

3. Plaintiff is a licensee of Apple, Inc., and for the past 25 years has been in the business of manufacturing and selling Digital Camera Battery Packs, Mobile Phone Battery Packs and External Battery Packs and manufactures and sells mobile external battery packs (“Plaintiff’s Products”) compatible for use in connection with Apple, Inc.’s iPhone and iPod branded products. Among Plaintiff’s Products are MiLi® Power Packs, MiLi® Power Skin, and MiLi® Power Spring.

4. Upon information and belief, Defendant is a corporation duly organized and existing by the laws of the State of California, with a registered place of business at 2850 Red Hill Ave., Suite 128, Santa Ana, California, 92705. Defendant’s registered agent for service of process is Daniel Huang, 2237 Sageleaf Cir., Corona, California 92882.

5. Upon information and belief, Defendant operates its business through the Internet web site, www.mophie.com, whereby Defendant sells products including batteries, cases, cables and chargers, including the “Mophie Juice Pack,” a battery pack for Apple, Inc.’s iPhone.

6. Upon information and belief, Defendant owns the ‘360 and ‘361 patents entitled “battery pack.” See Exhibits 1 & 2.

III. JURISDICTION AND VENUE

7. This action is for a declaratory judgment of non-infringement and invalidity of the ‘360 and ‘361 patents pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 as well as the Patent Act, 35 U.S.C. §1, *et seq.*

8. This Court has personal jurisdiction over Defendant because Defendant actively sells its products within this judicial district through its website, www.mophie.com, and through third-party retailers located within this judicial district. Defendant has also

accused Plaintiff, with its principal place of business in this judicial district, of patent infringement, and threatened to sue Plaintiff, as described below.

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1338 (a), as this action arises under an Act of Congress relating to patents, and 28 U.S.C. § 2201 as this action also arises under the Declaratory Judgment Act.

10. Venue is properly established in this Court pursuant to 28 U.S.C. §1391 because Plaintiff resides in this Judicial District and/or a substantial part of the events or acts giving rise to the claim occurred in this District. This is also the District in which Defendant has threatened to sue Plaintiff.

IV. FACTUAL BACKGROUND

11. On June 16, 2010, Defendant, through its attorneys, the California law firm Loza & Loza, LLP, sent Plaintiff a cease and desist letter, attached as Exhibit 3 (“June 16, 2010 Letter”), claiming ownership of the ‘360 and ‘361 patents and demanding that Plaintiff “cease and desist advertising, displaying, distributing, making, using, selling, offering for sale, and/or importing any products that infringe mStation’s patents for the Mophie iPhone battery packs.”

12. In the June 16, 2010 Letter, Defendant also requested that Plaintiff:

immediately (1) recall all iPhone battery packs that use mStation’s patented design; (2) provide [Defendant] with a full and complete accounting of all sales of the patented battery pack design in any stores and on-line; (3) provide [Defendant] with a full and complete accounting of all such products in inventory; and (4) provide [Defendant] with written assurance that [Plaintiff] have undertaken the above.

13. The June 16, 2010 Letter also threatened that Defendant would file suit against Plaintiff if Plaintiff does not respond to Defendant’s demands by 12:00 P.M., Pacific Time, Wednesday, June 30, 2010. Defendant threatened it would seek a Temporary

Restraining Order, Preliminary Injunction, monetary damages, and recovery of attorneys fees and costs.

14. A real and justiciable controversy already exists and in fact, although Defendant has not yet, to Plaintiff's knowledge, taken legal action on behalf of Defendant, Daniel Huang, the listed inventor of the '360 and '361 patents has filed suit in the Central District of California (10-cv-04705), against Plaintiff and two other entities, claiming infringement of the '360 and '361 patents. To date, Mr. Huang has not served the complaint upon Plaintiff. Hence, Plaintiff has good reason to believe a controversy exists between Plaintiff and Defendant, and for which Defendant has threatened and intends to file suit.

**V. COUNT 1: DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE '360 PATENT**

15. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully stated herein.

16. The '360 patent is a design patent, entitled "Battery Pack," issued to the listed inventor Daniel Huang. The application for the design was filed on March 30, 2009 and issued as a patent on May 25, 2010. Exhibit 1.

17. The '360 patent claims "[t]he ornamental design for a battery pack, as shown and described." Exhibit 1.

18. In its June 16, 2010 Letter, Defendant asserts it is the owner of the '360 patent. Exhibit 3.

19. In its June 16, 2010 Letter, Defendant accused Plaintiff of infringing the '360 patent and threatened to file suit if Plaintiff did not immediately "cease and desist advertising, displaying, distributing, making, using, selling, offering for sale, and/or

importing any products that infringe mStation's patents for the Mophie iPhone battery packs." Exhibit 3.

20. Plaintiff's Products do not infringe, either directly or indirectly, the '360 patent.

21. Plaintiff has not contributed to or otherwise induced the infringement of the '360 patent.

22. A real and justiciable controversy exists between the parties concerning Defendant's infringement allegations and threatened lawsuit, and Plaintiff seeks a declaration that Plaintiff has not and is not infringing the '360 patent.

**VI. COUNT 2: DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE '361 PATENT**

23. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully stated herein.

24. The '361 Patent is a design patent, entitled "Battery Pack," issued to the listed inventor Daniel Huang. The application for the design was filed on March 30, 2009 and issued as a patent on May 25, 2010. Exhibit 2.

25. The '361 Patent claims "[t]he ornamental design for a battery pack, as shown and described." Exhibit 2.

26. In its June 16, 2010 Letter, Defendant asserts it is the owner of the '361 patent. Exhibit 3.

27. In its June 16, 2010 Letter, Defendant accused Plaintiff of infringing the '361 patent and threatened to file suit if Plaintiff did not immediately "cease and desist advertising, displaying, distributing, making, using, selling, offering for sale, and/or importing any products that infringe mStation's patents for the Mophie iPhone battery packs." Exhibit 1.

28. Plaintiff's Products do not infringe, either directly or indirectly, the '361 patent.

29. Plaintiff has not contributed to or otherwise induced the infringement of the '361 patent.

30. A real and justiciable controversy exists between the parties concerning Defendant's infringement allegations and threatened lawsuit, and Plaintiff seeks a declaration that Plaintiff has not and is not infringing the '361 patent.

**VII. COUNT 3: DECLARATORY JUDGMENT OF
INVALIDITY OF THE '360 PATENT**

31. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully stated herein.

32. A real and justiciable controversy exists between the parties concerning Defendant's infringement allegations and threatened lawsuit, and Plaintiff seeks a declaration that the '360 patent is invalid.

33. Plaintiff alleges that the '360 patent is invalid for failing to comply with one or more provisions of the Patent Act, 35 U.S.C. §1 *et seq.*, including but not limited to §§ 101, 102, 103, 112 and/or 117.

34. Plaintiff also alleges that the '360 patent is invalid pursuant to §§ 102, 103 and 117 based on the prior disclosure of the design in at least the following prior art references:

U.S. Patent No. 6,646,864
Protective Case for Touch Screen Device
Registered November 11, 2003

U.S. Patent No. 7,343,184
Handheld Device Protective Case
Registered March 11, 2008

U.S. Patent No. 7,612,997
Portable Electronic Device Case with Battery
Registered November 3, 2009

U.S. Patent No. D556,681
Battery Pack with Case for Multimedia Phone
Registered December 4, 2007

U.S. Patent No. D558,757
Electronic Device
Registered January 1, 2008

U.S. Patent No. D561,092
Combined Battery Pack and Silicone Case for Multimedia Phone
Registered February 5, 2008

U.S. Patent No. D565,291
Mobile Telephone Case
Registered April 1, 2008

U.S. Patent No. D575,056
Portable Electronic Device Case
Registered August 19, 2008

U.S. Patent No. D581,151
Portable Electronic Device Case
Registered November 25, 2008

U.S. Patent No. D582,149
Portable Electronic Device Case
Registered December 9, 2008

U.S. Patent No. D587,896
Portable Electronic Device Case
Registered March 10, 2009

U.S. Patent No. D597,089
Hand-Held Electronic Device Cover
Registered July 28, 2009

U.S. Patent No. D603,603
Case for Electronic Device
Registered November 10, 2009

U.S. Patent No. D610,807
Protective Case for Portable Handheld Electronic Device

Registered- March 2, 2010

U.S. Patent No. D613,282

Phone Case

Registered April 6, 2010

U.S. Patent No. D617,784

Case

Registered June 15, 2010

35. Plaintiff requests judgment, pursuant to 28 U.S.C. § 2201 *et seq.* that the '360 patent is invalid.

**VIII. COUNT 3: DECLARATORY JUDGMENT OF
INVALIDITY OF THE '361 PATENT**

36. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully stated herein.

37. A real and justiciable controversy exists between the parties concerning Defendant's infringement allegations and threatened lawsuit, and Plaintiff seeks a declaration that the '361 patent is invalid.

38. Plaintiff alleges that the '361 patent is invalid for failing to comply with one or more provisions of the Patent Act, 35 U.S.C. §1 *et seq.*, including but not limited to §§ 101, 102, 103, 112 and/or 117.

