

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE

ICI USA LLC, a Washington corporation,

Plaintiff,

v.

RYAN TAI d/b/a ZAPPBO, a foreign person,

Defendant.

Case No. 2:15-cv-01107-TSZ

FIRST AMENDED COMPLAINT FOR  
PATENT, TRADE DRESS, AND  
COPYRIGHT INFRINGEMENT

**JURY DEMAND**

ICI USA LLC hereby states its complaint against Ryan Tai as follows:

**I. PARTIES**

1. Plaintiff ICI USA LLC (“ICI”) is a Washington corporation with its principal place of business in Seattle, Washington. ICI develops unique, innovative products that solve everyday problems, including sphere ice molds.

2. Upon information and belief, Defendant Ryan Tai, a resident of Singapore, is a foreign person doing business as Zappbo (“Zappbo”) with its principal place of business in Singapore. Upon information and belief, Zappbo sells a sphere ice mold.

**II. JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and § 1332.

4. This Court has personal jurisdiction because Defendant commits intentional

FIRST AMENDED COMPLAINT FOR PATENT, TRADE DRESS,  
AND COPYRIGHT INFRINGEMENT – 1

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Attorneys at Law  
1420 5th Avenue, Suite 3400  
Seattle, WA 98101-4010  
Telephone: 206.622.1711

1 acts to sell its products in the stream of commerce in the forum state; it has sufficient  
 2 minimum contacts with the forum state; it specifically sells its product in the forum state; it  
 3 sells its product through an Internet site requiring active participation in the forum state; and  
 4 it maintains a universal presence through Internet sales in the forum state.

5  
 6 5. Venue is proper under 28 U.S.C. §§ 1391(b)(2) and 1400(b) because a  
 7 substantial part of the events giving rise to the claim occurred in this judicial district, and the  
 8 property that is the subject of this action, namely, the Tovolo sphere ice mold, was created,  
 9 designed, and sold in this judicial district. In addition, Defendant has sold infringing products  
 10 in this judicial district.

### 11 **III. FACTUAL ALLEGATIONS**

#### 12 **A. ICI Has Sold Over One Million of Its Innovative and Well-Known** 13 **Sphere Ice Molds.**

14 6. ICI designs innovative new products that surprise and delight the user. ICI  
 15 has built a team of experts dedicated to each phase of product development including  
 16 marketers, industrial and graphic designers, and packaging experts. ICI's clients include Bed  
 17 Bath & Beyond, Crate & Barrel, Pier 1 Imports, Sur La Table, Macy's, and Williams  
 18 Sonoma, among others, all of whom sell the ICI products.

19  
 20 7. One of ICI's well known product lines is the Tovolo product line. ICI uses  
 21 the Tovolo brand to market utensils, kitchen gadgets, and beverage devices including tea  
 22 infusers, ice cube trays, wine bottle holders, crock book holders, spreaders, scoops, pizza  
 23 wheels, and ice sphere molds, among many other successful products.

24  
 25 8. The Tovolo products all have a certain look and feel in terms of design. The  
 26 Tovolo products incorporate bright colors; high-quality, sturdy-looking plastics; professional

1 quality-looking designs; and unique shapes. The designs among products look similar and  
2 help customers identify products that are part of the Tovolo line of products.

3 9. The Tovolo product line includes a product called Sphere Ice Molds. The  
4 innovative and clever design produces an ice sphere, which melts slowly when added to a  
5 drink.  
6

7 10. ICI sells the Tovolo sphere ice molds through Amazon.com among other  
8 places. The product received 4.6 out of 5 stars on Amazon after being reviewed by over  
9 2100 customers. The Tovolo sphere ice mold is a best seller on Amazon.com and among the  
10 Top 100 products in Kitchen & Dining. The product is the “#1 Best Seller” out of all the ice  
11 cube molds and trays sold on Amazon.com.  
12

13 11. In addition, ICI sells the Tovolo sphere ice mold through Bed Bath & Beyond,  
14 Sur La Table, and Williams Sonoma in addition to other fine retailers.

15 12. In total, ICI has sold over one million Tovolo sphere ice molds through its  
16 various retailers.

17 13. Since its creation, the Tovolo sphere ice mold has featured a unique design  
18 and combination of design elements. This design and trade dress includes a clear plastic  
19 mold base with two swirled-looking lines with the Tovolo trademark in the middle and a  
20 gray plastic mold top with grooves, lines, ridges, and a wagon wheel design. The colors and  
21 design elements help the mold look ready for professional kitchen use. None of these design  
22 elements are functional or necessary to the mold in any manner; rather, they add a unique  
23 touch similar to all of the other Tovolo products. Because these design elements fit in the  
24 family of the other Tovolo products, they help to signify the source of the products.  
25  
26

**B. Defendant's "SPHERE ICE MOLD" Ice Mold Infringes the Tovolo Product.**

14. On or about June 9, 2015, the Defendant's "SPHERE ICE MOLD" was purchased from Amazon.com and delivered to the offices of Schwabe, Williamson, & Wyatt located in Seattle, Washington. *See Attachment A.*

15. Defendant also sells the infringing Sphere Ice Mold through, at a minimum, its website at www.zappbo.com. *See Attachment B.*

