

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

POLYCONCEPT NORTH AMERICA, INC.

Plaintiff,

V.

QUEST USA CORP. d/b/a QUEST BASICS
USA

Defendant.

CIVIL ACTION NO. 1:20-CV-2684

**COMPLAINT FOR DECLARATION OF NON-INFRINGEMENT, AND
UNENFORCEABILITY OF DESIGN PATENT AND DEMAND FOR TRIAL BY JURY**

Plaintiff, Polyconcept North America, Inc. (“Polyconcept”), by and through its undersigned attorneys, sues Quest USA Corp. d/b/a Quest Basics USA (“Defendant” or “Quest”) and alleges as follows:

NATURE OF THE ACTION

1. This is a Declaratory Judgment action for a declaration of invalidity and non-infringement of U.S. Design Patent No. D817,316 entitled “Phone Accessory” (“the ‘316 Design Patent”) and U.S. Design Patent No. D863,287 entitled “Phone Accessory” (“the ‘287 Design Patent”) under the Declaratory Judgment Act 28 U.S.C. §§2201 – 2202 and the patent laws of the United States 35 U.S.C. §101 et seq.

THE PARTIES

2. Polyconcept is a Delaware corporation with a principal place of business located at 400 Hunt Valley Rd, New Kensington, PA 15068.

3. On information and belief, Defendant is a New York corporation with its principal place of business at 495 Flatbush Avenue, Brooklyn, New York 11225. Defendant operates an e-commerce website located at <monetbrand.com>, which distributes products throughout the United States, including Illinois and this District, including products allegedly covered by the '316 Design Patent or the '287 Design Patent.

JURISDICTION AND VENUE

4. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), and pursuant to 28 U.S.C. §§ 2201(a) and 2202.

5. This Court has personal jurisdiction over Defendant.

6. On information and belief, Defendant offers for sale products available to be purchased, delivered and/or picked up from brick and mortar stores within Illinois in this District, such as Walmart, Sam's Club, Anthropologie and Nordstrom Rack.

7. Defendant also offers for sale products, including products allegedly covered by the '316 Design Patent or the '287 Design Patent, through numerous e-commerce retailers, including but not limited to, Defendant's own website, Walmart, Amazon, Sam's Club, The Grommet, Anthropologie, ToyBoxTech, and Nordstrom Rack.

8. Defendant has targeted Illinois residents with marketing and advertising of their products through social media, including Twitter, Instagram and Facebook.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) and (c) because Defendant conducts business in this District and/or a substantial part of the events or omissions giving rise to the claim occurred in this District.

FACTS COMMON TO ALL COUNTS

10. On May 8, 2018, the United States Patent and Trademark Office issued the ‘316 Design Patent. A true and correct copy of the ‘316 Design Patent is attached hereto at EXHIBIT 1.

11. According the records at the United States Patent and Trademark Office, Defendant is the owner of the ‘316 Design Patent.

12. Figure 1 of the ‘316 Design Patent is shown below:

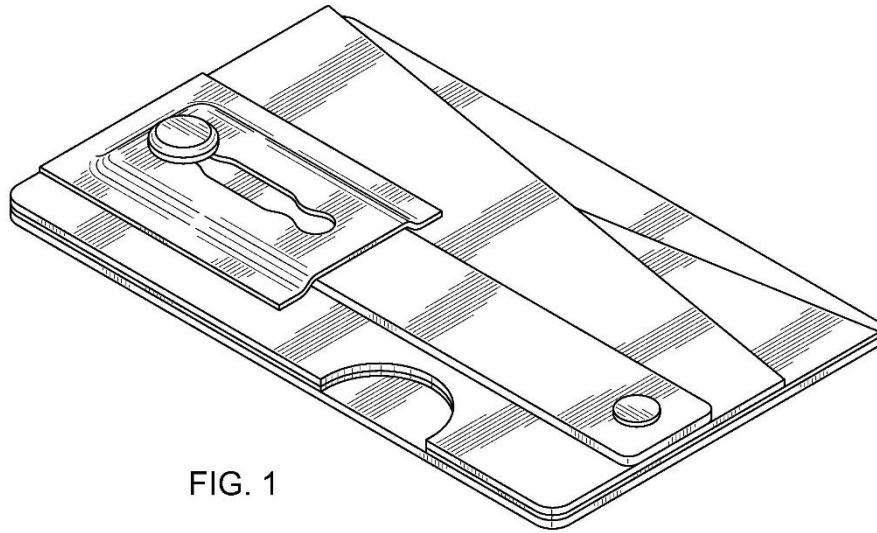


FIG. 1

13. On October 15, 2019, the United States Patent and Trademark Office issued the ‘287 Design Patent. A true and correct copy of the ‘287 Design Patent is attached hereto at EXHIBIT 2.

