	Mage	D16/326
D536,028 S *	1/2007	Paulson	D16/326
D537,467 S *	2/2007	Teng	D16/326

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Sunglass Hut, p. 5, 2002.*

U.S. Appl. No. 29/227,719, filed Apr. 13, 2005, Jannard, Pending application.

* cited by examiner

Primary Examiner—Raphael Barkai*(74) Attorney, Agent, or Firm*—Gregory K. Nelson**(57) CLAIM**

The ornamental design for an eyeglass frame, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of the eyeglass frame of the present invention;

FIG. 2 is a left-side elevational view thereof, the right-side elevational view being a mirror image thereof;

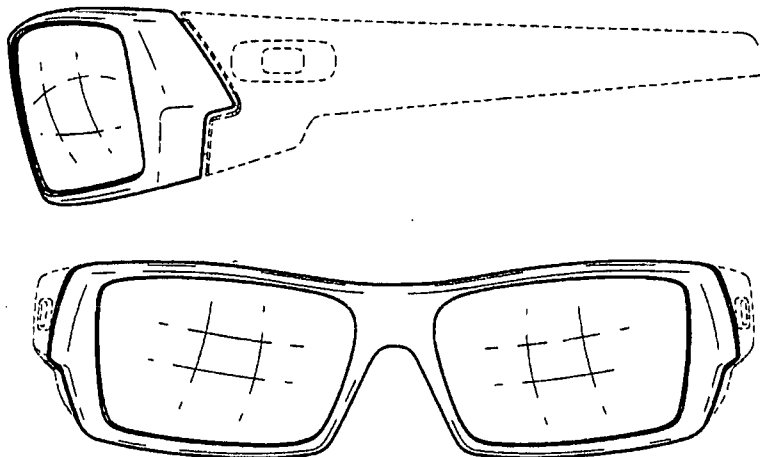
FIG. 3 is a front elevational view thereof;

FIG. 4 is a rear elevational view thereof;

FIG. 5 is a top elevational view thereof; and,

FIG. 6 is a bottom plan view thereof.

Phantom lining, where utilized, is for illustrative purposes only and is not intended to limit the claimed design to the features shown in phantom.

