AO 120 (Rev. 08/10)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	**REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK**

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court E.D. Tex. on the following

☐ Trademarks or ☑ Patents. (☑ the patent action involves 35 U.S.C. § 292.):

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
2:11-cv-00176	3/16/2011	E.D. Tex.

PLAINTIFF	DEFENDANT
Patent Research Institute, L.L.C.	Ciba Vision Corporation

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 4,109,070	8/22/1978	Wesley-Jessen Inc.-Assignee
2 4,111,535	9/5/1978	Wesley-Jessen Inc.-Assignee
3 4,182,802	1/8/1980	No Assignee of Record
4 4,288,269	9/8/1981	Boeing Aerospace Co.-Assignee
5 4,312,725	1/26/1982	Wesley-Jessen Inc.-Assignee

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY ☐ Amendment ☐ Answer ☐ Cross Bill ☐ Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
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DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE

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17. Ciba's false marking has caused proprietary injuries to the United States and continues to do so.

18. The marking and false marking statutes exist to give the public notice of patent rights. Congress intended the public to rely on marking as a ready means of discerning the status of intellectual property embodied in an article of manufacture or design, such as the Falsely Marked Products.

19. Federal patent policy recognizes an important public interest in permitting full and free competition in the use of ideas which are a part of the public domain such as those products described in the Falsely Marked Patents.

20. Congressional interest in preventing false marking was so great that Congress enacted 35 U.S.C. §292(a) which seeks to encourage private parties to enforce the false marking statute. By permitting members of the public to bring *qui tam* suits on behalf of the Government, Congress authorized private persons such as Plaintiff to help control false marking.

21. Ciba's acts of false marking deter innovation and stifle competition in the marketplace for the following reasons: (a) if an article that is within the public domain is falsely marked, potential competitors may be dissuaded from entering the same market; (b) false marking may also deter scientific research when an inventor sees a mark and decides to forego continued research to avoid possible infringement; and (c) false marking may cause unnecessary investment in design to avoid presumed patent infringement or costs incurred to analyze the validity or enforceability of a patent whose number has been marked upon a product with which a competitor would like to compete.

22. Ciba's acts of false marking mislead the public into believing that the Falsely

Marked Patents give Ciba control of the Falsely Marked Products, and places the risk of determining whether the Falsely Marked Products are controlled by such patents on the public rather than on Ciba, thereby increasing the cost to the public of ascertaining whether Ciba in fact controls the intellectual property embodied in the Falsely Marked Products.

23. In each instance where Ciba has represented that the Falsely Marked Products are protected by the Falsely Marked Patents, a member of the public desiring to participate in the market for products similar to the Falsely Marked Products must incur the cost of determining whether the involved Falsely Marked Patents are valid and enforceable.

24. Ciba's acts of false marking also create a misleading impression that the Falsely Marked Products are technologically superior to other available products, since articles bearing the term "patent" may be presumed to be novel, useful, and innovative.

25. Every person or company in the United States is a potential entrepreneur with respect to the process, manufacture, or composition of matter described in the Falsely Marked Patents. Moreover, every person or company in the United States is a potential competitor of Ciba's with respect to the Falsely Marked Products marked with the Falsely Marked Patents.

26. Each Falsely Marked Product and advertisement thereof is likely to discourage or deter members of the public from commercializing a competing product even though the Falsely Marked Patents have no legal authority to prevent any person or company in the United States from competing with Ciba in commercializing such products.

27. Ciba's marking of the Falsely Marked Products and its advertising thereof may stifle competition with respect to similar products to an immeasurable extent, thereby causing harm to the United States in an amount that cannot be readily determined.

28. Ciba has wrongfully and illegally advertised a patent monopoly that it does not possess and, as a result, has benefited by increasing or maintaining its market power or commercial success with respect to the Falsely Marked Products.

29. Each individual false marking (including each time an advertisement with such marking is accessed on the internet), is likely to harm the public. Thus, each such false marking is a separate offense under 35 U.S.C. § 292(a).

30. Each offense of false marking creates a proprietary interest of the United States in the penalty that may be recovered under 35 U.S.C. § 292(b).

VI. CLAIM

31. For the reasons stated in paragraphs 7 through 30 above, Ciba has violated 35 U.S.C. § 292 by falsely marking the Falsely Marked Products with intent to deceive the public.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following:

A. An accounting of the number, sales, and revenue of any Falsely Marked Products;

B. A judgment in favor of Plaintiff finding that Ciba has falsely marked products by affixing expired patents, *i.e.,* U. S. Patent Nos. 4,109,070; 4,111,535; 4,158,089; 4,182,802; 4,288,269; 4,312,725; 4,405,773; 4,549,794; 4,582,402; 4,668,240; 4,704,017; 4,720,188; 4,976,533; 4,955,580; 5,029,898; and 5,114,629 or inapplicable patents, *i.e.*, , D416,923; D421,617; and D416,924 to those products in violation of 35 U.S.C. § 292 and imposing a civil fine of $500 per each Falsely Marked Product and false marking offense or an alternative amount, as set by the Court, one-half of any such award to be paid to the United States;

