

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

FRENCHPORTE IP, LLC, and)
FRENCHPORTE, LLC,)
)
Plaintiffs,)
)
v.)
)
MARTIN DOOR MANUFACTURING,)
INC. and DIRECTBUY, INC.)
)
Defendants.)

Civil Action No. 1:13-cv-01329
JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs FrenchPorte IP, LLC and FrenchPorte, LLC (“FrenchPorte”) files this Complaint against Defendants Martin Door Manufacturing, Inc. (“Martin”) and DirectBuy, Inc. (“DirectBuy”), based upon actual knowledge as to itself and its own actions, and on information and belief as to all other persons and events, as follows:

Parties

1. FrenchPorte is a Maryland LLC with its principal place of business in Chevy Chase, MD. FrenchPorte is the assignee and owns all right, title, and interest to U.S. Pat. No. 6,948,547, 7,857,032, D505,495, D452,979, D464,142, D464,143, D464,736, D486,241, and D486,585, referred to below as the '547 Patent, the '032 Patent, the '495 Patent, the '979 Patent, the '142 Patent, the '143 Patent, the '736 Patent, the '241 Patent, and the '585 Patent, respectively, and collectively as the FrenchPorte Patents.

2. Martin is a California corporation, with its principal place of business at 2828 S 900 W Salt Lake City, Utah. Martin engages in the development, manufacture and distribution of garage doors. Martin may be served with process by service on its

registered agent for service, CT Corporation System at 818 W Seventh Street, Los Angeles, CA 90017.

3. DirectBuy is an Indiana corporation with its principal place of business at 8450 Broadway, Merrillville, IN and with three show rooms in the Commonwealth of Virginia, all located in the Eastern District of Virginia: DirectBuy of Hampton Roads, DirectBuy of Richmond, and DirectBuy of Woodbridge. DirectBuy may be served with process by service on its registered agent for service, Corporation Service Company, 251 E Ohio St. Suite 500, Indianapolis, IN, 46204.

Jurisdiction and Venue

4. This claim arises under the United States patent laws, 35 U.S.C. § 1, *et seq.* This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Martin has transacted business in the Commonwealth of Virginia, including the Eastern District of Virginia, and has caused tortious injury in this Commonwealth and District by an act or omission outside this Commonwealth and derived substantial revenue from goods used or consumed in this Commonwealth and District, by (a) establishing a network of authorized dealers, including AAC, Inc. of Vienna, Virginia, and Shore Doors of Stevensville, Maryland with the intent and for the purpose of selling Martin garage doors to persons in this Commonwealth and District, and by (b) selling Martin garage doors that infringe one or more FrenchPorte Patents to persons in this Commonwealth and District through its "DESIGN ONLINE" website tool and its authorized Martin Dealers and through DirectBuy to persons in this Commonwealth and District.

6. Martin has offered for sale and sold residential aluminum doors in the Commonwealth of Virginia which infringe the FrenchPorte patents as described below, including the Eastern District of Virginia, ever since their launch in late 2007. Martin has sold approximately 20 residential aluminum garage doors in the Commonwealth of Virginia for between \$60,000 to \$200,000 depending primarily on whether the doors sold were single or double doors. The precise numbers of doors sold by Martin in the Commonwealth of Virginia and the Eastern District of Virginia, their actual size, and their exact selling price(s), will be determined after FrenchPorte is afforded a reasonable opportunity for further investigation and discovery.

7. DirectBuy has transacted business in the Commonwealth of Virginia, including the Eastern District of Virginia, and has caused tortious injury in this Commonwealth and District by an act or omission outside this Commonwealth and derived substantial revenue from goods used or consumed in this Commonwealth and District, by (a) establishing a network of DirectBuy stores in this Commonwealth and in this District, including DirectBuy of Hampton Roads, DirectBuy of Richmond, and DirectBuy of Woodbridge, in part with the intent and for the purpose of selling Martin garage doors to persons in this Commonwealth and District, and by (b) selling Martin garage doors that infringe the '032 Patent to persons in this Commonwealth and District through directbuy.com and through its DirectBuy stores in Virginia to persons in this Commonwealth and District.

8. The precise numbers of doors sold by DirectBuy in the Commonwealth of Virginia and the Eastern District of Virginia, their actual size, and their exact selling

price(s), will be determined after FrenchPorte is afforded a reasonable opportunity for further investigation and discovery.

9. Venue is proper in this District and Division, under 28 U.S.C. §§ 1391 and 1400. Martin and DirectBuy reside within this District.

Factual Background

10. The FrenchPorte Patents are directed to overhead garage doors that look just like French doors. An example from FrenchPorte's website is reproduced below:



(Ex. B at 1).

11. While this garage appears to have three sets of French doors, in fact, as an interior shot of the rightmost door of this same garage shows, the FrenchPorte garage doors roll up into the ceiling on tracks just like a standard garage door:



(Ex. C at 1).

12. Accordingly a FrenchPorte garage is difficult to recognize as a garage at all as the following picture illustrates:



(Ex. D at 1).

13. While this picture appears at first glance to be a series of French doors leading onto a patio, in fact it is actually the front of a four-car garage, which becomes clear when one of the FrenchPorte garage doors is raised into the ceiling on its tracks:



(Ex. E at 1).

14. The FrenchPorte garage doors are the inventions of Ms. Jennifer Maher, a well-regarded make-up artist who has made up the faces of Cokie Roberts, Leonardo de Caprio and Bill Clinton prior to their appearances on ABC News. (Ex. F at 1).

15. Ms. Maher got the idea for FrenchPorte garage doors while house-hunting in the late 1990s, where she found standard garage doors looked “like big ugly boxes just plopped on the front of homes.” (Ex. G at 1). The problem bothered her for months. Then, one day, Ms. Maher visited a development of new houses, where the model home’s

garage had been set up as a temporary office, and the garage door had been replaced with French doors. (Ex. F at 1). When Ms. Maher inquired if she could buy a house with these doors, the builder told her “that the situation was only temporary and that they would be reinstalling that ugly garage door as soon as the house was sold.” (Ex. F at 1).

16. Ms. Maher was not deterred, however. As she recalls thinking at the time, “how hard would it be . . . to make a garage door that was attractive – one that looked like a French door but still operated as an overhead door?” (Ex. G at 1). Ms. Maher quickly found out the answer to her question: much harder than she initially thought.

17. The first problem Ms. Maher ran into is that while she found conventional garage doors “ugly”, the “mostly male garage-door dealers” who dominated the industry didn’t see them that way. (Ex. G at 1). Moreover, these same dealers were concerned about the cost of a garage door that looked like a French door. A conventional garage door cost \$1000, and garage door dealers knew how to sell garage doors at that price. (Ex. H at 2). But they worried that a garage door that looked like a French door would be significantly more expensive, and possibly cost multiples of a conventional garage door. So they wanted to know: How much more would it cost? And would anyone pay that much for a garage door? Until Ms. Maher could answer those questions, she knew her idea was going nowhere.

18. Accordingly, Ms. Maher investigated the matter and, needless to say, her investigations took some time. Ms. Maher is a make-up artist, not an engineer and indeed, before her work on the FrenchPorte garage door, she’d never worked with an engineer before in her life. So while she retained patent counsel and filed a number of patent applications on her designs starting in January 2000, she still needed to know:

could it be done? Could she design a garage door that not only looked beautiful on paper, but also could be built and sold for a price people were willing to pay?

19. To answer these questions, some 21 months after Ms. Maher filed her first design patent application, Ms. Maher entered into an NDA with Innovative Design Solutions, Inc. (“IDS”) (Ex. I at 1). She commissioned IDS to make a prototype of “FRENCH PORT DOORS” to be constructed out of “wood or other material” with panes of “polycarbonate or other material inserted and arranged in a way to give the appearance of French Doors in place of the garage door while retaining the ability to function in the same way as a standard garage door.” (Ex. I at 1). As that makes clear, at that time it was still not clear what materials would be used to make even this one of a kind prototype, let alone what could be used in a manufactured version of the FrenchPorte doors. (Ex. I at 1).