1 Claim, 4 Drawing Sheets

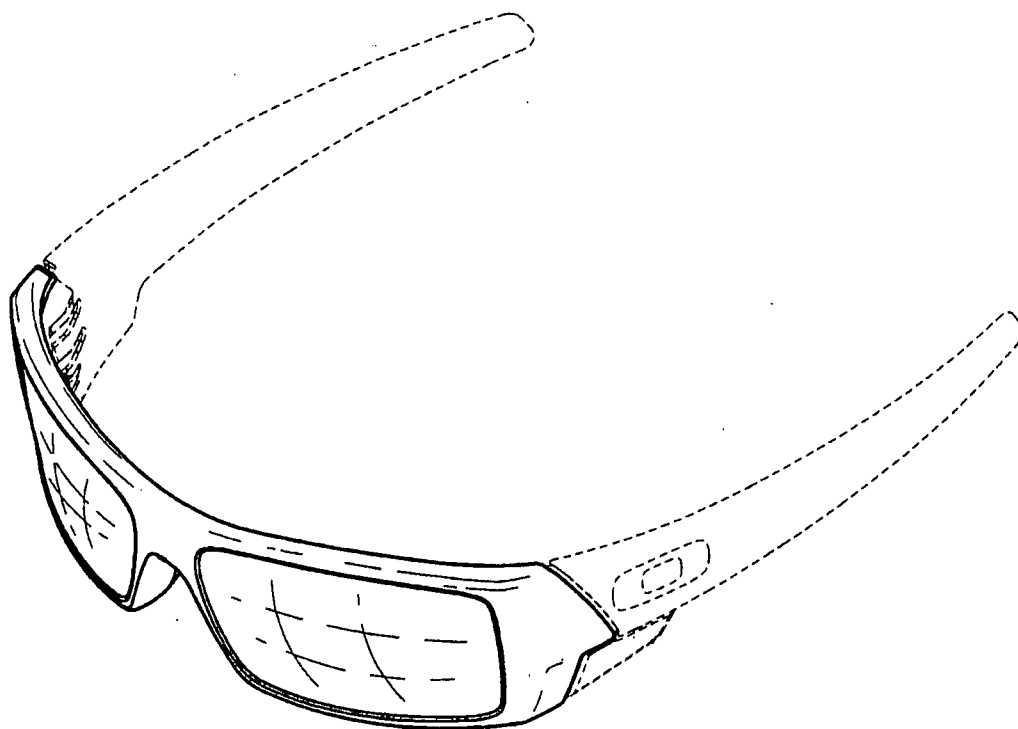


FIG. 1

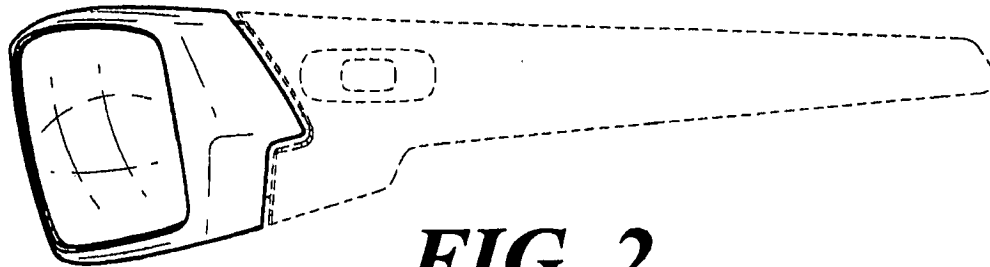


FIG. 2

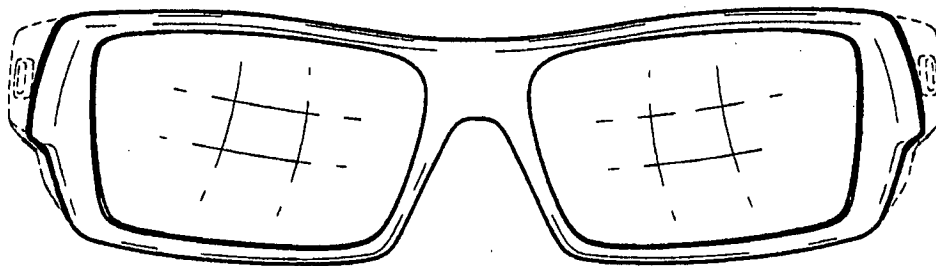


FIG. 3

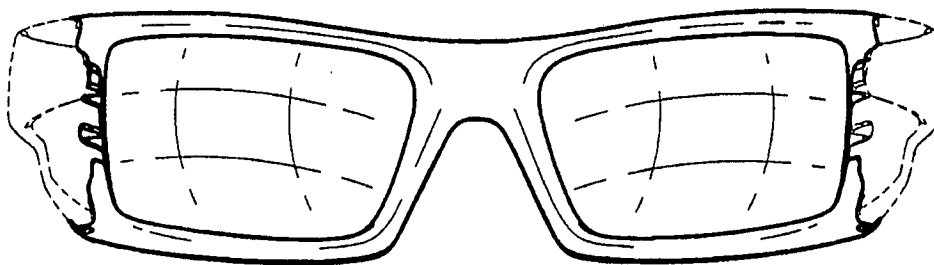


FIG. 4

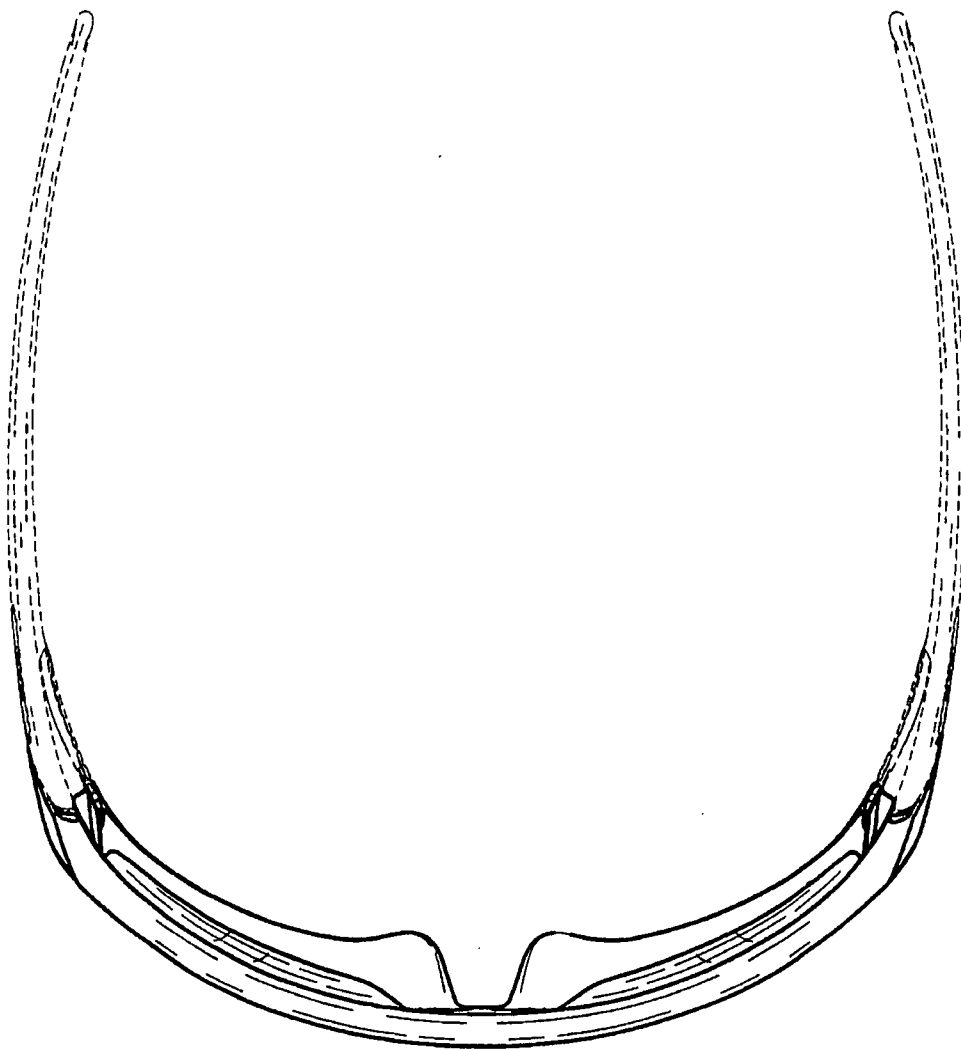


FIG. 5

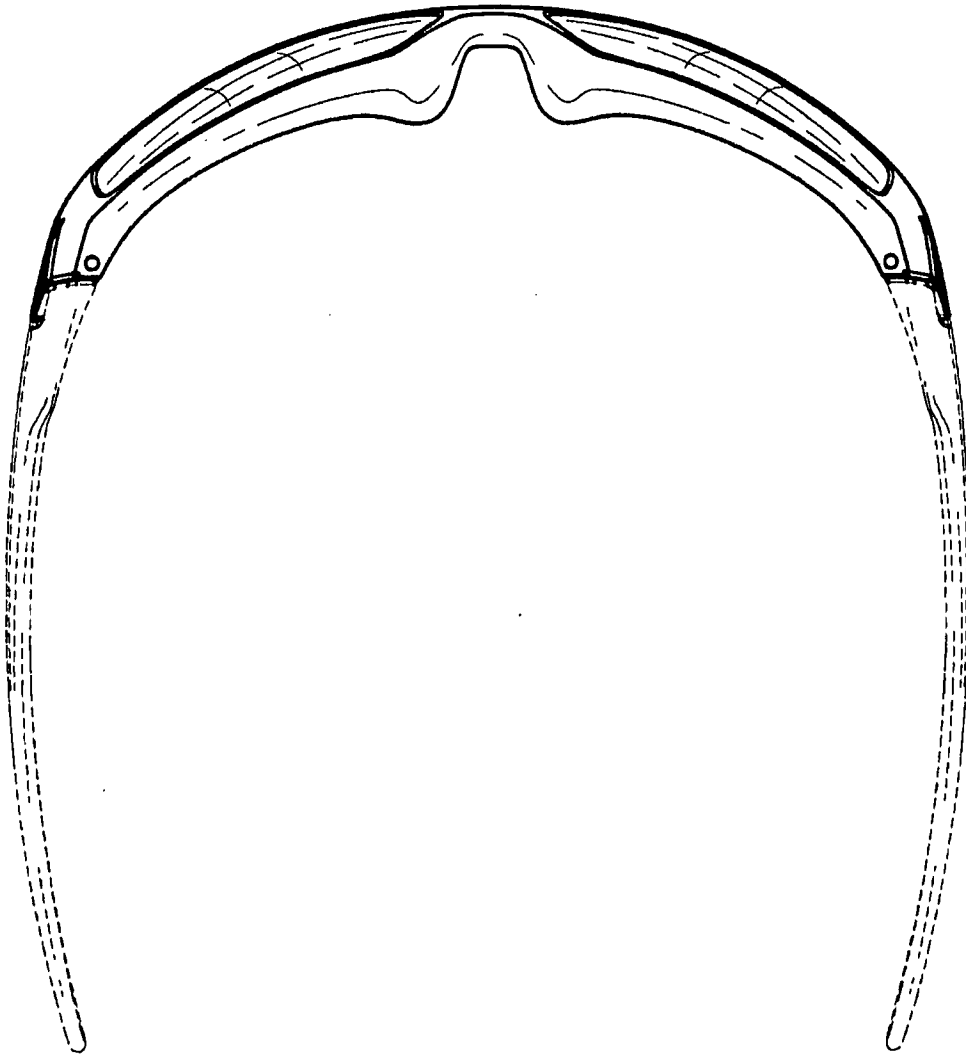


FIG. 6



US00D556818S

(12) **United States Design Patent** (10) **Patent No.:** **US D556,818 S**
Jannard et al. (45) **Date of Patent:** **** Dec. 4, 2007**

(54) **EYEGLASS COMPONENTS**

(75) Inventors: **James H. Jannard**, Spieden Island, WA (US); **Hans Karsten Moritz**, Foothill Ranch, CA (US); **Colin Baden**, Irvine, CA (US)

(73) Assignee: **Oakley, Inc.**, Foothill Ranch, CA (US)

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

(21) Appl. No.: **29/272,777**

(22) Filed: **Feb. 15, 2007**

Related U.S. Application Data

(62) Division of application No. 29/227,719, filed on Apr. 13, 2005, now Pat. No. Des. 547,794.

(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, 351/156, 61, 114-119, 121-123; 2/426-432, 2/447-449, 441, 436, 434-437**
 See application file for complete search history.

(56) **References Cited****U.S. PATENT DOCUMENTS**

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D199,150 S	9/1964	Carmichael
D202,658 S	10/1965	Petitto
D209,862 S	1/1968	McCracken
D268,683 S	4/1983	Tenny
D285,020 S	8/1986	Schmidthaler
D372,726 S	8/1996	Simioni
D390,589 S	2/1998	Simioni
D397,351 S	8/1998	Simioni
D407,099 S	3/1999	Wang
D414,796 S	10/1999	Arnette

D481,063 S	*	10/2003	Lane	D16/326
D500,781 S	*	1/2005	Mage	D16/335
D534,572 S	*	1/2007	Teng	D16/337
D535,318 S	*	1/2007	Teng	D16/335
D535,319 S	*	1/2007	Chuang	D16/326
D536,026 S	*	1/2007	Bruck	D16/326
D537,467 S	*	2/2007	Teng	D16/326

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Pending U.S. Appl. No. 29/227,719, filed Apr. 13, 2005, Jannard.

