

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA**

**FILED**  
OCT 1 2002  
DAVID W. DANIEL, CLERK  
US DISTRICT COURT  
DIST N CAROLINA

**TONY COLIDA,**

**Plaintiff**

**CIVIL ACTION NO.**

**5:02-cv-640-H**

**vs.**

**Judge:**

**ERICSSON INC,**

**Defendant**

**COMPLAINT**

**PLAINTIFF DECLARES AS FOLLOWS:**

1. Plaintiff: **Tony Colida**, Inventor, residing at 750 Montpelier, Blvd., Suite 905 in the city of St. Laurent, District of Montreal, Quebec, Canada, H4L 5A7;
2. Defendant: **ERICSSON INC**, a duly incorporated company having its office at: 511 Davis Drive, Research Triangel Park, North Carolina, 27709, U.S.A.;
3. The Plaintiff is an Inventor and Designer;
4. At all relevant times, Defendant transacts business by advertising, selling or offering for sale, and repairing and supporting, directly or indirectly themselves or through their distributors, within the United States and elsewhere in the world including portable cellular handset telephones;

**THE CAUSE OF DISPUTE:**

5. This is an action for infringement of United States Patent Des. 318,050., entitled Cellular Portable Handheld Telephone;

**HISTORY:**

6. The Plaintiff is the designer and the United States Patent owner of an item entitled a "Cellular Portable Handheld Telephone", as will be evidenced more fully hereinbelow;

7. On or about August of 1991 the Plaintiff first approached the Defendant company with his idea of a Project for a new and original designs for a portable cellular hand held telephone, but representatives of the Defendant told him at that time that they were not interested in the product;

8. More particularly on October 10, 1991, the Defendant informed the Plaintiff that they were not interested in using the subject design or acquiring any rights under the patent the proposed design at that time, the whole as appears more fully from a copy of the letter from Mr. Donald W. Walk, Patent and Assistant General Counsel for the Defendant is produced herewith as **Plaintiff Exhibit P-1**;

9. Notwithstanding the lack of interest in his product as demonstrated by Defendant, the Plaintiff pursued his interest in the product, and in 1991 the United States Patent bearing the number Des. 318,050 was granted to Plaintiff by the United States Patent Commission for the Cellular Portable Handheld Telephone, the whole as appears more fully from the United States Patent produced herewith as Plaintiff's **Exhibit P-2 (en-liaise)**;

10. The said invention consists of a " ornamental design for a portable handheld telephone" the whole as is more fully described in detail in exhibit **Exhibit P-2**;

#### **THE INFRINGEMENT:**

11. On or about 2001 it came to the Plaintiff's attention that the Defendant had already begun manufacturing and selling in the United States a Cellular Handheld Portable Telephone known as the "KF 788", the whole as appears more fully from a copy of a promotional advertising flyer by Defendant produced herewith as Plaintiff's **Exhibit P-3**;

12. Defendant's "KF 788 " product conforms to the distinctive design incorporated into Plaintiff's cellular portable handheld telephonepatent design, and in so doing constituted an infringement and appropriation of Plaintiff's rights in such designs;

13. Defendant's "KF 788" portable cellular handheld telephone has met with wide commercial acceptance and is being sold throughout the United States of America and world wide without the authorization and/or compensation to the Plaintiff;

14. The Plaintiff has invested considerable energy and money in the development and the promotion of his patents;

15. The Plaintiff, in his capacity, has priority in connection to the distinctive design incorporated into the Defendant's "KF 788" cellular portable handheld telephone;

16. Notwithstanding Plaintiff's patent, Defendant, since a precise date unknown to Plaintiff but known to Defendant have been infringing upon Plaintiff's United States patents by directly or under its control, authorization or instructions, manufacturing selling, distributing and advertising, illegally and without authority, the "KF 788" cellular portable handheld telephone which infringe on Plaintiff's United States Design Patent bearing the

number 318,050;

17. More particularly, Defendant's cellular portable handheld telephone infringe on Plaintiff's patents in that: it reproduces the overall bodies, the arrangement of the keypads and display screens, and the overall size and appearance of the cellular portable handheld telephone;

