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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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MAG INSTRUMENT, INC., a
California corporation,

Plaintiff,

v.

JS PRODUCTS, INC., a Nevada
corporation, and DOES 1-10,

Defendants.

Case No. **CV08-02781 PA (RZx)**

**COMPLAINT FOR PATENT
INFRINGEMENT, FEDERAL
TRADEMARK INFRINGEMENT,
FEDERAL FALSE DESIGNATION
OF ORIGIN, FEDERAL
TRADEMARK DILUTION,
CALIFORNIA UNFAIR
COMPETITION, CALIFORNIA
TRADEMARK DILUTION,
COMMON LAW TRADEMARK
INFRINGEMENT, AND COMMON
LAW UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

1 Plaintiff, Mag Instrument, Inc. ("Mag Instrument"), files this Complaint
2 against defendants, JS Products, Inc. ("JS Products"), and DOES 1-10, and
3 demanding a trial by jury, alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. The FIRST through THIRD causes of action are for patent
6 infringement, which arise under the patent laws of the United States, Title 35,
7 United States Code. This Court has original jurisdiction over the subject matter of
8 these causes of action pursuant to the provisions of 28 U.S.C. §§1331 and 1338(a).

9 2. This Court also has original jurisdiction over the subject matter of the
10 FOURTH through SIXTH and ELEVENTH through THIRTEENTH causes of
11 action pursuant to the provisions of 28 U.S.C. §§1331 and 1338(a), as well as 15
12 U.S.C. §1121, because these causes of action are for federal trademark
13 infringement, federal false designation of origin, and federal trademark dilution,
14 respectively, which arise under the Trademark (Lanham) Act of 1946, as amended,
15 15 U.S.C. §1051, et seq.

16 3. This Court also has original jurisdiction over the subject matter of the
17 SEVENTH through TENTH and FOURTEENTH through SEVENTEENTH causes
18 of action pursuant to the provisions of 28 U.S.C. §1338(b), because these causes of
19 action are for California unfair competition under California common law and
20 Business and Professions Code §17200, California trademark dilution under
21 Business and Professions Code §14247, and California trademark infringement in
22 violation of California common law, all of which are claims for unfair competition
23 under California law that are joined with a substantial and related claim under the
24 trademark laws of the United States.

25 4. Further, this Court has supplemental jurisdiction over the SEVENTH
26 through TENTH and FOURTEENTH through SEVENTEENTH causes of action,
27 which assert state law claims, pursuant to the provisions of 28 U.S.C. §1367(a).
28 These state law claims are so related to the other claims in this case, over which this

1 Court has original jurisdiction, that they form a part of the same case or controversy
2 under Article III of the United States Constitution.

3 5. Upon information and belief, venue is proper under 28 U.S.C.
4 §§1391(b) and 1391(c), as well as 28 U.S.C. §1400(b).

5 **THE PARTIES**

6 6. Mag Instrument is a corporation incorporated under the laws of the
7 State of California and has its principal place of business at 2001 South Hellman
8 Avenue, Ontario, California 91761.

9 7. Upon information and belief, defendant JS Products is a corporation
10 incorporated under the laws of the State of Nevada and has its principal place of
11 business at 5440 South Procyon Avenue, Las Vegas, Nevada 89118.

12 8. Upon information and belief, defendant JS Products resides in this
13 district under 28 U.S.C. §1391. In particular, defendant JS Products does business
14 in this district and a substantial part of the events giving rise to the claims in this
15 case occurred in this district.

16 9. Mag Instrument is not fully informed regarding the involvement of the
17 defendants sued herein under the fictitious names DOES 1-10, inclusive (the "Doe
18 Defendants"). Upon information and belief, the Doe Defendants are involved with
19 JS Products and/or the activities alleged herein. Mag Instrument has thus sued the
20 Doe Defendants by their fictitious names. Mag Instrument will seek leave to
21 amend this Complaint to allege the true names, capacities, and residences of the
22 Doe Defendants when their involvement is ascertained. JS Products and the Doe
23 Defendants are hereinafter collectively referred to as the "Defendants."

24 10. Mag Instrument is informed and believes, and thereupon alleges, that
25 the Doe Defendants, and each of them, are responsible in some manner, by their
26 acts and/or omissions, for the matters alleged herein. Mag Instrument is further
27 informed and believes, and thereupon alleges, that the Doe Defendants, and each of
28 them, at all material times herein alleged, were the agents, servants, and/or

1 employees of the other Defendants, or otherwise participated in the improper
2 conduct alleged herein.