39. Plaintiff also alleges that the '361 patent is invalid pursuant to §§ 102, 103 and 117 based on the prior disclosure of the design in at least the following prior art references:

U.S. Patent No. 6,646,864
Protective Case for Touch Screen Device
Registered November 11, 2003

U.S. Patent No. 7,343,184
Handheld Device Protective Case

Registered March 11, 2008

U.S. Patent No. 7,612,997
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Registered January 1, 2008

U.S. Patent No. D561,092
Combined Battery Pack and Silicone Case for Multimedia Phone
Registered February 5, 2008

U.S. Patent No. D565,291
Mobile Telephone Case
Registered April 1, 2008

U.S. Patent No. D575,056
Portable Electronic Device Case
Registered August 19, 2008

U.S. Patent No. D581,151
Portable Electronic Device Case
Registered November 25, 2008

U.S. Patent No. D582,149
Portable Electronic Device Case
Registered December 9, 2008

U.S. Patent No. D587,896
Portable Electronic Device Case
Registered March 10, 2009

U.S. Patent No. D597,089
Hand-Held Electronic Device Cover
Registered July 28, 2009

U.S. Patent No. D603,603
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Registered November 10, 2009

U.S. Patent No. D610,807
Protective Case for Portable Handheld Electronic Device
Registered- March 2, 2010

U.S. Patent No. D613,282
Phone Case
Registered April 6, 2010

U.S. Patent No. D617,784
Case
Registered June 15, 2010

40. Plaintiff requests judgment, pursuant to 28 U.S.C. § 2201 *et seq.* that the '361 patent is invalid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to enter judgment in Plaintiff's favor against Defendant as follows:

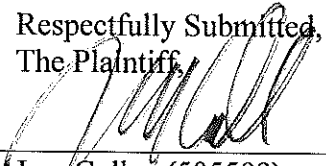
- A. Declare that Plaintiff has not and does not directly or indirectly infringe the '360 patent, literally, or under the doctrine of equivalents;
- B. Declare that Plaintiff has not and does not directly or indirectly infringe the '361 patent, literally, or under the doctrine of equivalents;
- C. Declare that the '360 patent is invalid;
- D. Declare that the '361 patent is invalid;
- E. Award Plaintiff its costs, expenses, and reasonable attorney fees, including an award for such costs, expenses, and fees under 28 U.S.C. § 285;
- F. Award Plaintiff such and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a jury trial as to all issues triable at law, and respectfully requests an early trial.

Respectfully Submitted,
The Plaintiff,

By:



Jess Collen (505509)

Matthew C. Wagner (105751)

Jenny T. Slocum (302759)

COLLEN *IP*

The Holyoke-Manhattan Building

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Town of Ossining

Westchester County, NY 10562

(914) 941-5668 Tel.

(914) 941-6091 Fax.

Counsel for Hali-Power, Inc.

EXHIBIT 1



US00D616360S

(12) **United States Design Patent**
Huang

(10) **Patent No.:** **US D616,360 S**
(45) **Date of Patent:** **** May 25, 2010**

(54) **BATTERY PACK**

(76) **Inventor:** Daniel Huang, 1801 E. Edinger Ave., Suite 255, Santa Ana, CA (US) 92705

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

(21) **Appl. No.:** 29/334,607

(22) **Filed:** Mar. 30, 2009

Related U.S. Application Data

(63) Continuation-in-part of application No. 12/356,068, filed on Jan. 19, 2009, now abandoned.

(51) **LOC (9) Cl.** 13-02

(52) **U.S. Cl.** D13/103

(58) **Field of Classification Search** D13/102-110,
D13/118-119, 184; D14/250, 251, 253,
D14/432, 434; D3/201, 215, 218, 226, 230,
D3/299; 429/96-100, 163, 176; 320/101-102,
320/107-115; 206/320, 701

See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

D267,795 S *	2/1983	Mallon	.....	D13/119
D327,868 S *	7/1992	Oka	.....	D13/110
D407,063 S *	3/1999	Reis et al.	.....	D13/103
D407,708 S *	4/1999	Nagele et al.	.....	D14/240
D424,512 S *	5/2000	Ho	.....	D13/103
D439,218 S *	3/2001	Yu	.....	D13/103
D446,497 S *	8/2001	Yu	.....	D13/103
D460,411 S *	7/2002	Wang	.....	D13/103
D481,716 S *	11/2003	He et al.	.....	D14/248
D517,007 S *	3/2006	Yong-Jian et al.	.....	D13/108

D525,582 S *	7/2006	Chan	.....	D13/107
D526,958 S *	8/2006	Shimizu	.....	D13/108
D535,252 S *	1/2007	Sandnes	.....	D13/108
D542,286 S *	5/2007	Taniyama et al.	.....	D14/248
D556,681 S *	12/2007	Kim	.....	D13/103
D561,092 S *	2/2008	Kim	.....	D13/103
D574,326 S *	8/2008	Lim	.....	D13/118
2008/0053770 A1*	3/2008	Tynyk	.....	190/100

* cited by examiner

Primary Examiner—Rosemary K Tarcza
(74) *Attorney, Agent, or Firm*—Julio M. Loza; Loza & Loza, LLP

(57) **CLAIM**

The ornamental design for a battery pack, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view of a battery pack, showing my new design;

FIG. 2 is a perspective view of the battery pack showing a mobile phone for illustrative purposes;

FIG. 3 is a front view of the battery pack;

FIG. 4 is a top view of the battery pack;

FIG. 5 is a bottom view of the battery pack;

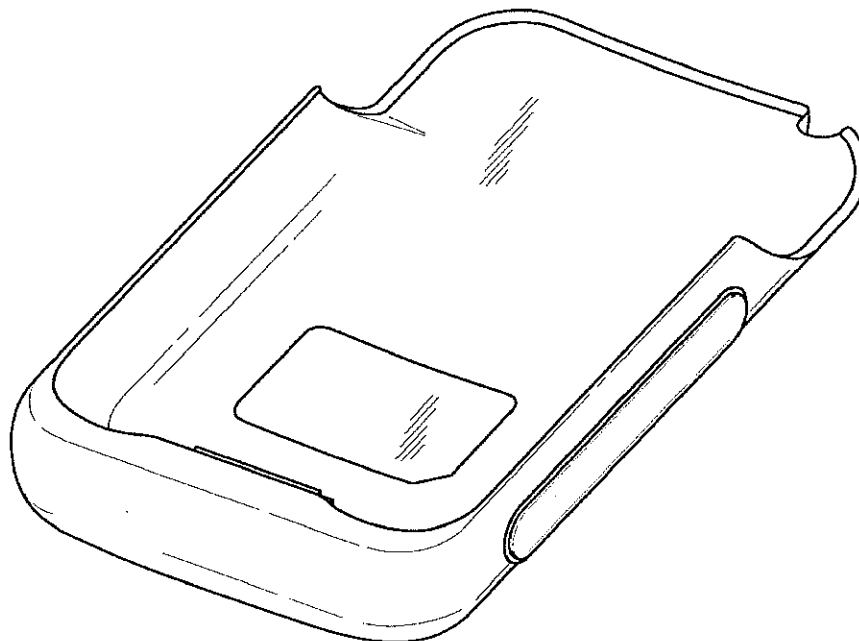
FIG. 6 is a back view of the battery pack;

FIG. 7 is a first side view of the battery pack; and,

FIG. 8 is a second side view of the battery pack.

The broken line showing of environment is for illustrative purposes only and forms no part of the claimed design.

1 Claim, 7 Drawing Sheets



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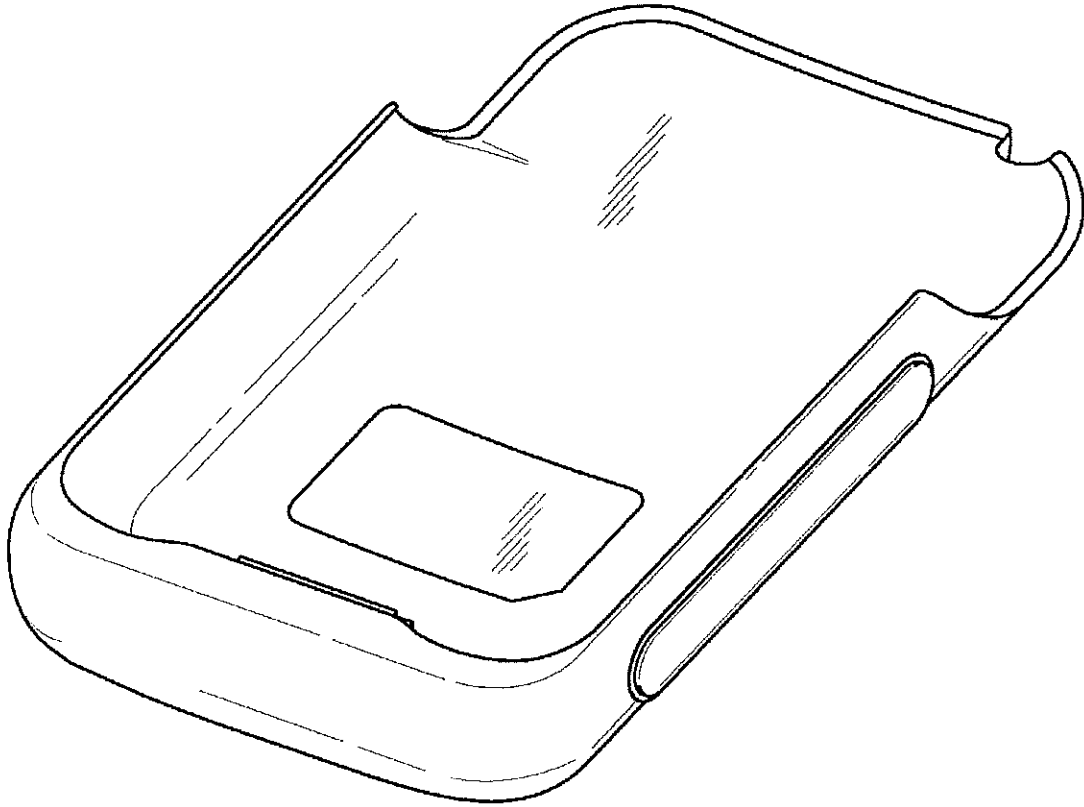