16. Zappbo's Sphere Ice Mold product as sold on its website and on Amazon.com, see **Attachment C**, copies and infringes the trade dress of the Tovolo sphere ice molds:

**Tovolo Product**



**Zappbo Product**



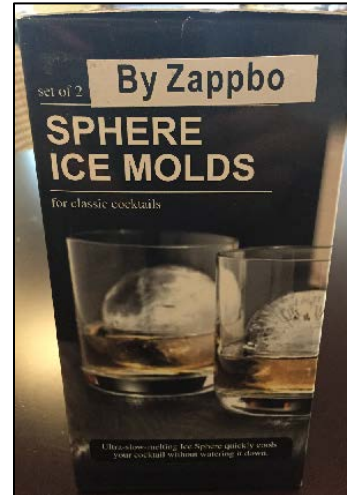
17. In addition to infringing the trade dress of Tovolo's product, the packaging for Zappbo's brand product infringes on the trade dress of the Tovolo packaging. Zappbo's brand packaging uses the same rectangular box, similar black, gray, and white color scheme, and very similar wording placement. Further, just like the Tovolo product packaging, the front of the SIM brand packaging displays a cocktail glass that is partially filled with a brown liquid and a large ice sphere. Zappbo's Sphere Ice Mold brand packaging also displays the

words “for classic cocktails,” “ultra-slow-melting,” and “cools your cocktail without watering it down,” which all invoke Tovolo’s use of those same words on its packaging.

**Tovolo Product**



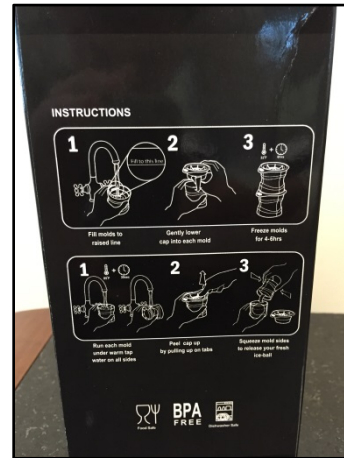
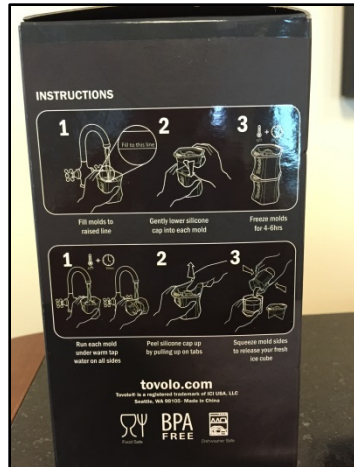
**Zappbo Product**



18. In addition, Zappo’s brand product infringes the copyright of ICI’s operating instructions on the reverse side of the packaging. The Tovolo packaging includes unique instructions including six step-by-step images demonstrating the proper use of the sphere ice mold, along with six accompanying written instructions with each image. The reverse side of the Zappbo product packaging copies the exact same six images that appear on the Tovolo product packing. The instructional words are also nearly identical. The only difference is that the Zappbo instructions omit the word “silicone” when referring to the product’s cap; otherwise the instructions are copied verbatim.

**Tovolo Product**

**Zappbo Product**



#### IV. CLAIMS FOR RELIEF

##### CAUSE OF ACTION – PATENT INFRINGEMENT UNDER 35 U.S.C. § 271

19. ICI repeats, realleges, and incorporates all of the above allegations.

20. On June 9, 2015, US D731,264 (the “264 Patent”), entitled “Sphere Mold,” attached hereto as **Attachment D**, was issued to ICI.

21. The ‘264 Patent is presumed valid.

22. Defendant’s Sphere Ice Mold is infringing the ‘264 Patent, at least Fig. 1, 2, 3, 4, 5, 8, 9 of the ‘264 product.

23. Defendant manufactures, sells, and distributes the infringing product.

24. Defendant’s actions have damaged ICI.

##### CAUSE OF ACTION – TRADE DRESS INFRINGEMENT UNDER 15 U.S.C. § 1125(a)

25. ICI repeats, realleges, and incorporates all of the above allegations.

26. ICI owns a protectable trade dress in the clearly articulated design elements and combination of elements in the Tovolo sphere ice mold, including a clear plastic mold base that features two swirled-looking lines with the Tovolo trademark in the middle and a

1 gray plastic mold top with grooves, lines, ridges, and a wagon wheel design. ICI also owns a  
2 protectable trade dress in the Tovolo sphere ice mold packaging, including the color scheme,  
3 tag lines and placement, and layout elements.

4  
5 27. None of the trade dress in the Tovolo sphere ice mold or packaging is  
6 functional. Rather, the design elements and combination thereof were selected to fit in with  
7 the other products in Tovolo's kitchen and beverage lines and to designate Tovolo and ICI as  
8 the source. Indeed, the Tovolo trademark is incorporated into the trade dress of the product  
9 and packaging as another way to indicate the product source.

10 28. The trade dress in the Tovolo sphere ice mold and packaging is inherently  
11 distinctive or has acquired secondary meaning through ICI's sales and marketing efforts of  
12 the mold as described above. The product and packaging design and features are well known  
13 in all of the markets in which ICI sells the products.

