

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ICON EYEWEAR, INC.,  
Plaintiff,

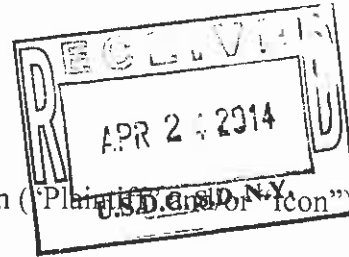
v.

JUDGE HELLERSTEIN

14 CV 2910  
COMPLAINT

Jury Trial Demanded

ILLINI LINE, LTD.,  
Defendant.



Plaintiff Icon Eyewear, Inc., a New Jersey corporation (Plaintiff "Icon") by their attorneys, complain against Illini Line, Ltd., ("Defendant" or "Illini") an Illinois corporation, alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

**THE PARTIES**

2. Icon is a company incorporated in New Jersey and has its registered office at 75 Seaview Drive, Secaucus, New Jersey 07094 and a place of business located at 1001 6<sup>th</sup> Avenue, Suite 302, New York, New York 10018.

3. Upon information and belief, Illini is a domestic corporation having a principal place of business in Vernon Hills, Illinois, and a mailing address of 450 E Bunker Court, Vernon Hills,

Illinois 60061.

4. Upon information and belief, Illini is in the business of manufacturing, developing, offering for sale and selling in bulk a wide range of products including eyewear to distributors throughout the United States.

#### **JURISDICTION AND VENUE**

5. This suit arises under the patent laws of the United States, 35 U.S.C. § 101 et seq. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Illini because Illini is transacting business in this judicial district.

7. Venue is proper in this judicial district as to Illini under 28 U.S.C. § 1391 (b) and (c), and 28 U.S.C. § 1400(b).

#### **THE ASSERTED PATENT**

8. United States Patent No. 7,367,670 (the '670 patent) was duly and legally issued on May 6, 2008 to Travis E. Duane ("Duane") for an invention entitled "Eyewear Bottle Opener" and is still in force. A true copy of the '670 patent is attached to this Complaint as Exhibit A.

9. Icon is the owner of all right, title and interest in, to and under the '670 patent by assignment from Duane.

#### **BACKGROUND**

10. The '670 patent is directed to an eyewear product having a bottle opener incorporated in the earpiece of the frame. The invention of the '670 patent has been marketed and sold by Icon in

the United States under the designation "Bottle Opener Sunglasses".

11. Illini has received written notification of the '670 patent from Icon and has been requested to desist from the infringement thereof. A true copy of said written notification is attached to this Complaint as Exhibit B. Images of the infringing eyewear product of Illini are attached to this Complaint as Exhibit C.

12. Illini has responded that it intends to continue making and selling the infringing eyewear product. A true copy of said written response is attached to this Complaint as Exhibit D.

**COUNT I**  
**(Patent Infringement Against Icon by Illini)**

13. Plaintiff realleges each and every one of the foregoing paragraphs 1-12 of this Complaint.

14. Illini has offered for sale, sold, and manufactured, and continues to offer for sale, sell, and manufacture, eyewear products in the United States, which infringe the '670 patent.

15. Illini has infringed the '670 patent and/or has contributed to the infringement by others and/or has induced others to infringe and, unless enjoined, will continue to infringe and/or contribute to the infringement by others and/or induce others to infringe the '670 patent by selling, offering to sell, and manufacturing products covered by the claims of the '670 patent.

16. The infringement by Illini, is set forth herein, has been willful.

17. Icon has been damaged by Illini's infringement of the '670 patent in an amount to be determined at trial.

18. The infringement of the '670 patent by Illini has caused Icon to suffer irreparable harm and injury.

19. The infringement by Illini of the '670 patent is in direct violation of Icon's right under 35 U.S.C. § 271 to exclude others from making, using, selling, and/or offering for sale products

embodying the invention of the '670 patent.

20. Icon has no adequate remedy at law.

21. Icon will continue to suffer irreparable harm unless an injunction is issued enjoining and restraining Illini from infringing the '670 patent.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully prays for judgment against Illini as follows:

- (a) That an injunction issue enjoining Illini, and its agents, servants and employees, and all those in active concert and participation with them, from infringing, contributing to the infringement by others, and inducing infringement of the '670 patent;
- (b) That Icon be awarded damages in connection with Illini's infringement, contributory infringement and inducement of infringement of the '670 patent;
- (c) That an accounting be had, and judgment rendered, in Icon's favor against Illini for the gains, profits and advantages derived by it, directly or indirectly, based on its unlawful acts of patent infringement, and for damages in an amount adequate to compensate Icon from the wrongful conduct of Illini;
- (d) That attorney's fees, costs and disbursements incurred in connection with the prosecution of this litigation be awarded to Icon; and
- (e) For such other and further relief as the Court may deem just, proper and equitable under the circumstances.

### **JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

**GOTTLIEB, RACKMAN & REISMAN, P.C.**

A handwritten signature in blue ink that reads "Jeffrey M. Kaden" with a stylized flourish at the end.

Jeffrey M. Kaden, Esq. (JK 2632)  
jkaden@grr.com  
270 Madison Avenue  
New York, New York 10016  
(212) 684-3900  
(212) 684-3999 (fax)

Dated: April 23, 2014

# Exhibit A

(12) **United States Patent**  
**Duane**

(10) **Patent No.:** **US 7,367,670 B2**  
(45) **Date of Patent:** **May 6, 2008**

(54) **EYEWEAR BOTTLE OPENER**

(76) **Inventor:** **Travis E. Duane**, 2112 Columbia Dr.,  
 Flower Mound, TX (US) 75022

(\* ) **Notice:** Subject to any disclaimer, the term of this  
 patent is extended or adjusted under 35  
 U.S.C. 154(b) by 0 days.