18. The sale of the "KF 788" cellular phones by Defendant is causing Plaintiff to suffer important losses as well as damages to his clear rights. Moreover, as a result of said infringing activities, Defendant is making unlawful profits from the illegally appropriated design incorporated into its cellular portable handheld telephone which it may prove impossible for Plaintiff to prove and to quantify without the assistance of this Court;

19. That the full extent of Defendant's infringing activities is unknown to Plaintiff but is known to Defendant and therefore Plaintiff claims relief in respect of all acts of infringement by Defendant past, present and future;

20. Plaintiff informed the Defendant of the infringement of his U.S. Patent protected design through a letter dated February 28, 2002, the whole as appears more fully from a copy of the letter addressed to the corporate offices of the Defendant produced herewith as Plaintiff's **Exhibit P-4**;

21. On March 25, 2002, Defendant has denied any liability which stems from its patent infringement, the whole as appears more fully from a copy of the letter addressed to the Plaintiff from Defendant produced herewith as Plaintiff **Exhibit P 5**;

22. The Defendant has been notified in writing of Plaintiff rights under at least U.S. Design Patent No. 318,050 and is believed to have actual knowledge of relevant patents prior to the manufacture of the "KF 788" cellular portable handheld telephone notwithstanding this, the Defendant, with full knowledge of the patent and without prior authorization of Plaintiff has willfully, wantonly and deliberately continued to infringe, in flagrant disregard of Plaintiff's rights under the patent;

23. Damages caused to the Plaintiff through the infringement of his patent rights are estimated at **\$100 Million U.S. dollars**, but Plaintiff, reserves his rights to amend the quantum of the damages, suffered by him once the full extent of Defendant's infringement activities are made known by the accounting demanded below;

24. The present action is well founded in fact and in law;

**THEREFORE YOUR PLAINTIFFS PRAY FOR THE FOLLOWING RELIEF;**

**GRANT** the present action.

**CONDEMN** Defendant to pay the plaintiff the sum of **\$100 Million U.S. dollars**, as of the date hereof, the whole with interest on a cumulative basis plus the legal indemnity in accordance with the Laws of the United States;

**ORDER** Defendant to furnish an accounting of all sales of the "KF 788" cellular portable handheld telephones world-wide resulting from Defendant's infringement of Plaintiff's United States Patents Des. 318,050, including;

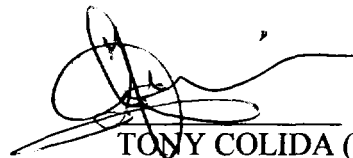
- a. a statement of sales directly, through subsidiaries, and through dealers and distributors;
- b. a statement of the retail sales price;
- c. a statement of gross revenues and profits;
- d. a statement of gross revenues and profit from maintenance and repairs;
- e. a statement of current inventory;
- f. a statement of units manufactured to date;
- g. a statement of units on order from the manufacturer;

**RESERVE** Plaintiff's right to amend the present proceedings, particularly with respect to the quantification of the damages once the full extent of distribution sales and revenues are known;

**THE Whole** with interest and any legal indemnity on a cumulative basis in accordance with the **Laws of the United States**;

**I declare under penalty of perjury that the foregoing is true and correct.**

DATED: August 30, 2002



TONY COLIDA (Plaintiff Pro Se)  
750 Montpellier, Blvd. Suite 905  
St. Laurent, Quebec H4L 5A7  
Canada  
Tel.: 514-423-3777

OF COUNSEL: Mr. Lazar Sarna, Esq.  
Sarna & Neudorfer (Lawfirm)  
1350 Sherbrooke St. West  
10th Floor  
Montreal, Quebec H3G 1J1  
Canada  
Tel.: 514-842-4550

EXHIBIT # 1

October 10, 1991

Mr. Tony Colida, President  
President Electronic Ltd.  
6745 Darlington Avenue  
MONTREAL, P.Q.  
H3S 2J7  
CANADA

Re: Cellular Portable Telephone  
United States Patent No. DES 318,050

Dear Mr. Colida:

In response to your letter dated August 16, 1991, the above-referenced design patent has been reviewed and it has been decided that we are not interested in using the subject design or acquiring any rights under the patent.