14  
15 29. Defendant's ice sphere mold design and packaging together create a  
16 likelihood of confusion as to source, sponsorship, affiliation, connection, or association  
17 because the Defendant's product and packaging copies all of the non-functional trade dress  
18 elements of the Tovolo sphere ice mold product and packaging. Customers are likely to be  
19 confused or deceived as to the origination of the Defendant's product or are likely to think  
20 that the Defendant's product is somehow connected to or associated with ICI and Tovolo.

21  
22 30. The general impression made by the Defendant's product upon the eye of the  
23 ordinary purchaser or user is deceiving given the similarity to the Tovolo trade dress. The  
24 multiplicity of similarities between the products constitutes trade dress infringement.

25 31. Defendant's conduct violates 15 U.S.C. § 1125(a) and has damaged ICI.  
26

**CAUSE OF ACTION – COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 501**

32. ICI repeats, realleges, and incorporates all of the above allegations.

33. ICI owns a protectable copyright in the compilation of instructions, including unique images and words, and the manner in which these instructions are set forth on the Tovolo packaging.

34. The Zappbo product copies the instructional images as they are presented on the Tovolo packaging.

35. The Zappbo product substantially copies the instructional words as they are presented on the Tovolo packaging.

36. Defendant's conduct violates 17 U.S.C. § 501 and has damaged ICI.

**V. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff ICI prays for relief as follows:

1. For a judgment against Defendant;
2. For an injunction against Defendant that prohibits Defendant from manufacturing, selling, incorporating, or otherwise using ICI's proprietary trade dress.
3. For damages against Defendant in an amount to be determined at trial;
4. For reasonable attorneys' fees and the costs of pursuing ICI's claims as may be allowed by law; and
5. Such other and further relief as the Court determines is just and proper.



1 Dated this 29<sup>th</sup> day of July, 2015.

2 SCHWABE, WILLIAMSON & WYATT, P.C.

3  
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*Attorneys for Plaintiff ICI USA LLC*

# ATTACHMENT A

amazon.com



SDnzdMzMk

Your order of June 9, 2015 (Order ID 103-6412454-6381059)

Qty.	Item	Item Price	Total
1	Tovolo Colossal Cube Ice Mold - Set of 2, Kitchen (** P-9-A098A439 **) B00BMANKMW 848113002586	\$14.22	\$14.22
1	Zappbo® - MORE FOR LESS 4 X 2.5" Huge Perfect Ice Balls Value for Money Best Silicone Ice Sphere Maker and Ice Ball Mold... (** P-8-A259C034 **) X000RT8VND B00H3ZH7CO - SKU8 820103774178 (Sold by Zappbo)	\$15.99	\$15.99
1	iPerfect Kitchen Sphere Ice Mold - Premium Silicone Ice Ball Maker - Set of 2 X 2.5" Molds Kitchen (** P-8-A204A416 **) B00V500FYU RV-H9FK-NNP7 616241764870 (Sold by iPerfect Kitchen)	\$8.95	\$8.95

This shipment completes your order.	Subtotal	\$39.16
	Tax Collected	\$1.37
Have feedback on how we	Order Total	\$40.53
packaged your order? Tell us at	Paid via credit/debit	\$40.53
www.amazon.com/packaging.	Balance due	\$0.00

**Returns Are Easy!** Most items can be refunded, exchanged, or replaced when returned in original and unopened condition. Visit <http://www.amazon.com/returns> to start your return, or <http://www.amazon.com/help> for more information on return policies.



## ATTACHMENT B

[http://zappbo.com/?p=23](#)

[File](#) [Edit](#) [View](#) [Favorites](#) [Tools](#) [Help](#)

[x](#) [00:00:00](#)


[Suggested Sites](#) [Lexis Advance](#) [Home](#) [Google Scholar](#) [Relativity](#) [Web Slice Gallery](#)

## Zappbo – Sphere Ice Molds 2 X 2.5 “

Tuesday, April 15th, 2014 at 6:06 pm

**Product Description**


Zappbo Ice Sphere Maker and Ice Ball Molds are perfect and best for your cocktails, liquors, juices, drinks and many more other types of liquids. Why? Because, it brings together the art of the mold and the science of the ice balls or spheres that will literally and ultraly slow down the melting of the ice balls which in turn quickly cools without watering down your drinks and brings out every flavor of it. Your drinks will remain its perfect texture and taste while you enjoy the cool and refreshing drinks.



**Key Product Features :**

1. Best Ice Ball Mold You Can Find For Making Perfect 2.5" Round Shaped Ice Sphere.
2. Perfect For All Liquors and Drinks As The Ice Balls Are Ultra Slow In Melting That Quickly Cools Your Drinks Without Watering It Down And Brings Out Every Flavor Of Your Drinks.
3. The Silicone Ice Ball Molds are BPA Free and Dishwasher Safe. The Ice Balls Are Easy To Release From The Ice Mold.
4. These Sophisticated Ice Ball Molds Are Classically Designed Such That The Innovative Cap Creates Larger Higher Quality Ice Balls Every Time.
5. These Durable Silicone Ice Molds Will Not Leak And Will Not Tip In Your Freezer. It Can Be Stacked Neatly To Conserve Space. Very Easy To Use. Just Add Water And Freeze. Come with Pack of 2 Silicone Ice Ball Molds.

Please click this link, highlighted text or images for a great buying experience NOW!