(21) **Appl. No.:** **11/691,567**

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

(65) **Prior Publication Data**  
 US 2007/0229755 A1 Oct. 4, 2007

**Related U.S. Application Data**

(60) **Provisional application No. 60/744,001**, filed on Mar.  
 30, 2006.

(51) **Int. Cl.**  
**G02C 1/00** (2006.01)

(52) **U.S. Cl.** ..... **351/158; 351/41; 351/121**

(58) **Field of Classification Search** ..... 351/158,  
 351/41, 121, 111; 215/400; 7/170, 169,  
 7/128, 151, 158; 362/119, 800  
 See application file for complete search history.

(56) **References Cited**

**U.S. PATENT DOCUMENTS**

4,238,862 A \* 12/1980 **Leatherman** ..... 7/128  
 6,273,582 B1 \* 8/2001 **Taggart et al.** ..... 362/119  
 7,073,918 B1 \* 7/2006 **Bauman** ..... 362/119

\* cited by examiner

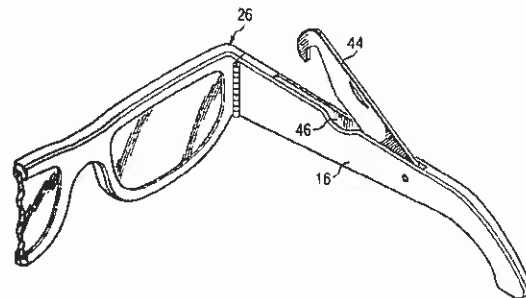
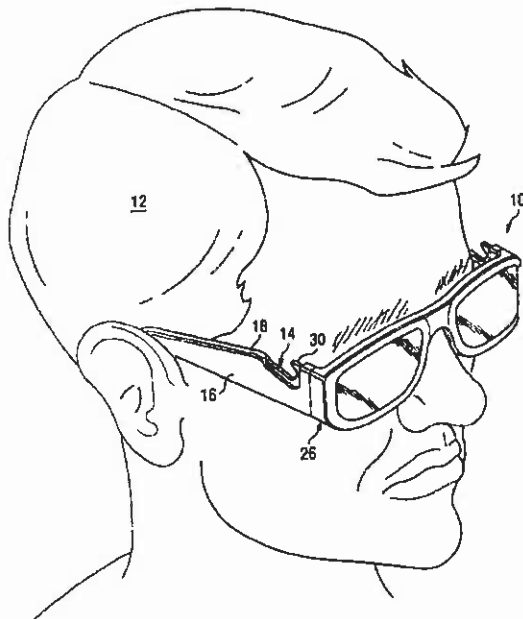
*Primary Examiner*—Hung X. Dang

(74) *Attorney, Agent, or Firm*—Michael A. O'Neil

(57) **ABSTRACT**

An eyewear bottle opener wherein a bottle opener is housed  
 within the reinforced earpiece of the frame of the eyewear  
 for the convenience of a person wearing the eyewear and  
 desiring to open a bottle having a metal cap.