We wish you and your business every success and thank you for thinking of Ericsson GE.

Very truly yours,



Donald W. Walk  
Patent & Assistant General Counsel

/mj

United States Patent [19]

Elbaz et al.

[11] Patent Number: Des. 318,050

[45] Date of Patent: Jul. 9, 1991

[54] CELLULAR PORTABLE TELEPHONE

[75] Inventors: Jacques Elbaz; Tony Colida, both of Montreal, Canada

[73] Assignee: President Electronic Canada Limited, Montreal, Canada

[\*\*] Term: 14 Years

[21] Appl. No. 476,285

[22] Filed: Feb. 7, 1990

[52] U.S. Cl. D14/138; D14/147, 455/90

[58] Field of Search D14/138, 147, 148, 379/58, 59, 433, 440, 434, 455/89, 90

[56] References Cited

U.S. PATENT DOCUMENTS

D 184,307	1/1959	Dreyfuss et al	D14/148
D 189,877	3/1961	Mosing et al	D14/148
D 200,158	1/1965	Zanuso et al	D14/147
D 297,490	4/1967	Zanuso et al	D14/147
D 267,491	4/1967	Zanuso et al	D14/147
D 215,664	10/1969	Dreyfuss et al	D14/148
D 257,977	1/1981	Blomberg	D14/138
D 258,988	4/1981	Fukushima et al	D14/138
D 275,950	10/1984	Marshall	D14/147
D 277,282	1/1985	Tzukamoto et al	D14/138

D 282,338	2/1986	Nichols	D14/138
D 298,036	10/1988	Watanabe	D14/138
D 300,742	4/1989	Soren et al	D14/138 X
D 300,827	4/1989	Soren et al	D14/138
D 303,259	9/1989	Deighan	D14/138
D 305,427	1/1990	Soren et al	D14/138

FOREIGN PATENT DOCUMENTS

0086929	4/1988	Japan	D14/138
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OTHER PUBLICATIONS

Motorola Sheet, Circle No. 12, Electronic, 6:90.  
GTE Flip Phone, shown in Telephony 07/16/79, four pictures.  
Owner's Manual, Duofone ET-415, Cat. No. 43-555, Cordless Electronic Telephone, 3 pages

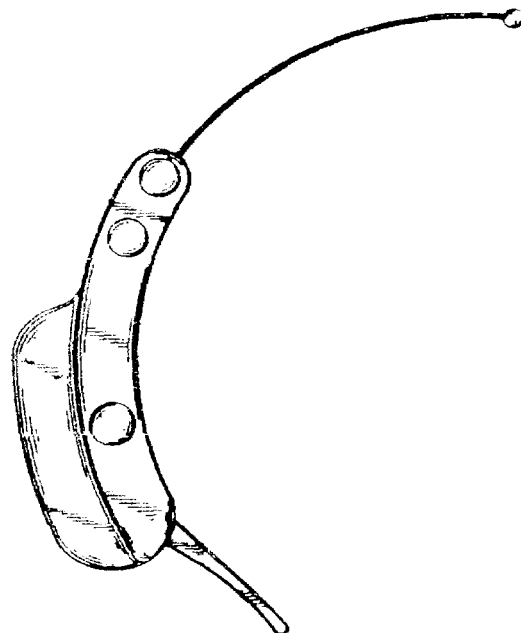
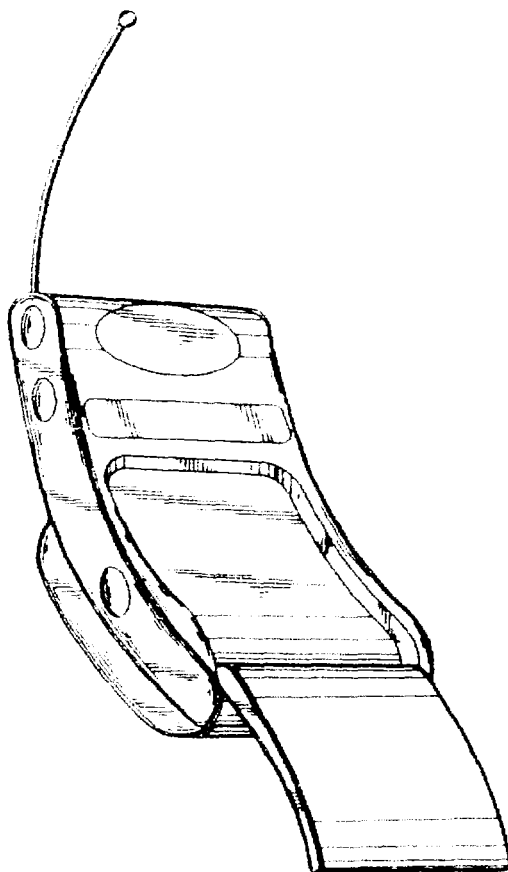
Primary Examiner—Horace B. Fay, Jr

