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

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TMI PRODUCTS, INC.,
Plaintiff

v.

MID AMERICA MOTORWORKS,
INC.,
Defendant

Case No. 5:12-CV-01661-FMO-OP

**FIRST AMENDED COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF ARISING
OUT OF PATENT
INFRINGEMENT (35 U.S.C. § 271)**

AND

DEMAND FOR JURY TRIAL

1 Pursuant to the Court's order dated April 22, 2013 (Dkt. #24), for its First
2 Amended Complaint against Mid America Motorworks, Inc. ("Mid America," or
3 "Defendant"), Plaintiff TMI Products, Inc. ("TMI") alleges as follows:

4 **THE PARTIES**

5 1. TMI is a corporation duly organized and existing under the laws of the
6 California, with its principal place of business at 1493 E. Bentley Drive, Corona,
7 California 92879. TMI is the owner by assignment of U.S. Design Patent No.
8 D434,720 (the, "'720 Patent," or "Patent-In-Suit"). TMI's rights include the
9 exclusive world-wide rights to license the '720 patent, and to enforce the '720 patent
10 against alleged infringers.

11 2. Upon information and belief, Mid America is a corporation organized
12 and existing under the laws of the State of Illinois, with its principal place of
13 business at 17082 N. US Highway 45, Effingham IL, 62401-6764.

14 **NATURE OF THE ACTION**

15 3. In this civil action, TMI seeks damages and injunctive relief against
16 Defendant for acts of patent infringement in violation of the Patent Act of the United
17 States, 35 U.S.C. §§ 1 et seq.¹

18 **JURISDICTION AND VENUE**

19 4. Pursuant to 28 U.S.C. §§ 1331 and 1338, this Court has jurisdiction
20 over the federal claims alleged herein. Pursuant to 28 U.S.C. § 1367, this Court has
21 jurisdiction over the state law claim because it arises from a nucleus of operative
22 facts common to the federal claims.

23 5. Venue is proper under 28 U.S.C. §§ 1391(c) and 1400(b), in that the
24 acts and transactions complained of herein were conceived, carried out, made
25

26 ¹ TMI respectfully reserves the right to subsequently seek to add additional
27 causes of action as appropriate, whether in this action or in other actions, including
28 causes of action that are omitted in this First Amended Complaint in comparison to
the original Complaint. TMI also notes that its cause of action for design patent
infringement was not the subject of any previous motions to dismiss, and that
Defendant did not seek dismissal of that cause of action.

1 effective, or had effect within the State of California and within this Judicial
2 District, among other places.

3 6. On information and belief, Mid America resides in this Judicial District
4 by virtue of its business activities in this Judicial District.

5 7. On information and belief, Mid America markets and sells, throughout
6 the United States and including in this Judicial District, the automotive floor
7 consoles that are at issue in this action.

8 8. On information and belief, based at least on the facts stated above, this
9 Court has personal jurisdiction over Defendant.

10 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

11 9. TMI is a family-owned company founded in 1982 by four brothers.
12 TMI makes high-quality interior automotive components such as seating, interior
13 consoles, floor coverings, door panels, convertible roof assemblies, headliners, sun
14 visors, and integrated electronic systems.

15 10. For more than 25 years TMI Products, Inc. has specialized in
16 developing high-quality interior components for new premier models as well as
17 restoration vehicles.

18 11. TMI has invested multiple millions of dollars developing its proprietary
19 line of automotive products, including its patented Volkswagen (“VW”) Consoles.

20 12. On December 5, 2000, the United States Patent & Trademark Office
21 duly and legally issued United States Letters Patent No. D 434,720 (“the ’720
22 Patent”), entitled “AUTOMOTIVE CONSOLE.” A true and correct copy of the
23 ’720 Patent is attached as Exhibit A and incorporated herein by reference.

24 13. TMI is the assignee and owner of all rights, title, and interest in the
25 ’720 Patent. TMI’s rights include the world-wide right to license the ’720 Patent
26 and to enforce the ’720 Patent against any and all infringers.