**14 Claims, 4 Drawing Sheets**



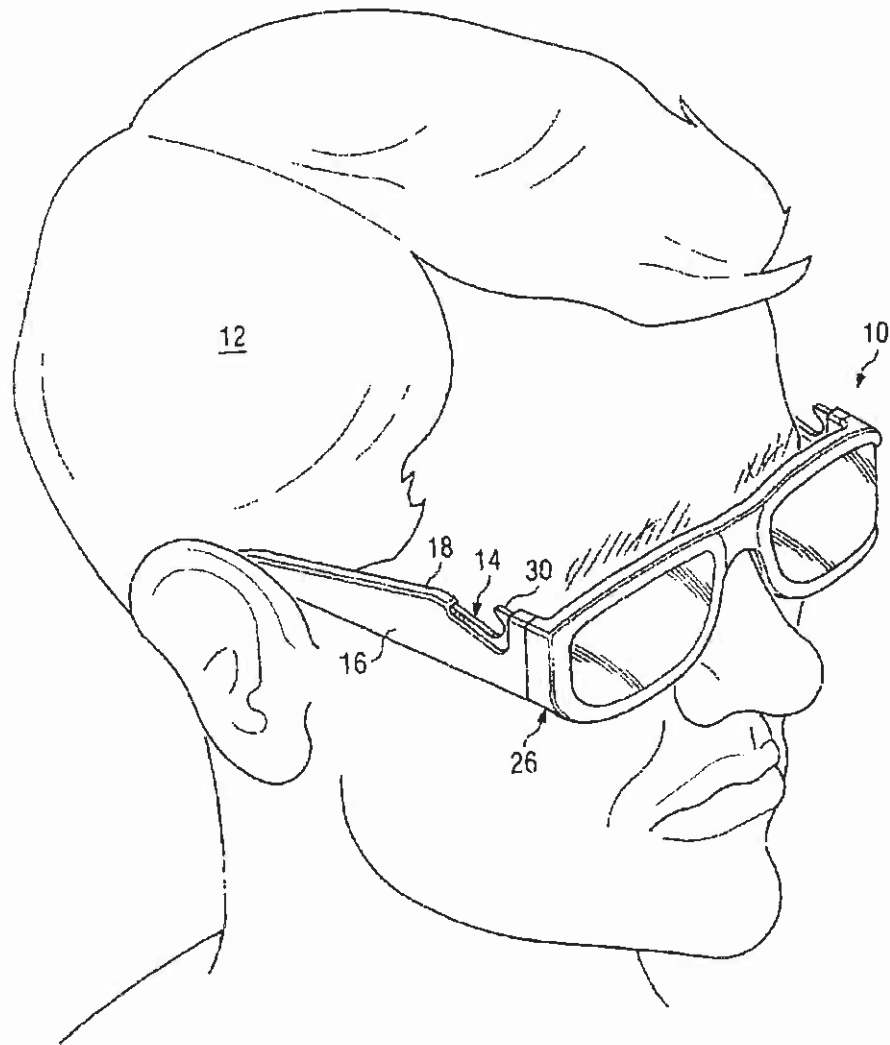
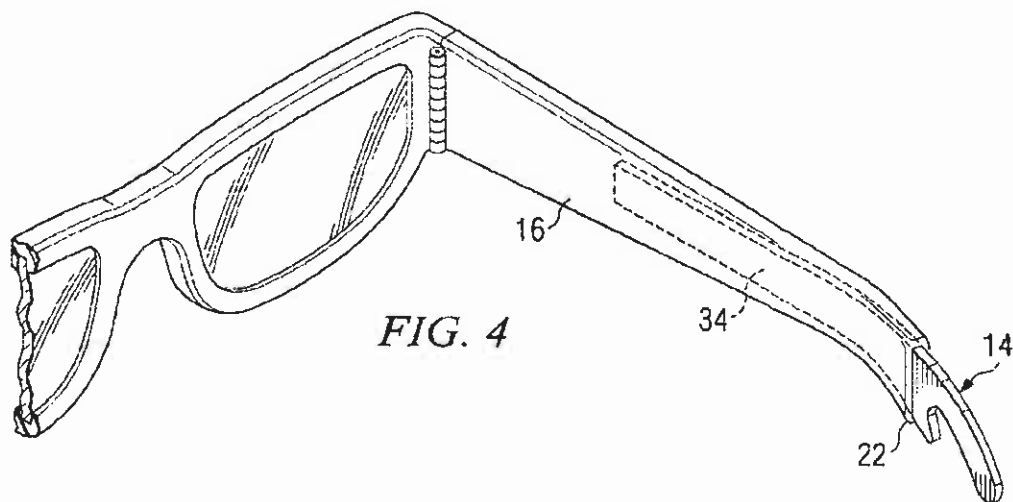
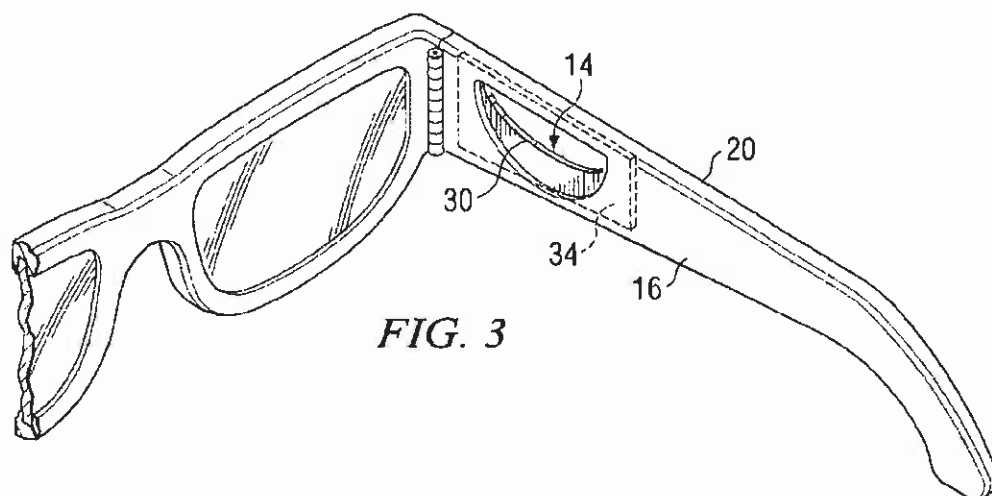
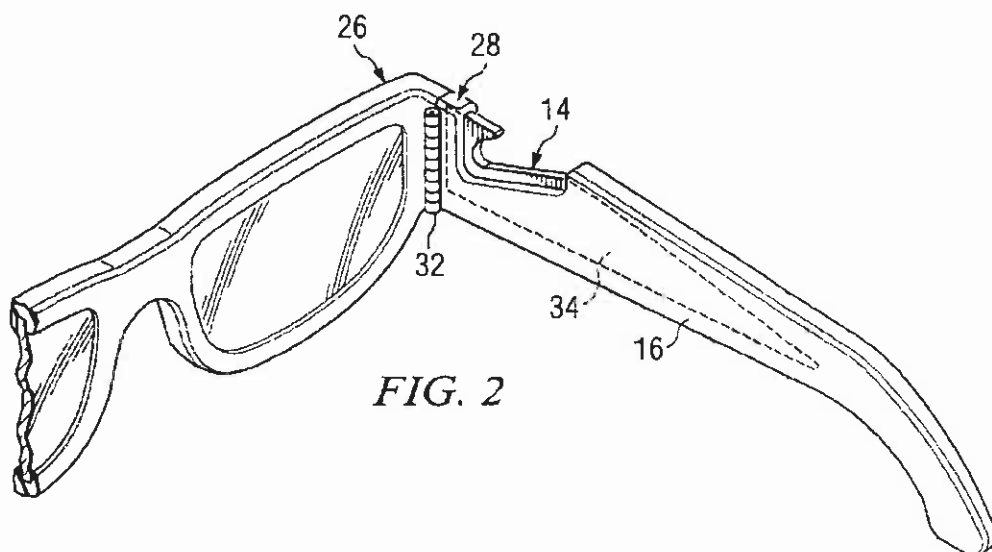


