

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

WAYNE FUELING SYSTEMS LLC,

Plaintiff,

v.

ESCO SERVICES, INC.

Defendant.

Civ. Action No.: 1:15-cv-460

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Wayne Fueling Systems LLC, by its undersigned attorneys, for its Complaint against ESCO Services, Inc., demands a trial by jury and alleges as follows:

THE PARTIES

1. Plaintiff Wayne Fueling Systems LLC (“Wayne”) is a Delaware limited liability company having a principal place of business at 3814 Jarrett Way, Austin, Texas 78728.

2. On information and belief, ESCO Services, Inc. (“ESCO”) is a Colorado corporation having its registered agent and principal place of business at 4665 Paris Street, Building A, Unit 150, Denver, CO 80239-3126.

3. On information and belief, ESCO is in the business of selling aftermarket parts and components in the fueling industry. In particular, ESCO sells and offers for sale its WU000805-0005 Lighted Button Kit (Ovation) ESCO # 203-0524 and/or WU003458-0002 Non-Lighted Button Kit (Ovation) ESCO # 203-0525 (collectively, the “Accused Products”) in this judicial district, each of which embody the claimed design of the ‘016 patent.

NATURE OF ACTION

4. This is an action for patent infringement arising under the patent laws of the United

States, Title 35, United States Code and arising under 35 U.S.C. §§ 271 and 281-285.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this matter pursuant to at least 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over ESCO because ESCO has purposely availed itself of the privileges and benefits of the laws of the State of Texas and has committed acts of patent infringement within this judicial district.

7. Upon information and belief, the Defendant ESCO directly and/or indirectly: regularly solicits and conducts business within this judicial district, derives revenue from business transacted within this judicial district, and/or has committed acts of patent infringement within this judicial district through sales of the Accused Products in this judicial district.

8. Venue is proper in the Western District of Texas pursuant to 28 U.S.C. §§ 1391 and/or 1400.

The Patent in Suit

9. Wayne is the owner by assignment of United States Design Patent No. D607,016 entitled “Housing for an Octane Selection Switch for a Fuel Dispenser” (“the ‘016 patent”), which was duly issued by the United States Patent and Trademark Office on December 29, 2009. A true and correct copy of the ‘016 patent is appended hereto as Exhibit A.

10. Wayne manufactures and sells products embodying the design claimed by the ‘016 patent, including the Wayne WU000805_0005 switch assembly.

11. Wayne will be both substantially and irreparably harmed by infringement of ‘016 patent. There is no adequate remedy at law.

COUNT FOR INFRINGEMENT OF U.S. PATENT NO. D607,016

12. The allegations of each of the foregoing paragraphs are incorporated herein by reference.

13. In violation of 35 U.S.C. § 271, ESCO has made, used, sold, offered for sale and/or imported into this judicial district and elsewhere in the United States, the Accused Products having a design that is an infringement of the ornamental design claimed by the '016 patent.

14. ESCO has had pre-suit knowledge of the '016 Asserted Patent since on or about March 6, 2015 when ESCO received a copy of the '016 patent with a cease and desist letter from Wayne notifying ESCO of Wayne's rights in the '016 Patent and demanding that ESCO immediately cease and desist from its infringement of the '016 patent.

15. Notwithstanding ESCO's knowledge of the '016 patent, ESCO has continued to sell and/or offer for sale the Accused Products. Thus upon information and belief, ESCO's acts of infringement have been willful.

16. Wayne is entitled to damages adequate to compensate for ESCO's infringement of the '016 patent in an amount to be determined at trial, but in no event less than a reasonable royalty, treble damages pursuant to 35 U.S.C. § 284, and attorneys' fees and costs incurred in prosecuting this action pursuant to 35 U.S.C. § 285.

17. Wayne is entitled to recover ESCO's total profits from its sales of the Accused Products pursuant to 35 U.S.C. § 289.

18. By reason of the foregoing, Wayne has suffered, and will continue to suffer, substantial damages as a result of Defendants' infringement of the '016 patent in an amount to be determined at the trial of this action.