20. It took nearly six months of work, but by late January 2002, Ms. Maher and IDS working closely together had produced a full scale prototype of a FrenchPorte garage door. (See Ex. J and K). Two months later, Ms. Maher filed her first utility patent application on the FrenchPorte doors, leading ultimately to the issuance of the '547 patent based on the United States Patent and Trademark Office’s expert assessment that Ms. Maher had invented a truly new, non-obvious garage door. (Ex. L at 1).

Response to the FrenchPorte Door

21. Although most garage door dealers remained very skeptical even after Ms. Maher produced her prototype, she took heart from the fact that at least “their wives ‘immediately got it’.” (Ex. G at 1). Still, she knew she needed more than just a prototype: she needed a manufacturer and market recognition to show that she was right.

The only way to prove that people would pay for a FrenchPorte door was to launch the door as a commercial product, have it succeed on a small scale, and then attract a larger manufacturer who would partner with FrenchPorte to market the door properly. Ms. Maher's husband, Ken Maher, believed in the project and, to help Ms. Maher realize her vision, succeeded Ms. Maher as FrenchPorte's CEO at this time, adding his business expertise from running a successful mortgage business to Ms. Maher's design talents.

22. In the summer of 2003, FrenchPorte hired Alto Garage Door Manufacturing to develop and manufacture FrenchPorte Garage Doors. (Ex. M at 1). These manufactured FrenchPorte doors were shown for the first time at the International Builder's Show in Las Vegas, Nevada in January 2004, and over a thousand attendees expressed interest in the door. (Ex. M at 1). FrenchPorte also caught the attention of HGTV at the show, who interviewed Ms. Maher (Ex. M at 1) and named the FrenchPorte door one of HGTV's "100 Best Innovative Ideas" that year. (Ex. F at 1; Ex. H at 1). Once the HGTV segment of Ms. Maher and her door aired on HGTV, inquiries from potential customers started rolling in as to how to obtain the door and at what price. (*See* Ex. M at 1). What FrenchPorte learned was that, with FrenchPorte's sole manufacturer being based in the United States, the price unfortunately was still more than most customers were willing to pay. (*See* Ex. M at 1-2).

23. By mid 2005, however, FrenchPorte reached a manufacturing agreement with Hangzhou Legend Autodoor Factory in China, which considerably lowered the cost of the FrenchPorte doors. (Ex. M at 2). FrenchPorte also entered into a distribution agreement with A-Tech in August 2005, a large garage door distributor located in Palmer, Pennsylvania. (Ex. M at 2.) A-Tech had a network of approximately 1,500

dealers in the east. (Ex. M at 2). Wholesale revenue climbed to \$350,000 in 2006. (Ex. G at 1). FrenchPorte continued to invest heavily in innovation, leading that same year to the invention by Ms. Maher and Mr. Ni of Hangzhou in China of a pinch-resistant apparatus that prevented fingers from being injured in FrenchPorte's doors. (Ex. N at 1).

FrenchPorte Initiates a Promising Relationship with Martin Door

24. Even with these successes, however, given A-tech's East Coast focus, FrenchPorte saw the need to partner with additional companies to strengthen their mid-western and western network, as well as to potentially gain access to just in time manufacturing facilities in the United States to lower inventory requirements. FrenchPorte accordingly reached out to Martin Door of Salt Lake City, Utah, a then 70-year old, well-established garage door manufacturer and distributor with deep roots in the Midwest and West, which sold its doors in over 80 countries as well as to hundreds of Martin dealers in the U.S. (Ex. O at 1-2).

25. After initial overtures, on May 2, 2006, FrenchPorte Vice President Roger Davis, FrenchPorte Consultant Sam Bunch, and FrenchPorte Distributor A-Tech's COO, Scott Schmidt, met in Salt Lake City with David Martin, Chairman and CEO of Martin Door, along with David Haslam, Martin Door's Director of Sales and Marketing, and Robert Scott, Martin Door's Chief Engineer. (Ex. P at 1).

26. At that meeting, FrenchPorte was given a tour of Martin's 500,000 square foot facility which was "impressive and very clean and well organized." (Ex. P at 1). After the tour, FrenchPorte "displayed our pinch resistance extrusion design and door sample." (Ex. P at 1). The "Martin group of David Martin, David Haslam and Robert Scott reviewed the pinch resistance operation of the door." (Ex. P. at 1). They "all

seemed genuinely interested with the sample.” (Ex. P at 1). After the meeting adjourned to a conference room, questions arose as to “whether the Martin hinge and roller carriage would work.” (Ex. P at 2). At that point, “David Martin suggested that we disassemble our sample and see how a reversed Martin hinge would work.” (Ex. P at 2). “John McLaughlin, a Sales Manager with Martin assisted in the effort.” (Ex. P at 2). A detailed manufacturing and engineering analysis was conducted following the disassembly, (Ex. P at 2-3), and at the conclusion “[a]ll parties agreed that numbers would need to be crunched to determine if this would be feasible.” (Ex. P at 3). However, “Martin’s engineer was very positive that it would work,” but “[t]he question remains as to whether the price point would still make the door sellable.” (Ex. P at 3).

27. Further discussions were held regarding testing to show that FrenchPorte doors would comply with Florida regulations requiring doors to withstand 150 mph winds, a “very severe test.” (Ex. P. at 3). FrenchPorte agreed that “Martin would take the 3 samples from A-Tech . . . after the show in Las Vegas to begin cycle testing.” (Ex. P at 3). Martin “agreed to collaborate with FrenchPorte in the elevation and extrusion modification to the door.” (Ex. P at 4). David “Martin executed a confidentiality agreement when presented by FrenchPorte.” (Ex. P at 4). FrenchPorte “agreed to provide Martin with shop drawings and possibly a CAD file of the drawings as soon as possible” (Ex. P. at 4). However, both parties agreed that the Florida test could “be accomplished with tweaking the exiting [sic – existing] design.” (Ex. P at 4).

28. Martin then “expressed interest in possibly replacing their existing Silverline Door Model with FrenchPorte.” (Ex. P at 4). This was very attractive to FrenchPorte, of course, because after all if “Martin manufacturers [sic] the door, the

design, style, color and consumer choices could be endless.” (Ex. P. at 4). As for Martin’s perspective, “[b]ecause of the uniqueness of the door design, David Halsom [sic – Haslam] believes Atlanta (Home Depot) would be doing back flips for the opportunity to supply this door at their stores.” (Ex. P. at 4).

29. The parties then turned to a detailed discussion of patents. At the outset “David Martin educated us as too [sic] Martin’s some 60 patents.” (Ex. P at 4). He said “every door manufacture [sic] has and is infringing on his patents.” (Ex. P at 4). He “used an example over an infringement by Overhead Door.” (Ex. P at 4). The “cost to litigate would be prohibitive for the return.” (Ex. P at 4). He “could not even get Overhead Door to pay \$1.00 a door for Martin’s door seal design.” (Ex. P at 4).

30. He also “informed us that four known companies in China is [sic] actually using Martin’s name and his picture to promote a knock-off all of their design without their permission.” (Ex. P at 4). When “consulting with the authority, they informed him that it was a loosing [sic] battle.” (Ex. P at 4). His “other example was of 1,000 plus companies copying NOKIA phones and NOKIA not being able to do anything about it.” (Ex. P at 4).

31. As Roger Davis then observed, “[t]he idea being made that a patent is important in this country if put to market quickly, because a good design patent can be slightly modified and may not be ruled an infringement.” (Ex. P at 4). “However, FrenchPorte’s utility patent would make it very difficult for infringement.” (Ex. P at 4).

32. Following the meeting, A-Tech’s COO “thought our visit was very successful.” (Ex. P at 5). Dialogue “had been accomplished and the pinch resistance design was well received by Martin Door.” (Ex. P at 5). The collaboration “between

Martin, A-tech and FrenchPorte could provide a very unique opportunity for all parties.”
(Ex. P at 5).

**The Collaboration with Martin Fails and
Martin Launches the Avignon French Door**

33. Despite its promising beginning and significant efforts by all parties to follow through on the many fronts identified in the high-level May 2, 2006 discussion of collaboration, over time Martin became less and less responsive, until by 2007 Martin was no longer even returning phone calls from FrenchPorte’s CEO, Ken Maher.