FIG. 1





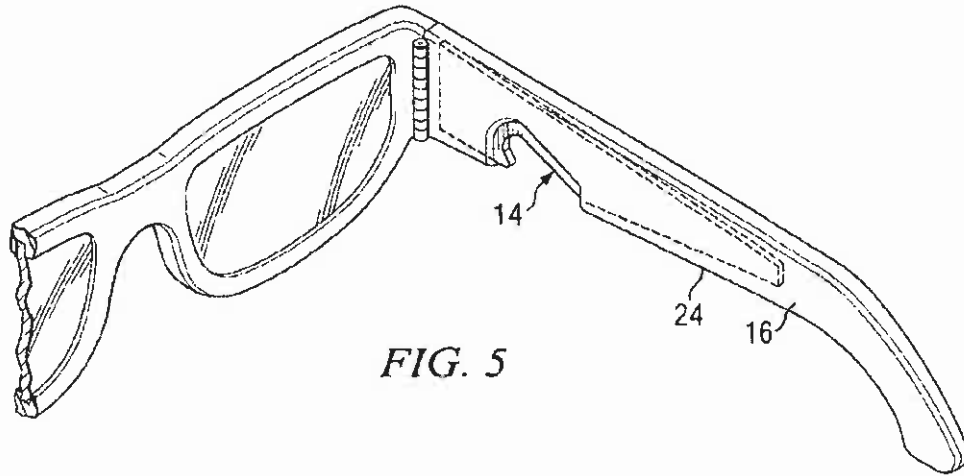


FIG. 5

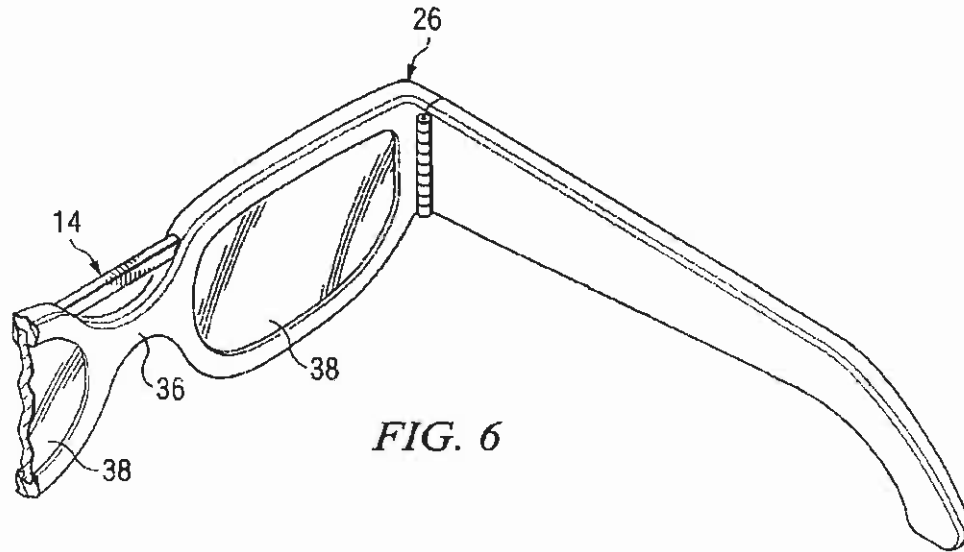


FIG. 6

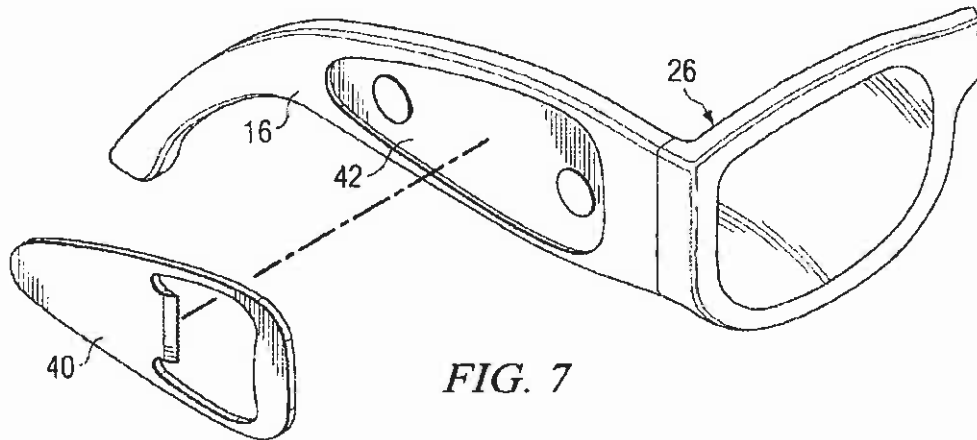
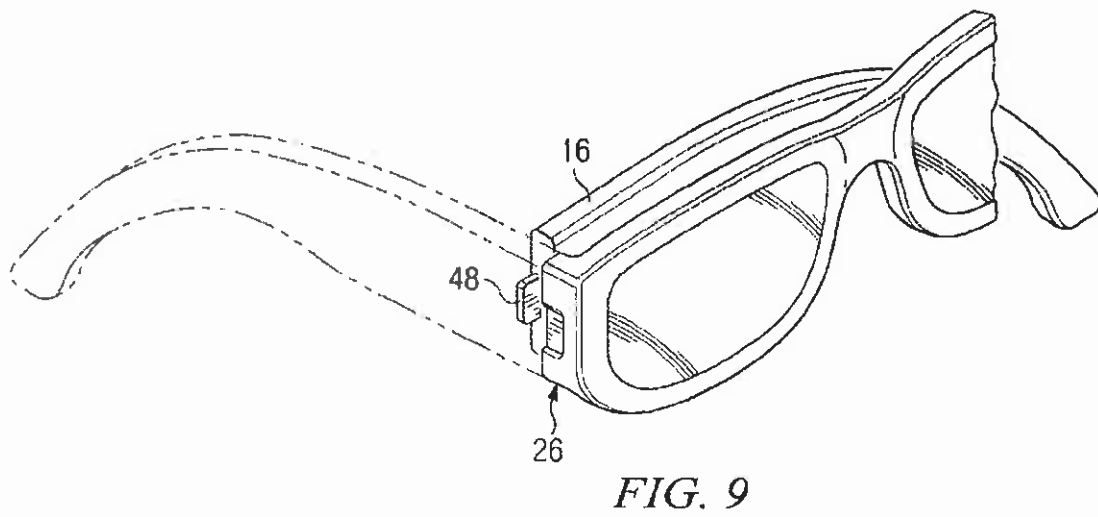
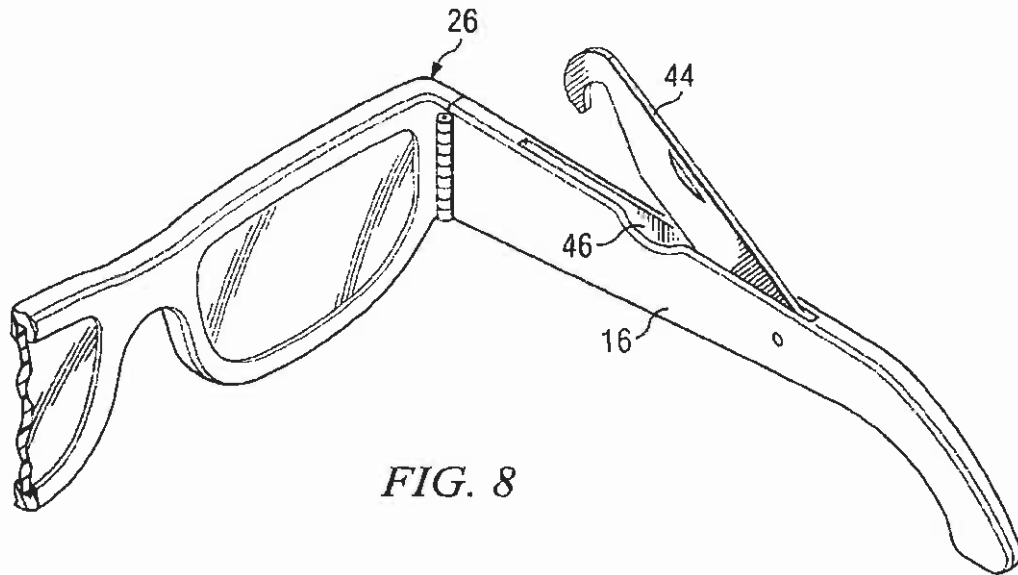