[57] CLAIM

The ornamental design for cellular portable telephone, as shown and described

DESCRIPTION

FIG. 1 is a left side on a front perspective view of a cellular portable telephone showing our new design, FIG. 2 is a right side elevational view thereof, and FIGS. 3 and 4 are respectively front and rear elevational views thereof.



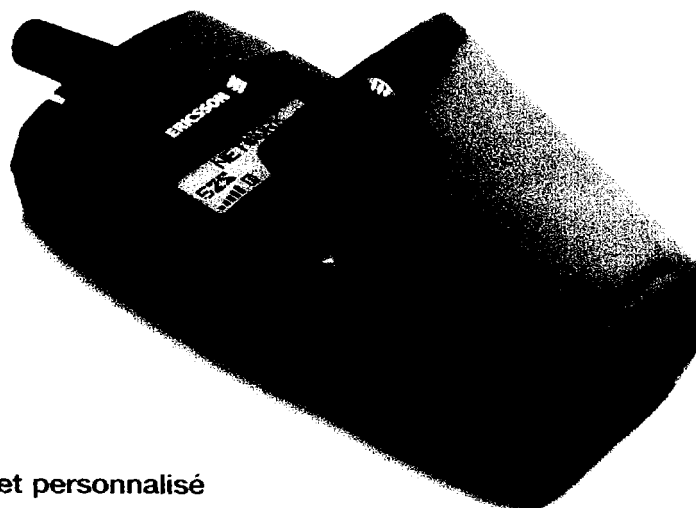
**ERICSSON** 

## Téléphone mobile KF 788

Le petit téléphone  
au style bien  
distinct.



EXHIBIT  
# 3



Double bande - binaur  
pour systèmes D-AMPS

**Trousse**  
KF 788  
Chargeur de voyage  
Pile NiMH 650 mAh

**Taille**  
4,2 x 1,9 x 0,9 po  
(106 x 50 x 23 mm)

**Poids**  
5,1 onces  
(151 grammes)

**Conversation**  
1 h 45 min (numérique)  
1 h (analogique)

**Attente**  
43 h (numérique)  
21 h (analogique)

**Couleur**  
étain  
bourgogne  
automne  
indigo



### Élegant et personnalisé

Grâce à sa conception élégante et à sa forme ergonomique, le modèle Ericsson KF 788 s'adapte confortablement à main. Ses nombreuses fonctions peuvent être personnalisées en fonction de vos besoins, par exemple, sonneries particulières, options de menu intuitif et vibration d'avertissement qui vous permet de prendre vos appels en toute discrétion. Le visuel à trois lignes d'affichage vous offre encore d'autres choix : menus d'utilisateur en anglais, en espagnol, en français et parfois en portugais.

### Facile à utiliser

Vous apprécierez la facilité d'accès au réglage du volume et aux touches de défilement de menu qui se trouvent sur le côté de l'appareil. Sans compter la rapidité de la composition grâce à l'accès monotouche à composition abrégée et à la recomposition des 40 derniers numéros.