1. On information and belief, ESCO's infringement will continue absent an injunction from this Court.

2. Wayne has suffered and will continue to suffer serious and irreparable injury unless ESCO's infringement of the '016 patent is enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. Judgment that Defendant has infringed the '016 patent;
- B. Judgment for an award of compensatory damages in an amount to be determined at a trial of this action;
- C. Judgment requiring that Defendants account for and pay over to Plaintiff all profits obtained by Defendants as a result of Defendant's infringement;
- D. Award Wayne all damages, including increased damages pursuant to 35 U.S.C. § 284, caused by Defendant's willful unlawful acts together with interest thereon;
- E. Award Wayne its attorney fees pursuant to 35 U.S.C. § 285;
- F. An Order requiring Defendant to surrender for destruction or other disposition, at the election of the Plaintiff, all of the manufacturing tooling, materials, prints, specification, drawings, molds, extrusions, dies, castings, computer programs, manuals, documentation, programs and all components and assemblies in all states, and any and all inventory of articles that infringe the '016 patent;
- G. An Order preliminarily and permanently enjoining Defendant, its parents, subsidiaries, affiliates, divisions, officers, agents, servants, employees, directors, partners, representatives, and all parties in active concert and/or participation with them, from the

manufacture, use, sale, offer for sale or importation into the United States of any articles which infringe the '016 patent;

H. Such further and other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Wayne hereby demands a jury trial of all issues triable of right by jury.

Date: May 28, 2015

Respectfully submitted,

WAYNE FUELING SYSTEMS LLC

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EXHIBIT A



US00D607016S

(12) **United States Design Patent**
Shelton et al.

(10) **Patent No.:** **US D607,016 S**
(45) **Date of Patent:** **** Dec. 29, 2009**

(54) **HOUSING FOR AN OCTANE SELECTION SWITCH FOR A FUEL DISPENSER**

(75) Inventors: **Artemus A. Shelton**, Round Rock, TX (US); **Mark Justin Johnson**, Elgin, TX (US)

(73) Assignee: **Dresser, Inc.**, Addison, TX (US)

(**) Term: **14 Years**

(21) Appl. No.: **29/331,413**

(22) Filed: **Jan. 26, 2009**

(51) **LOC (9) Cl.** **15-02**

(52) **U.S. Cl.** **D15/9.1**

(58) **Field of Classification Search** D15/7-9.2;
D23/231, 232, 225; 417/410.1, 359.415-416,
417/234, 321, 265, 405

See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

- D315,740 S * 3/1991 Mack D15/9.1
- D430,170 S * 8/2000 Taylor et al. D15/9.1
- D433,037 S * 10/2000 Wilson et al. D15/9.2
- D438,216 S * 2/2001 Taylor et al. D15/9.1

* cited by examiner

Primary Examiner—R. Seifert

(74) *Attorney, Agent, or Firm*—Fish & Richardson P.C.

(57) **CLAIM**

The ornamental design for a housing for an octane selection switch for a fuel dispenser, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view from above illustrating the front, top and right sides illustrating the switch housing in an unactivated position;

FIG. 2 is a perspective view from below illustrating the front, bottom and right side illustrating the switch housing in an unactivated position;

FIG. 3 is a front view thereof illustrating the switch housing in an unactivated position;

FIG. 4 is a back view thereof illustrating the switch housing in an unactivated position;

FIG. 5 is a right side view thereof illustrating the switch housing in an unactivated position and the opposite side is a mirror image of the right side view shown in FIG. 5;

FIG. 6 is a right side view thereof illustrating the switch housing in an activated position, and the opposite side is a mirror image of the right side view shown in FIG. 6;

FIG. 7 is a bottom view illustrating the switch housing in an unactivated position;

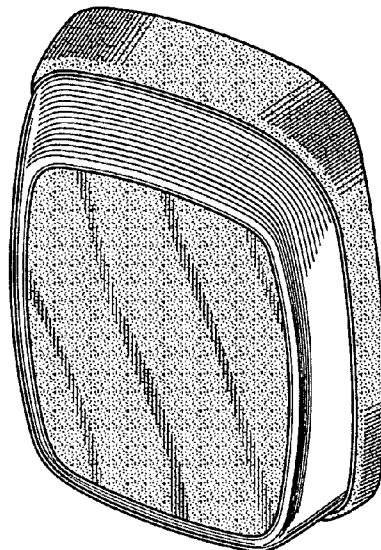
FIG. 8 is a top view illustrating the switch housing in an activated position; and,

FIG. 9 is a perspective view from above illustrating the switch housing in an activated position.

