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1 Frank M. Weyer, Esq. (State Bar No. 127011)
2 **TECHCOASTLAW®**
3 264 S. La Cienega Blvd., Suite 1224
4 Beverly Hills CA 90211
5 Telephone: (310) 926-3928
6 Facsimile: (310) 388-0796

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

5 Attorney for Plaintiff
6 USAMERICAN LLC

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 USAMERICAN LLC, a California
11 Limited Liability Company,

12 Plaintiff,

13 v.
14 OAKLEY, INC., a Delaware
15 Corporation, and

16 MOTOROLA, INC., a Delaware
17 Corporation,

Defendants.

18 Civil Action No.

19 77cv06-0010

CAS

(SS)

20 **COMPLAINT FOR PATENT
21 INFRINGEMENT**

22 **DEMAND FOR JURY TRIAL**

23 COMES NOW, Plaintiff USAMERICAN LLC and on information and belief
24 alleges as follows:

25 **JURISDICTION AND VENUE**

26 1. This is an action for patent infringement under 35 U.S.C. §§ 271 et. seq.
27 and 28 U.S.C. §§ 1331 and 1338(a).

28 2. The acts of patent infringement alleged herein occurred within this
judicial district. Therefore, venue is proper pursuant to 28 U.S.C. §§ 1391(b), (c), and
1400(b).

PARTIES

3. Plaintiff USAMERICAN LLC (“USAmerican”) is a California limited liability company with a place of business in Beverly Hills, California.

4. Defendant OAKLEY, INC. ("Oakley") is a Delaware Corporation doing business in the County of Los Angeles, State of California.

5. Defendant MOTOROLA, INC. ("Motorola") is a Delaware Corporation doing business in the County of Los Angeles, State of California.

FIRST CAUSE OF ACTION
PATENT INFRINGEMENT

6. Plaintiff incorporates by reference paragraphs 1 – 5 as though fully set forth herein.

7. Plaintiff is the assignee of U.S. Patent No. 4,902,120 issued on February 20, 1990 for "Eyeglass Headphones" ("the '120 patent").

8. A 11.5 year maintenance fee for maintaining the '120 patent in force was originally payable by the end of the twelfth year after the issue date, on February 20, 2002.

9. Pursuant to 37 C.F.R. §1.378, a patentee may petition the Patent Office to accept a delayed payment of a patent maintenance fee.

10. On or about October 6, 2004, the patentee of the '120 patent filed a petition to the Patent Office to accept delayed payment of the 11.5 year maintenance fee. The petition was accompanied with a tender of the maintenance fee and the applicable late payment surcharge fee.

1 11. In December 2004, the Petitions Branch of the Patent Office issued a
2 written decision stating that it rejected the patentee's petition to accept delayed
3 payment of the maintenance fee. However, the Patent Office accepted and cashed the
4 patentee's tendered check for the maintenance fee and surcharge.
5

6 12. Since October 2004, the Patent Office has kept possession of and used as
7 part of its general funds the maintenance fee and surcharge fee payment tendered by
8 the patentee. Such possession and comingling with general funds constitutes
9 acceptance of the tendered maintenance fee and surcharge.

10 13. Pursuant to 35 U.S.C. §82, if the Patent Office "accepts payment of a
11 maintenance fee" tendered pursuant to 37 C.F.R. §1.378 the patent "shall be
12 considered as not having expired."

13 14. Due to the Patent Office's acceptance of the tendered maintenance fee
14 and surcharge, the '120 patent remains valid and in full force and effect.
15

16 15. Defendant Oakley has had actual notice of the '120 patent since at least
17 May 1994, at which time Oakley unsuccessfully sued American Innovative Products,
18 Inc., a predecessor of Plaintiff, for infringement of several Oakley patents.

19 16. Defendants Oakley and Motorola, individually and jointly, have infringed
20 and continue to infringe, the '120 Patent pursuant to 35 U.S.C. §271(a), (b), and (c) by
21 making, offering for sale, selling and using eyeglass headphones incorporating the
22 patented invention, including their "Razrwire" sunglass headphone products.

23 17. Defendants' infringement of Plaintiff's patent rights has irreparably
24 damaged Plaintiff and will continue to cause irreparable harm unless enjoined by the
25 Court.
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28

DEMAND FOR RELIEF

WHEREFORE, Plaintiff asks this Court to:

a. Enter judgment for Plaintiff against Defendants and each of them on this Complaint;

b. Enter a preliminary and permanent injunction to enjoin Defendants, and all those in privity with Defendants, from further infringement of the '120 Patent during the remaining term of the patent;

c. Award compensatory damages to Plaintiff and to increase those damages three times in accordance with 35 U.S.C. § 284;

d. Award Plaintiff reasonable attorneys' fees in accordance with 35 U.S.C. § 285;

e. Award Plaintiff interest and costs; and

f. Award Plaintiff such other and further relief as is just and proper.

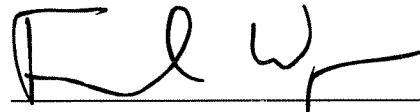
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2 DEMAND FOR JURY TRIAL
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5 Plaintiff hereby demands a trial by jury of all issues so triable.
6

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8
9 Respectfully submitted,
10 TECHCOASTLAW®
11

12 Dated: January 3, 2006
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14 By:
15



16 Frank M. Weyer
17 264 S. La Cienega Blvd., Suite 1224
18 Beverly Hills CA 90211
19 (310) 926-3928
20 Fax (310) 388-0796
21 Attorney for Plaintiff
22 USAMERICAN LLC
23
24
25
26
27
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