34. Still, notwithstanding the disappointing and never-explained end of their potential collaboration with Martin, 2007 overall proved to be otherwise an excellent year for FrenchPorte, with wholesale revenue tripling from 2006 to over \$1 million. (Ex. G at 1). FrenchPorte opened its first showroom to the public that same year, and was having successful discussions with other large garage door manufacturers. (Ex. M at 2). After years of hard work by the Mahers and millions of dollars of their own savings invested in the venture, FrenchPorte looked finally poised to attract a larger manufacturer.

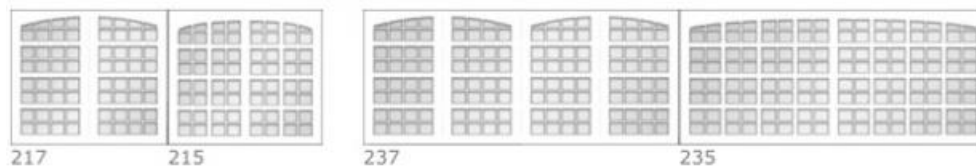
35. In 2009, however, it finally became clear why Martin had ceased collaborating with FrenchPorte. That year, Martin, launched the “Avignon Garage Door,” which “features a French-style” (hereinafter Martin’s Avignon French doors) in late 2009:



(Ex. Q at 1). Martin in fact featured this door on the front page of its August 2009, “Martinews” newsletter, distributed to “86 Countries of the World,” under the head-line “Avignon . . . La Belle!”, the latter being French for “the beautiful.” (Ex. Q at 1). Martin also helpfully noted that “[t]he Avignon is named after a city in southern France famous for being the home of seven Catholic popes in the period from 1305 to 1378.” (Ex. Q at 2).

36. Martin further praised the design, quoting David Haslam saying “It’s a new look and a new approach for the garage door market.” (Ex. Q at 2). And indeed it was, as David Haslam knew full well by learning of this new design and new approach at the May 2, 2006 meeting with FrenchPorte. (Ex. P at 1). Needless to say, Martinews made no mention that this “new look and . . . new approach” was presented to them by FrenchPorte in good faith years earlier. (Ex. P at 1).

37. Still, Martin apparently became somewhat concerned that the Avignon brand might be too similar to FrenchPorte and thus re-branded the door “the Athena,” ironically according to Wikipedia the Greek goddess of “wisdom . . . law and justice, just warfare . . . strength, strategy, the arts, crafts and skill.” Notwithstanding the rebranding, the identical Avignon French door design is sold to this day:



(Ex. R at 2). The term “Martin’s Avignon French doors” accordingly will be used herein to refer both to the original Avignon door as well as all of the garage door designs currently sold by Martin under the Athena brand.

38. Martin’s Avignon French doors infringe FrenchPorte’s '547 Patent, as can be seen by comparing Claim 1 of FrenchPorte’s '547 patent to the models of Martin’s Avignon French door described in Exhibit R, Martin’s online catalog for these garage doors.

39. Claim 1 of the '547 Patent first requires that the garage door be “[a]n overhead garage door adapted to be suspended horizontally when open and incorporating decorative elements of a house façade, the door having a front side, a rear side and a height, the front side forming an exterior façade having the appearance of a plurality of adjacent doorways . . .” (Ex. L at col. 6, ll. 39-44). All of Martin’s Avignon French doors are overhead garage doors that are adapted to be suspended horizontally when open. (*See* Ex. S at 1, 2). Martin’s Avignon French doors also “incorporate[e] decorative elements of a house façade” as, indeed even Martin admits by touting them as both “beautiful” and by noting they are “a sectional garage door, designed to look like a swinging door.” (Ex. Q at 1). Finally, Martin’s Avignon French doors, like all doors, have “a front side, a rear side and a height”, and their front side forms “an exterior façade having the appearance of a plurality of adjacent doorways.” (Ex. Q at 1). Here again, Martin promoted these doors upon their launch as “a sectional garage door, designed to look like a swinging door.”

(Ex. Q at 1). Martin’s Avignon French doors therefore meet all of these requirements of Claim 1.

40. Claim 1 of the '547 Patent next requires that the garage door have at least “three longitudinal sections arranged in a stack” (Ex. L at col. 6, ll. 46). All models of Martin’s Avignon French doors are made up of at least three longitudinal sections arranged in a stack. (See Ex. S at 2). Martin’s Avignon French doors therefore also meet these additional requirements of Claim 1.

41. Claim 1 of the '547 Patent next requires a “first”, “second” and “third” array of “impact resistant, light-transmitting . . . panels formed in the three longitudinal sections, the . . . array extending vertically more than half the height of the door, the . . . array including a [1st][3rd][5th] vertical stack of light-transmitting panels and a [2nd][4th][6th] vertical stack of light-transmitting panels, the [1st][3rd][5th] vertical stack being horizontally spaced apart from the [2nd][4th][6th] vertical stack by a [1st][2nd][3rd] gap.” (Ex. L at col. 6, ll. 47-67, col. 7, ll. 1-3). That is, the garage door must have at least the following “impact resistant, light-transmitting . . . panels”:

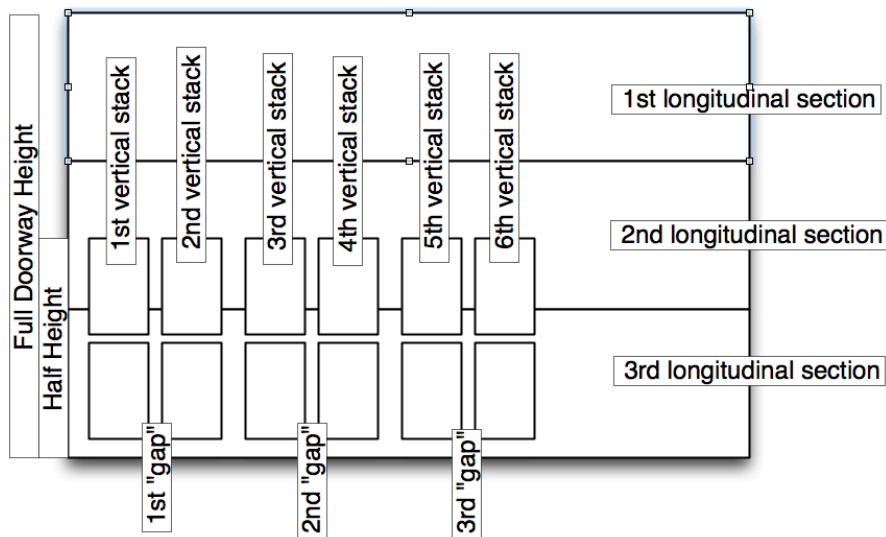


Figure 1

42. Claim 1 further requires a “first” and “second” vertical column “formed by portions of the three longitudinal sections disposed within a . . . horizontal space between the [1st][2nd] array and the [2nd][3rd] array, the . . . vertical column being wider than the . . . gaps.” (Ex. L at col. 7, ll. 4-14). This leads to the additional “vertical column” requirements set forth in Figure 2 below:

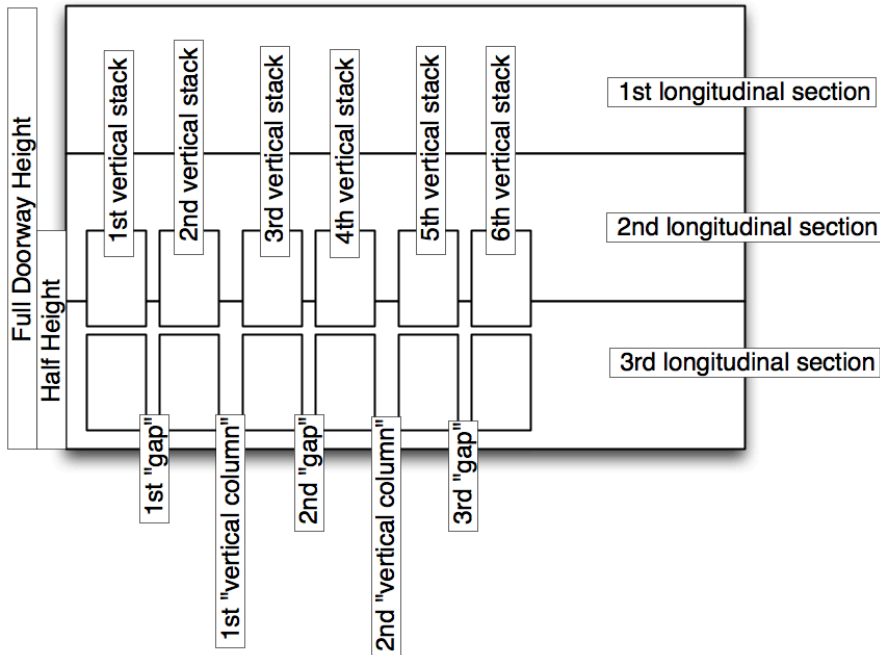


Figure 2

43. As can be seen, the first and second vertical columns depicted in Figure 2 are, as required by '547 Patent claim 1, disposed in a “horizontal space” between the first, second and third arrays (themselves “including” at least the six requisite vertical stacks of light-transmitting panels), and both of these vertical columns are “wider”, as required, than all three of the requisite gaps. (See Figure 2).

44. The Martin Avignon French doors likewise have light-transmitting panel[s] that make up the requisite six vertical stacks in three longitudinal sections, which make up more than half the height of the door, and then form three gaps and two

columns, where the two columns are larger than all of the three gaps. (Ex. Q at 1). For example, the original Avignon door meets these requirements of Claim 1 of the '547 Patent as can be seen from the diagram below:

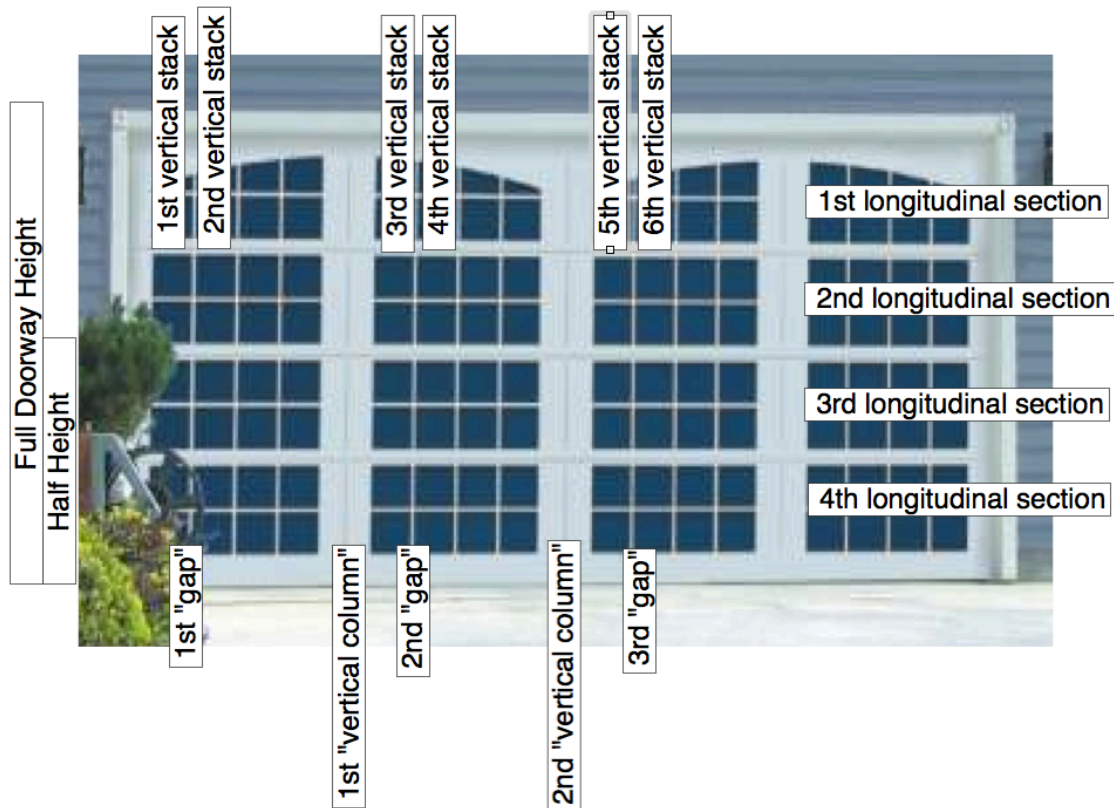


Figure 3

45. Indeed, six of the sixteen Martin Avignon French door designs have these required elements of Claim 1 of the '547 Patent. (Ex. R at 2 (*see* Styles 215, 237, 235, 218, 236 and 238)). While four of these styles have a thicker central vertical column, and at least two other vertical columns, these styles infringe to the same extent as Style 237 (the original Avignon door) because these vertical columns are only required to be wider than the three requisite gaps. (Ex. L at col. 7, ll. 4-14). The remaining ten Martin Avignon French doors, however, lack the required second “vertical column” and

therefore do not literally infringe Claim 1 of the '547 Patent, although many of these doors do infringe FrenchPorte's '032 patent, as well as a number of the FrenchPorte design patents, as further explained below. (*Id.*)

46. Likewise, the Martin Avignon French doors have “light-transmitting” panels in the configurations required by '547 Patent claim 1, when they are sold with any of the four “Window Tint” or Laminate Glass Options, (Ex. R at 2-3), all of which glasses are depicted by Martin as transmitting light when samples of these glasses are displayed against a red-flower background, (Ex. R at 3). As Martin warrants its garage doors for 5 years (Ex. R at 1) and would also be liable for any injury its garage doors might cause, these light-transmitting panels are also “impact resistant” as further required by '547 Patent claim 1.

47. '547 Patent claim 1 further requires the claimed garage door to have “a plurality of guide rollers.” (Ex. L at col. 7, ll. 15). As Martin “doesn’t cut corners or scrimp on the hardware for the world’s best garage door,” Martin’s Avignon French doors have rollers most likely for the two interior longitudinal sections, as well as at the top and bottom of the door, without which the door would not remain on the track. (Ex. S at 1). With at least two rollers and more likely four, Martin’s Avignon French doors have the requisite “plurality of guide rollers” and therefore meet this element of Claim 1 as well.

48. Finally, '547 Patent claim 1 requires that “said light-transmitting panels permit light from the front side to transmit through the door to the rear side,” (Ex. L at col. 7 at ll. 16-18), which all of the options available meet, as discussed above in detail. *See, supra*, ¶ 42. '547 Patent claim 1 further requires that the “arrays be[] arranged on

said exterior facade to simulate adjacent, light transmitting doorways” (Ex. L at col. 7 at ll. 18-19), which, as discussed previously, they do. *See, supra*, ¶ 35. Finally, Claim 1 requires “said impact resistant light-transmitting panels in conjunction with said vertical columns provide the functionality of structural integrity for the garage door.” (Ex. L at col. 7 at ll. 20-22). These requirements are also met because Martin stands by the safety and structural integrity of its Avignon French doors, (Ex. S at 1), and specifically warranties its products against defects for 5 years, (Ex. R at 1).

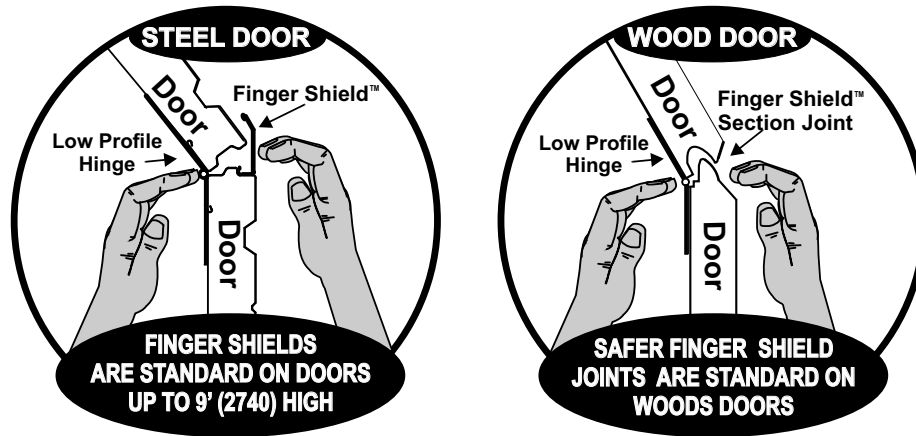
49. Accordingly, for all of these reasons, Martin’s Avignon French doors infringe at least Claim 1 of the '547 patent.