* cited by examiner

Primary Examiner—Raphael Barkai

(74) *Attorney, Agent, or Firm*—Gregory K. Nelson

(57) **CLAIM**

The ornamental design for an eyeglass components, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of the eyeglass components of the present invention;

FIG. 2 is a perspective view thereof;

FIG. 3 is a front elevational view thereof;

FIG. 4 is a lateral left-side elevational view thereof, the lateral right-side elevational view being a mirror image thereof;

FIG. 5 is a medial left-side elevational view thereof, the medial right-side elevational view being a mirror image thereof;

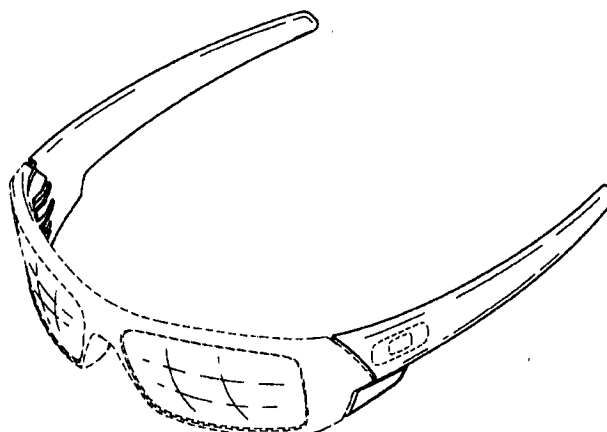
FIG. 6 is a rear elevational view thereof;

FIG. 7 is a bottom plan view thereof; and,

FIG. 8 is a top elevational view thereof.

Phantom lining, where utilized, is for illustrative purposes only and is not intended to limit the claimed design to the features shown in phantom.

1 Claim, 5 Drawing Sheets



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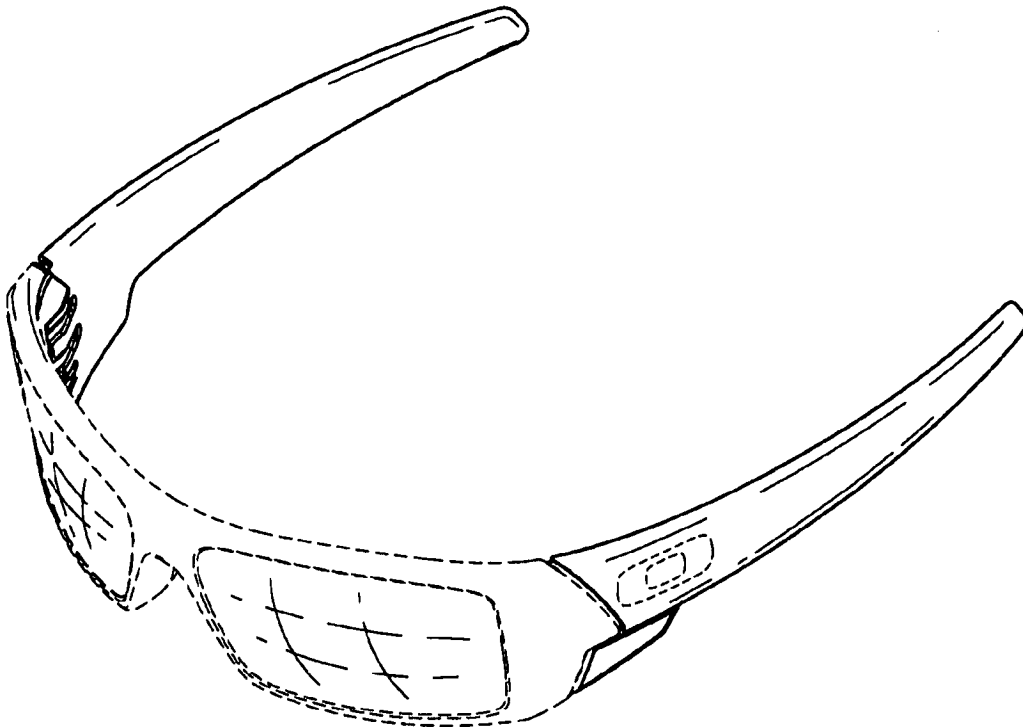


FIG. 1

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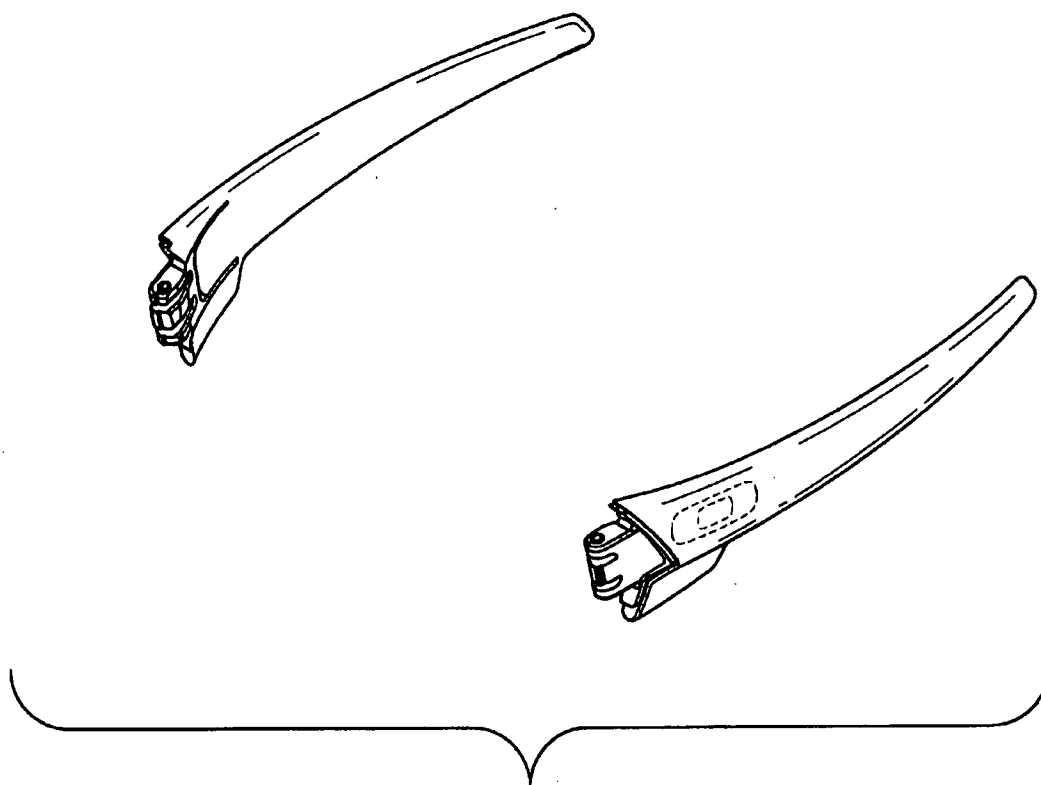