14. According the records at the United States Patent and Trademark Office, Defendant is the owner of the ‘287 Design Patent.

15. Figure 1 of the ‘287 Design Patent is shown below:

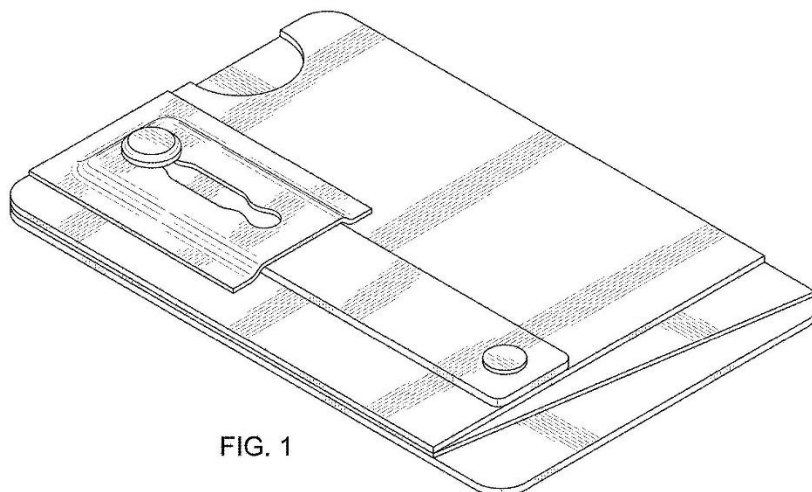


FIG. 1

16. The commercial embodiment of the '316 Design Patent or '287 Design Patent are not marked as set forth in 35 U.S.C. §287.

17. Polyconcept is a leading supplier of promotional products. Polyconcept sells its thousands of different products through numerous distributors.

18. Many of the products offered for sale by Polyconcept can be customized to include a personalized logo or identifying information.

19. One of Polyconcept's distributors is 4imprint, Inc. ("4imprint").

20. On March 18, 2020, Defendant, through its counsel, sent a letter to 4imprint demanding the "immediate cessation of any sales of" the Vienna RFID Phone Wallet with Finger Loop ("Vienna wallet"). The correspondence alleges that use, sale, and offers to sell the Vienna wallet infringes the '316 Design Patent and the '287 Design Patent. The correspondence further alleges that the letter is "notice that continued sales of the knockoff of [Quest's] device will constitute willful infringement subjecting you to statutory damages up to \$2 million and attorney

fees in a court of law.” The letter further alleges immediate cessation of sales and an accounting of all sales previously made. A copy of this letter is attached at Exhibit 3.

21. 4imprint purchases the Vienna wallet from Polyconcept. A picture of the Vienna wallet is shown below:



22. On April 6, 2020, Polyconcept, through its counsel, notified Defendant, through its counsel, that Polyconcept was the source of the products alleged to be infringed in Defendant’s March 18, 2020 correspondence to 4imprint and that Polyconcept would be responding to the allegations contained in such correspondence.

23. Defendant alleges that the Vienna wallet infringes the ‘316 Design Patent because it has “identical dimensions with an identical finger loop, an almost identical slot for movement of a pin, and a window along the bottom side.” (Exhibit 3, p. 2).

24. A design patent, however, does not cover the article itself or the way it functions. Rather, a design merely protects the ornamental non-functional features.

25. Phone accessories, and in particular wallets, lie in a crowded field.

26. For the '316 Design Patent or the '287 Design Patent to be infringed, no matter how similar two items look to the ordinary observer, the Vienna wallet must appropriate the novelty of the '316 Design Patent and the '287 Design Patent that distinguishes them from the prior art.

27. The Vienna Wallet does not infringe the '316 Design Patent or the '287 Design Patent because it differs in any feature of these patents that allegedly make it patentable over the prior art.

28. The features that Defendant alleges are similar between the Vienna wallet and the '316 Design Patent and the '287 Design Patent are taught in the prior art.