FIG. 7



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**EYEWEAR BOTTLE OPENER****CROSS-REFERENCE TO RELATED APPLICATION**

This application claims priority based on provisional patent application Ser. No. 60/744,001 filed Mar. 30, 2006, the entire content of which is incorporated herein by reference.

**TECHNICAL FIELD**

This invention relates to the fields of eyewear and bottle openers.

**BACKGROUND AND SUMMARY OF THE INVENTION**

Eyewear, and more particularly the type referred to as eyeglasses, is well known in the prior art. Eyewear typically comprises lenses and a frame, wherein the frame positions the lenses in front of the user's eyes and has earpieces that hold the frame in place. It is well known to vary the tint of the lenses and the style and material of the frames.

Bottle openers are also well known in the prior art. Typically bottle openers comprise a metal lever that is inserted below a metal bottle cap that is pleated about the rim of the neck of the bottle and then rotated about the bottle cap using a point on the cap as a fulcrum on which to pivot, thus pulling the bottle cap off of the rim of the bottle.

This invention combines eyewear and the type of bottle opener described above. The invention provides convenience for persons wearing eyewear, or eyeglasses, that desire to open bottles. In accordance with its narrower aspects, the invention comprises eyewear having a frame manufactured so as to house a bottle opener therein.

In one embodiment, the bottle opener is housed within the earpiece such that the opener is accessible from the top and near the hinge at which the earpiece joins the frame. The bottle opener is made from aluminum or a similarly rigid material of the like and includes an anchor piece that anchors the bottle opener within the earpiece and provides stability when used to open bottles. The earpiece is manufactured from plastic that is molded about the aluminum bottle opener and its anchor piece. Further, the hinge which connects the earpiece to the frame is reinforced with six to ten joints to absorb the stress incurred when the bottle opener is used to open bottles.

The bottle opener is also housed in the earpiece such that the lever is accessible from the bottom or from the side as well as near the end which is placed about the user's ear. In another embodiment the bottle opener is housed in the nose-piece of the eyewear. In another embodiment the bottle opener is attached to the ear piece of the eyewear via a magnet or other means. In yet another embodiment the bottle opener is housed within the ear piece such that it is rotatable out of the housing for use.

**BRIEF DESCRIPTION OF THE DRAWINGS**

A more complete understanding of the present invention may be had by reference to the following Detailed Description when taken in connection with the accompanying Drawings, wherein:

FIG. 1 is a perspective view illustrating one embodiment of the invention being worn by an individual;

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FIG. 2 is a rear perspective view illustrating the embodiment of FIG. 1 wherein the bottle opener is positioned to be accessed from the top of the ear piece;

FIG. 3 is a rear perspective view illustrating the embodiment of FIG. 1 wherein the bottle opener is positioned to be accessed from the side of the ear piece;

FIG. 4 is a rear perspective view illustrating the embodiment of FIG. 1 wherein the bottle opener is positioned to be accessed from the end of the ear piece that attached about an individual's ear;

FIG. 5 is a rear perspective view illustrating the embodiment of FIG. 1 wherein the bottle opener is positioned to be accessed from the bottom of the ear piece;

FIG. 6 is a rear perspective view illustrating another embodiment of the invention;

FIG. 7 is a perspective view illustrating another embodiment of the invention;

FIG. 8 is a perspective view illustrating yet another embodiment of the invention; and

FIG. 9 is a perspective view, partially shown in phantom, illustrating yet another embodiment of the invention.

**DETAILED DESCRIPTION**

Referring to the drawings, and in particular to FIG. 1, there is shown a perspective view of a first embodiment of the eyewear bottle opener 10 being used by an individual 12. In this embodiment the bottle opener 14 is housed within the earpiece 16 of the frame 26 near the hinge 28 of the frame 26 so that the lever 30 of the bottle opener 14 is accessible from the top 18 of the earpiece 16.