FIG. 2

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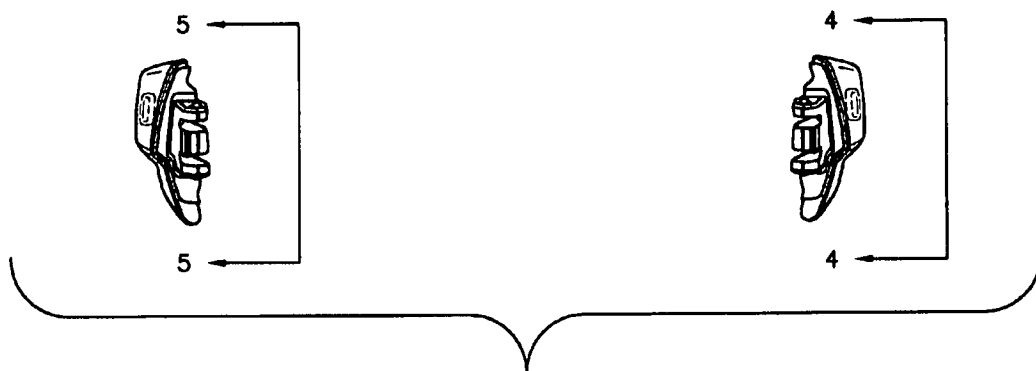


FIG. 3



FIG. 4



FIG. 5

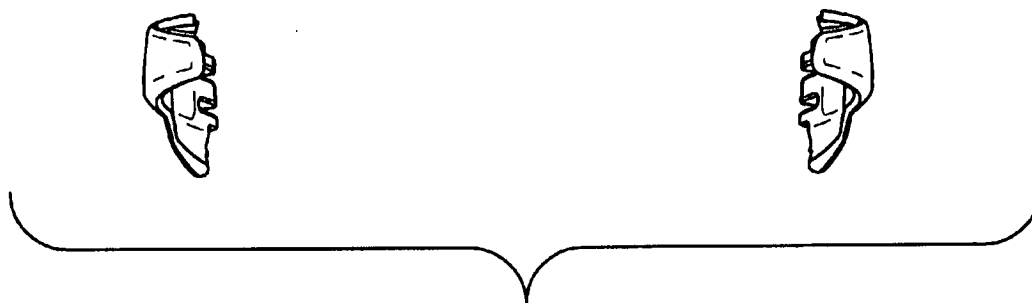


FIG. 6

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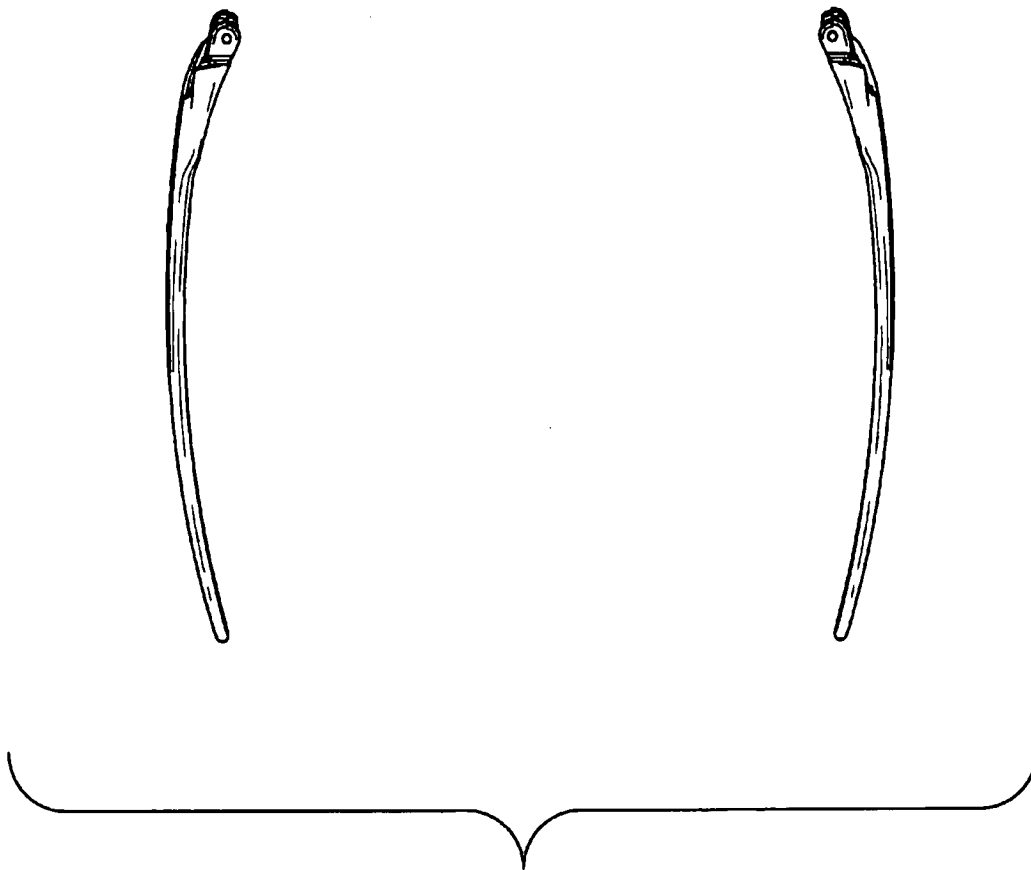


FIG. 7

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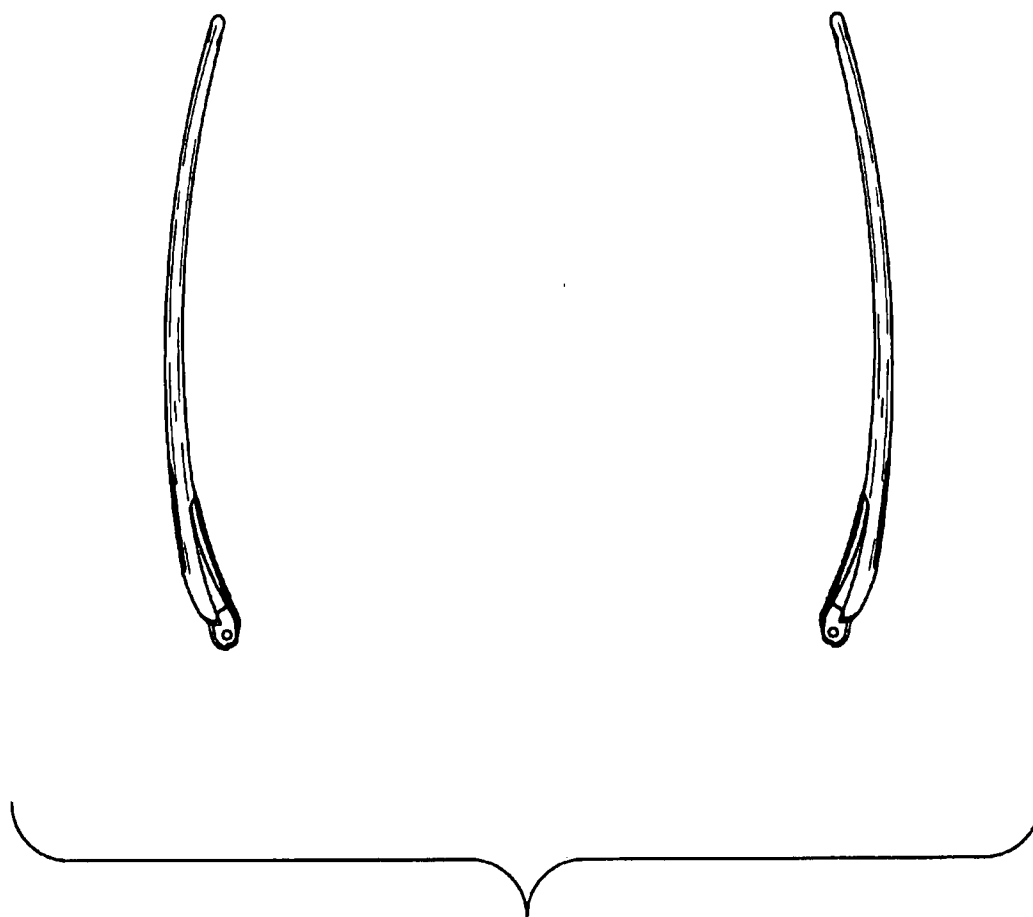


FIG. 8



US00D572749S

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

(10) **Patent No.:** **US D572,749 S**
(45) **Date of Patent:** **** Jul. 8, 2008**

(54) **EYEGLASS FRONT**

(75) Inventor: **Peter Yee**, Irvine, CA (US)

(73) Assignee: **Oakley, Inc.**, Foothill Ranch, CA (US)

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

(21) Appl. No.: **29/288,926**

(22) Filed: **Jun. 27, 2007**

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D414,796 S	10/1999	Arnette	
D423,548 S	4/2000	Yee et al.	
D424,598 S *	5/2000	Simioni	D16/338
D425,103 S *	5/2000	Yee et al.	D16/326
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D549,268 S *	8/2007	Daems et al.	D16/321
D549,764 S *	8/2007	Teng	D16/326
D557,325 S *	12/2007	Jannard et al.	D16/326
D564,572 S *	3/2008	Yee et al.	D16/335

Related U.S. Application Data

(62) Division of application No. 29/238,943, filed on Sep. 21, 2005, now Pat. No. Des. 558,816.