29. Prior art U.S. Patent No. 9,362,968 ("the '968 patent"), teaches an adhesive pocket to be affixed to a cell phone having both a credit card slot and a finger strap. Figures 3 and 6 of the '968 Patent are reproduced below:

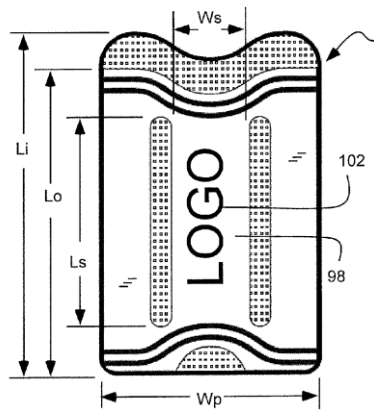


Fig. 3

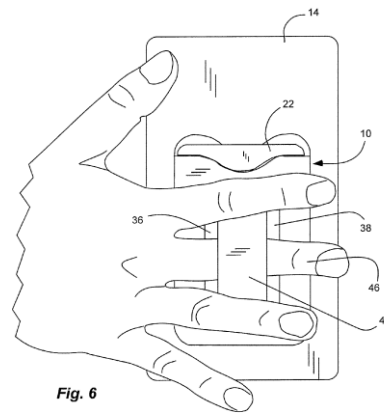


Fig. 6

30. Prior art Chinese Patent No. 206100112 (“the ‘112 Patent”) discloses the finger loop with a slot for movement of the pin. Figures 3 and 4 of the ‘112 Patent are reproduced below:

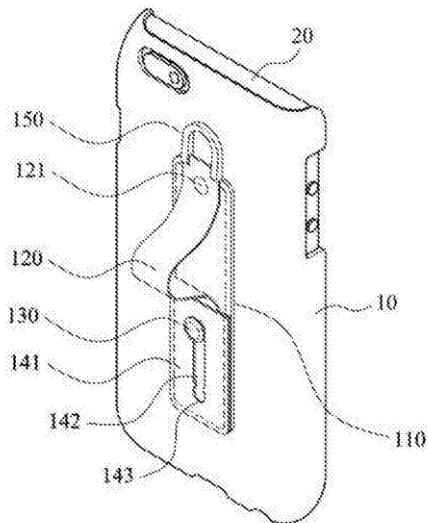


图3

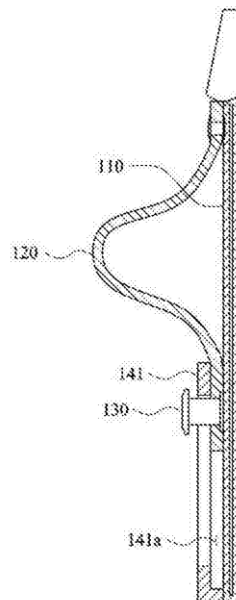
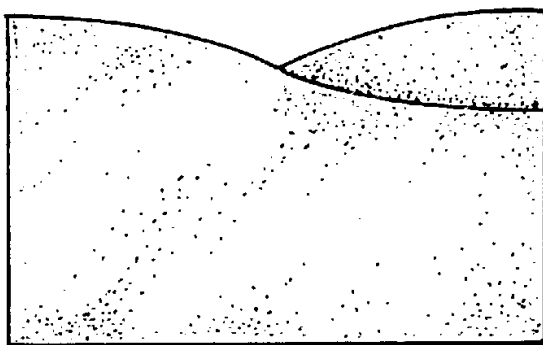