27 14. Figure 1 of the ’720 Patent is reproduced below:
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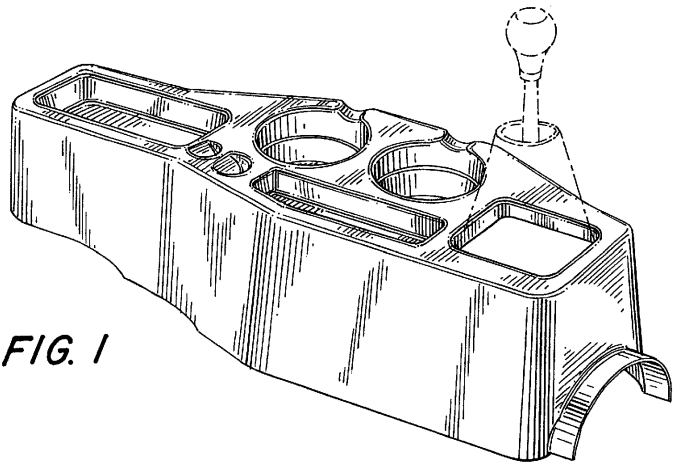


FIG. 1

15. TMI's VW Console bearing SKU No. 25-1108 is an embodiment of the invention claimed in the '720 patent.

16. TMI's VW Console bearing SKU No. 25-1109 is also an embodiment of the invention claimed in the '720 patent.

17. TMI's patented VW Consoles (SKU Nos. 25-1108 and 25-1109) are unique and have no equal in the marketplace.

18. Mid America is a supplier and distributor of automotive-related products, and owns and operates web sites at least at www.mamotorworks.com and www.mamotorworkstv.com, through which products may be purchased by consumers in the United States.

19. Defendant causes the manufacture of, sells, and distributes automotive products under the name Basic Black Center Console #304734.

20. The design and appearance of Defendant's Basic Black Center Console #304734 is overtly copied from TMI's VW Console # 25-1108.

21. As the photographs below demonstrate, Defendant's Basic Black Center Console #304734 (shown at the top) is virtually identical to the patented TMI VW Console #25-1108 product (shown at the bottom).

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22. Defendant causes the manufacture of, sells, and distributes automotive products under the name Basic Black Center Console #304731.

23. The design and appearance of Defendant's Basic Black Center Console #304731 is overtly copied from TMI's VW Console # 25-1109.

1 24. As the photographs below demonstrate, Defendant's Basic Black
2 Center Console #304731 (shown at the top) is virtually identical to the patented TMI
3 VW Console #25-1109 product (shown at the bottom).



25
26 25. Defendant was expressly notified of the existence of TMI's '720 Patent
27 and of its infringement of this patent, at least as early as January 10, 2012.

28

1 26. TMI's VW Consoles (SKU Nos. 25-1108 and 25-1109) have been on
2 the market since 1999, and are well known to the public and to Defendant.

3 27. At least because Defendant was aware of the existence of TMI's '720
4 patent, Defendant's infringement is willful.

5 28. Unless Defendant's conduct is enjoined, Defendant's disregard of
6 TMI's rights will result in irreparable harm to TMI.

7 **FIRST CLAIM FOR RELIEF**

8 **(Infringement of U.S. Design Patent No. D 434,720)**

9 29. TMI incorporates herein by reference the allegations set forth in
10 paragraphs 1-28 of this Complaint as though fully set forth herein.

11 30. Defendant makes, uses, offers to sell, sells, and/or imports its Basic
12 Black Center Consoles Nos. 304734 and 304731, and/or enables and/or induces
13 others to commit such acts.

14 31. Defendant is infringing the claim of the '720 patent by making, using,
15 selling, offering for sale, and/or importing for sale at least its Basic Black Center
16 Console Nos. 304734 and 304731, and/or by enabling and/or inducing others to
17 commit such acts.

18 32. Defendant will continue to commit such acts of infringement unless
19 enjoined by this Court.

20 33. Defendant has continued to commit one or more of the acts described
21 in the preceding paragraphs with full knowledge of TMI's '720 patent.

22 34. As a direct and proximate result of Defendant's infringement of the
23 '720 patent, TMI has been and continues to be damaged in an amount yet to be
24 determined.