**Recent Posts**

- > Zappbo – 4 Huge Perfect Ice Ball Molds
- > Zappbo – 8 Huge Perfect Ice Ball Molds
- > Zappbo – Sphere Ice Molds 2 X 2.5 “
- > Zappbo – Sphere Ice Mold 4 X 2.5”

**Recent Comments**

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- > April 2014
- > January 2014

**Categories**

- > 4 Huge Ice Ball Mold
- > 8 Huge Ice Ball Mold
- > Sphere Ice Molds – 2 X 2.5”
- > Sphere Ice Molds – 4 X 2.5”

CATEGORIES	ARCHIVES
> 4 Huge Ice Ball Mold	> April 2014
> 8 Huge Ice Ball Mold	> January 2014
> Sphere Ice Molds – 2 X 2.5”	
> Sphere Ice Molds – 4 X 2.5”	

## ATTACHMENT C

amazon **ice ball mold**

Shop by Department **Department** Your Amazon.com Today's Deals Gift Cards Sell Help

INTRODUCING **amazon echo**

Hello, Sign in **Your Account** Try Prime Wish List Cart

Appliances Best Sellers Refrigeration Cooking Washers & Dryers Dishwashers Parts & Accessories

Appliances > Parts & Accessories > Refrigerator Parts & Accessories

**Sign in**  
New customer? Start here.

**Zappbo® Set of 2 X 2.5" Huge Perfect Ice Balls Top Rated Love By All Classic Best Silicone Ice Sphere Molds Ice Ball Maker for**

Share

Qty: 1

Yes, I want **FREE Two-Day Shipping** with Amazon Prime

**Add to Cart**

Turn on 1-Click ordering for this browser

**Ship to:**  
WA 98101

**Add to Wish List**

Have one to sell? **Sell on Amazon**

Roll over image to zoom in

**Cocktail, Bourbon, Scotch, Punch, Block, Bottle, Bullets, Candle, Diamond, Bowl, Fred, Guitar, Gui**  
by Zappbo  
☆☆☆☆☆ 4 customer reviews

List Price: ~~\$20.99~~  
Price: ~~\$14.99~~  
Sale: **\$10.99 & FREE Shipping** on orders over \$35. Details  
You Save: \$10.00 (48%)

In Stock.  
Sold by Zappbo and Fulfilled by Amazon. Gift-wrap available.

**Want It tomorrow, June 24?** Order within 4 hrs 5 mins and choose **One-Day Shipping** at checkout. Details

- **Best Ice Ball Mold You Can Find For Making Perfect 2.5" Round Shaped Ice Sphere.**
- **Perfect For All Liquors and Drinks As The Ice Balls Are Ultra Slow In Melting That Quickly Cools Your Drinks Without Watering It Down And Brings Out Every Flavor Of Your Drinks.**
- **The Silicone Ice Ball Molds are BPA Free and Dishwasher Safe. The Ice Balls Are Easy To Release From The Ice Mold.**
- **These Sophisticated Ice Ball Molds Are Classically Designed Such That The Innovative Cap Creates Larger Higher Quality Ice Balls Every Time.**
- **These Durable Silicone Ice Molds Will Not Leak And Will Not Tip In Your Freezer. It Can Be Stacked Neatly To Conserve Space. Very Easy To Use. Just Add Water And Freeze. Come with Pack of 2 Silicone Ice Ball Molds.**

[See more product details](#)

**Special Offers and Product Promotions**

\* ~~\$10.99~~ **\$0.00 instead of \$10.99** with ~~\$10.99~~ **\$30.00 gift card instantly** xsg#hsuryddrkkh# **Amazon.com Rewards Visa Card** Dssd#jrz1

**Product Information**

Technical Details		Additional Information	
Brand Name	Zappbo	ASIN	B00IWUUP0
Item Weight	3.5 ounces	Customer Reviews	☆☆☆☆☆ (4 reviews) 5.0 out of 5 stars
Product Dimensions	3.1 x 3.1 x 2.8 inches	Best Sellers Rank	#3,014 in Appliances (See top 100) #2777 in Home Improvement > Appliances > Large Appliance Accessories > Refrigerator Parts & Accessories
		Shipping Weight	5.8 ounces (View shipping rates and policies)
		Date First Available	March 30, 2014

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## ATTACHMENT D





US00D731264S

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

(10) **Patent No.:** **US D731,264 S**  
(45) **Date of Patent:** **\*\* Jun. 9, 2015**

(54) **SPHERE MOLD**

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(Continued)

(71) Applicant: **ICI USA, LLC**, Seattle, WA (US)

(72) Inventors: **Matthew Frank**, Seattle, WA (US);  
**Ryan H Peloquin**, Seattle, WA (US)

(73) Assignee: **ICI USA, LLC**, Seattle, WA (US)

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

(21) Appl. No.: **29/452,215**

(22) Filed: **Apr. 12, 2013**

**Related U.S. Application Data**

(63) Continuation of application No. 29/417,609, filed on  
Apr. 5, 2012, now abandoned.