The stippling indicates a portion of the switch housing formed from non-translucent material. The unstippled area is translucent.

The broken lines of FIG. 4 are to illustrate the environment for an opening in the back with an electrical lead but form no part of the claimed design. The broken lines of FIGS. 6, 8 and 9 are to illustrate the environment showing light emitting diodes located inside the switch housing, wherein said diodes emit light through the translucent portion of the switch housing when the switch housing is in an activated position. The specific locations of the light emitting diodes form no part of the claimed design.

1 Claim, 2 Drawing Sheets



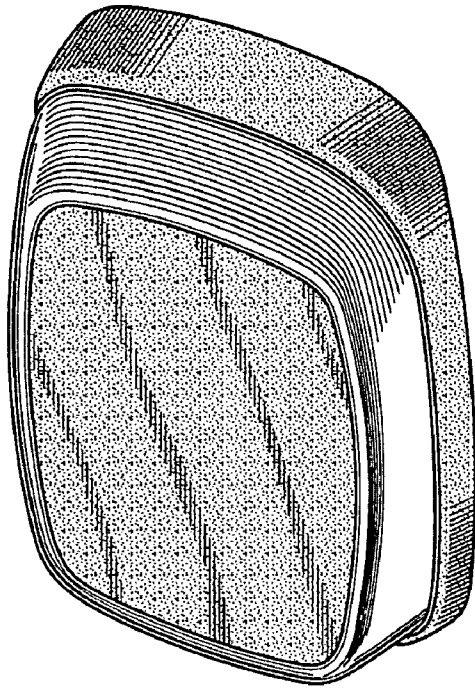


Fig.1

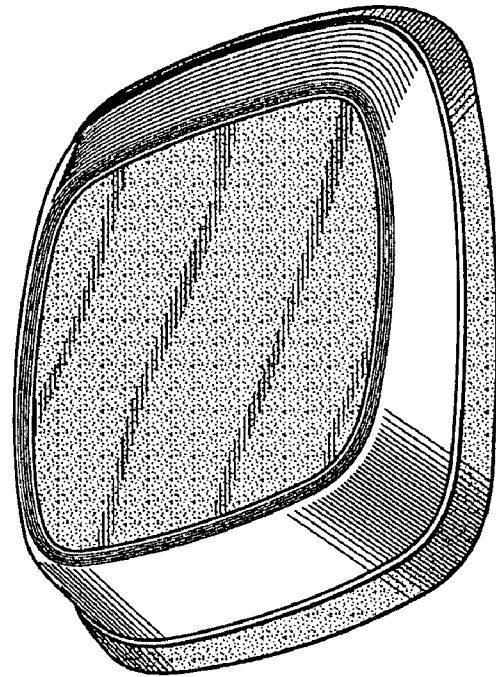


Fig.2

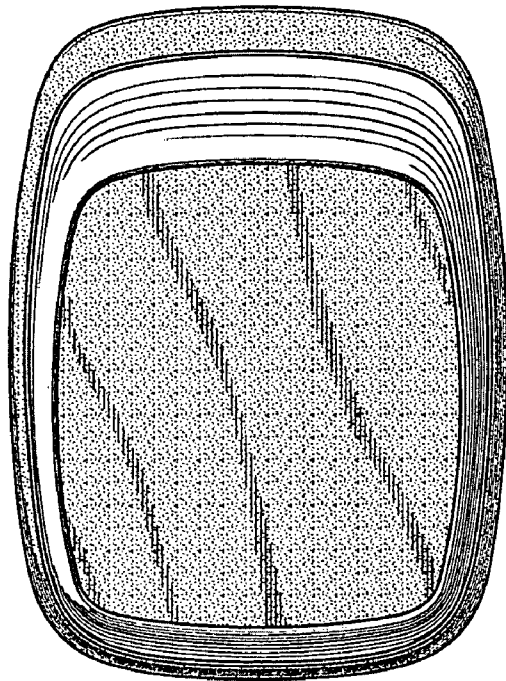


Fig.3

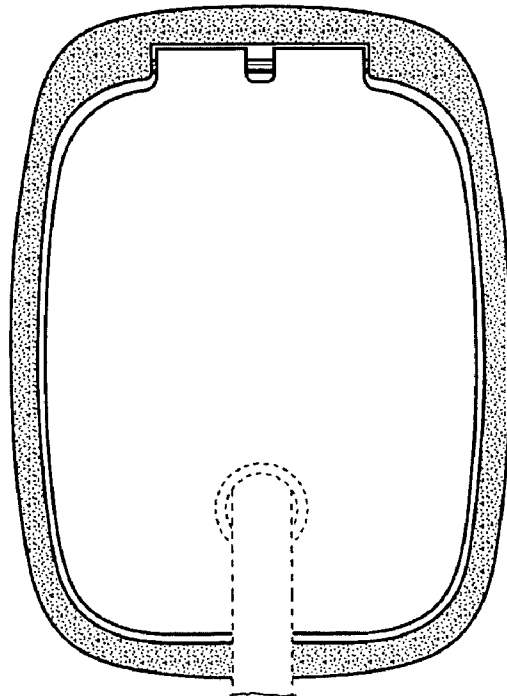


Fig.4

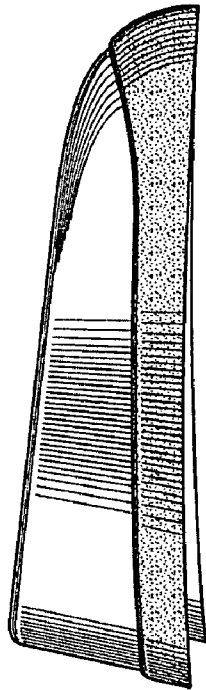


Fig. 5

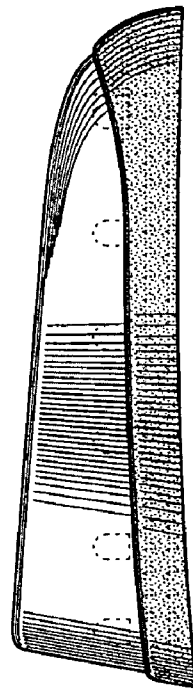


Fig. 6

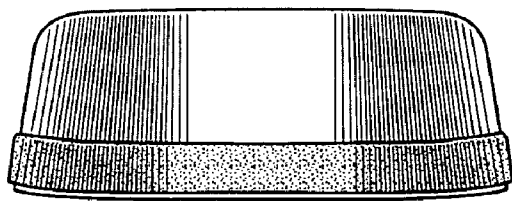


Fig. 7

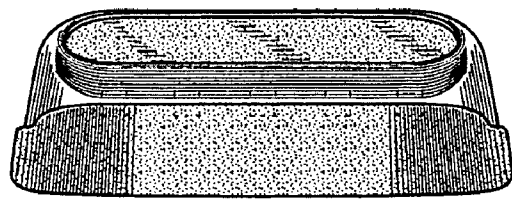


Fig. 8

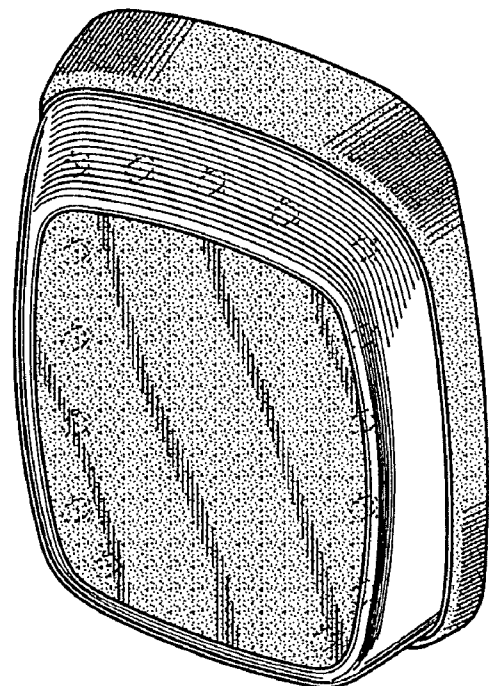


Fig. 9