25 35. Unless Defendant and its respective officers, agents, servants, and
26 employees, and all persons acting in concert with Defendant, are enjoined from
27 infringing the '720 patent, TMI will be greatly and irreparably harmed.
28

1 36. By reason of the above acts, TMI is entitled to injunctive relief
2 enjoining and restraining Defendant, and its respective officers, agents, servants, and
3 employees, and all persons acting in concert with Defendant, from further
4 infringement of the '720 patent.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, TMI prays for judgment against Defendant as follows:

7 1. That this Court adjudge and decree that the '720 patent is valid and
8 enforceable;

9 2. That this Court adjudge and decree that Defendant has infringed the
10 claim of the '720 patent, and that such infringement is willful and that this case is
11 exceptional under 35 U.S.C. § 285;

12 3. That this Court permanently enjoin Defendant, its owners, officers,
13 agents, servants, employees, attorneys, successors, and assigns, and all others in
14 active concert or participation with Defendant, from continued infringement of the
15 '720 patent;

16 4. That TMI be awarded Defendant's profits under 35 U.S.C. § 289;

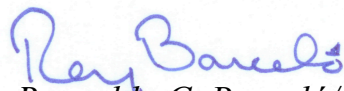
17 5. That TMI be awarded damages against Defendant for infringement of
18 the '720 patent, and that such an award be trebled under 35 U.S.C. § 284;

19 6. An assessment of prejudgment interest;

20 7. An award for TMI's costs and attorneys' fees; and

21 8. Any other relief this Court deems just and proper.

22
23 Dated: May 6, 2013

By:  /s Reynaldo C. Barceló/

24
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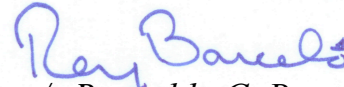
Attorneys for Plaintiff, TMI Products, Inc.

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DEMAND FOR JURY TRIAL

TMI hereby demands a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure as to all issues in this lawsuit.

Dated: May 6, 2013



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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2013, the foregoing document, entitled
FIRST AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE
RELIEF ARISING OUT OF PATENT INFRINGEMENT (35 U.S.C. § 271)
AND DEMAND FOR JURY TRIAL was served upon the following counsel of
record for Defendant, via U.S. mail and electronic mail:

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Dated: May 6, 2013

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Attorneys for Plaintiff, TMI Products, Inc.

EXHIBIT A



US00D434720S

United States Patent [19]
Haack et al.

[11] **Patent Number: Des. 434,720**
[45] **Date of Patent: ** Dec. 5, 2000**

[54] **AUTOMOTIVE CONSOLE**

[75] Inventors: **Ernesto R. Haack, Anaheim; Eugene M. Tuccinardi, Temecula, both of Calif.**

[73] Assignee: **TMI Products, Inc., Corona, Calif.**

[**] Term: **14 Years**

[21] Appl. No.: **29/110,036**

[22] Filed: **Aug. 27, 1999**

[51] **LOC (7) Cl. 12-16**

[52] **U.S. Cl. D12/419**

[58] **Field of Search D12/400, 415, D12/416, 419, 421-426; 296/37.1, 37.6, 37.8-37.16; 224/42.11, 926, 539, 327, 275, 276, 540-542, 400; 108/44-45; 180/90; D7/619-622, 701, 707-708**

[56] **References Cited**

U.S. PATENT DOCUMENTS

D. 201,795	8/1965	Nimetz et al.	D12/419
D. 216,780	3/1970	Tronville et al.	D12/419
D. 271,541	11/1983	Rockwell	D12/419
D. 323,313	1/1992	Li	D12/419
D. 328,973	9/1992	Mankey	D12/419
D. 346,066	4/1994	Smith	D12/416

D. 359,266	6/1995	Karp et al.	D12/419
D. 362,837	10/1995	Mankey et al.	D12/419
D. 375,931	11/1996	Ferrigan	D12/419
D. 390,186	2/1998	Smith	D12/419
D. 397,083	8/1998	Smith	D12/419

OTHER PUBLICATIONS

"Rocky Mountain Motorworks" Catalog, 1999, p. 37.