(51) **LOC (10) Cl.** ..... **07-04**

(52) **U.S. Cl.**  
USPC ..... **D7/672**

(58) **Field of Classification Search**

USPC ..... D7/368, 603, 672-676, 638, 669, 323,  
D7/354, 376, 543-546, 549, 555, 601-602,  
D7/677, 681, 701, 705, 708; 249/63, 69,  
249/70, 127, 132, 81, 91-92, 118-121,  
249/94-97, 126, 173, 175; 62/135, 348,  
62/352, 350, 300, 66, 228.2, 250, 312,  
62/398, 400, 459; D15/80, 89-90, 82-83;  
D1/101-103, 105; D23/200, 202,  
D23/204-206; 425/117, 118, 125, 126.1,  
425/126.2, 234; 294/87.11; 206/563, 423,  
206/822; 220/659, 669, 674-675,  
220/FOR. 112, FOR. 115, 800; D6/329, 351  
See application file for complete search history.

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(Continued)

*Primary Examiner* — Wan Laymon

*Assistant Examiner* — Mark Booker

(74) *Attorney, Agent, or Firm* — Schwabe Williamson &  
Wyatt PC

(57) **CLAIM**

I claim as my invention the ornamental design for a sphere  
mold, as shown and described.

**DESCRIPTION**

FIG. 1 shows a perspective view of the sphere mold;  
FIG. 2 shows a first, side view of the sphere mold when it is in  
a closed position where the opposite side is to the same as the  
side shown;  
FIG. 3 shows a top of the sphere mold when it is in a closed  
position;  
FIG. 4 shows a second side view of the sphere mold when it  
is in a closed position where the opposite side is the same as  
the to the side shown;  
FIG. 5 shows a top view of the sphere mold when it is in an  
open position;  
FIG. 6 is a side view of the sphere mold when it is in a closed  
position;  
FIG. 7 is a sectional view of the sphere mold taken from line  
7-7 of FIG. 6;  
FIG. 8 is an exploded view of the sphere mold; and,  
FIG. 9 is a bottom view of the sphere mold.

**1 Claim, 8 Drawing Sheets**



## US D731,264 S

Page 2

(56)

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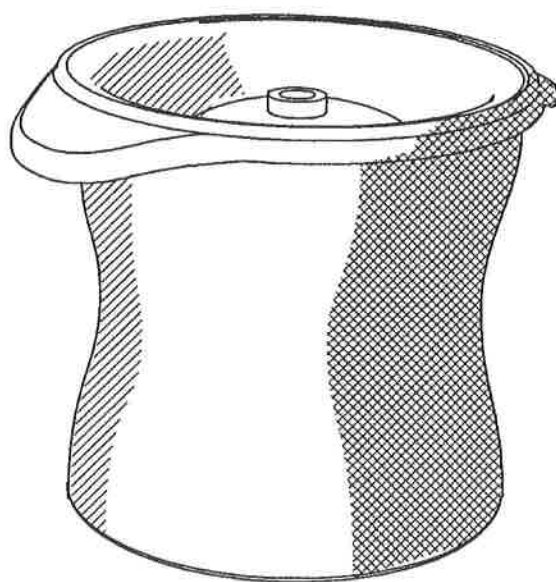
\* cited by examiner