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

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

(58) **Field of Classification Search** D16/101,
D16/300-342; D29/109-110; D24/110.2;
351/41, 44, 51-52, 62, 158, 92, 103-123,
351/140, 153; 2/426-432, 447-449, 441,
2/434-437

See application file for complete search history.

(56) **References Cited**

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D199,150 S	9/1964	Carmichael	
D202,658 S	10/1965	Pettito	
D204,812 S	5/1966	Shindler	
D209,862 S	1/1968	Carmichael	
D268,683 S	4/1983	Tenny	
D285,020 S	8/1986	Schmidthaler	
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D390,589 S	2/1998	Simioni	
D397,350 S	8/1998	Jannard et al.	
D397,351 S	8/1998	Simioni	
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Oakley, Inc. "Official Eyewear Catalog" (2002), p. 15, Foothill Ranch, CA.

* cited by examiner

Primary Examiner—Raphael Barkai

(74) *Attorney, Agent, or Firm*—Gregory K. Nelson

(57) **CLAIM**

The ornamental design for an eyeglass front, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of the eyeglass components of the present invention;

FIG. 2 is a front elevational view thereof;

FIG. 3 is a rear elevational view thereof;

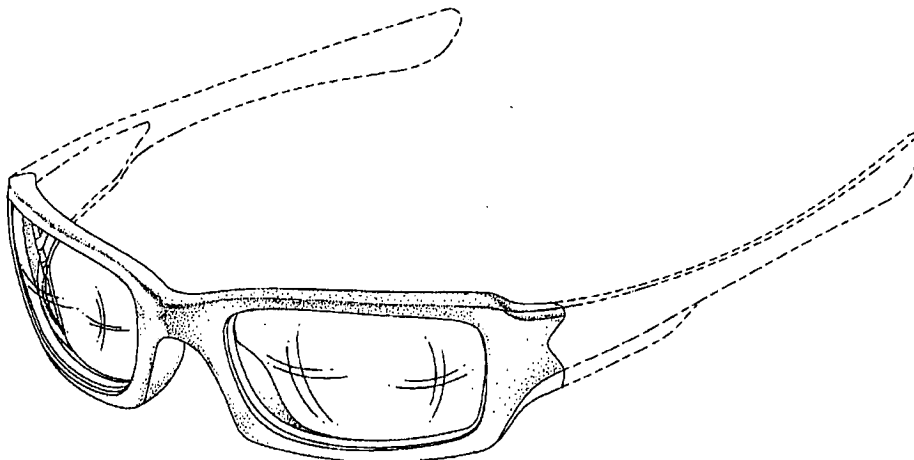
FIG. 4 is a left-side elevational view thereof, the right-side elevational view being a mirror image thereof;

FIG. 5 is a top elevational view thereof; and,

FIG. 6 is a bottom plan view thereof.

The broken lines shown in FIG. 1 are for illustrative purposes only and form no part of the claimed design

1 Claim, 3 Drawing Sheets



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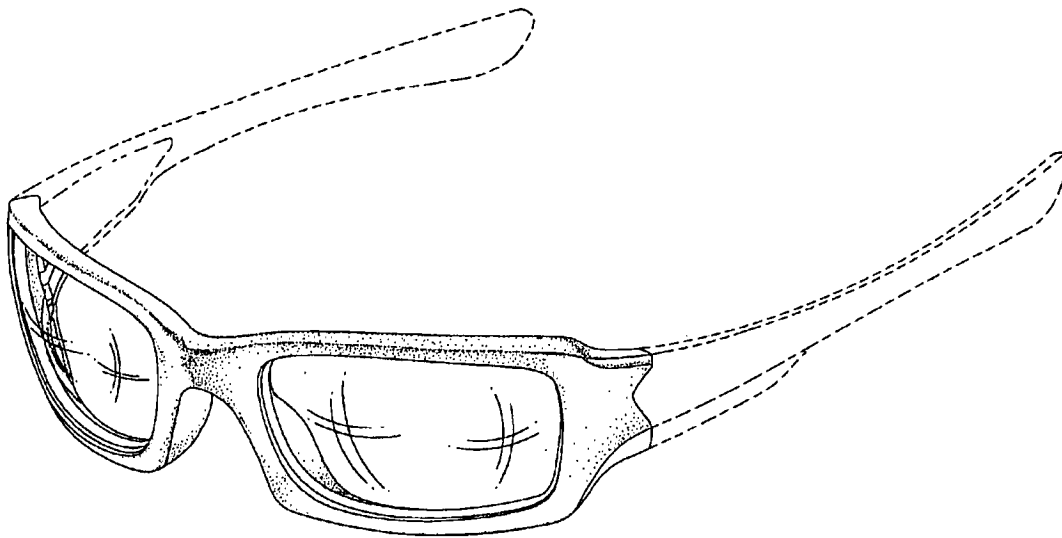


FIG. 1

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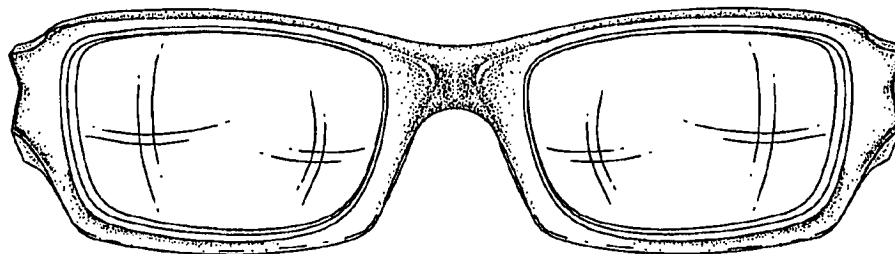


FIG. 2

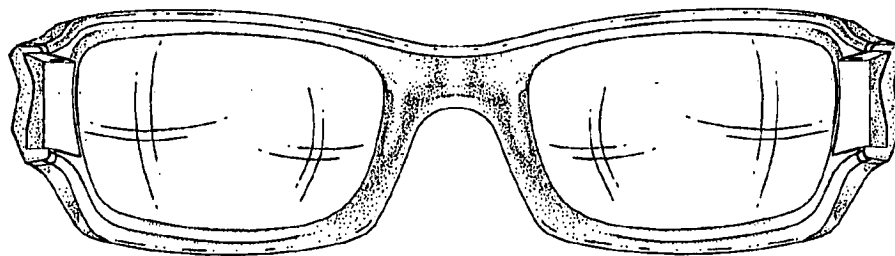


FIG. 3

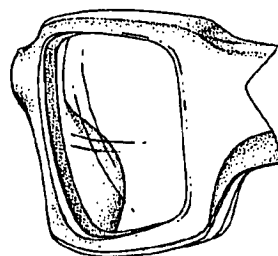


FIG. 4

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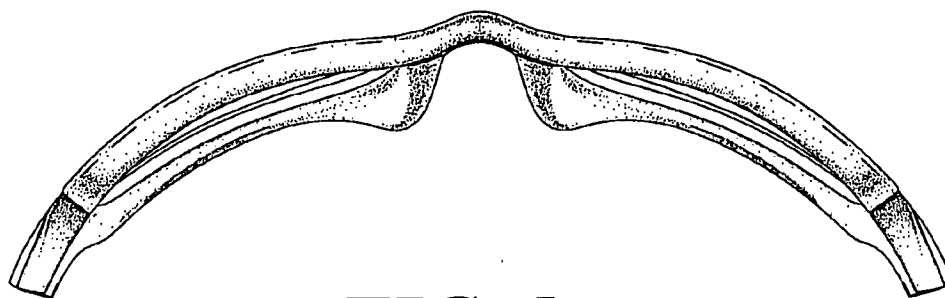