C. An award of pre-judgment and post-judgment interest on any monetary award;

D. An injunction prohibiting Ciba and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them from violating 35 U.S.C. § 292 by affixing expired and inapplicable patents to its products and advertising that such expired and inapplicable patents protect its products;

E. An award of attorneys fees and costs, and other expenses and an enhancement of damages and penalties; and

F. Such other and further relief to which Plaintiff is entitled.

JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

Respectfully submitted,

/s/ Stuart M. Nelkin
Stuart M. Nelkin
Texas Bar No. 14884000
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Texas SBN: 14883500
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Attorneys for Plaintiff

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PLAINTIFF	DEFENDANT
Patent Research Institute, L.L.C.	Ciba Vision Corporation

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 4,405,773	9/20/1983	Schering Corporation-Assignee
2 4,549,794	10/29/1985	Schering Corporation-Assignee
3 4,582,402	4/15/1986	Schering Corporation-Assignee
4 4,668,240	5/26/1987	Schering Corporation-Assignee
5 4,704,017	11/3/1987	Schering Corporation-Assignee

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY ☐ Amendment ☐ Answer ☐ Cross Bill ☐ Other Pleading	
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Patent Research Institute, L.L.C.	Ciba Vision Corporation

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 4,720,188	1/19/1988	Schering Corporation-Assignee
2 4,976,533	12/11/1990	Schering Corporation-Assignee
3 5,114,629	5/19/1992	Cooper Vision, Inc.-Assignee
4 D416,923	11/23/1999	Wesley Jessen Corporation-Assignee
5 D416,924	11/23/1999	Wesley Jessen Corporation-Assignee

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PLAINTIFF	DEFENDANT
Patent Research Institute, L.L.C.	Ciba Vision Corporation

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 D421,617	3/14/2000	Wesley-Jessen Corporation-Assignee
2 4,158,089	6/12/1979	Wesley-Jessen Inc.-Assignee
3 4,955,580	9/11/1990	Cooper Vision Optics Limited-Assignee
4 5,029,898	7/9/1991	No Assignee of Record
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PATENT RESEARCH INSTITUTE, L.L.C.	§	
	§	
Plaintiff,	§	
	§	
	§	
v.	§	**Civil Action No. 2:11-cv-00176**
	§	
CIBA VISION CORPORATION,	§	
	§	
Defendant.	§	**JURY TRIAL DEMANDED**

COMPLAINT

I. NATURE OF THE CASE

1. This is an action for false patent marking under Section 292 of the Patent Act (35 U.S.C. § 292) which provides that any person may sue to recover the civil penalty for false patent marking. Plaintiff Patent Research Institute, L.L.C. brings this *qui tam* action on behalf of the United States of America against Defendant, Ciba Vision Corporation.

II. PARTIES

2. Plaintiff Patent Research Institute, L.L.C. is a Texas limited liability company with its principal place of business in Houston, Texas.

3. Defendant Ciba Vision Corporation ("Ciba") is a Delaware corporation having its principal place of business at 11460 Johns Creek Parkway, Duluth, Georgia, 30097.

III. JURISDICTION AND VENUE

4. The Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over Ciba. Ciba has continuously conducted business within the State of Texas. Ciba has continuously offered for sale and sold, marked, and advertised the products that are the subject of this Complaint in the United

States, the State of Texas, and the Eastern District of Texas.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c), and 1395(a).

IV. FACTS

7. Ciba has marked and continues to mark its Durasoft, Precision UV, and WildEyes contact lens products (the "Falsely Marked Products") with the expired or inapplicable patents, U.S. Patent Nos. 4,109,070; 4,111,535; 4,158,089; 4,182,802; 4,288,269; 4,312,725; 4,405,773; 4,549,794; 4,582,402; 4,668,240; 4,704,017; 4,720,188; 4,976,533; 4,955,580; 5,029,898; 5,114,629; D416,923; D421,617; and D416,924 (the "Falsely Marked Patents") (attached hereto as Exhibits 1-19). Such false marking by Ciba includes: (a) marking the Falsely Marked Patents upon the Falsely Marked Products, (b) affixing the Falsely Marked Patents to the Falsely Marked Products and (c) using the Falsely Marked Patents in advertising in connection with the Falsely Marked Products.

8. When a patent expires, all prospective rights in the patent terminate irrevocably. Therefore, a product marked with an expired patent is not currently protected by such expired patent. U.S. Patent 4,109,070 was filed on June 7, 1977 and issued on August 22, 1978. Therefore, U.S. Patent 4,109,070 expired no later than June 7, 1997. U.S. Patent 4,111,535 was filed on October 12, 1976 and issued on September 5, 1978. Therefore, U.S. Patent 4,111,535 expired no later than October 12, 1996. U.S. Patent 4,158,089 was filed on December 27, 1977 and issued on June 12, 1979. Therefore, U.S. Patent 4,158,089 expired no later than December 27, 1997. U.S. Patent 4,182,802 was filed on December 27, 1977 and issued on January 8, 1980. Therefore, U.S. Patent 4,182,802 expired no later than December 27, 1997. U.S. Patent 4,288,269 was filed on December 21, 1979 and issued on September 8, 1981. Therefore, U.S. 4,288,269 expired no later than December