Primary Examiner—Stacia Cadmus

Attorney, Agent, or Firm—Price Gess & Ubell

[57] **CLAIM**

The ornamental design for an automotive console, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view of the automotive console showing the new design;

FIG. 2 is a top plan view of FIG. 1;

FIG. 3 is a left side elevational view of FIG. 1;

FIG. 4 is a right side elevational view of FIG. 1;

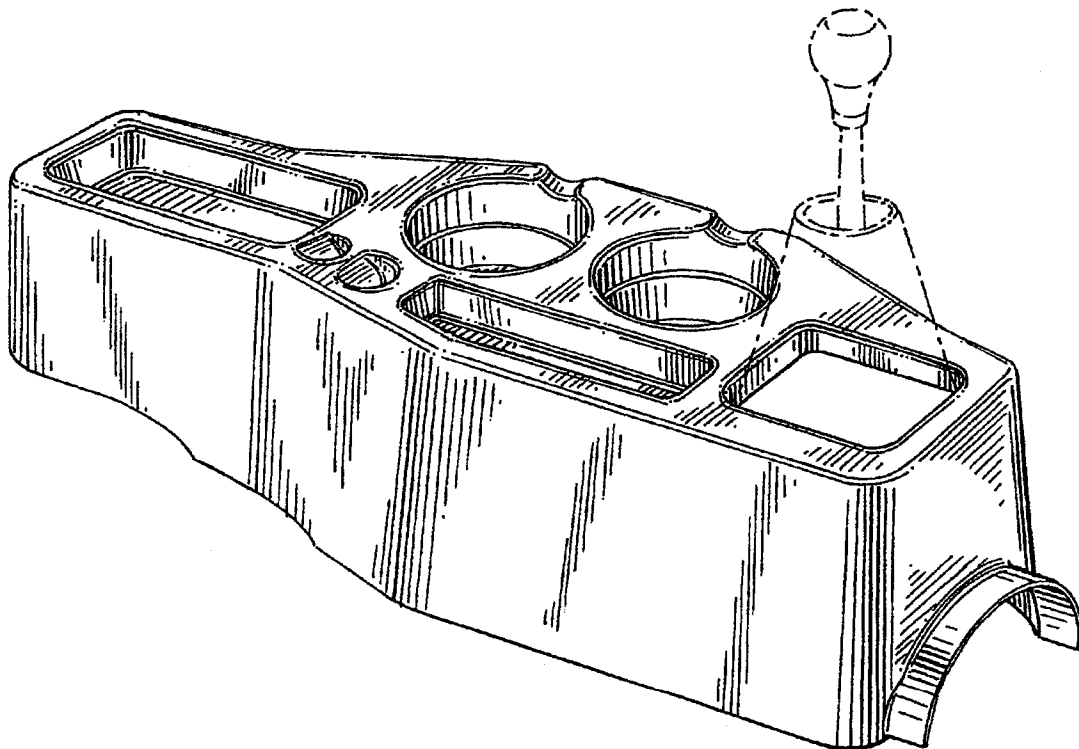
FIG. 5 is a bottom plan view of FIG. 1;

FIG. 6 is a front elevational view of FIG. 1; and,

FIG. 7 is a rear elevational view of FIG. 1.

The broken line showing of environment is for illustrative purposes only and forms no part of the claimed design.