图4

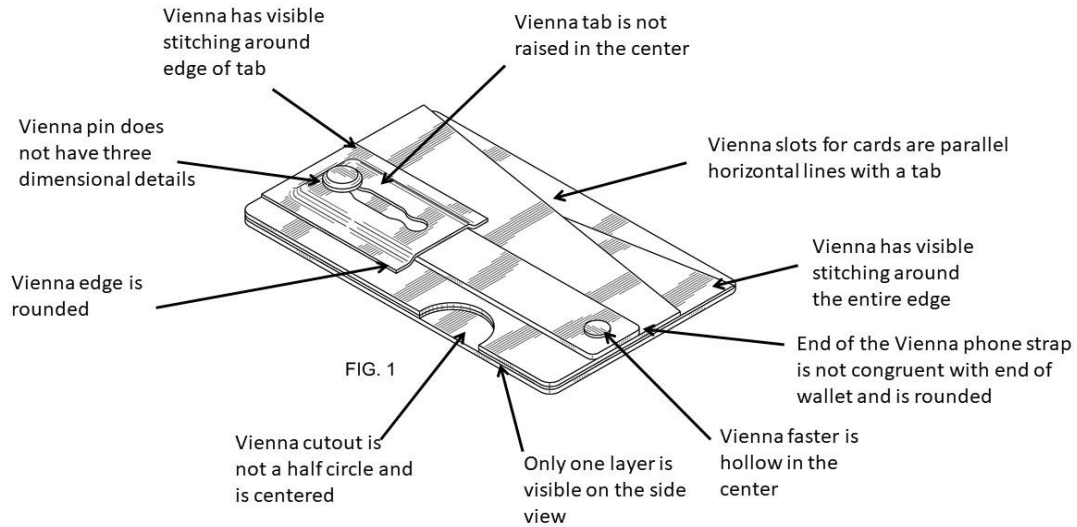
31. Prior art U.S. Patent No. D4,466,647 (“the ‘647 Patent”) teaches the design of intersecting edges of pockets for use to differentiate different card slots. Figure 1 of the ‘647 Patent is reproduced below:



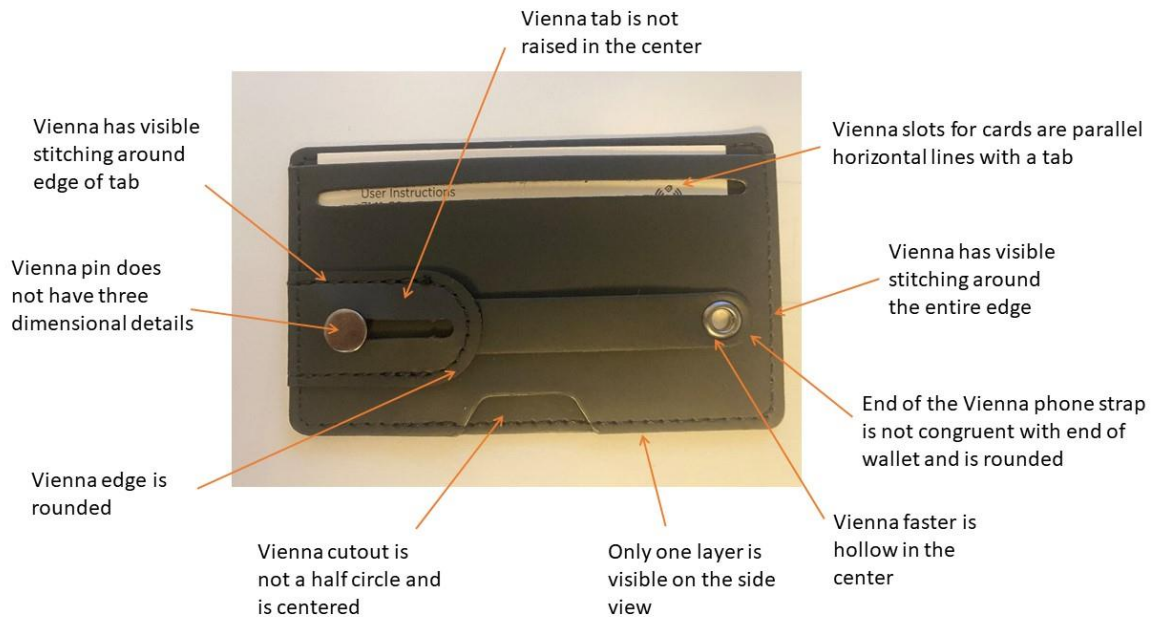
32. The '316 Design Patent is invalid under at least 35 U.S.C. §103 based on the combination of the '968 Patent in view of the '112 Patent and further in view of the '647 Patent.

33. The '287 Design Patent is invalid under at least 35 U.S.C. §103 based on the combination of the '968 Patent in view of the '112 Patent and further in view of the '647 Patent.