### Pratique

Un rabat spécialement conçu permet de prendre les appels lorsque vous l'ouvrez et d'y mettre fin lorsque vous le fermez, et sert en outre à protéger les touches. Le modèle Ericsson KF 788 offre un choix de fonctions pratiques telles que : radiorecherche alphanumérique/messages textuels, identification de l'appelant, indicateur de message en attente et composition automatique pour carte d'appel. Cet appareil comprend un répertoire électronique pouvant contenir jusqu'à 200 noms et numéros.

### Sécurisé

Le modèle Ericsson KF 788 est doté d'une fonction d'authentification d'appels qui vous protège contre la fraude de temps d'appel. Un code de sécurité choisi par l'utilisateur restreint l'accès aux fonctions liées à la confidentialité. Et vous serez également très sensible à la sécurité supplémentaire que représente le dispositif de secret pour les signaux vocaux numériques.

EXHIBIT 4

**-- President Electronics, Limited**  
since 1989

**Tony Colida**  
President

750 Montpellier, Blvd. Suite 905  
St. Laurent, Quebec H4L 5A7

Tel.: (514) 423-3777  
Fax: (514) 747-2814

February 28, 2002

VIA - FACSIMILE

ERICSSON GE Mobile Communications Inc.  
Mountain View Road  
Lynchburg, Virginia 24502

Attn: Intellectual Property Law Department

RE: **Infringement of United States Patent Des. 318,050**  
**"Cellular Portable Handheld Telephone"**  
**Our File No.: Ericsson Corp - 003**

Dear Sir:

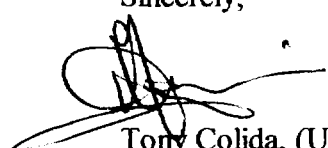
This letter is a "**notice**" to advise Ericsson GE Communications, Inc., that you are infringing my U.S. Patent rights, under the United States Patent No.: DES. 318,050 for a item entitled "Cellular Portable Handheld Telephone".

We are enclosing a copy of our U.S. Design Patent No.: 318,050 in which this cover the design of "Ericsson GE Communications, Cellular Portable Handheld Telephone". Also enclosed for your review is a copy of Ericsson GE's promotional brochure model no. KF 788, in which you are marketing in the United States.

In regards to your **infringement**, we are willing to license to Ericsson GE the U.S. Patent Des. 318, 050, for a lump sum of \$1,000,000., (one million U.S. dollars).

If we do not hear from Ericsson GE Communication, Inc., within **10 days** of this notice, we will initiate a patent infringement suit against Ericsson GE Communication, Inc.

Sincerely,



Tony Colida, (U.S. patent owner)

TC:sb

Enclosures:





March 25, 2002

VIA U.S. MAIL

Mr. Tony Colida, President ✓  
President Electronics, Ltd.  
650 Montpellier Blvd, Suite 905  
Ville St. Laurent, Quebec H4L 5A7  
Canada

RE: U.S. Patent No. DES 318,050

Dear Mr. Colida:

We have received the file history for U.S. Patent DES 318,050 ("the '050 patent"). After thoroughly reviewing the file history, including the comments made by you in securing allowance of the '050 patent, and comparing the '050 patent with the KF-788, it is obvious that Ericsson does not infringe the '050 patent.

It is clear and indisputable that the KF-788 is completely different from the '050 patent. The differences are so clear and obvious that it is not possible to initiate a legal proceeding without violating Rule 11 of the Federal Rules of Civil Procedure. Ericsson will defend itself vigorously in this matter and will seek sanctions, including attorneys fees, and other appropriate remedies should you decide to pursue this matter further.

Ericsson considers this matter closed.

Very truly yours,

Stephen A. Calogero  
Legal Counsel - Intellectual Property

cc: David Williams (LMC)

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Ericsson Inc.  
511 Davis Drive  
P.O. Box 13905  
RTP, NC 27709