1 Claim, 2 Drawing Sheets

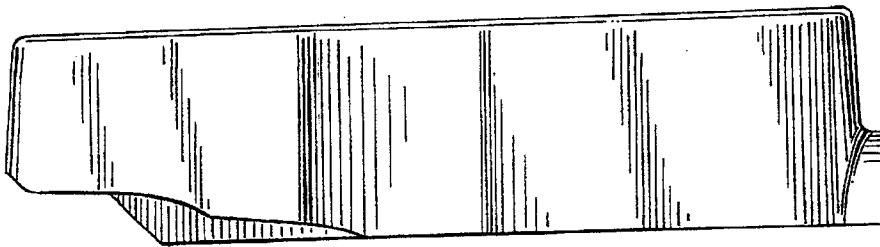
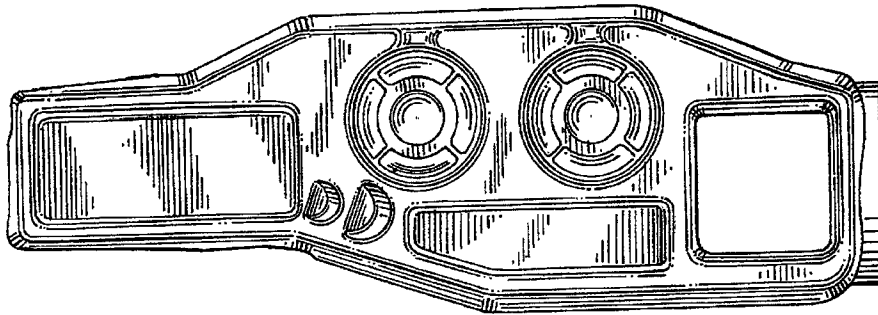
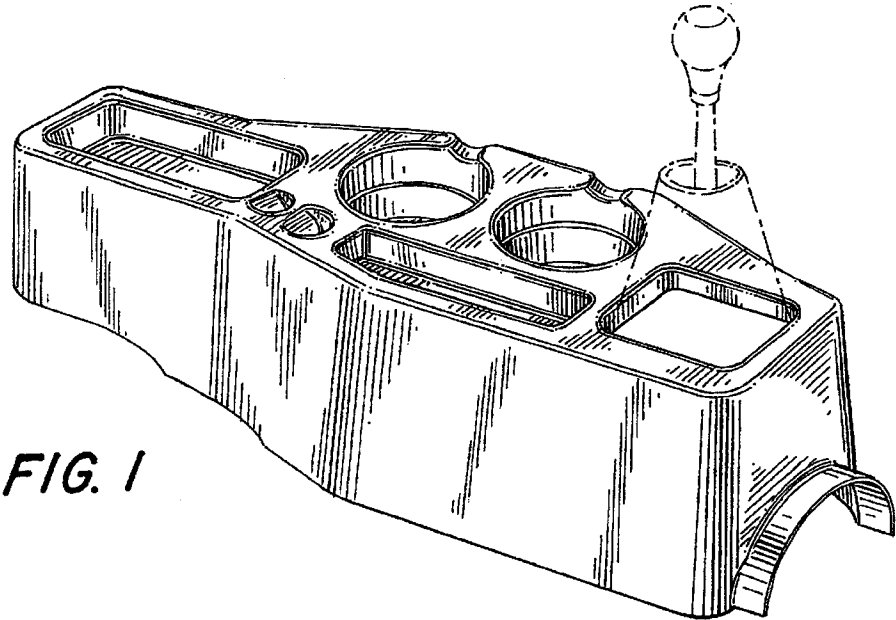


U.S. Patent

Dec. 5, 2000

Sheet 1 of 2

Des. 434,720



U.S. Patent

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Sheet 2 of 2

Des. 434,720

FIG. 4

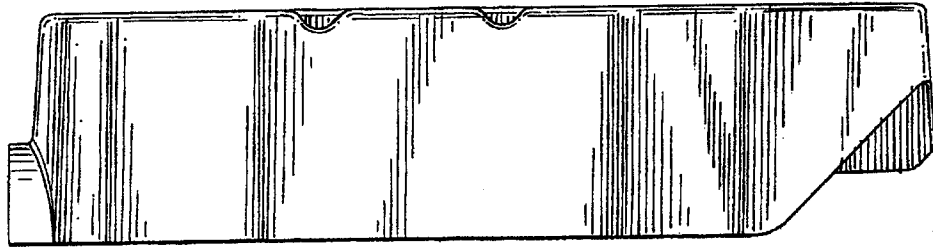


FIG. 5

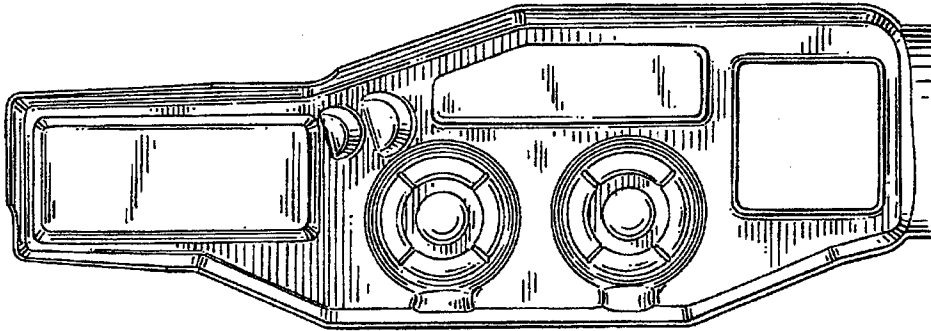


FIG. 6

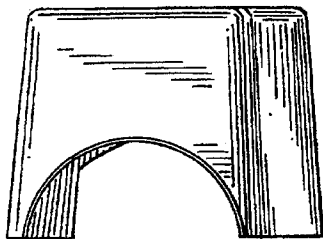


FIG. 7