FIG. 2 is a rear perspective view of the embodiment of FIG. 1. The bottle opener 14 is shown positioned near the hinge 28. The hinge 28 is reinforced by nine joints 32. The hinge 32 can be reinforced by more or fewer joints as necessary. The bottle opener 14 is attached to an anchor 34, both of which are made from aluminum in this embodiment, that adds support to the earpiece 16 that is molded thereabout when the bottle opener 14 is used for its intended purpose. The bottle opener 14 and the anchor 34 can be made of other materials, such as varying metals or alloys. Proper materials for the construction of the bottle opener 14 and the anchor 34 will be well known to those having skill in the art. In this embodiment the frame 26 is made from plastic. The frame 26 can be made from other materials, such as metal, an alloy, or a ceramic material. Proper materials for the construction of the frame 26 will be well known to those having skill in the art.

FIG. 3 is a rear perspective view of the embodiment of FIG. 1 wherein the bottle opener 14 is positioned such that the lever 30 of the bottle opener 14 is accessible from the side 20 of the earpiece 16. The bottle opener 14 is attached to an anchor 34 in FIG. 3 as well.

FIG. 4 is a rear perspective view of the embodiment of FIG. 1 wherein the bottle opener 14 is positioned at the end 22 of the earpiece 16. The bottle opener 14 is shown attached to an anchor 34.

FIG. 5 is a rear perspective view of the embodiment of FIG. 1 that is similar to the invention shown in FIG. 2 except that the bottle opener 14 is accessible from the bottom 24 of the earpiece 16.

FIG. 6 is a rear perspective view illustrating another embodiment of the invention wherein the bottle opener 14 is positioned above the nose-piece 36 of the frame 26 that connects the portions of the frame 26 that hold the lenses 38.

FIG. 7 is a perspective view illustrating another embodiment of the invention wherein a bottle opener 40 is a

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separate piece that is attached to the earpiece 16 of the frame 26 via a magnet 42 or other means such as hook-and-loop fasteners.

FIG. 8 is a perspective view illustrating yet another embodiment of the invention wherein a bottle opener 44 is housed within a housing 46 in the earpiece 16 of the frame 26 such that the bottle opener 44 may be rotated out of the housing 46 for use.

FIG. 9 is a perspective view, partially shown in phantom, illustrating yet another embodiment of the invention wherein a bottle opener 48 is formed at the hinge 28 of the frame 26 upon the folding of the earpiece 16. Upon the folding of the earpiece 16, the portion of the bottle opener 48 attached to the earpiece 16 is exposed, so as to be inserted below a bottle cap for opening.

Although preferred embodiments of the invention have been illustrated in the accompanying Drawings and described in the foregoing Detailed Description, it will be understood that the invention is not limited to the embodiments disclosed, but is capable of numerous rearrangements, modifications, and substitutions of parts and elements without departing from the spirit of the invention.

The invention claimed is:

1. An eyewear bottle opener, comprising:
  - a first and a second lens;
  - a frame for securing the lenses and positioning the lenses before an individual's eyes;
  - two hinges attached to the frame, one hinge substantially near the first lens and the other hinge substantially near the second lens;
  - an earpiece attached to each hinge for securing the frame about the individual's head;
  - at least one bottle opener having a lever for opening bottles; and
  - a reinforced housing within an earpiece for receiving the bottle opener.
2. The eyewear bottle opener of claim 1 wherein the at least one bottle opener is positioned within the top portion of an earpiece.
3. The eyewear bottle opener of claim 1 wherein the at least one bottle opener is positioned within the side portion of an earpiece.
4. The eyewear bottle opener of claim 1 wherein the at least one bottle opener is positioned within the end portion of an earpiece.

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5. The eyewear bottle opener of claim 1 wherein the at least one bottle opener is positioned within the bottom portion of an earpiece.

6. The eyewear bottle opener of claim 1 wherein the at least one bottle opener is housed within a housing in an earpiece such that the bottle opener can be rotated out of the housing for use.

7. The eyewear bottle opener of claim 6 wherein the at least one bottle opener rotates upwardly out of the housing.

8. The eyewear bottle opener, comprising:

- a first and a second lens;
- a frame for securing the lenses and positioning the lenses before an individual's eyes;
- two hinges attached to the frame, one hinge substantially near the first lens and the other hinge substantially near the second lens;
- an earpiece attached to each hinge for securing the frame about the individual's head; and
- at least one bottle opener having a lever for opening bottles.

9. The eyewear bottle opener of claim 8 wherein the at least one bottle opener is positioned above a nosepiece of the frame.

10. The eyewear bottle opener of claim 8 wherein the at least one bottle opener is a separate piece that attached to an earpiece.

11. The eyewear bottle opener of claim 10 wherein the at least one bottle opener magnetically attaches to an earpiece.

12. The eyewear bottle opener of claim 8 wherein the at least one bottle opener is housed within a housing in an earpiece such that the bottle opener can be rotated out of the housing for use.

13. The eyewear bottle opener of claim 12 wherein the at least one bottle opener rotates upwardly out of the housing.

14. The eyewear bottle opener of claim 8 wherein the at least one bottle opener is formed at a hinge attached to the frame upon the folding of an earpiece, thereby exposing a portion of the bottle opener attached to the earpiece so as to be inserted below a bottle cap for opening.

\* \* \* \* \*

UNITED STATES PATENT AND TRADEMARK OFFICE  
**CERTIFICATE OF CORRECTION**

PATENT NO. : 7,367,670 B2  
APPLICATION NO. : 11/691567  
DATED : May 6, 2008  
INVENTOR(S) : Travis E. Duane

Page 1 of 1

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

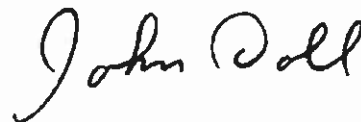
Col. 1, line 53, replace "bottle open is" with -- bottle opener is --.