50. DirectBuy may offer Martin’s Avignon French doors for sale, but as DirectBuy is a members only club, and very limited information regarding the Martin doors DirectBuy sells is available to the public, FrenchPorte needs to explore the exact models offered by DirectBuy through discovery to assess infringement of the '547 patent by DirectBuy.

Martin’s Infringement of the '032 Patent

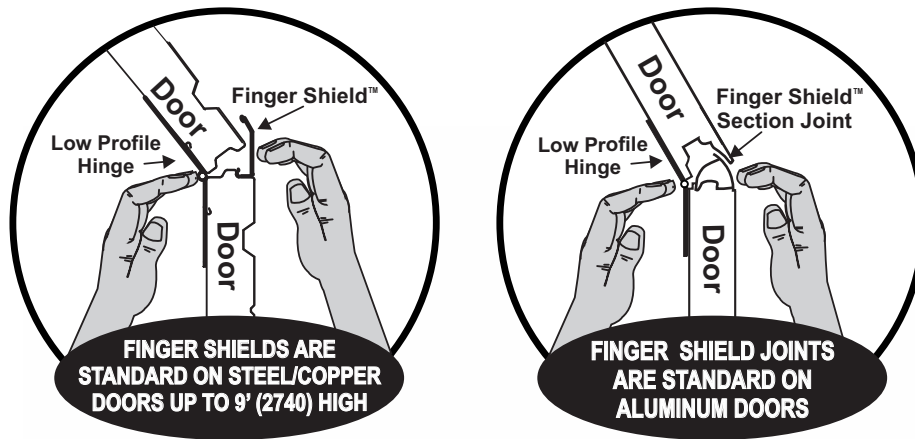
51. In addition to infringing at least Claim 1 of the '547 patent, Martin’s Avignon French doors also infringe at least Claim 1 of the '032 Patent, as do all of Martin’s Residential Aluminum Doors.

52. In 2004, prior to meeting with FrenchPorte, Martin made only steel and wood doors, which used Martin’s FingerShield to protect children’s fingers from being injured in doors:

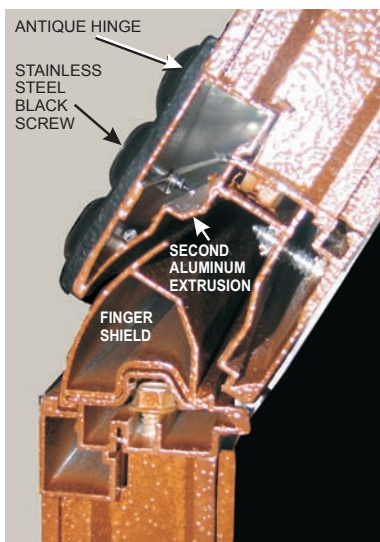


(Ex. T at 23).

53. In late 2007, however, after meeting with FrenchPorte and seeing FrenchPorte's aluminum door sample, Martin began offering residential aluminum doors, which used a new device to protect against finger injury for these doors:



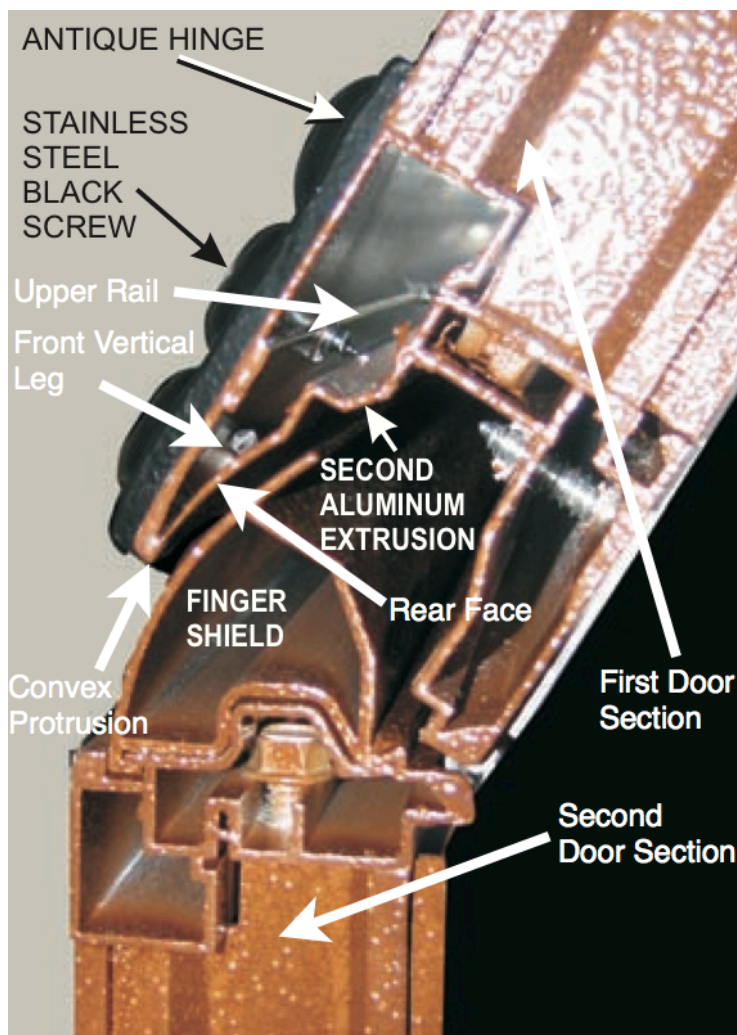
54. Martin's Aluminum FingerShield joint infringes Claim 1 of the '032 patent, as can be seen by reference to a photograph of this joint, which will be progressively annotated to illustrate infringement. First, the original photograph:



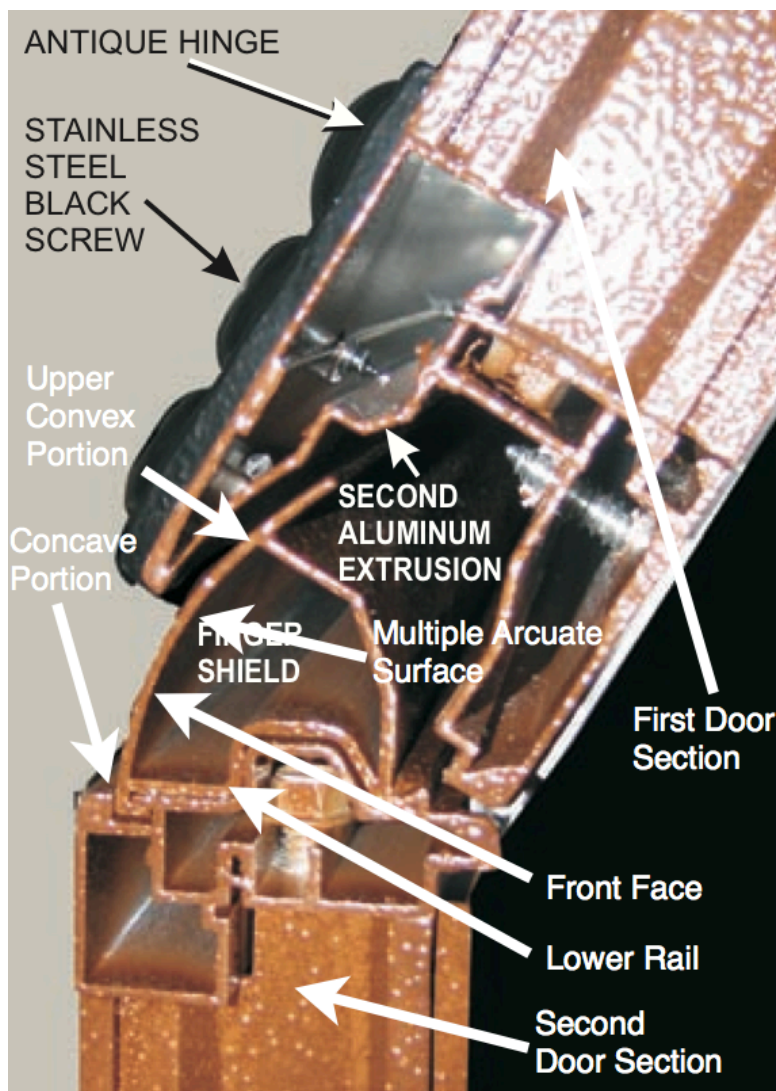
(Ex. U at 22).