FIG. 1

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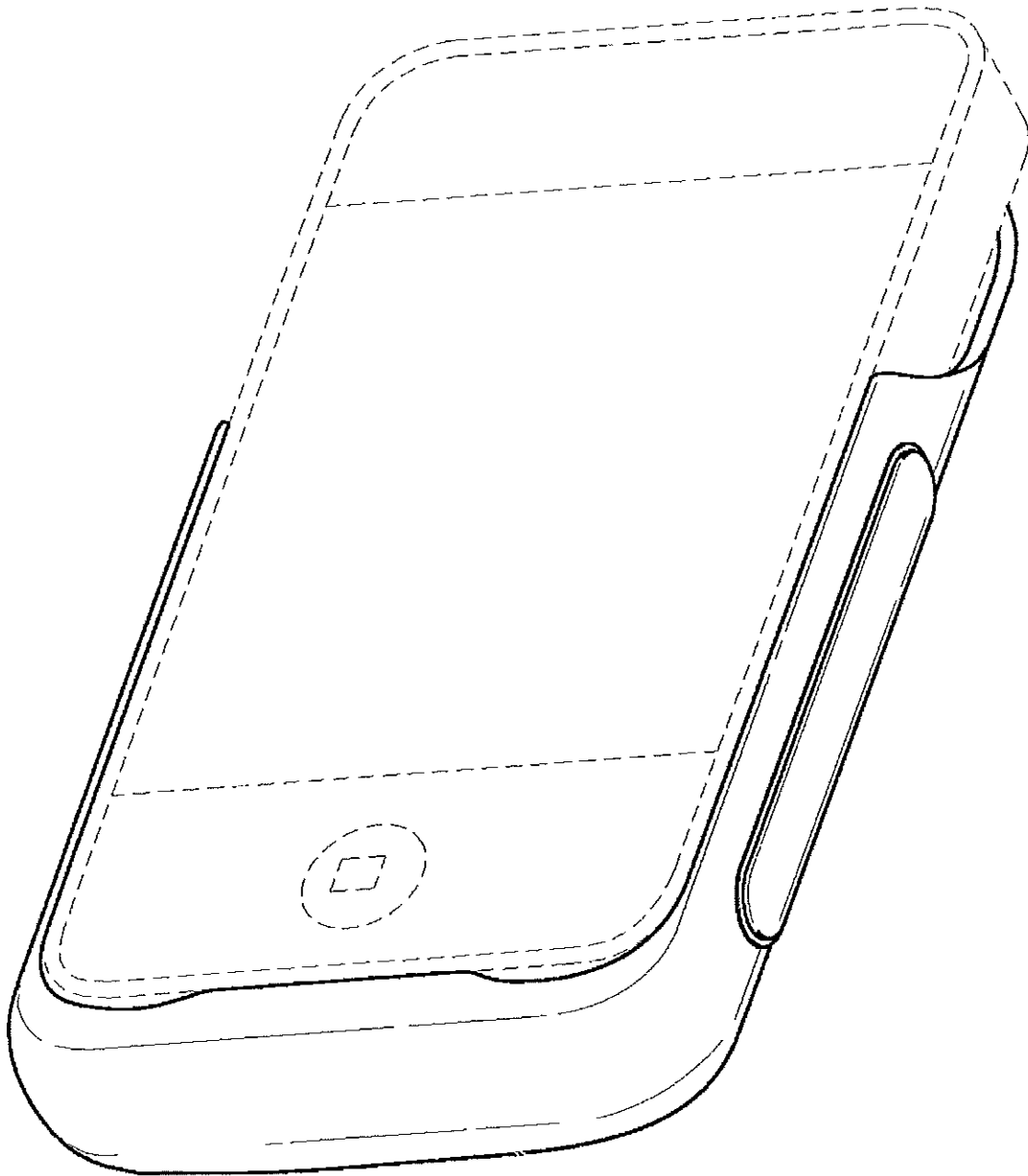


FIG. 2

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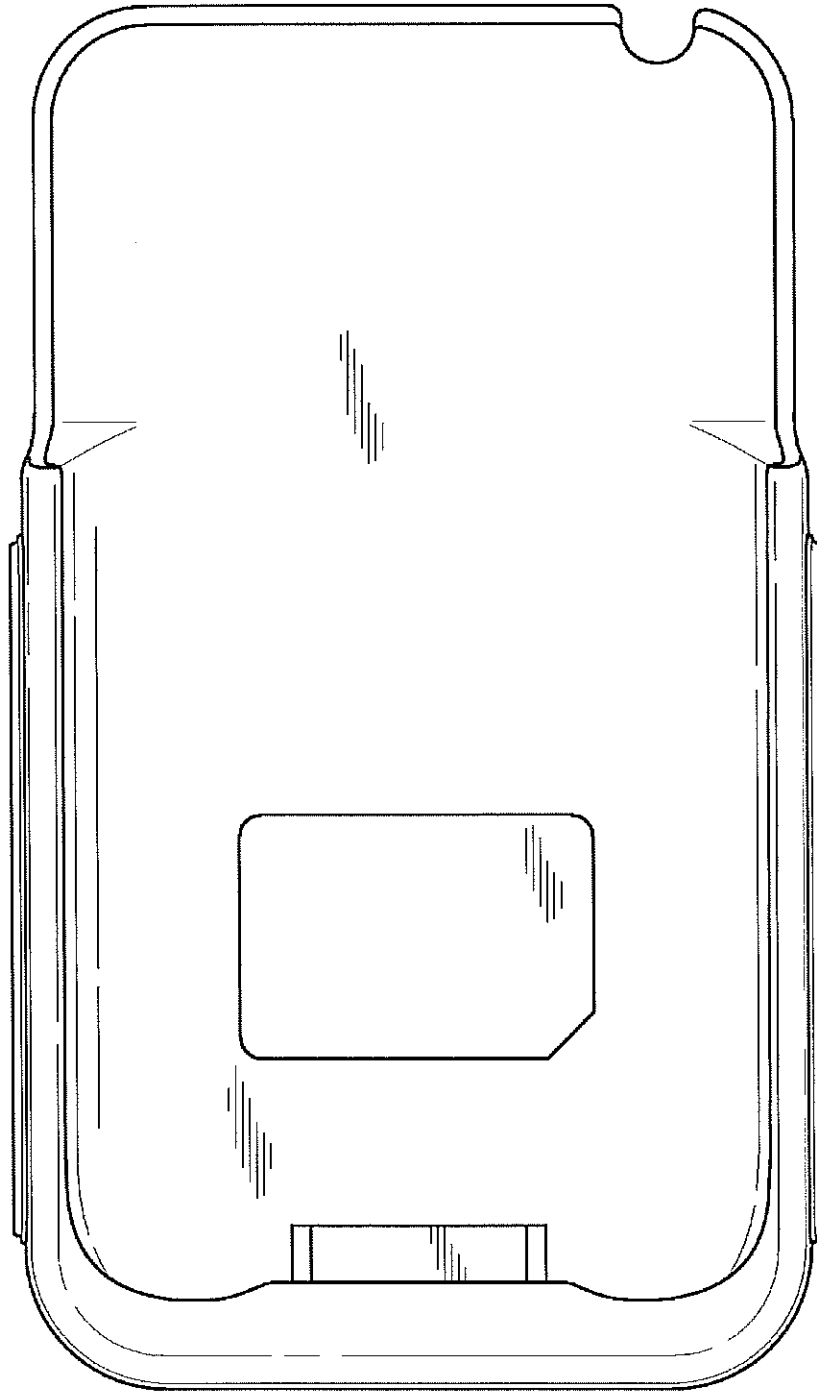


FIG. 3

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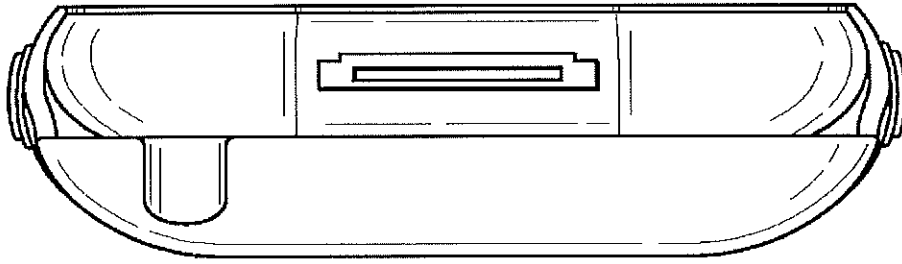