Col. 2, line 9, replace "that attached about" with -- that attaches about --.

Col. 4, Claim 10, line 28, replace "that attached to an" with -- that attaches to an --.

Signed and Sealed this

Seventeenth Day of March, 2009



JOHN DOLL

*Acting Director of the United States Patent and Trademark Office*

# Exhibit B

GOTTlieb, RACKMAN & REISMAN, P.C.

COUNSELORS AT LAW

PATENTS TRADEMARKS COPYRIGHTS INTELLECTUAL PROPERTY

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ROBERT P. FEINLAND

OF COUNSEL  
GEORGE GOTTLIEB  
JAMES REISMAN

March 26, 2014

**VIA FEDERAL EXPRESS**

Mr. Neil Fine  
President  
Illini Line, Ltd.  
450 Bunker Court  
Vernon Hills, IL 60061

Re: Infringement of United States Patent No. 7,367,670 for  
EYEWEAR BOTTLE OPENER

Dear Sir:

We are intellectual property counsel to Icon Eyewear, Inc. of Secaucus, New Jersey ("Icon"). We wish to call to your attention that our client is the owner of United States Patent No. 7,367,670 ("the '670 patent") granted on May 6, 2008, entitled "Eyewear Bottle Opener." A copy this patent is enclosed as Exhibit 1.

Our client has brought to our attention a product being marketed by your company identified as "Bottle Opener Sunglasses". The "Bottle Opener Sunglasses" product is advertised at the website <[www.illiniline.com](http://www.illiniline.com)>. A copy of the product page for the "Bottle Opener Sunglasses" is attached as Exhibit 2. Your manufacture, use, sale and offer for sale of the "Bottle Opener Sunglasses" constitutes patent infringement under 35 U.S.C. §271 et seq.

Accordingly, we demand that you:

- 1) immediately cease and desist from further marketing or selling eyeglasses (including the "Bottle Opener Sunglasses") which infringe the '670 patent;
- 2) immediately advise your customers that you will not be honoring outstanding purchase orders for all such eyeglasses;
- 3) immediately advise your supplier(s) that you will not accept any further shipments of all such eyeglasses; and



Mr. Neil Fine  
Illini Line, Ltd.  
Page 2 of 2  
March 26, 2014

4) advise us of the names and addresses of the entity or entities who supply the eyeglasses to you; and

5) provide us with information concerning your total sales of the "Bottle Opener Sunglasses", so that our client may evaluate the extent of its patent damages, including providing us with a copy of purchase orders, invoices, letters of credit and any other documents that would evidence both your manufacturing orders or purchases, and your sales to retailers.

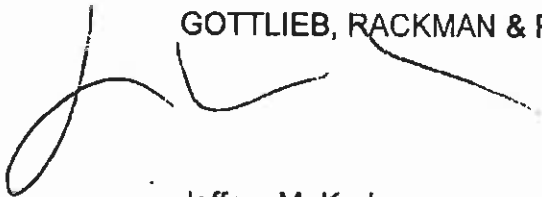
Accordingly, unless we receive written assurances from you or your attorneys that you will immediately comply with our demands by **April 10, 2014**, we will assume that you will continue your offending conduct and will take appropriate legal action. In that regard, we have been authorized to bring a lawsuit against you in the Federal Court for the Southern District of New York if we are not assured that our client's Intellectual Property rights are being adequately respected.

As you must appreciate, this matter is of great importance to Icon. We therefore await a prompt response from either you or your counsel. In the event that we do not receive a satisfactory response, we will ask that the court preliminarily and permanently enjoin you from selling eyeglasses that infringe Icon's intellectual property.

This letter constitutes notice of Icon's patent rights and is written without waiver of any rights and remedies that Icon may assert to protect its intellectual property.

Very truly yours,

GOTTLIEB, RACKMAN & REISMAN, P.C.