55. Claim 1 requires a “sectional overhead garage door, comprising: a first door section; and a second door section, the first door section and the second door section being configured to be hingedly attached to each other.” (Ex. N at col. 11, ll. 23-29). Martin’s aluminum doors have two such sections which are hingedly attached to each other. (Ex. U at 23).

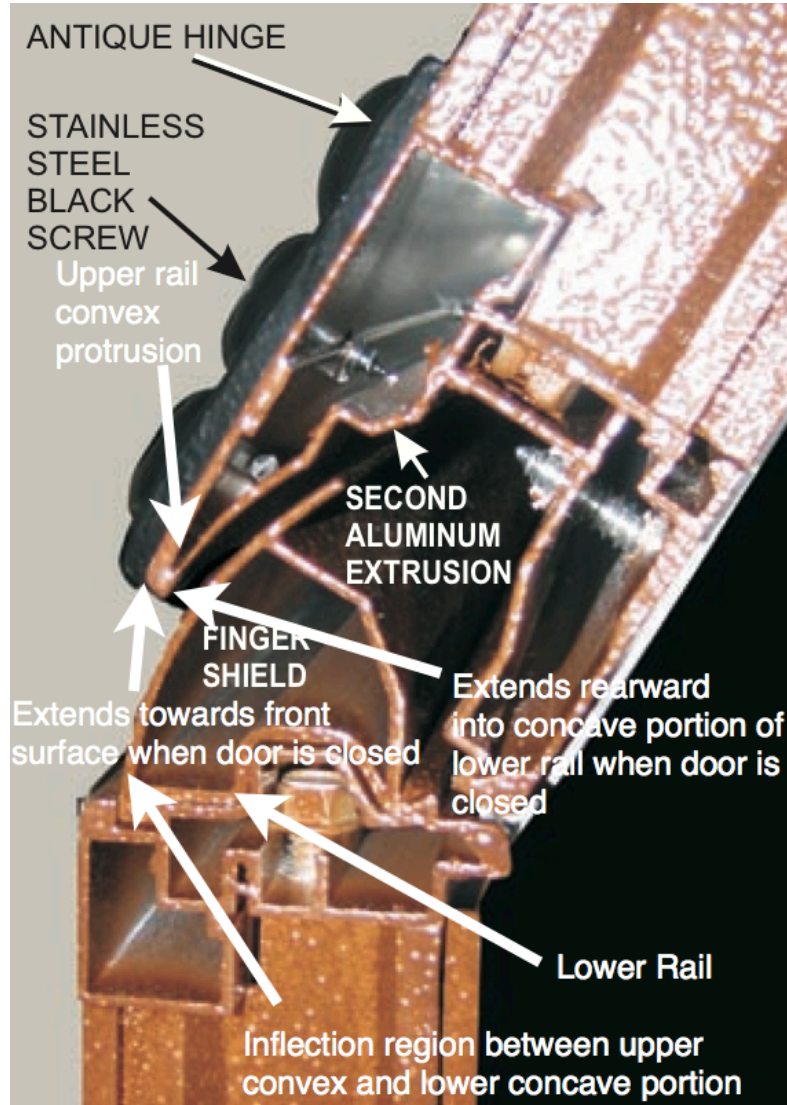
56. Next, Claim 1 requires there to be an “upper rail being attached to the first door section and having a front vertical leg, the front vertical leg having a rear face, and a lower portion of the rear face forming a convex protrusion.” (Ex. N at col. 11, ll. 30-33). These elements are present in all of Martin’s aluminum doors, as shown below:



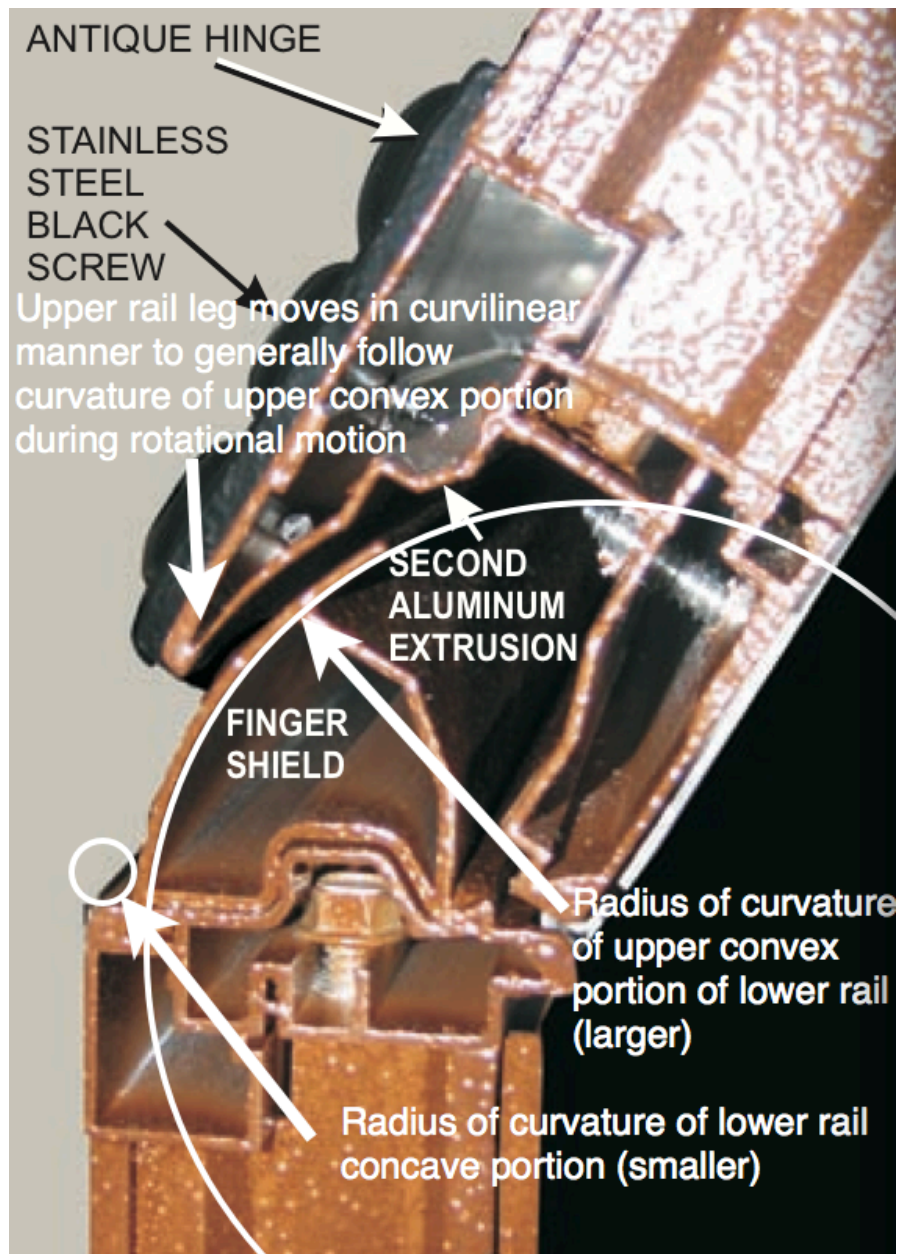
57. Claim 1 next requires there to be a “lower rail being attached to the second door section, the lower rail having a front face and a multiple arcuate surface on the front face, the multiple arcuate surface having an upper convex portion, a concave portion which mates with the upper rail convex protrusion . . .” (Ex. N at col. 11, ll. 34-38). These elements are also all present in all of Martin’s aluminum doors, as shown below:



58. Claim 1 next requires that “the upper rail convex protrusion [be] extending rearward into the concave portion of the lower rail and toward a front surface of the overhead garage door when the first section and the second section are in a closed position, and an inflection region between the upper convex portion and the concave portion” (Ex. N at col. 11, ll. 38-43). These elements are also all present in all of Martin’s aluminum doors, as shown below:



59. Finally Claim 1 requires “the lower rail concave portion has a radius of curvature smaller than a radius of curvature of the upper convex portion of the lower rail, and the upper rail front vertical leg moves in a curvilinear manner to generally follow the curvature of the upper convex protrusion during rotational motion of the upper and lower rails.” (Ex. N at col. 11, ll. 44-49). These elements are also all present in all of Martin’s aluminum doors, as shown below:



60. Accordingly, Claim 1 of the '032 patent is infringed by all of Martin's residential aluminum doors. Claims 2 and 3 of the '032 patent are also infringed by all of Martin's residential aluminum doors as these require simply that the upper and lower rail "comprise a metal material" and more specifically "aluminum." (Ex. N at col. 11, ll. 50-54). Martin's rails are both metal and aluminum. (Ex. U at 22, 23).

61. DirectBuy sells and offers for sale all of Martin's current models of residential aluminum doors. DirectBuy accordingly also infringes the '032 patent.

Martin Also Infringes FrenchPorte's Design Patents

62. In addition to infringing the '547 and '032 patents, Martin's Avignon French doors also infringe the remainder of the FrenchPorte patents, namely the '495 Patent, the '979 Patent, the '142 Patent, the '143 Patent, the '736 Patent, the '241 Patent, and the '585 Patent. All seven of these patents are design patents which, unlike a utility patent such as the '547 Patent, have only a single claim that covers all of the figures in the patent. The scope of the claim encompasses the design's visual appearance as a whole. All matter depicted in solid lines contributes to the overall appearance of the design, whereas broken lines constitute unclaimed subject matter. To show infringement of these patents, FrenchPorte must show that the overall appearance of Martin's Avignon French doors is substantially the same as the overall appearance of the claimed FrenchPorte garage doors.

63. Like the '547 Patent, the '495 Patent, the '979 Patent, the '142 Patent, the '143 Patent, the '736 Patent, the '241 Patent, and the '585 Patent all depict in their figures and therefore claim overhead garage doors that look like swinging French doors. Martin's Avignon French doors are all garage doors that appear to be swinging French doors and therefore they infringe the '495 Patent, the '979 Patent, the '142 Patent, the '143 Patent, the '736 Patent, the '241 Patent, and the '585 Patent. Indeed, as Martin concedes, "the Avignon . . . Garage Door . . . features a French-style . . . and is a sectional garage door, designed to look like a swinging door." (Ex. Q at 1). For that reason, the Martin

Avignon French doors infringe the '495 Patent, the '979 Patent, the '142 Patent, the '143 Patent, the '736 Patent, the '241 Patent, and the '585 Patent.

64. DirectBuy may offer Martin's Avignon French doors for sale, but as DirectBuy is a members only club, and very limited information regarding the Martin doors DirectBuy sells is available to the public, FrenchPorte needs to explore the exact models offered by DirectBuy through discovery to assess infringement of the '495 Patent, the '979 Patent, the '142 Patent, the '143 Patent, the '736 Patent, the '241 Patent, and the '585 Patent by DirectBuy.

FrenchPorte Suffers from Martin's Infringement

65. Martin's infringement had a devastating effect on FrenchPorte because of Martin's much greater size. Martin's annual wholesale revenues are on the order of 100 times as much as FrenchPorte's. With the FrenchPorte door itself a proven winner, FrenchPorte's marketing was simply no match for Martin's promotion of its infringing Avignon French door and Martin's residential aluminum doors. FrenchPorte's wholesale revenues have shrunk from their peak in 2007 of over a million dollars a year back to only a quarter of that height today at best. The Maher's closed their showroom in 2009 and have operated their business out of their home ever since.

66. FrenchPorte accordingly comes now to this Court to obtain relief from Martin and DirectBuy's infringement, as otherwise the Maher's dream of beautiful FrenchPorte garage doors may well be realized, only not by them as the rightful innovators, but instead by Martin and DirectBuy's infringement of FrenchPorte's patents.

Count 1 – Martin’s Infringement of U.S. Patent No. 6,948,547

67. FrenchPorte incorporates by reference the material factual allegations above.

68. Martin has infringed and is continuing to infringe the '547 Patent by engaging in acts including making, using, selling, or offering to sell within the United States, products that embody the patented invention described and claimed in the '547 Patent, including Martin’s Avignon French garage doors.

69. Martin’s activities have been without express or implied license from FrenchPorte.

70. Martin will continue to infringe the '547 Patent unless enjoined by this Court. As a result of the Martin’s infringing conduct, FrenchPorte has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. FrenchPorte is entitled to permanent injunctive relief against such infringement, under 35 U.S.C. § 283.

71. As a result of the infringement of the '547 Patent, FrenchPorte has been damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant to 35 U.S.C. § 284, in an amount to be determined at trial.

Count 2 – Martin’s Infringement of U.S. Patent No. 7,857,032

72. FrenchPorte incorporates by reference the material factual allegations above.

73. Martin has infringed and is continuing to infringe the '032 Patent by engaging in acts including making, using, selling, or offering to sell within the United States, products that embody the patented invention described and claimed in the '032

Patent, including Martin's Avignon French garage doors and Martin's other residential aluminum garage doors.

74. Martin's activities have been without express or implied license from FrenchPorte.

75. Martin will continue to infringe the '032 Patent unless enjoined by this Court. As a result of the Martin's infringing conduct, FrenchPorte has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law.

FrenchPorte is entitled to permanent injunctive relief against such infringement, under 35 U.S.C. § 283.

76. As a result of the infringement of the '032 Patent, FrenchPorte has been damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant to 35 U.S.C. § 284, in an amount to be determined at trial.

Count 3 – DirectBuy's Infringement of U.S. Patent No. 7,857,032

77. FrenchPorte incorporates by reference the material factual allegations above.

78. DirectBuy has infringed and is continuing to infringe the '032 Patent by engaging in acts including using, selling, or offering to sell within the United States, products that embody the patented invention described and claimed in the '032 Patent, including Martin's residential aluminum garage doors.

79. DirectBuy's activities have been without express or implied license from FrenchPorte.

80. DirectBuy will continue to infringe the '032 Patent unless enjoined by this Court. As a result of the DirectBuy's infringing conduct, FrenchPorte has suffered, and

will continue to suffer, irreparable harm for which there is no adequate remedy at law. FrenchPorte is entitled to permanent injunctive relief against such infringement, under 35 U.S.C. § 283.

81. As a result of the infringement of the '032 Patent, FrenchPorte has been damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant to 35 U.S.C. § 284, in an amount to be determined at trial.

Count 4 – Martin’s Infringement of U.S. Patent D505,495

82. FrenchPorte incorporates by reference the material factual allegations above.

83. Martin has infringed and is continuing to infringe the '495 Patent by engaging in acts including making, using, selling, or offering to sell within the United States, products that embody the patented invention described and claimed in the '495 Patent, including Martin’s Avignon French garage doors.

84. Martin’s activities have been without express or implied license from FrenchPorte.

85. Martin will continue to infringe the '495 Patent unless enjoined by this Court. As a result of the Martin’s infringing conduct, FrenchPorte has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law.

FrenchPorte is entitled to permanent injunctive relief against such infringement, under 35 U.S.C. § 283.

86. As a result of the infringement of the '495 Patent, FrenchPorte has been damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant to 35 U.S.C. § 284, in an amount to be determined at trial.