FIG. 4

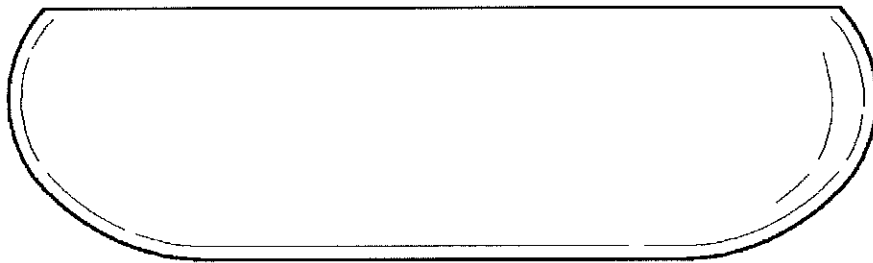


FIG. 5

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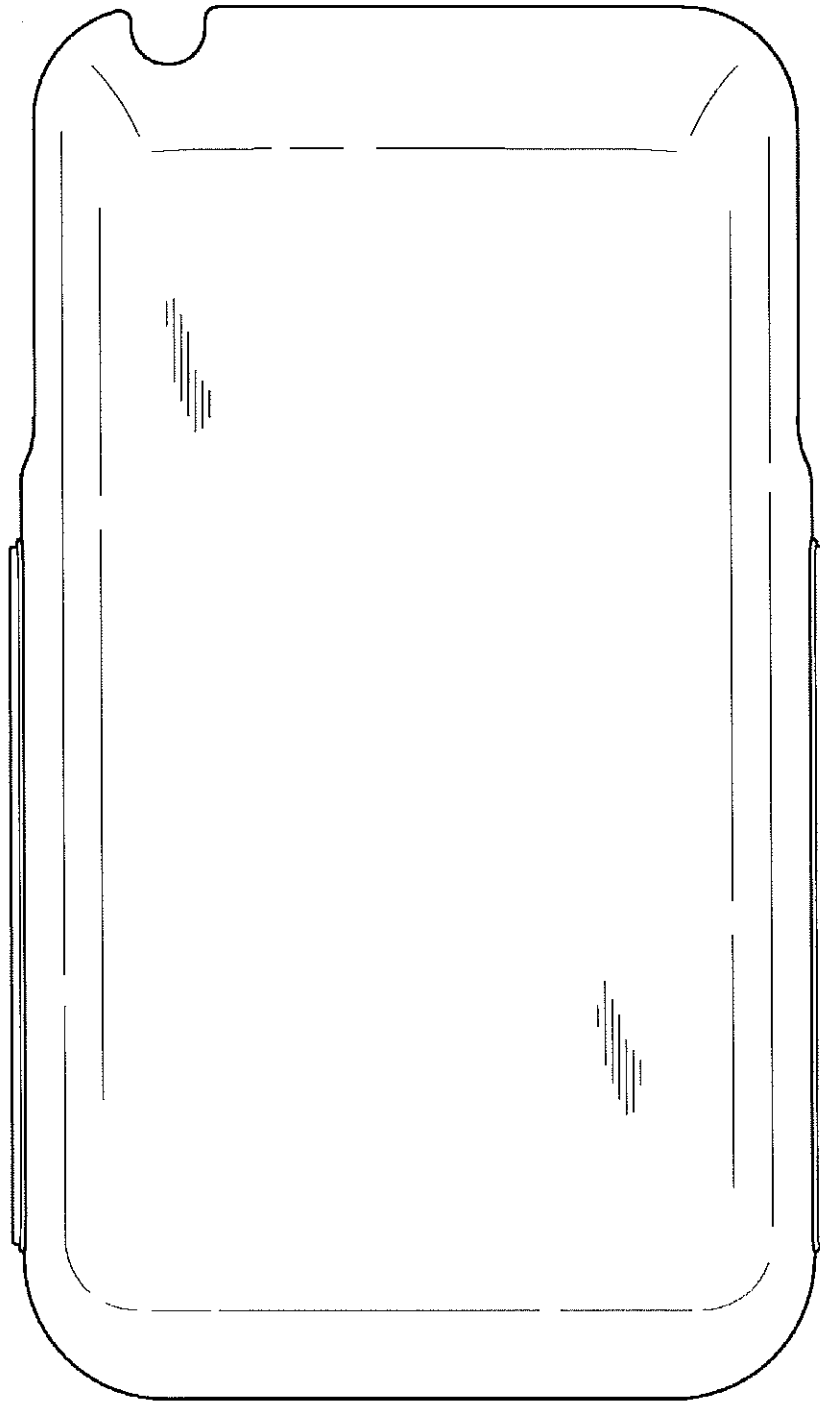


FIG. 6

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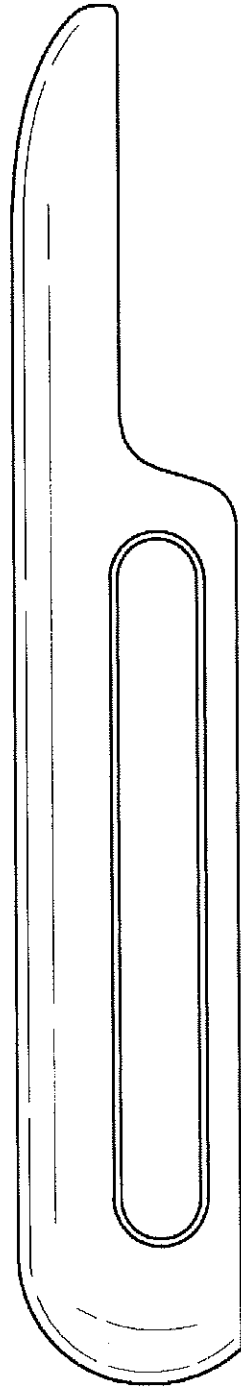


FIG. 7

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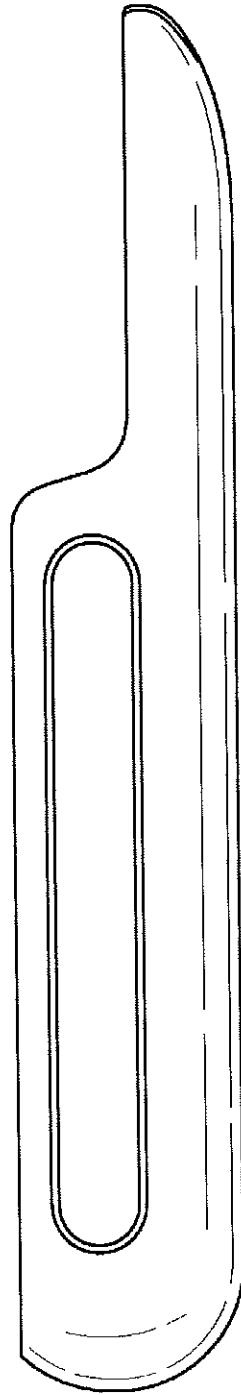


FIG. 8

EXHIBIT 2



US00D616361S

(12) **United States Design Patent** (10) **Patent No.:** **US D616,361 S**
Huang (45) **Date of Patent:** **** May 25, 2010**

(54) **BATTERY PACK**
 (76) Inventor: **Daniel Huang**, 1801 E. Edinger Ave., Suite 255, Santa Ana, CA (US) 92705
 (**) Term: **14 Years**
 (21) Appl. No.: **29/334,612**
 (22) Filed: **Mar. 30, 2009**

Related U.S. Application Data

(63) Continuation of application No. 12/356,068, filed on Jan. 19, 2009, now abandoned.
 (51) **LOC (9) Cl.** **13-02**
 (52) **U.S. Cl.** **D13/103**
 (58) **Field of Classification Search** **D13/102-110, D13/118-119, 184; D14/250, 251, 253, D14/432, 434; D3/201, 215, 218, 226, 230, D3/299; 429/96-100, 163, 176; 320/101-102, 320/107-115; 206/320, 701**
 See application file for complete search history.

References Cited

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D407,063 S *	3/1999	Reis et al.	D13/103
D407,708 S *	4/1999	Nagele et al.	D14/240
D460,411 S *	7/2002	Wang	D13/103
D517,007 S *	3/2006	Yong-Jian et al.	.....	D13/108
D525,582 S *	7/2006	Chan	.....	D13/107
D526,958 S *	8/2006	Shimizu	.....	D13/108
D535,252 S *	1/2007	Sandnes	.....	D13/108
D556,681 S *	12/2007	Kim	.....	D13/103
D561,092 S *	2/2008	Kim	.....	D13/103
2008/0053770 A1 *	3/2008	Tynyk	.....	190/100

* cited by examiner

Primary Examiner—Rosemary K Tarcza
 (74) *Attorney, Agent, or Firm*—Julio M. Loza; Loza & Loza, LLP

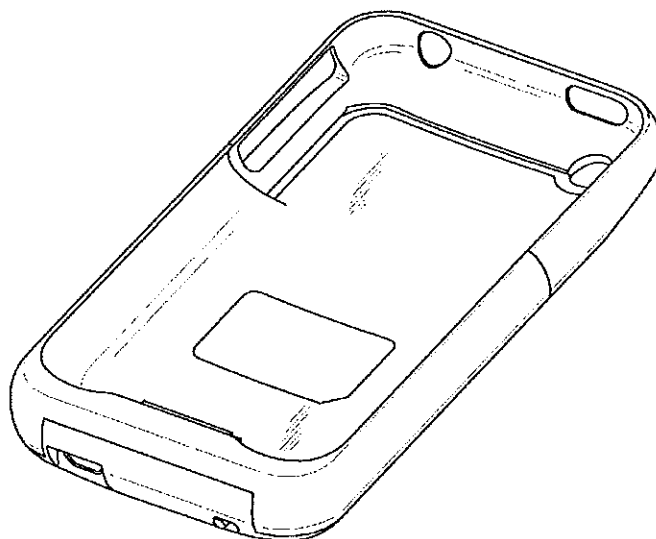
(57) **CLAIM**

The ornamental design for a battery pack, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view of a battery pack for a mobile device, showing my new design;
 FIG. 2 is an alternate perspective view showing the battery pack in an open configuration;
 FIG. 3 is a perspective view of the battery pack shown without a top piece for ease of illustration, also showing a mobile phone for illustrative purposes;
 FIG. 4 is an alternate front view of the battery pack with a top piece showing a mobile phone for illustrative purposes;
 FIG. 5 is a front view of the battery pack;
 FIG. 6 is an alternate front view showing an open battery pack;
 FIG. 7 is a top view of the battery pack;
 FIG. 8 is a bottom view of the battery pack;
 FIG. 9 is a back view of the battery pack;
 FIG. 10 is an alternate back view showing an open battery pack;
 FIG. 11 is a first side view of the battery pack;
 FIG. 12 is a first side view showing an open battery pack;
 FIG. 13 is a second side view of the battery pack; and,
 FIG. 14 is the second side view showing an open battery pack.
 The broken line showing of environment is for illustrative purposes only and forms no part of the claimed design.