**U.S. Patent**

**Jun. 9, 2015**

**Sheet 1 of 8**

**US D731,264 S**



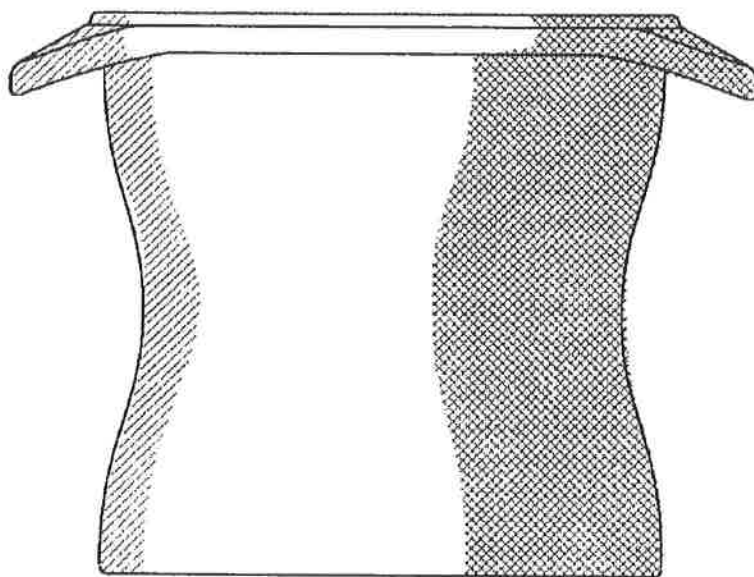
**FIG 1**

**U.S. Patent**

**Jun. 9, 2015**

**Sheet 2 of 8**

**US D731,264 S**



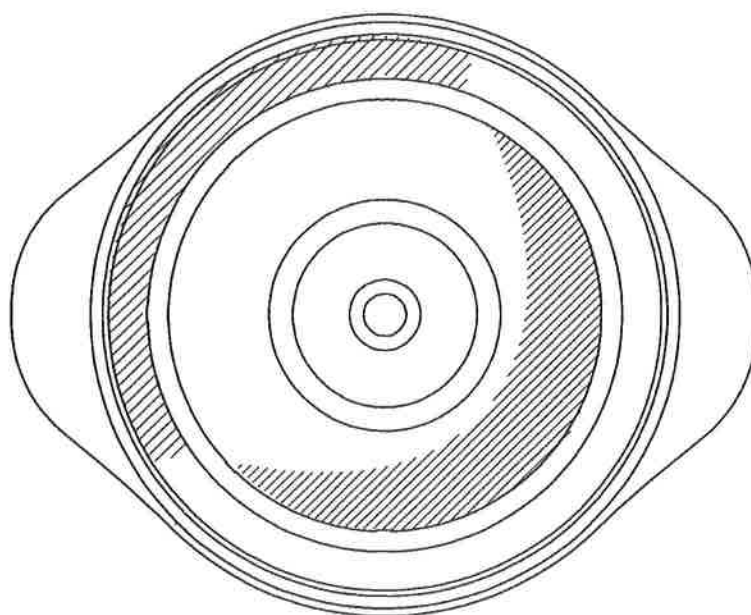
**FIG 2**

**U.S. Patent**

**Jun. 9, 2015**

**Sheet 3 of 8**

**US D731,264 S**



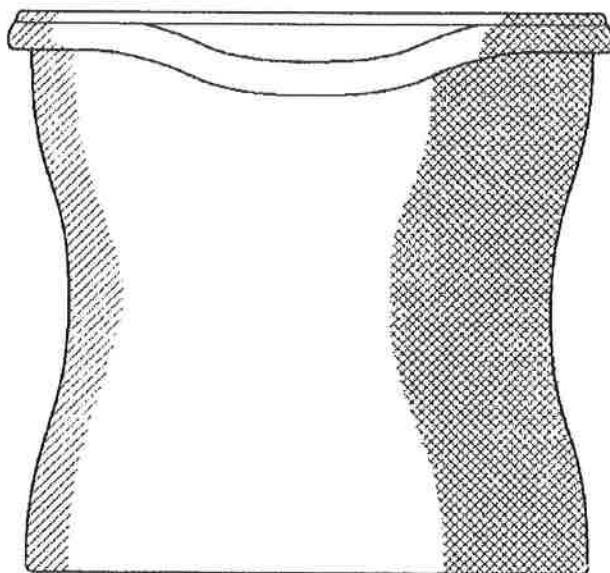