FIG. 5

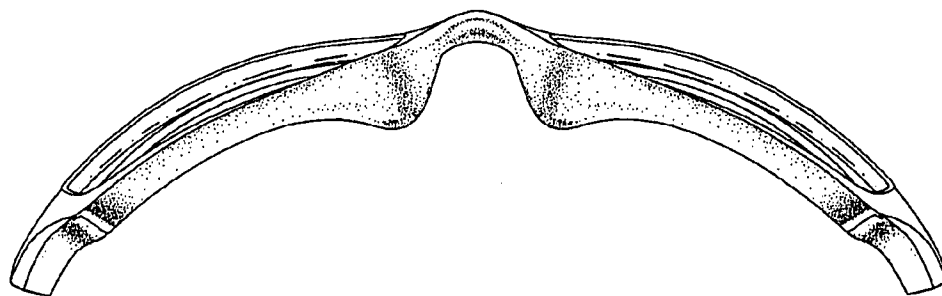


FIG. 6

US00D581443S

(12) **United States Design Patent**
Jannard et al.(10) **Patent No.:** **US D581,443 S**(45) **Date of Patent:** **** Nov. 25, 2008**(54) **EYEGLASSES COMPONENTS**(75) Inventors: **James H. Jannard**, Spieden Island, WA (US); **Lek Thixton**, Orcas, WA (US); **Colln Baden**, Irvine, CA (US); **Peter Yee**, Irvine, CA (US)(73) Assignee: **Oakley, Inc.**, Foothill Ranch, CA (US)(**) **Term:** **14 Years**(21) **Appl. No.:** **29/301,902**(22) **Filed:** **Mar. 21, 2008****Related U.S. Application Data**

(62) Division of application No. 29/266,547, filed on Sep. 22, 2006, now Pat. No. Des. 569,412.

(51) **LOC (8) Cl.** **16-06**(52) **U.S. Cl.** **D16/314**(58) **Field of Classification Search** D16/101,
D16/300-342; D29/109-110; D24/110.2;
351/41, 44, 51-52, 62, 158, 92, 103-123,
351/140, 153; 2/426-432, 447-449, 441,
2/434-437

See application file for complete search history.

(56) **References Cited****U.S. PATENT DOCUMENTS**

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D178,178 S	7/1956	Fleming	
D293,450 S	12/1987	Jannard	
D323,333 S	1/1992	Jannard et al.	
D324,394 S	3/1992	Jannard	
D329,442 S	9/1992	Jannard	
D330,035 S	10/1992	Jannard	
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D399,866 S	10/1998	Yee	
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D452,522 S *	12/2001	Chiou	D16/330
D458,624 S	6/2002	Soper	
D473,892 S	4/2003	Thixton et al.	
D529,066 S *	9/2006	Matera	D16/315

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U.S. Appl. No. 29/288,604, filed Jun. 15, 2007.

U.S. Appl. No. 29/288,605, filed Jun. 15, 2007.

U.S. Appl. No. 29/288,606, filed Jun. 15, 2007.

* cited by examiner

Primary Examiner—Raphael Barkai(74) *Attorney, Agent, or Firm*—Gregory K. Nelson(57) **CLAIM**

The ornamental design for eyeglass components, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of the eyeglass components of the present invention;

FIG. 2 is a front elevational view thereof;

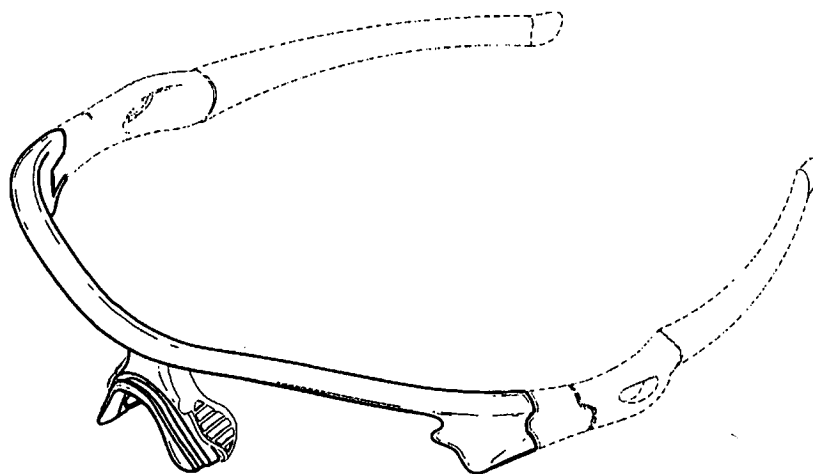
FIG. 3 is a rear elevational view thereof;

FIG. 4 is a left-side elevational view thereof, the right-side elevational view being a mirror image thereof;

FIG. 5 is a top elevational view thereof; and,

FIG. 6 is a bottom plan view thereof.

Phantom lining, where utilized, is for illustrative purposes only and is not intended to limit the claimed design to the features shown in phantom.

1 Claim, 3 Drawing Sheets

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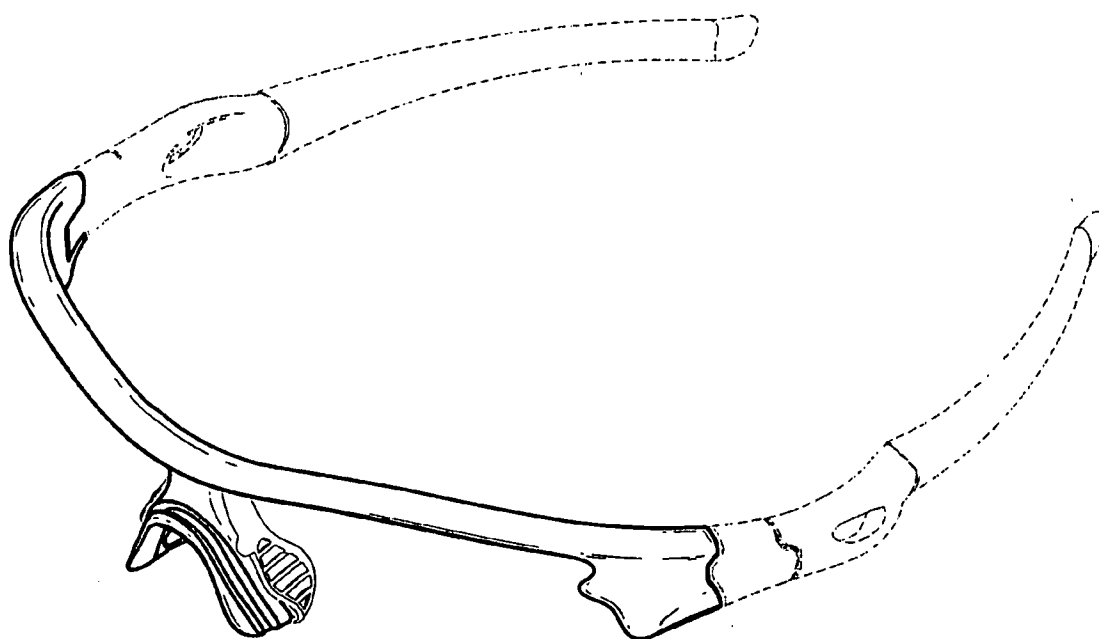