1 Claim, 13 Drawing Sheets



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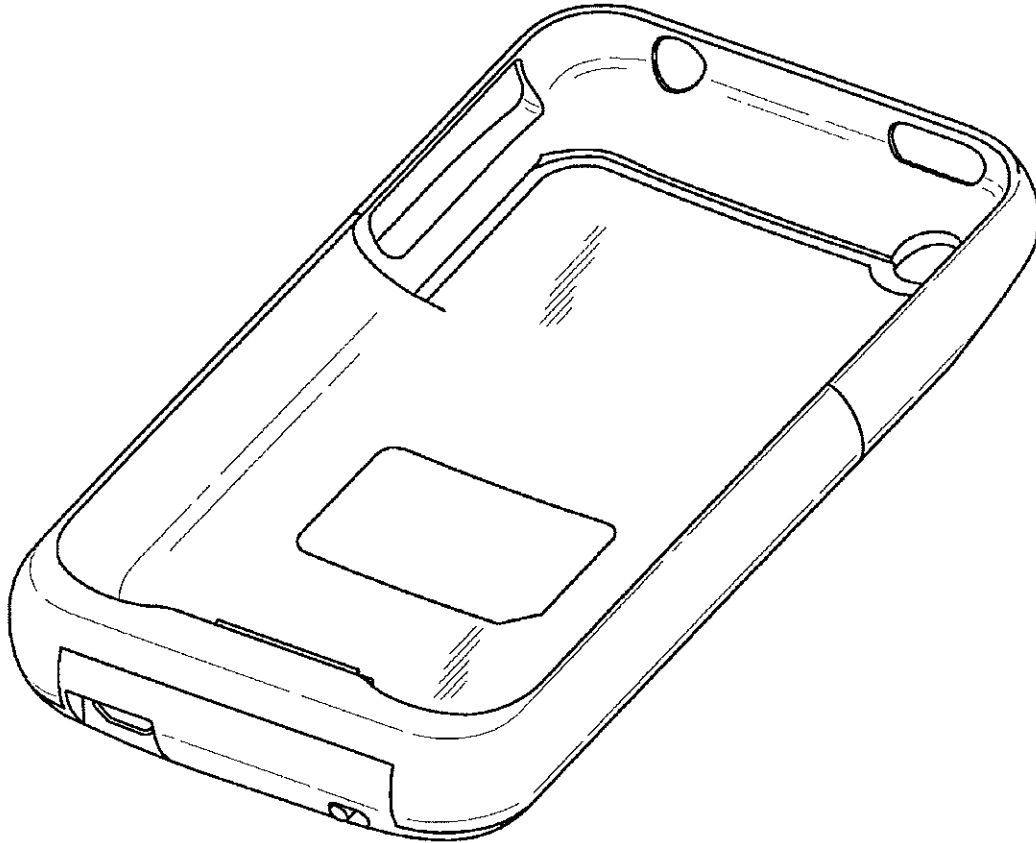


FIG. 1

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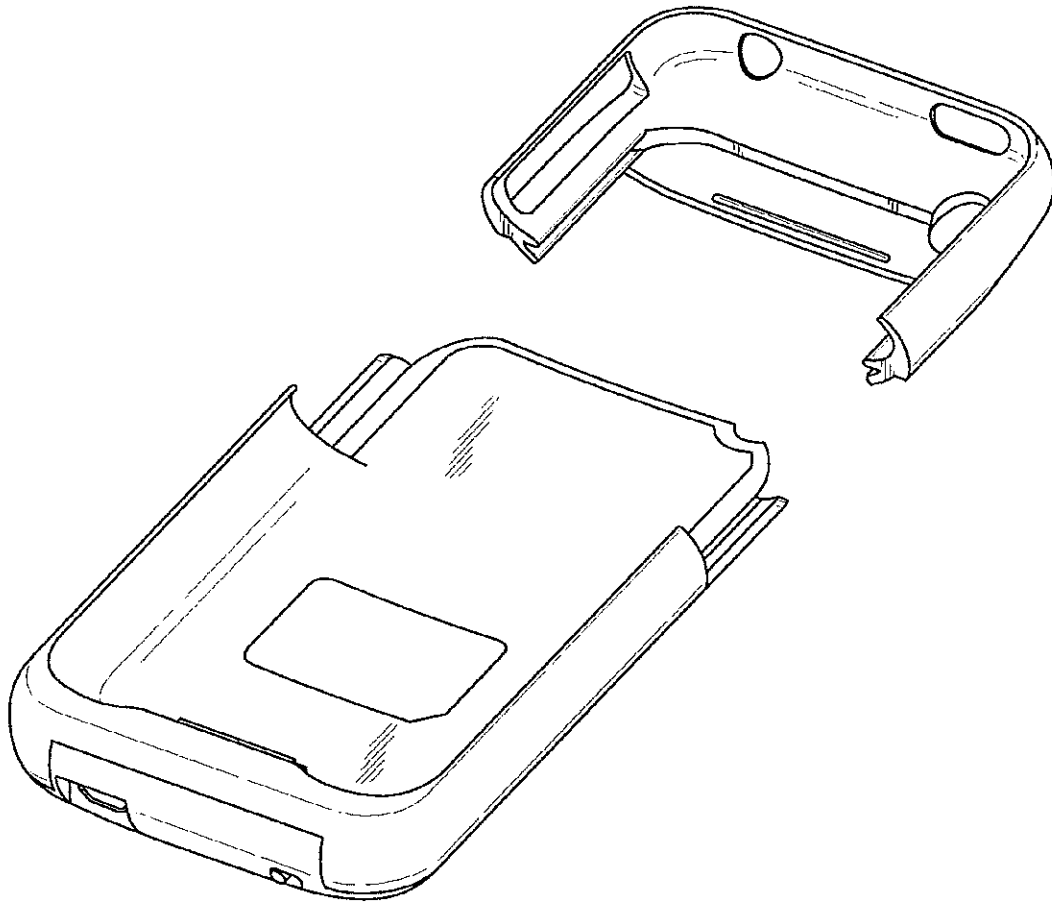


FIG. 2

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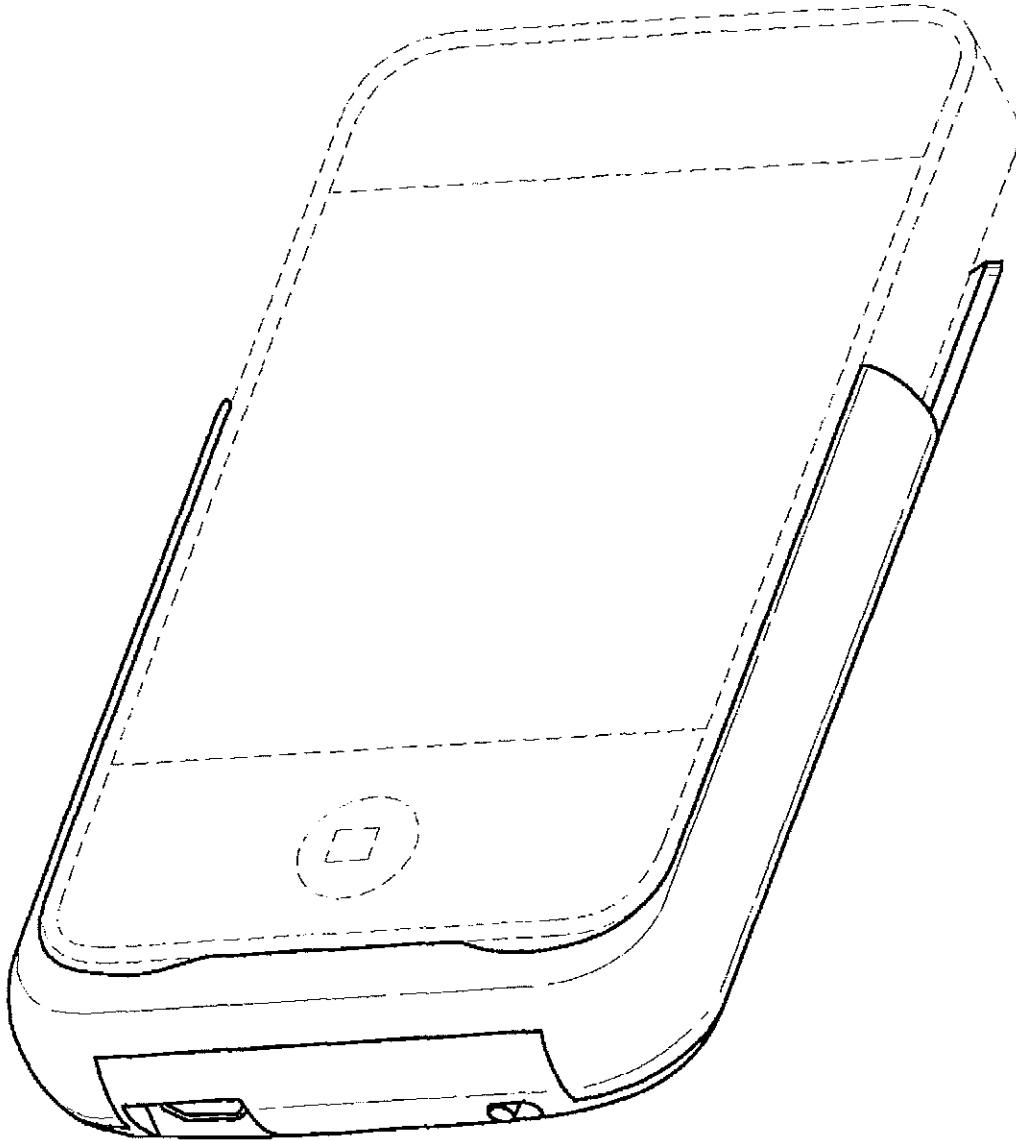