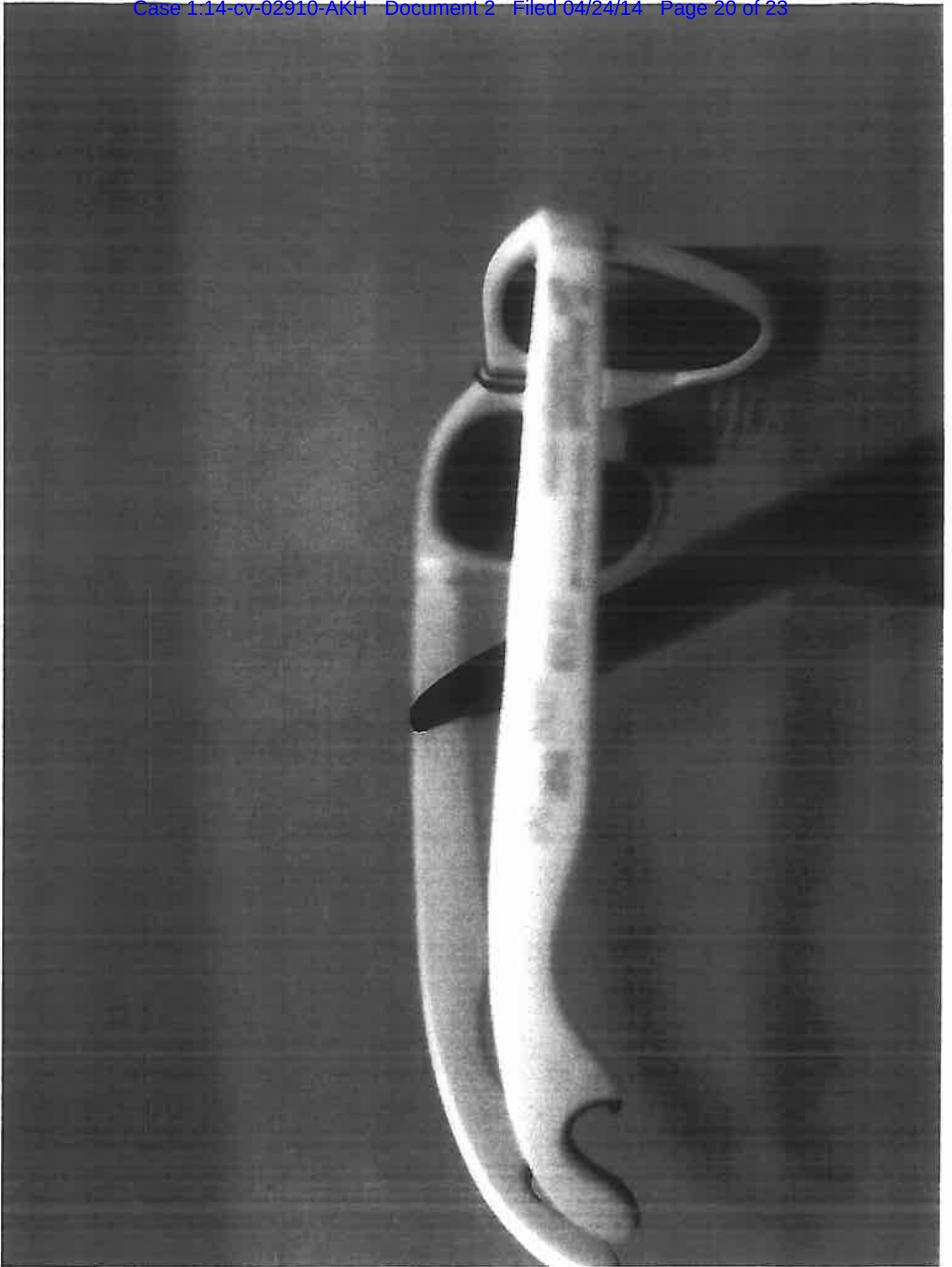
Jeffrey M. Kaden

Encls.

cc: Icon Eyewear, Inc.. (w/out encls.)

# Exhibit C





# Exhibit D



Patrizia, Frank & Samir LLP  
Attorneys at Law

MAX SHAFTAL  
Tel. (312) 551.3067  
mshaftal@pfs-law.com

Refer To: 1444-069

April 7, 2014

**VIA E-MAIL & U.S. MAIL**

Jeffrey M. Kaden, Esq.  
GOTTLIEB, RACKMAN & REISMAN, P.A.  
270 Madison Avenue  
New York, NY 10016-0601

Re: Infringement of United States Patent No. 7,367,670 for  
EYEWEAR BOTTLE OPENER

Dear Mr. Kaden:

We represent Illini Line, Ltd. ("Illini") in connection with its intellectual property matters. We have now had the opportunity to review the allegations contained in your March 26, 2014 letter to Mr. Neil Fine of Illini on behalf of Icon Eyewear, Inc. ("Icon"). Our review included the prosecution history of U.S. Patent No. 7,367,670 ("the '670 patent"); the accused Bottle Opener Sunglasses; the prior art cited by the Patent and Trademark Office; and prior art found by our own searching. Based upon the results of our analysis, we cannot agree with your allegation that Illini's Bottle Opener Sunglasses infringe the '670 patent.

In particular, to the extent that Icon is asserting that the claims of the '670 patent<sup>1</sup> read on Illini's Bottle Opener Sunglasses, we believe that the relevant claims of the '670 patent are invalid based on one or more of the following, among other prior references: U.S. Design Patent No. D436,614; U.S. Design Patent No. D438,232; U.S. Design Patent No. 415,781; U.S. Design Patent No. D419,173; U.S. Design Patent No. D419,174; U.S. Design Patent No. D354,763; and U.S. Patent Publication No. 2007/0013864 ("the Dietz '864 publication"). Copies of the patents are enclosed for your reference. In particular, the Dietz '864 publication teaches eyewear having two earpieces hingedly attached to a frame, and a mechanical tool or kitchenware (including utensils) integrally attached thereto. As a bottle opener is a utensil and a mechanical tool, the Dietz '864 publication teaches each and every limitation of at least claims 1, 8 and 10 of the '670 patent and would, therefore, anticipate at least Claims 1, 8 and 10. In addition, each of the aforementioned design patents illustrates an eyewear frame having a bottle opener having a lever

<sup>1</sup> Although you failed to identify which claims you believe are infringed by Illini's Bottle Opener Sunglasses, for purposes of this letter, we assume Icon may be asserting Claims 1, 4, 8 and 10. If this is incorrect, please let us know.

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Patzik, Frank & Samotny Ltd.  
Attorneys at Law

Jeffrey M. Kaden, Esq.  
GOTTLIEB, RACKMAN & REISMAN, P.A.  
April 7, 2014  
Page 2

for opening bottles. These designs show the bottle opener positioned within the end portion of an earpiece. In the context of a utility patent, placement of the bottle opener in the end portion is accordingly merely a design choice, thereby making Claim 4 obvious over these prior art references.

Even if one were to assume that claims of the '670 patent are valid, it is our opinion that Illini's Bottle Opener Sunglasses does not infringe at least Claim 1. In particular, Illini's Bottle Opener Sunglasses does not include a reinforced housing, or anything that can be considered an equivalent, as required by Claim 1 of the '670 patent.

We trust that the foregoing adequately demonstrates that Illini's Bottle Opener Sunglasses do not infringe any valid claims of the '670 Patent. Should you have any support for a conclusion to the contrary, please provide it to us immediately. In the absence of any such support, we will deem your allegations to be without merit.

Very truly yours,

**PATZIK, FRANK & SAMOTNY LTD.**

A handwritten signature in black ink, appearing to read 'Max Shaftal', written over a horizontal line.

Max Shaftal

MS/dr  
Enclosures

cc: Mr. Neil Fine  
Scott W. Smilie, Esq.