FIG. 1

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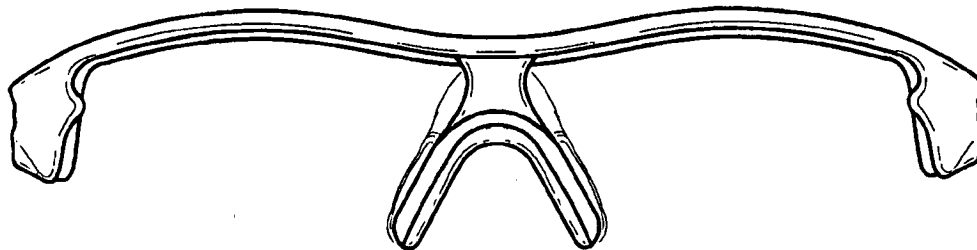


FIG. 2

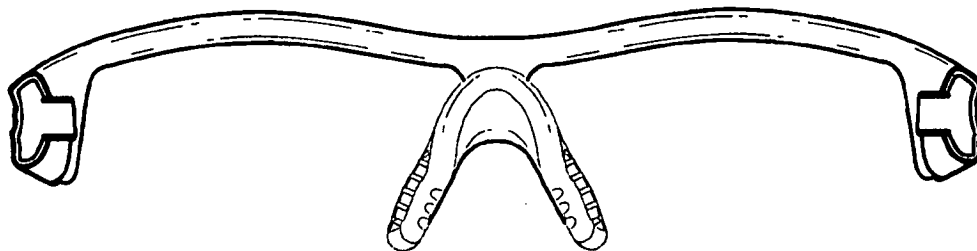


FIG. 3

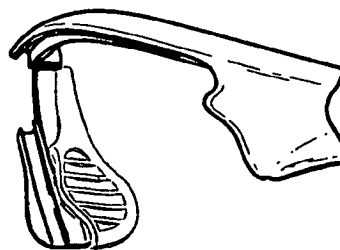


FIG. 4

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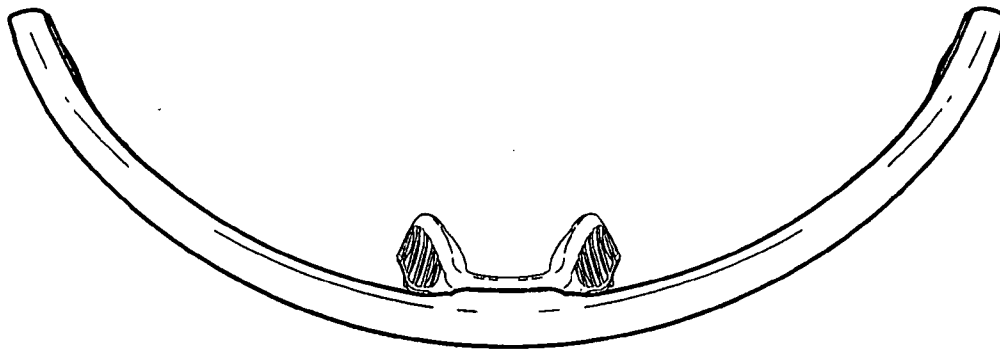


FIG. 5

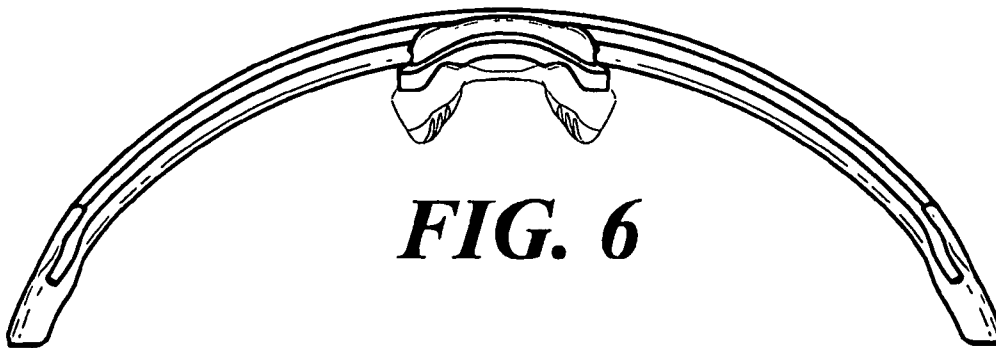


FIG. 6



US00D581444S

(12) **United States Design Patent**
Jannard et al.

(10) **Patent No.:** **US D581,444 S**
 (45) **Date of Patent:** **** Nov. 25, 2008**

(54) **EYEGLASS COMPONENTS**

(75) Inventors: **James H. Jannard**, Spieden Island, WA (US); **Lek Thixton**, Orcas, WA (US); **Collin Baden**, Irvine, CA (US); **Peter Yee**, Irvine, CA (US)

(73) Assignee: **Oakley, Inc.**, Foothill Ranch, CA (US)

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

(21) Appl. No.: **29/301,914**

(22) Filed: **Mar. 21, 2008**

Related U.S. Application Data

(62) Division of application No. 29/266,547, filed on Sep. 22, 2006, now Pat. No. Des. 569,412.

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

(52) **U.S. Cl.** **D16/314; D16/321; D16/335**

(58) **Field of Classification Search** **D16/101, D16/300-342; D29/109-110; D24/110.2; 351/41, 44, 51-52, 62, 158, 92, 103-123, 351/140, 153; 2/426-432, 447-449, 441, 2/434-437**

See application file for complete search history.

(56) **References Cited**

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D178,178 S	7/1956	Fleming
D293,450 S	12/1987	Jannard
D323,333 S	1/1992	Jannard et al.
D324,394 S	3/1992	Jannard
D329,442 S	9/1992	Jannard
D330,035 S	10/1992	Jannard
D331,587 S	12/1992	Jannard et al.
5,249,001 A	9/1993	Jannard
D344,742 S	3/1994	Jannard
D354,501 S	1/1995	Jannard
5,610,668 A	3/1997	Mage
D384,364 S	9/1997	Yee

5,760,868 A	6/1998	Jannard et al.	
D399,519 S	10/1998	Yee	
D399,866 S	10/1998	Yee	
D401,607 S	11/1998	Miniutti	
D410,484 S	6/1999	Jannard et al.	
6,233,342 B1	5/2001	Fernandez	
D458,624 S	6/2002	Soper	
D473,892 S	4/2003	Thixton et al.	
D497,380 S *	10/2004	Thixton et al.	D16/326
D508,515 S *	8/2005	Yee et al.	D16/335
D513,761 S *	1/2006	Yee et al.	D16/335
D529,066 S *	9/2006	Matera	D16/315

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 U.S. Appl. No. 29/288,604, filed Jun. 15, 2007.
 U.S. Appl. No. 29/288,605, filed Jun. 15, 2007.
 U.S. Appl. No. 29/288,606, filed Jun. 15, 2007.