FIG. 3

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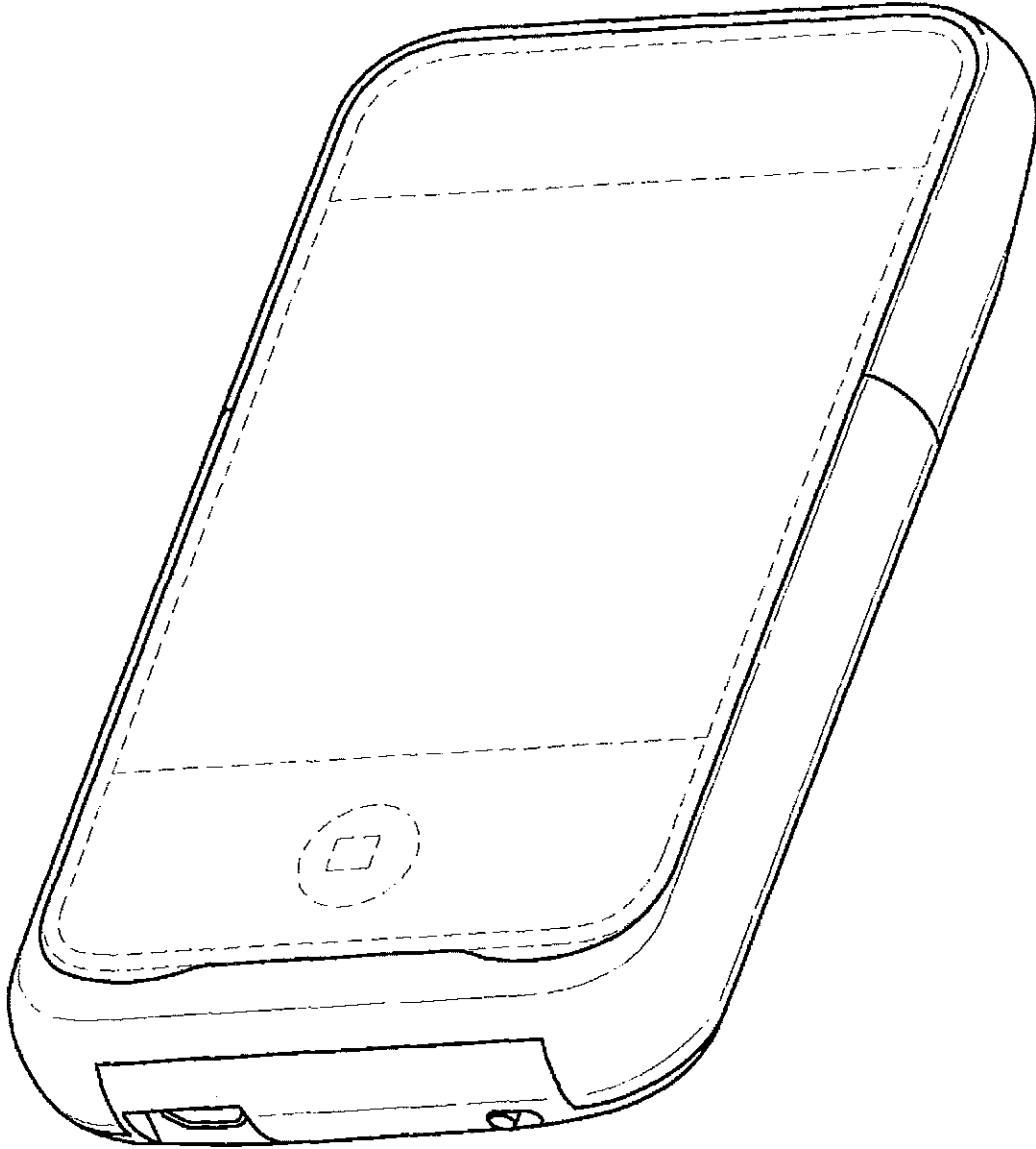