**FIG 3**

**U.S. Patent**

**Jun. 9, 2015**

**Sheet 4 of 8**

**US D731,264 S**



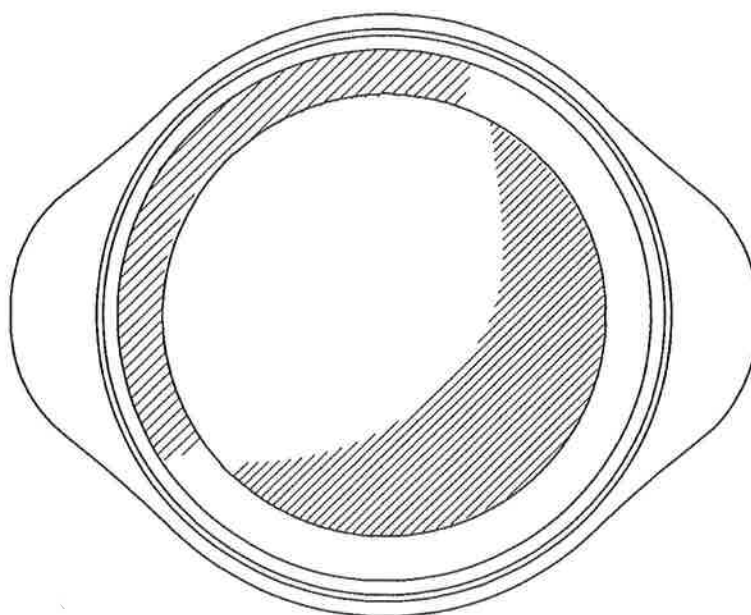
**FIG 4**

**U.S. Patent**

**Jun. 9, 2015**

**Sheet 5 of 8**

**US D731,264 S**



**FIG 5**

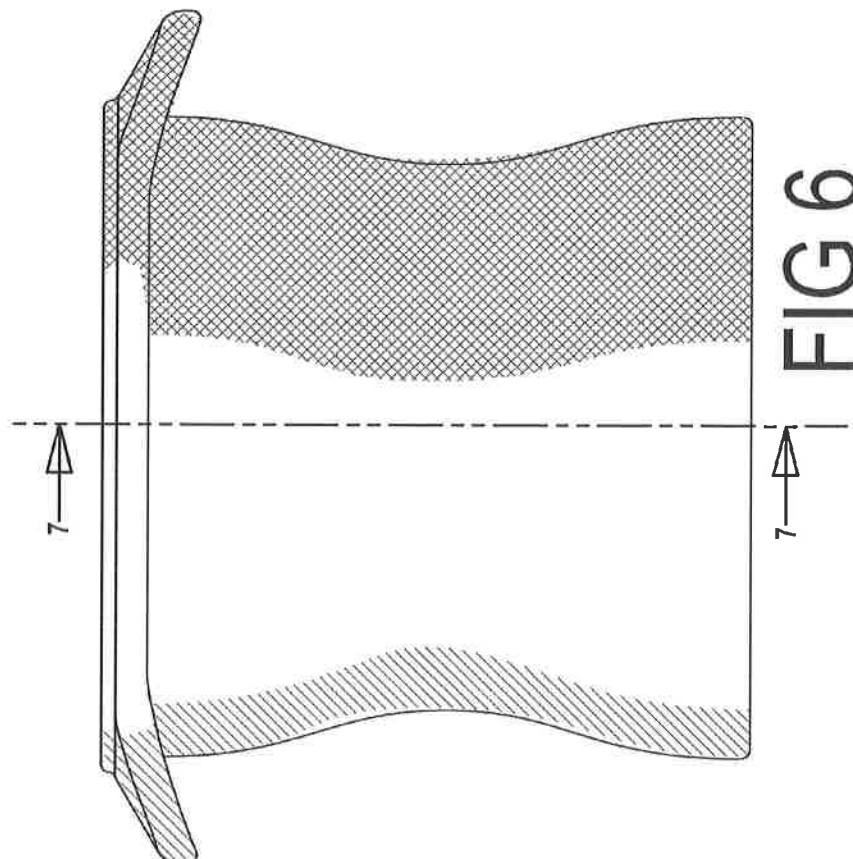
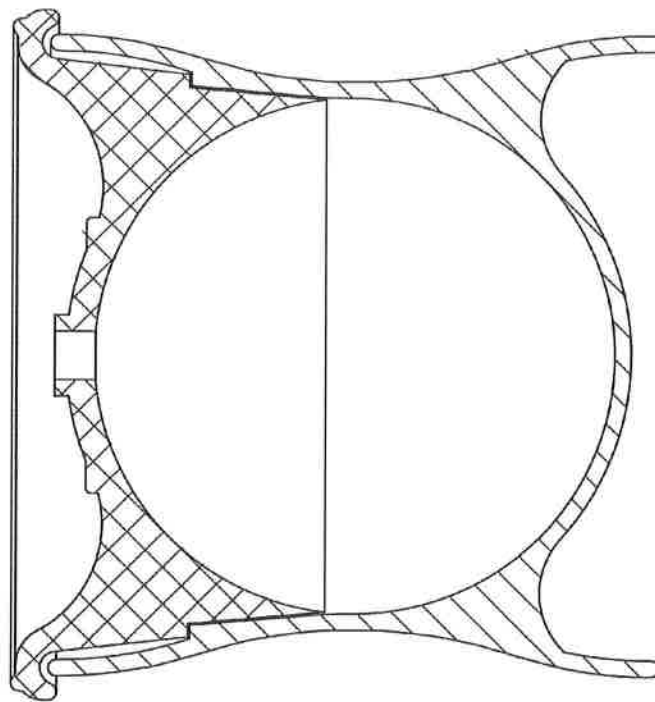


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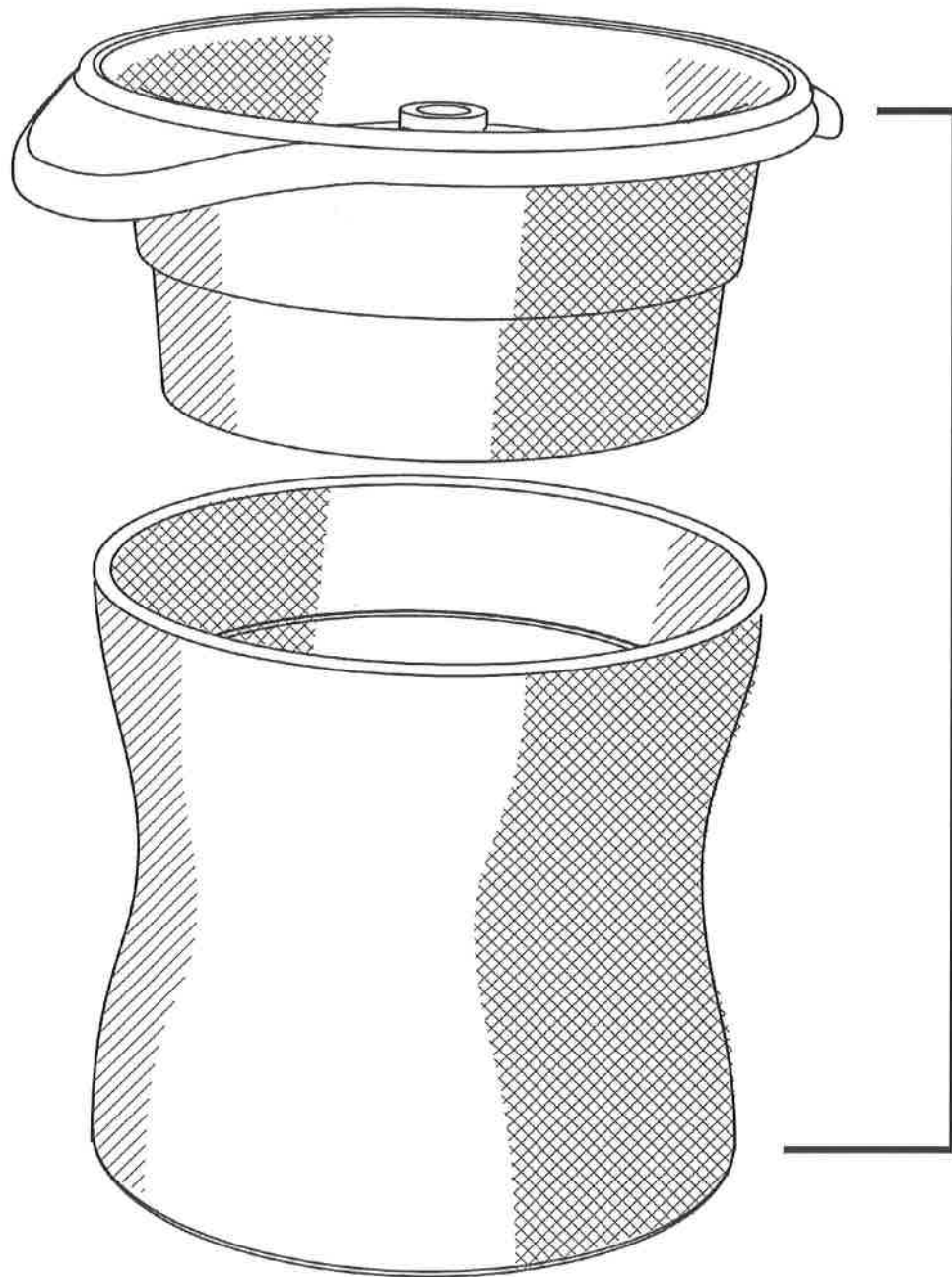


