

United States District Court,
S.D. Florida.

**ASPEX EYEWEAR, INC.; Ira Lerner, Inc., d/b/a Manhattan Design Studio; Contour Optik, Inc.,
and Asahi Optical Co., Ltd,**
Plaintiffs/CounterDefendants.

v.
CONCEPT IN OPTICS, INC., and Walmart Stores Inc,
Defendants/Counterclaimants.

and

Ronald L. Darta,
Plaintiff.

v.
Aspex Eyewear Inc,
Defendant.

Aug. 28, 2001.

Barry J. Schindler, Michael A. Nicodema, Greenberg Traurig, New York, NY, John Cyril Malloy, Jr., Malloy & Malloy, Miami, FL, for Aspex Eyewear, Inc., Manhattan Design Studio, Contour Optik, Inc., Asahi Optical Co., Ltd., and Manhattan Design Studio.

Barry J. Schindler, Greenberg Traurig, New York, NY, Joseph Wayne Beasley, Josephs Jack & Miranda, Miami, FL, for Ronald L. Darta.

Gary E. Lambert, Boston, MA, Joseph Wayne Beasley, Josephs Jack & Miranda, Miami, FL, for Concept in Optics, Inc., Wal-Mart Stores, Inc.

ORDER

ROBERT L. DUBE, United States Magistrate Judge.

THIS CAUSE is before the Court upon Defendants' Memorandum Requesting the Court to Construct the Meaning of the Claims in the '207 Patent and the ' 730 Patent and Plaintiffs' Memorandum of Points and Authorities in Support of Their Contentions Regarding The Literal Scope of the Asserted 207 and 730 Patent Claims. In comparing the bench memoranda, the Court notes there appears to be some disagreement and inconsistencies as to the terms and phrases of the patent claims, language in dispute, that the Court must necessarily construe at the *Markman* Hearing. Moreover, the submitted bench memoranda fail to at times provide the Court with a proposed meaning/construction, rather than only a discussion, of the terms and phrases. Additionally, the memoranda lack a comprehensive proposed construction of the claims of the 207 and 730 Patents which incorporates the parties provided positions on the meanings attributed to the asserted

terms and phrases of the claims of the patents and presents it as a whole. Accordingly, upon review of the memoranda and the file in this cause, it is **ORDERED** follows:

1. **By August 29, 2001**, local counsel for the parties meet and confer in person to discuss the specific terms and phrases the Court needs to construe to the *Markman* Hearing. The parties are reminded that only those terms that are in controversy need to be construed and only to the extent necessary to resolve the dispute. *See Vivid Techs., Inc. v. Am. Science & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed.Cir.1999).

2. The parties shall each submit no later than **Friday, August 31, 2001 at 4:00 p.m.** a supplemental bench memorandum informing the Court of the precise terms and phrases of the claims of the Patents it needs to construe, a proposed construction/interpretation for each of the terms and phrases of the claims, with support, and a comprehensive proposed construction of the claims as all discussed in this Order. **A hard copy of the Supplemental Bench Memorandum as well as a copy on disk in Word Perfect Format shall be delivered directly to the chambers of Magistrate Judge Dube within the time provided.**

DONE AND ORDERED.

S.D.Fla.,2001.

Aspex Eyewear, Inc. v. Concept in Optics, Inc.

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