34. The Vienna wallet does not infringe the '316 Design Patent because the designs would not appear the same to an ordinary observer because the claimed design and the Vienna wallet are different for the following reasons:



Front View of the '316 Patent



Front View of the Vienna Wallet

Vienna has additional concentric rectangle

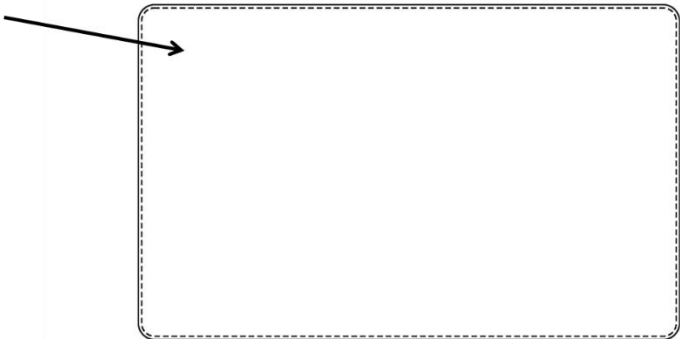
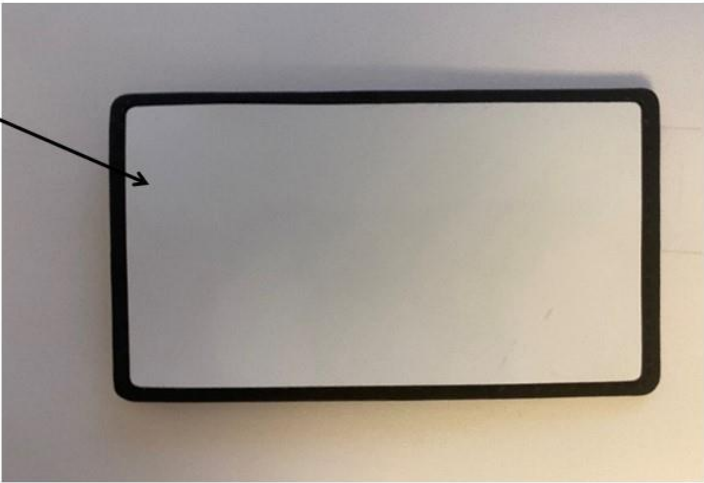


FIG. 3

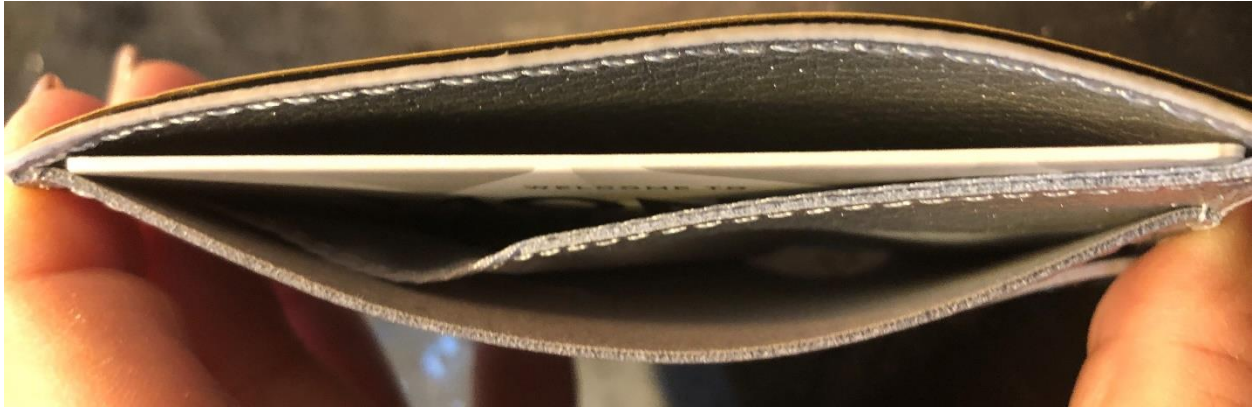
Fig. 3 Rear View of the '316 patent

Vienna has additional concentric rectangle



Rear View of the Vienna Wallet

35. The difference in the claimed side view of the '316 Design Patent, which form the card slots, and the side view of the Vienna wallet are highlighted below by a comparison of the commercial embodiment of the '316 Design Patent and the Vienna wallet:



Commercial embodiment of the '316 Design Patent



Vienna Wallet

36. The Vienna wallet also does not infringe the ‘287 Design Patent because the designs would not appear the same to an ordinary observer because the claimed design and the Vienna wallet are different for at least the reasons discussed above with reference to the ‘316 Design Patent and the fact that the Vienna wallet includes non-intersecting card slots located on the longer side of the wallet, while the card slots of the ‘287 Design Patent are located on the shorter side of the wallet.