FIG. 4

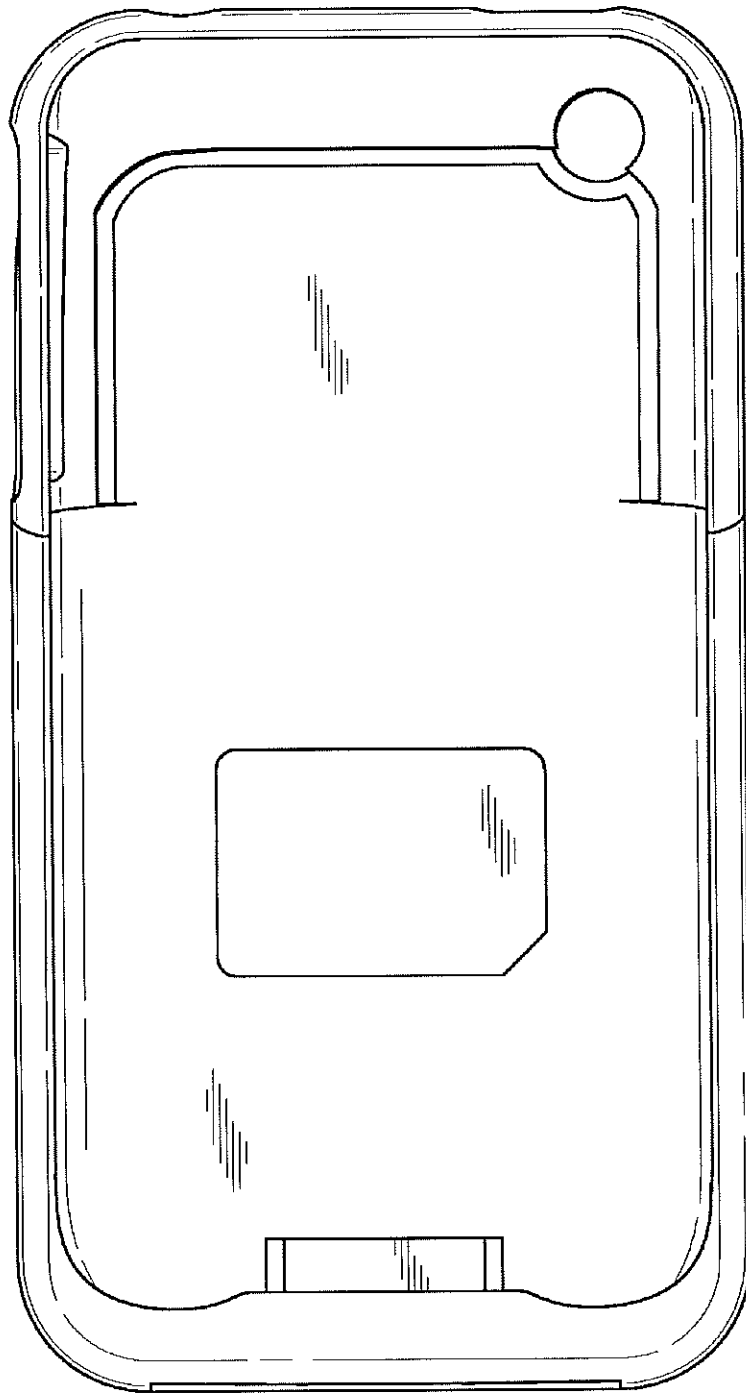


FIG. 5

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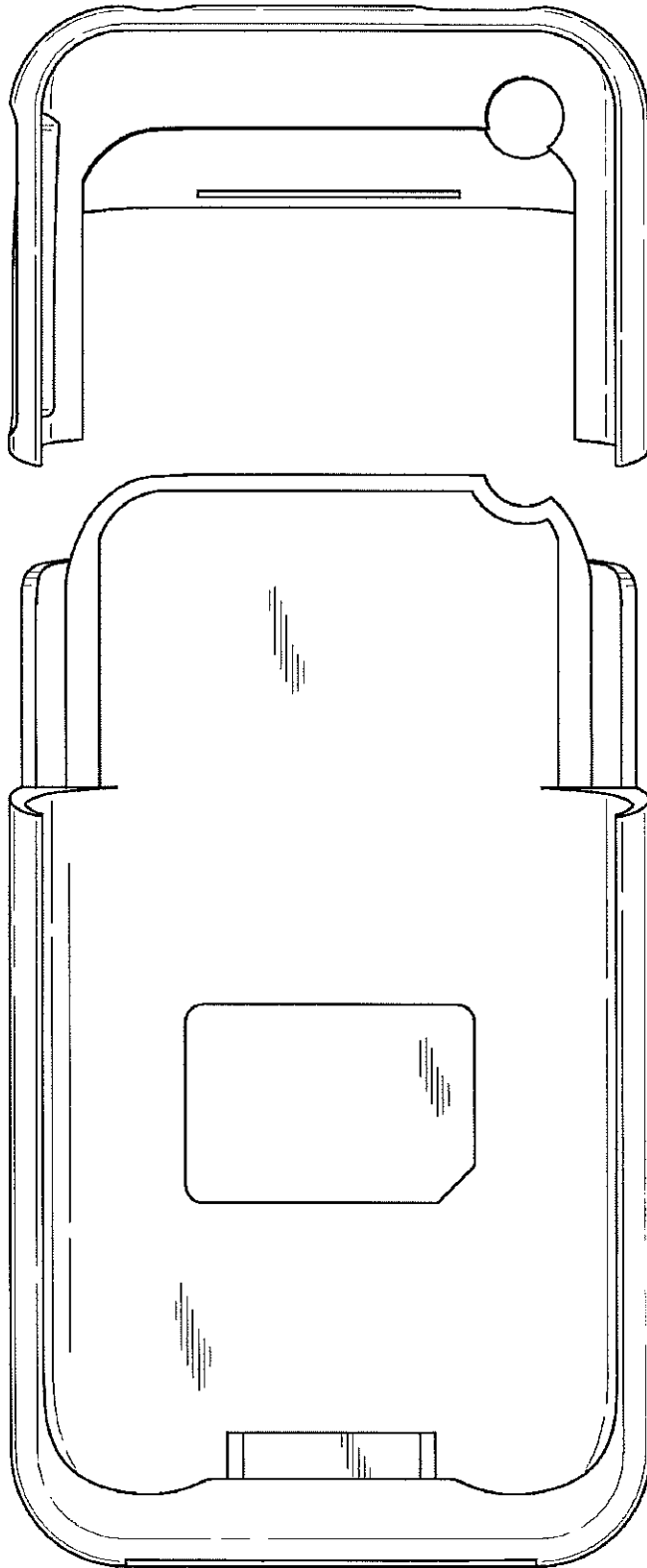


FIG. 6

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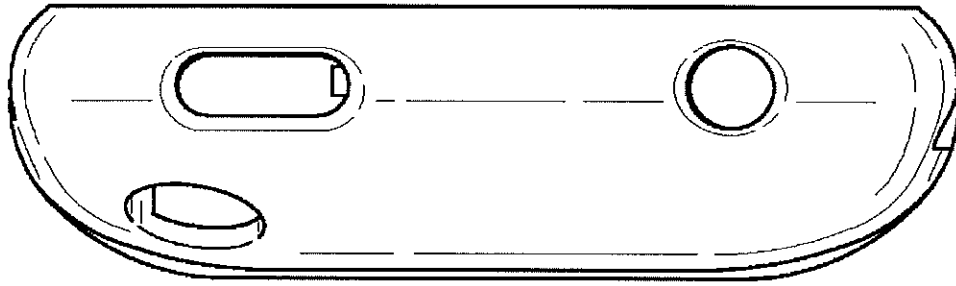


FIG. 7

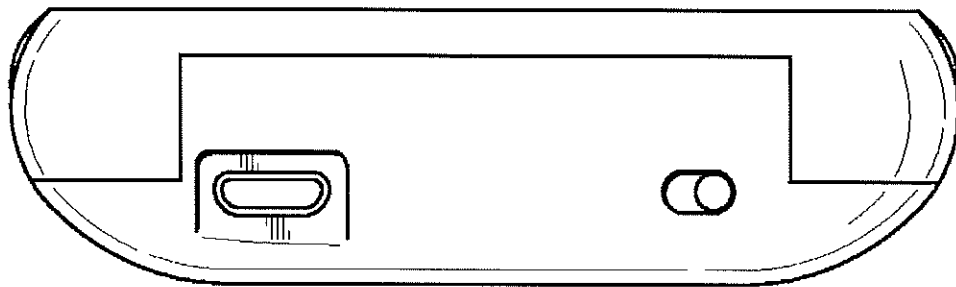


FIG. 8

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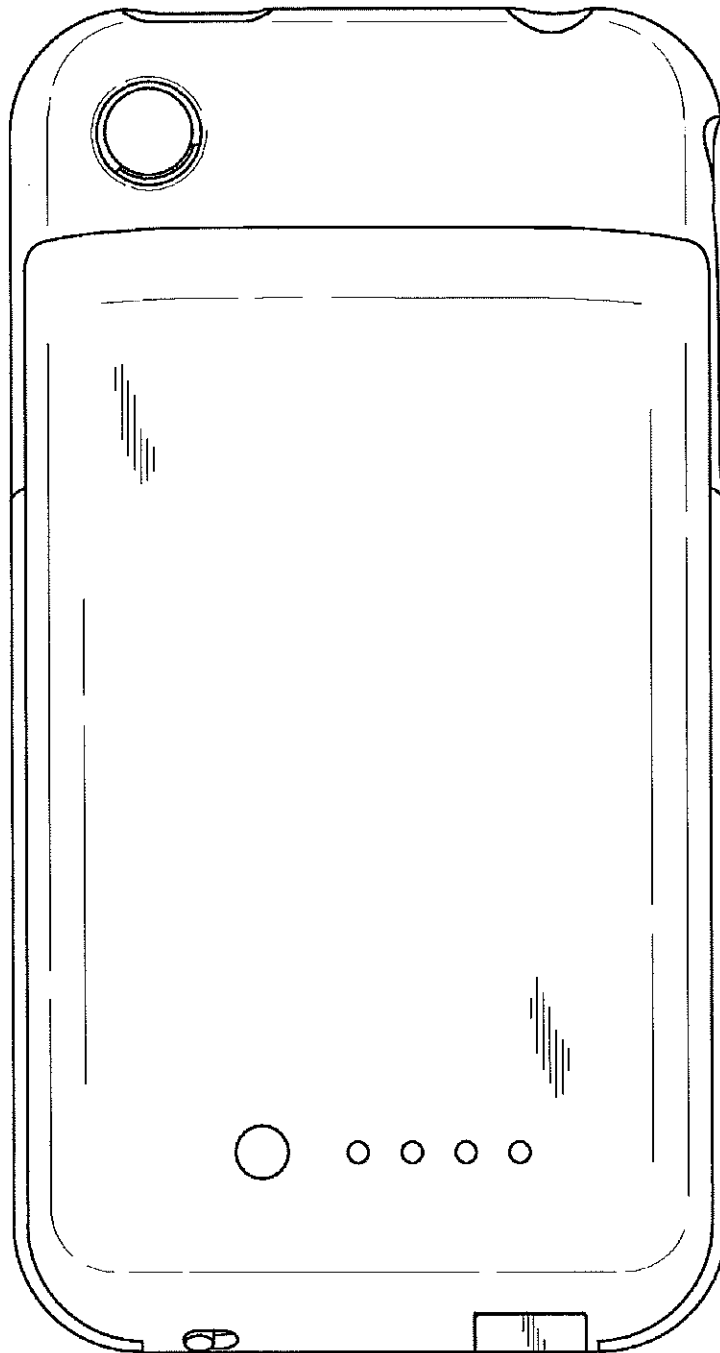