21, 1999. U.S. Patent 4,312,725 was filed on January 31, 1980 as a continuation of an application filed on June 8, 1978 and issued on January 26, 1982. Therefore, U.S. Patent 4,312,725 expired no later than January 26, 1999. U.S. Patent 4,405,773 was filed on February 5, 1982 and issued on September 20, 1983. Therefore, U.S. Patent 4,405,773, expired no later than February 5, 2002. U.S. Patent 4,549,794 was filed on May 5, 1983 and issued on October 29, 1985. Therefore, U.S. Patent 4,549,794 expired no later than May 5, 2003. U.S. Patent 4,582,402 was filed on April 16, 1984 and issued on April 15, 1986. Therefore, U.S. Patent 4,582,402 expired no later than April 16, 2004. U.S. Patent 4,668,240 was filed on December 16, 1985 as a continuation of an application filed on January 4, 1985 and issued on May 26, 1987. Therefore, U.S. Patent 4,668,240 expired no later than January 4, 2005. U.S. Patent 4,704,017 was filed on September 23, 1985 as a continuation of an application filed on January 4, 1985 and issued on November 3, 1987. Therefore, U.S. Patent 4,704,017 expired no later than January 4, 2005. U.S. Patent 4,720,188 was filed on June 25, 1987 and issued on January 19, 1988. Therefore, U.S. Patent 4,720,188 expired no later than June 25, 2007. U.S. Patent 4,976,533 was filed on June 7, 1988 and issued on December 11, 1990. Therefore, U.S. Patent 4,976,533 expired no later than June 7, 2008. U.S. Patent 4,955,580 was filed on January 27, 1987 and issued on September 11, 1990. Therefore, U.S. Patent 4,955,580 expired no later than September 11, 2007. U.S. Patent 5,029,898 was filed on December 19, 1989 and issued on July 9, 1991. Therefore, U.S. Patent 5,029,898 expired no later than December 19, 2009. U.S. Patent 5,114,629 was filed on May 24, 1990 as a continuation of an application filed on March 18, 1986 and issued on May 19, 1992. Therefore, U.S. Patent 5,114,629 expired no later than May 19, 2009.

9. Moreover, patents only cover the inventions they claim. Despite this fact, Ciba has falsely marked some of the Falsely Marked Products with patents that have no application to the products in question. Thus Ciba has falsely marked its WildEyes contact lenses with U.S. Patent Nos. D416,923, D421,617, and D416,924 despite the fact that these designs are incompatible with each other and that there are more WildEyes designs than there are enumerated design patents. Thus each WildEyes lens product is falsely marked with either 2 or 3 inapplicable patents. Similarly, U.S. Patent No. 5,029,898 covers a ski pole and guard and appears to have no application to the Falsely Marked Products. U.S. Patent No. 4,288,269 is a Boeing patent that covers a method to remove protective paper tape and maskants and appears to have no application to the Falsely Marked Products. U.S. Patent No. 4,955,580 does not cover the Falsely Marked Product but rather a mold that might be used to produce contact lens. In this regard it is similar to other patents within the group comprising the Falsely Marked Patents, a number of which relate to processes as opposed to products.

10. It was a false statement for Ciba to mark the Falsely Marked Products with expired or inapplicable patents.

11. Ciba is a large, sophisticated company. Ciba has, and/or regularly retains, sophisticated legal counsel.

12. Ciba has many years of experience with patents and the licensing of patents.

13. Ciba knew that the Falsely Marked Products were not covered by the Falsely Marked Patents. Ciba personnel know that patents expire and that patent rights do not apply after patents expire. Ciba as the owner or licensee of intellectual property knows about its intellectual property's legal status. In particular, Ciba knew that the Falsely

Marked Patents marked on its products had expired and knew that the Falsely Marked Patents do not cover the products to which the marking is affixed. Ciba has no legitimate business reason that would explain its decision 1) not to remove expired patents from its products or 2) to place inapplicable patents on those products. Ciba likewise has no legitimate business reason that would explain its decision to include inapplicable patents and not to remove expired patents from its marking labels. Ciba also has no legitimate business reason that would explain its decision to continue utilizing the Falsely Marked Patents in its advertising and marketing of the Falsely Marked Products on the internet and at its website.

14. Ciba knew that it was a false statement to mark the Falsely Marked Products with expired patents. Upon information and belief, Ciba intentionally marked its products with the Falsely Marked Patents for the purpose of deceiving the public into believing that something contained in or embodied in the Falsely Marked Products is covered by or protected by the Falsely Marked Patents. Moreover, Ciba has been previously sued for falsely marking its products with other expired patents yet has taken no action to cease its false marking practices with respect to the Falsely Marked Products.

15. Ciba knew that its use of the Falsely Marked Patents gave it a competitive advantage and would increase its revenue.

V. INJURY IN FACT TO THE UNITED STATES

16. Ciba's false marking has caused injuries and continues to cause injuries to the sovereignty of the United States arising from Ciba's violations of federal law, specifically, Ciba's violations of 35 U.S.C. § 292(a).