37. Defendant’s March 18, 2020, letter states that the Vienna wallet infringes the ‘316 Design Patent and the ‘287 Design Patent and that continued sales constitutes willful infringement.

38. Accordingly, Defendant’s threat of patent infringement has created an actual, substantial and justiciable case or controversy between Polyconcept and Defendant concerning the right of Polyconcept to market, manufacture and sell the Vienna wallet to others.

COUNT I

Declaration of Noninfringement, Invalidity and Unenforceability of the ‘316 Design Patent

39. Polyconcept hereby incorporates the previous paragraphs of this Complaint by reference and realleges them as originally and fully set forth herein.

40. The acts of Defendant as alleged herein including, but not limited to, Defendant’s allegations that the Vienna wallet infringes the ‘316 Design Patent, has created a present and actual controversy between Polyconcept and Defendant concerning whether Polyconcept’s Vienna wallet infringes the ‘316 Design Patent and whether the ‘316 Design Patent is invalid.

41. The claim of the ‘316 Design Patent is invalid for failing to meet the criteria of patentability set forth in Title 35 of the United States Code (the Patent Act), including but not limited to, the criteria of §§ 102, 103, and 112.

42. Polyconcept seeks a declaratory judgment that the '316 Design Patent is invalid, not infringed and unenforceable for one or more of the following reasons:

- a. the '316 Design Patent is invalid for failure to comply with the requirements of the patent laws of the United States, including, but not limited to, 35 U.S.C. §§ 102, 103 and 112;
- b. Polyconcept has not infringed, induced infringement of or contributorily infringed the '316 Design Patent, and is not liable for infringement; and
- c. The manufacture, use, sale and offer for sale of the Vienna wallet does not infringe the claim of the '316 Design Patent.

COUNT II

Declaration of Noninfringement, Invalidity and Unenforceability of the '287 Design Patent

43. Polyconcept hereby incorporates the previous paragraphs of this Complaint by reference and realleges them as originally and fully set forth herein.

44. The acts of Defendant as alleged herein including, but not limited to, Defendant's allegations that the Vienna wallet infringes the '287 Design Patent, has created a present and actual controversy between Polyconcept and Defendant concerning whether Polyconcept's Vienna wallet infringes the '287 Design Patent and whether the '287 Design Patent is invalid.

45. The claim of the '287 Design Patent is invalid for failing to meet the criteria of patentability set forth in Title 35 of the United States Code (the Patent Act), including but not limited to, the criteria of §§ 102, 103, and 112.

46. Polyconcept seeks a declaratory judgment that the '287 Design Patent is invalid, not infringed and unenforceable for one or more of the following reasons:

- d. the '287 Design Patent is invalid for failure to comply with the requirements

of the patent laws of the United States, including, but not limited to, 35 U.S.C. §§ 102, 103 and 112;

- e. Polyconcept has not infringed, induced infringement of or contributorily infringed the '287 Design Patent, and is not liable for infringement; and
- f. The manufacture, use, sale and offer for sale of the Vienna wallet does not infringe the claim of the '287 Design Patent.

PRAYER

WHEREFORE, Plaintiff, Polyconcept North America, Inc., respectfully requests that this Court enter judgment in its favor and against Defendant, Quest USA Corp, and requests relief as follows:

- A. For an award of damages as provided by law as determined at trial, together with prejudgment interest;
- B. For a declaration from this Court that the '287 Design Patent is invalid;
- C. For a declaration from this Court that the '287 Design Patent is unenforceable against Polyconcept;
- D. For a declaration from this Court that the '316 Design Patent is invalid;
- E. For a declaration from this Court that the '316 Design Patent is unenforceable against Polyconcept;
- F. For a declaration from this Court that Polyconcept may continue to manufacture and sell its Vienna wallet;
- G. For a declaration from this Court that Polyconcept has not infringed, contributorily infringed or induced infringement of the only claim of the '287 Design Patent;

H. For a declaration from this Court that Polyconcept has not infringed, contributorily infringed or induced infringement of the only claim of the '316 Design Patent;

I. A determination that this case is exceptional and awarding Polyconcept its costs and reasonable attorneys' fees incurred in this action under 35 U.S.C. § 285;

J. For costs of suit incurred, including but not limited to, reasonable attorneys' fees;

K. That this Court grant such other and further relief that it deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all counts of its Complaint so triable.

Dated: May 4, 2020

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