FIG. 9

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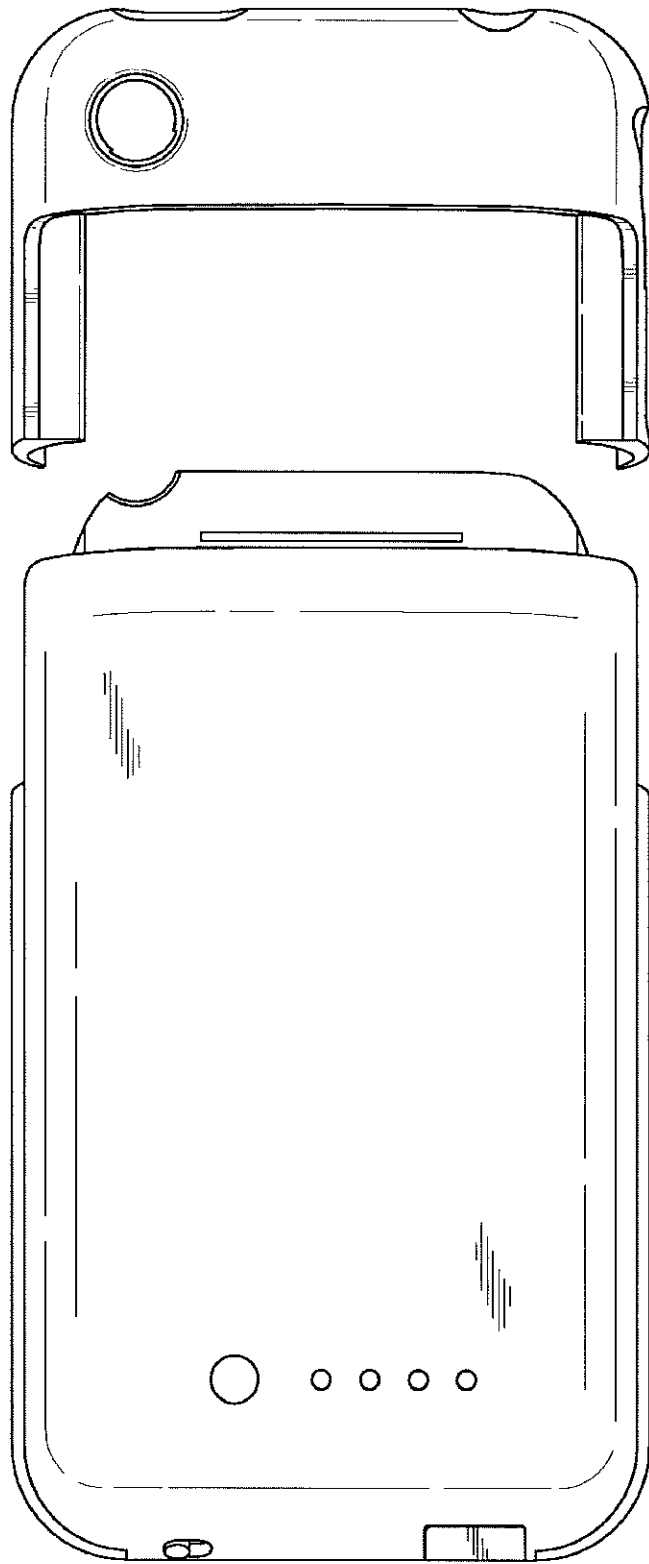


FIG. 10

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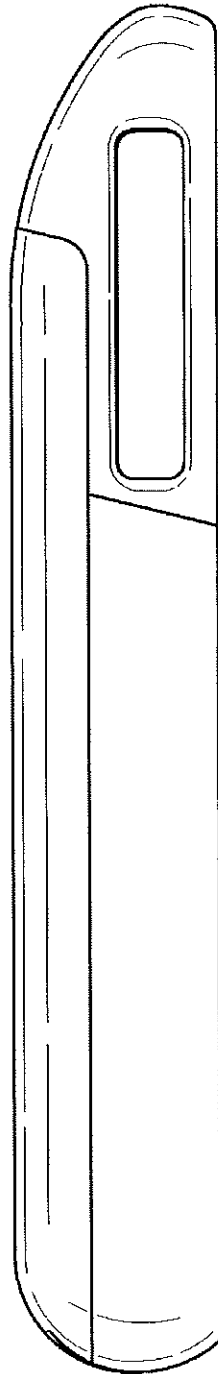


FIG. 11

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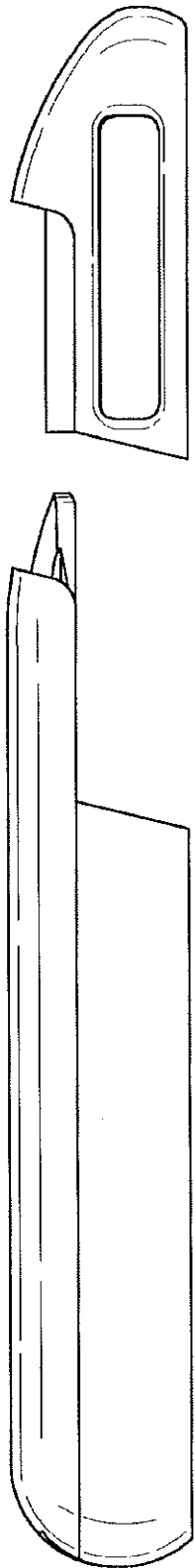


FIG. 12

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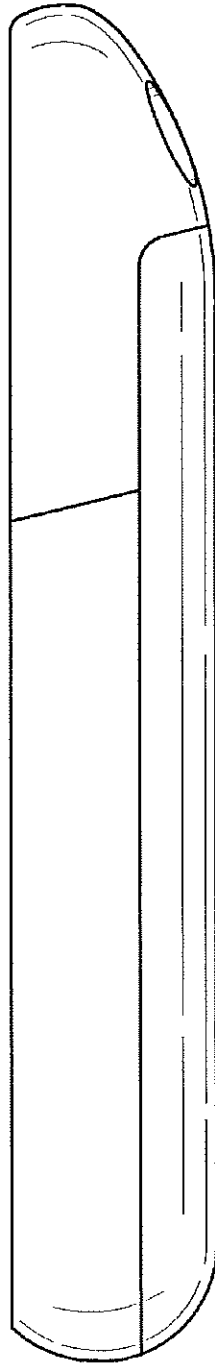


FIG. 13

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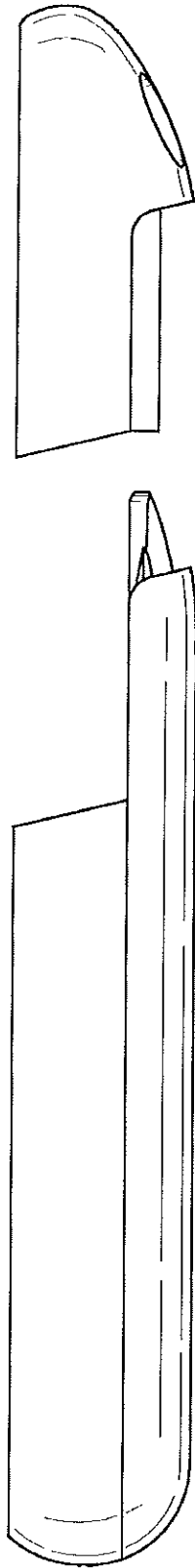


FIG. 14

EXHIBIT 3

**LOZA
&
LOZA, L.L.P.**
An Intellectual Property Solutions Group

Christina S. Loza, Esq.
305 N. Second Avenue, #127, Upland, CA 91786
949.705.6777, 949.608.8934 (fax)
tina@lozaip.com
Los Angeles ■ Orange County ■ South Bay ■ Inland Empire

June 16, 2010

Via Certified Mail Return Receipt Requested and Electronic Mail

Ed Kang
Wholesale Manager
Hali-Power, Inc.
P.O. Box 458
Bearsville, NY 12409
edwardckang@gmail.com
harry@hali-power.com

Re: Patent, Trademark, and Copyright Infringement of Mophie Juice Pack Design Patents and Packaging

Dear Mr. Kang:

We are intellectual property litigation counsel for mStation Corporation (“mStation”) which sells the Mophie Juice Pack, an iPhone battery pack. We understand from your distributor, Phonesuit, that you are the manufacturer and supplier of their MiLi iPhone battery pack. The MiLi iPhone battery pack violates mStation’s design patents, namely U.S. Patent Nos. D616,360 and D616,361. Accordingly, both Hali-Power and Phonesuit’s activity is in violation of the Patent Act and constitutes patent infringement.

We learned from Phonesuit’s counsel, Mr. Mark Thomas, that you contend that there is no infringement of mStations’ design patents. We have cautioned them that they should conduct their own investigation of this matter. As distributors, they would be considered contributory infringers. We are fully prepared to move forward with litigating this matter against Phonesuit and Hali-Power if this flagrant infringement continues.

The patents referenced above constitute a valuable asset of mStation. Hali-Power’s continued use of our intellectual property has and will surely continue to cause significant and irreparable damage to mStation and the goodwill that has been established in its intellectual property. Accordingly, mStation is prepared to vigorously protect its rights.

According to the Patent Act, 35 U.S.C. §289, “whoever during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purpose of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner....” Additionally, pursuant to 35 U.S.C. §284 a patent holder may receive “damages

adequate to compensate for the infringement but in no even less than a reasonable royalty for the use made of the invention by the infringer together with interests and costs....”

With that said, we hereby demand that you **cease and desist advertising, displaying, distributing, making, using, selling, offering for sale, and/or importing any products that infringe mStation’s patents for the Mophie iPhone battery packs.**

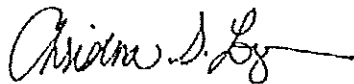
We demand that you immediately (1) recall all iPhone battery packs that use mStation’s patented design; (2) provide us with a full and complete accounting of all sales of the patented battery pack design in any stores and on-line; (3) provide us with a full and complete accounting of all such products in inventory; and (4) provide us with written assurance that you have undertaken the above.

In the event that we do not receive a response to the foregoing by 12:00 P.M. PST, Wednesday, June 30, 2010, we will assume that you do not wish to resolve this matter efficiently and amicably and we will proceed to file suit and immediately seek a Temporary Restraining Order, Preliminary Injunction, monetary damages, and recovery of our attorneys fees and costs.

Thank you for your anticipated prompt attention to this matter. We look forward to hearing from you or your counsel in the near future.

Nothing contained herein or omitted herefrom shall be deemed to bind, limit, or prejudice any of the rights or remedies of mStation, Inc. all of which are expressly reserved.

Sincerely,



Christina S. Loza, Esq.
Attorneys for mStation Corporation