Count 5 – Martin’s Infringement of U.S. Patent D452,979

87. FrenchPorte incorporates by reference the material factual allegations above.

88. Martin has infringed and is continuing to infringe the '979 Patent by engaging in acts including making, using, selling, or offering to sell within the United States, products that embody the patented invention described and claimed in the '979 Patent, including Martin’s Avignon French garage doors.

89. Martin’s activities have been without express or implied license from FrenchPorte.

90. Martin will continue to infringe the '979 Patent unless enjoined by this Court. As a result of the Martin’s infringing conduct, FrenchPorte has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. FrenchPorte is entitled to permanent injunctive relief against such infringement, under 35 U.S.C. § 283.

91. As a result of the infringement of the '979 Patent, FrenchPorte has been damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant to 35 U.S.C. § 284, in an amount to be determined at trial.

Count 6 – Martin’s Infringement of U.S. Patent D464,142

92. FrenchPorte incorporates by reference the material factual allegations above.

93. Martin has infringed and is continuing to infringe the '142 Patent by engaging in acts including making, using, selling, or offering to sell within the United

States, products that embody the patented invention described and claimed in the '142 Patent, including Martin's Avignon French garage doors.

94. Martin's activities have been without express or implied license from FrenchPorte.

95. Martin will continue to infringe the '142 Patent unless enjoined by this Court. As a result of the Martin's infringing conduct, FrenchPorte has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law.

FrenchPorte is entitled to permanent injunctive relief against such infringement, under 35 U.S.C. § 283.

96. As a result of the infringement of the '142 Patent, FrenchPorte has been damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant to 35 U.S.C. § 284, in an amount to be determined at trial.

Count 7 – Martin's Infringement of U.S. Patent D464,143

97. FrenchPorte incorporates by reference the material factual allegations above.

98. Martin has infringed and is continuing to infringe the '143 Patent by engaging in acts including making, using, selling, or offering to sell within the United States, products that embody the patented invention described and claimed in the '143 Patent, including Martin's Avignon French garage doors.

99. Martin's activities have been without express or implied license from FrenchPorte.

100. Martin will continue to infringe the '143 Patent unless enjoined by this Court. As a result of the Martin's infringing conduct, FrenchPorte has suffered, and will

continue to suffer, irreparable harm for which there is no adequate remedy at law.

FrenchPorte is entitled to permanent injunctive relief against such infringement, under 35 U.S.C. § 283.

101. As a result of the infringement of the '143 Patent, FrenchPorte has been damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant to 35 U.S.C. § 284, in an amount to be determined at trial.

Count 8 – Martin’s Infringement of U.S. Patent D464,736

102. FrenchPorte incorporates by reference the material factual allegations above.

103. Martin has infringed and is continuing to infringe the '736 Patent by engaging in acts including making, using, selling, or offering to sell within the United States, products that embody the patented invention described and claimed in the '736 Patent, including Martin’s Avignon French garage doors.

104. Martin’s activities have been without express or implied license from FrenchPorte.

105. Martin will continue to infringe the '736 Patent unless enjoined by this Court. As a result of the Martin’s infringing conduct, FrenchPorte has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law.

FrenchPorte is entitled to permanent injunctive relief against such infringement, under 35 U.S.C. § 283.

106. As a result of the infringement of the '736 Patent, FrenchPorte has been damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant to 35 U.S.C. § 284, in an amount to be determined at trial.

Count 9 – Martin’s Infringement of U.S. Patent D486,241

107. FrenchPorte incorporates by reference the material factual allegations above.

108. Martin has infringed and is continuing to infringe the '241 Patent by engaging in acts including making, using, selling, or offering to sell within the United States, products that embody the patented invention described and claimed in the '241 Patent, including Martin’s Avignon French garage doors.

109. Martin’s activities have been without express or implied license from FrenchPorte.

110. Martin will continue to infringe the '241 Patent unless enjoined by this Court. As a result of the Martin’s infringing conduct, FrenchPorte has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. FrenchPorte is entitled to permanent injunctive relief against such infringement, under 35 U.S.C. § 283.

111. As a result of the infringement of the '241 Patent, FrenchPorte has been damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant to 35 U.S.C. § 284, in an amount to be determined at trial.

Count 10 – Martin’s Infringement of U.S. Patent D486,585

112. FrenchPorte incorporates by reference the material factual allegations above.

113. Martin has infringed and is continuing to infringe the '585 Patent by engaging in acts including making, using, selling, or offering to sell within the United

States, products that embody the patented invention described and claimed in the '585 Patent, including Martin's Avignon French garage doors.

114. Martin's activities have been without express or implied license from FrenchPorte.

115. Martin will continue to infringe the '585 Patent unless enjoined by this Court. As a result of the Martin's infringing conduct, FrenchPorte has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law.

FrenchPorte is entitled to permanent injunctive relief against such infringement, under 35 U.S.C. § 283.

116. As a result of the infringement of the '585 Patent, FrenchPorte has been damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant to 35 U.S.C. § 284, in an amount to be determined at trial.

Jury Trial Demand

117. FrenchPorte demands a trial by jury on all appropriate issues.

Prayer for Relief

Therefore, upon final hearing or trial, plaintiff FrenchPorte prays for the following relief:

- (a) A judgment that Martin has infringed the '547 Patent;
- (b) A judgment that Martin has infringed the '032 Patent;
- (c) A judgment that DirectBuy has infringed the '032 Patent;
- (d) A judgment that Martin has infringed the '495 Patent;
- (c) A judgment that Martin has infringed the '979 Patent;
- (d) A judgment that Martin has infringed the '142 Patent;

- (e) A judgment that Martin has infringed the '143 Patent;
- (f) A judgment that Martin has infringed the '736 Patent;
- (g) A judgment that Martin has infringed the '241 Patent;
- (h) A judgment that Martin has infringed the '585 Patent;
- (i) A judgment and order permanently restraining and enjoining Martin, its directors, officers, employees, servants, agents, affiliates, subsidiaries, others controlled by them, and all persons in active concert or participation with any of them, from further infringing the FrenchPorte Patents;
- (j) A judgment and order permanently restraining and enjoining DirectBuy, its directors, officers, employees, servants, agents, affiliates, subsidiaries, others controlled by them, and all persons in active concert or participation with any of them, from further infringing the '032 Patent;;
- (j) A judgment and order requiring Martin and DirectBuy to pay damages to FrenchPorte adequate to compensate it for Martin's wrongful infringing acts, in accordance with 35 U.S.C. § 284 and 35 U.S.C. § 289;
- (k) A judgment and order requiring Martin and DirectBuy to pay to FrenchPorte pre-judgment interest under 35 U.S.C. § 284, and post-judgment interest under 28 U.S.C. § 1961, on all damages awarded; and
- (l) Such other costs and further relief, to which FrenchPorte is entitled.

Dated: January 7, 2014

Respectfully submitted,

/s/

Jay M. McDannell, Esq. (VA #45630)
Potomac Law Group, LLP
1300 Pennsylvania Avenue, NW
Suite 700
Washington, D.C. 20004
Direct: (703) 718-0171
Fax: (202) 318-7707
jmcannell@thepotomaclawgroup.com

Of Counsel:

Neil H. Koslowe
Potomac Law Group, LLP
1300 Pennsylvania Avenue, NW

Suite 700
Washington, D.C. 20004
Direct: (202) 508-8118
nkoslowe@potomaclaw.com

Geoffrey C. Mason, Esq.
Potomac Law Group, LLP
1300 Pennsylvania Avenue, NW
Suite 700
Washington, D.C. 20004
Direct: (202) 507-5720
gmason@potomaclaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January 2014, the foregoing Amended Complaint was served via ECF on the following:

Jeffrey K. Sherwood
Dickstein Shapiro, LLP
1825 Eye Street NW
Washington, DC 20006
Telephone: (202) 420-2200
sherwoodj@dicksteinshapiro.com

/s/
Jay M. McDannell, Esq. (VA #45630)
Potomac Law Group, LLP
1300 Pennsylvania Avenue, NW
Suite 700
Washington, D.C. 20004
Direct: (703) 718-0171
Fax: (202) 318-7707
jmcannell@potomaclaw.com