FIG 8

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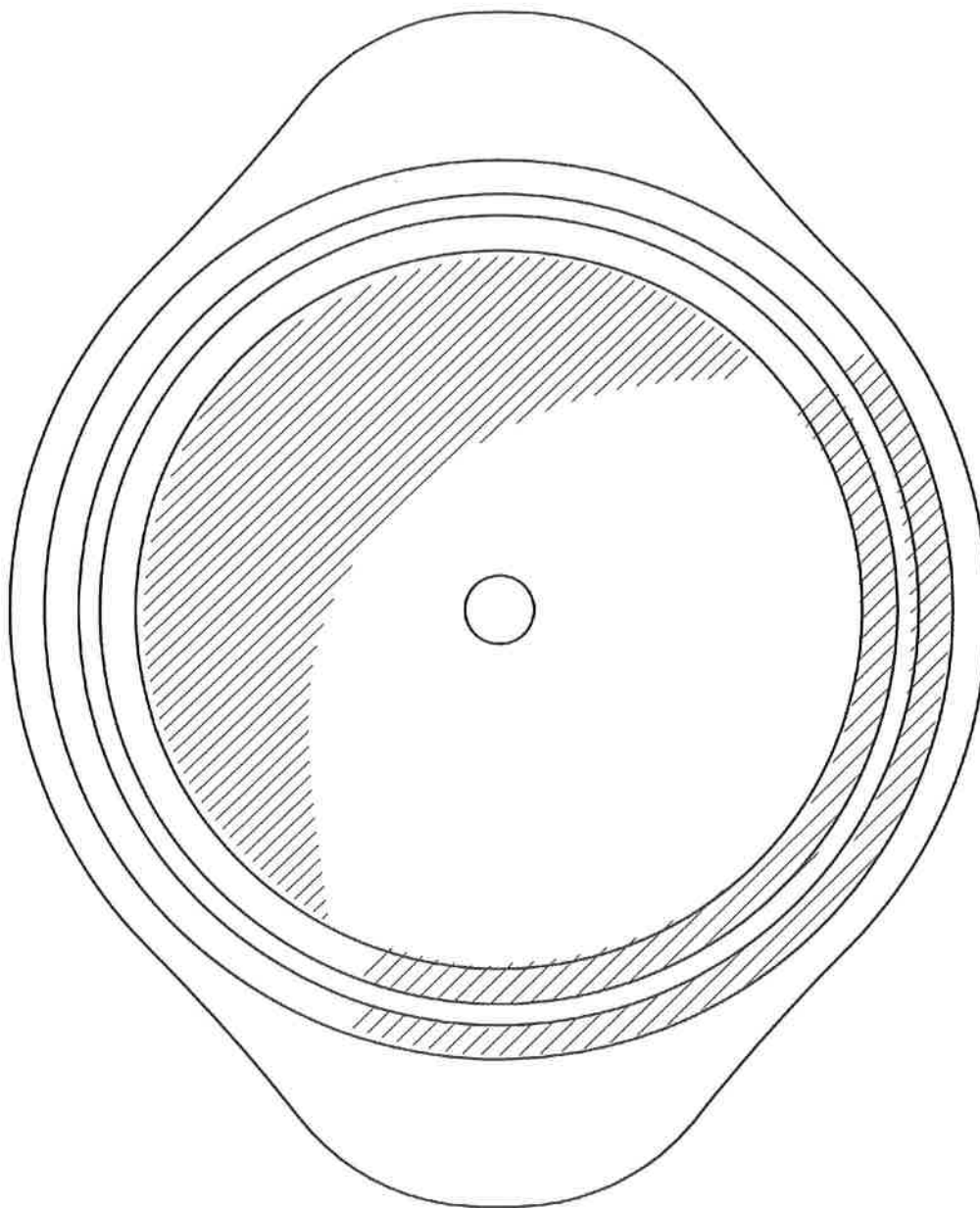


FIG 9