* cited by examiner

Primary Examiner—Raphael Barkai

(74) *Attorney, Agent, or Firm*—Gregory K. Nelson

(57) **CLAIM**

The ornamental design for eyeglass components, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of the eyeglass components of the present invention;

FIG. 2 is a front elevational view thereof;

FIG. 3 is a lateral left-side elevational view thereof, the lateral right-side elevational view being a mirror image thereof;

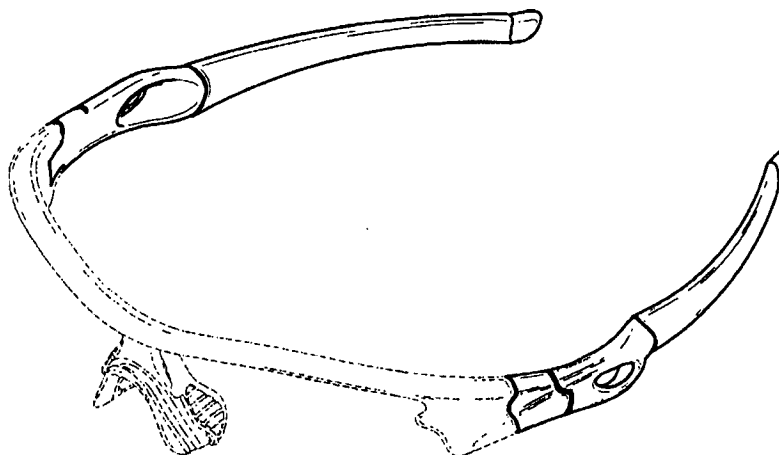
FIG. 4 is a rear elevational view thereof;

FIG. 5 is a top elevational view thereof; and,

FIG. 6 is a bottom plan view thereof.

Phantom lining, where utilized, is for illustrative purposes only and is not intended to limit the claimed design to the features shown in phantom.

1 Claim, 4 Drawing Sheets



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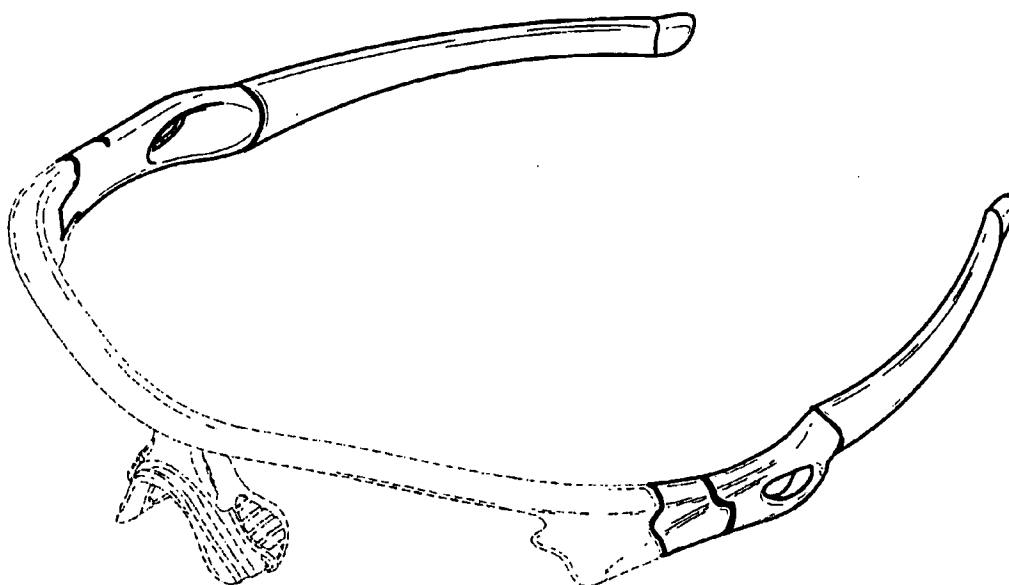


FIG. 1

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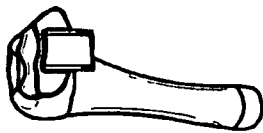


FIG. 2



FIG. 3

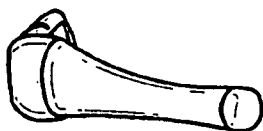


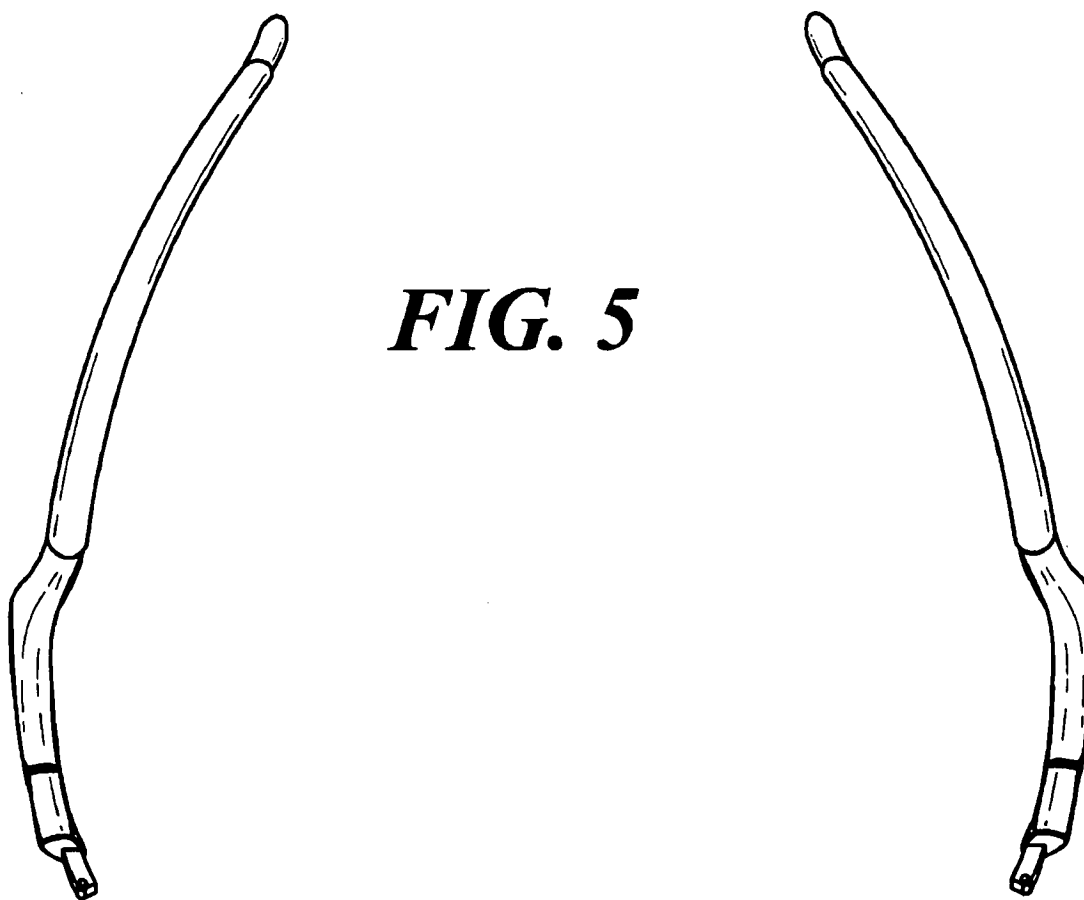
FIG. 4

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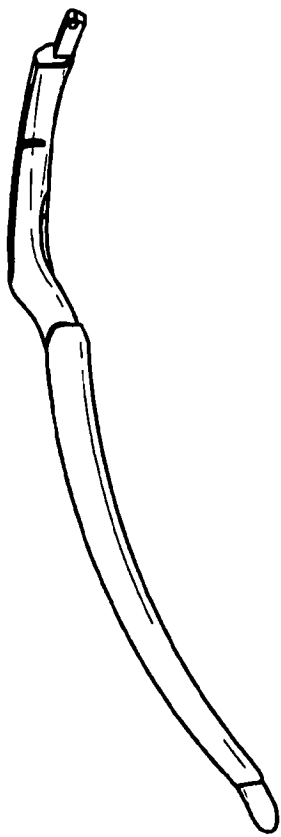


FIG. 6

