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RICHARD W. WIEKING
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

C08 03538 PVT

DIOPTICS MEDICAL PRODUCTS, INC., a California Corporation

Plaintiff,

vs.

IDEAVILLAGE PRODUCTS CORP., dba HD VISION, a New Jersey Corporation

Defendant.

Case No.

COMPLAINT FOR PATENT INFRINGEMENT

JURY TRIAL DEMANDED

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

Plaintiff Dioptics Medical Products, Inc. ("Dioptics"), for its claims for relief herein against defendant IdeaVillage Products Corp. dba HD Vision ("IdeaVillage"), avers as follows:

PARTIES

1. Dioptics is a corporation organized and existing under the laws of the State of California with its principal place of business in San Luis Obispo, California.

2. On information and belief, IdeaVillage Products Corp. dba HD Vision was and is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business at 155 Route 46 W., 4th Floor, Wayne, New Jersey, 07470.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a)

because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

4. Venue is proper in this federal district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b) in that IdeaVillage has done business in California and in this judicial district, has committed acts of infringement nationwide and in this judicial district, and continues to commit acts of infringement nationwide and in this judicial district, entitling Dioptics to relief.

INTRADISTRICT ASSIGNMENT

5. This is an Intellectual Property Action and shall therefore be assigned on a district-wide basis in accordance with Local Rule 3-2(c).

INFRINGEMENT OF U.S. DESIGN PATENT NO. D532,814

6. On November 28, 2006, United States Design Patent No. D532,814 (the "`814 patent") was duly and legally issued for an invention entitled "Eyeglasses." Dioptics was assigned the `814 patent and Dioptics continues to hold all rights and interest in the `814 patent. Exhibit A is a true and correct copy of the `814 patent.

7. IdeaVillage has infringed and continues to infringe the `814 patent. Its infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of infringing sunglasses and inducement of others to manufacture, use, sell, import, and/or offer to sell such sunglasses, including but not limited to certain of IdeaVillage's HD Vision Wraparounds sunglass products. IdeaVillage is therefore liable for infringement of the `814 patent pursuant to 35 U.S.C. § 271.

8. Dioptics is informed and believes that IdeaVillage has sold and/or made offers to sell products infringing the `814 patent nationwide via the Internet and in this judicial district.

9. IdeaVillage's infringement of Dioptics's exclusive rights under the `814 patent have harmed and will continue to harm Dioptics, causing irreparable injury for which there is no adequate remedy at law unless enjoined by this Court.

10. Dioptics has complied with the requirements of 35 U.S.C. § 287 (a) and is entitled to collect damages for infringement occurring prior to suit with respect to the `814 patent.

11. Upon information and belief, IdeaVillage's infringing products were directly or indirectly copied from Dioptics products bearing the `814 patent's mark. Thus, on information and

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belief, IdeaVillage's infringement of the `814 patent is willful and deliberate, entitling Dioptics to attorney's fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

INFRINGEMENT OF U.S. DESIGN PATENT NO. D434,789

12. On December 5, 2000, United States Design Patent No. D434,789 (the "`789 patent") was duly and legally issued for an invention entitled "Eyeglasses." Dioptics was assigned the `789 patent and Dioptics continues to hold all rights and interest in the `789 patent. Exhibit B is a true and correct copy of the `789 patent.

13. IdeaVillage has infringed and continues to infringe the `789 patent. Its infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of infringing sunglasses and inducement of others to manufacture, use, sell, import, and/or offer to sell such sunglasses, including but not limited to certain of IdeaVillage's HD Night Vision Wraparounds sunglass products. IdeaVillage is therefore liable for infringement of the `789 patent pursuant to 35 U.S.C. § 271.

14. Dioptics is informed and believes that IdeaVillage has sold and/or made offers to sell products infringing the `789 patent nationwide via the Internet and in this judicial district.

15. IdeaVillage's infringement of Dioptics's exclusive rights under the `789 patent have harmed and will continue to harm Dioptics, causing irreparable injury for which there is no adequate remedy at law unless enjoined by this Court.

16. Dioptics has complied with the requirements of 35 U.S.C. § 287 (a) and is entitled to collect damages for infringement occurring prior to suit with respect to the '789 patent.

17. On information and belief, IdeaVillage's infringing products were directly or indirectly copied from Dioptics products bearing the `789 patent's mark. Thus, on information and belief, IdeaVillage's infringement of the `789 patent is willful and deliberate, entitling Dioptics to attorney's fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Dioptics Medical Products, Inc. requests entry of judgment in its favor and against IdeaVillage as follows:

a. Declaring that IdeaVillage has infringed U.S. Design Patent Nos. D532,814 and

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D434,789;

b. Preliminarily and permanently enjoining IdeaVillage, its officers, agents, employees, and those acting in privity with them, from further infringement, contributory infringement and/or inducing the infringement of .S. Design Patent Nos. D532,814 and D434,789;

c. Awarding all profits pursuant to 35 U.S.C. § 289 for the design patents in suit, damages (including punitive damages) according to proof pursuant to 35 U.S.C. § 284, and treble damages and attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law for all patents in suit; and

d. Granting other such costs and further relief as the Court may deem just and proper.

Dated: July 23, 2008

Winston & Strawn

By: _____
David S. Bloch
Andrew P. Bridges
Nicole M. Norris
Attorneys for Plaintiff
DIOPTICS MEDICAL PRODUCTS, INC.

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San Francisco, CA 94111-5894

JS 44 (Rev. 12/07) (cand rev 1-08)

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 OF THE FORM.)

I. (a) PLAINTIFFS
Dioptics Medical Products, Inc.

DEFENDANTS
IDEAVILLAGE PRODUCTS CORP., dba HD VISION

(b) County of Residence of First Listed Plaintiff San Luis Obispo County, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Passaic County, New Jersey
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

E-FILING

(c) Attorney's (Firm Name, Address, and Telephone Number)
David S. Bloch
Winston & Strawn LLP
101 California Street
San Francisco, CA 94111

Attorneys (If Known)
Anand V. Khubani
21 Law Drive
Fairfield, NJ 07004

ADR

C08 03538 PVT

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 (For Diversity Cases Only) and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State.	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury — Med. Malpractice
- ☐ 365 Personal Injury — Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities -- Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R.& Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☒ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA(1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. 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

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity):**
35U.S.C. §271
Brief description of cause:
Patent infringement

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23 **DEMAND $**
CHECK YES only if demanded in complaint: **JURY DEMAND:** ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY
PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)
☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE

DATE
July 23, 2008

SIGNATURE OF ATTORNEY OF RECORD

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