3 **FIRST CAUSE OF ACTION**

4 **(Patent Infringement – 35 U.S.C. §271, et seq.)**

5 **(United States Patent No. 5,267,131)**

6 11. Mag Instrument repeats, realleges, and incorporates by reference, as
7 though fully set forth herein, the allegations contained in paragraphs 1-10, above.

8 12. On November 30, 1993, United States Patent No. 5,267,131 ("the '131
9 patent"), entitled "Shock Absorbing Lens Holder and Anti-Roll Device," was duly
10 and legally issued in the names of Anthony Maglica and Fred R. McAlister. By
11 virtue of proper assignment, Mag Instrument has acquired and duly owns all right,
12 title, and interest in this patent, including the right to sue and recover for
13 infringement thereof. A copy of the '131 patent is attached hereto as **Exhibit 1**.

14 13. Upon information and belief, Defendants have notice of Mag
15 Instrument's rights in the '131 patent.

16 14. Defendants have infringed the '131 patent by manufacturing, using,
17 importing, offering to sell, and/or selling flashlights embodying one or more of the
18 inventions claimed therein within the United States, or by supplying infringing
19 products to others to use, thereby inducing and/or contributing to the infringement
20 of the '441 patent.

21 15. Defendants' continuing infringement has inflicted and, unless
22 restrained by this Court, will continue to inflict great and irreparable harm upon
23 Mag Instrument. Mag Instrument has no adequate remedy at law. Mag Instrument
24 is entitled to preliminary and permanent injunctions enjoining Defendants from
25 engaging in further acts of infringement.

26 16. As a direct and proximate result of the foregoing acts of Defendants,
27 Mag Instrument has suffered, and is entitled to, monetary damages in an amount
28 not yet determined. Mag Instrument is also entitled to its costs of suit and interest.

1 is entitled to preliminary and permanent injunctions enjoining Defendants from
2 engaging in further acts of infringement.

3 30. As a direct and proximate result of the foregoing acts of Defendants,
4 Mag Instrument has suffered, and is entitled to, monetary damages in an amount
5 not yet determined. Mag Instrument is also entitled to its costs of suit and interest.

6 31. Upon information and belief, Defendants' acts were in conscious and
7 willful disregard for Mag Instrument's rights, and the resulting damage to Mag
8 Instrument is such as to warrant the trebling of damages in order to provide just
9 compensation.

10 **FOURTH CAUSE OF ACTION**

11 **(Federal Trademark Infringement—SSOA of the MINI MAGLITE® Flashlight)**

12 **(15 U.S.C. §1051, et seq.)**

13 32. Mag Instrument repeats, realleges, and incorporates by reference, as
14 though fully set forth herein, the allegations contained in paragraphs 1-10, above.

15 33. For many years, and prior to the acts of Defendants complained of
16 herein, Mag Instrument has continuously manufactured, advertised, assembled,
17 marketed, sold, and distributed, in interstate and international commerce, high-
18 quality machined, anodized aluminum, high-intensity, adjustable beam flashlights,
19 including, but not limited to, a line of flashlights under the distinctive trademark
20 MINI MAGLITE®. These flashlights are also characterized by their distinctive
21 shape, style, and overall appearance ("SSOA"), which is a trademark of Mag
22 Instrument. These flashlights are further characterized by their outstanding quality,
23 extraordinary design, materials of construction, workmanship, performance,
24 reliability, durability, and outstanding optical features.

25 34. The SSOA of the MINI MAGLITE® flashlight is inherently distinctive,
26 non-functional, and has acquired secondary meaning in that it has come to be
27 associated by the trade and consuming public exclusively with Mag Instrument and,
28

1 as a result, has come to signify Mag Instrument as the source of flashlights bearing
2 the same or similar characteristics.

3 35. Mag Instrument has obtained, and is the owner of, a federal
4 registration on the SSOA of the MINI MAGLITE® flashlight. A copy of this
5 federal registration, United States Trademark Registration Number 2,074,795, is
6 attached hereto as **Exhibit 4**. This registration remains in full force and effect, and
7 has become incontestable. At all relevant times, Mag Instrument has consistently
8 and continuously displayed the registration symbol "®" or its equivalent since the
9 mark has become registered.

10 36. Mag Instrument has manufactured, advertised, marketed, and
11 promoted its flashlights and related products so that the public associates them with
12 the idea of outstanding quality, extraordinary design, materials, workmanship,
13 performance, reliability, durability, and outstanding optical features. In furtherance
14 of that goal, Mag Instrument usually displays its products and the associated
15 trademarks in its advertising and promotional presentations. To date, Mag
16 Instrument has spent several millions of dollars advertising and promoting its MINI
17 MAGLITE® flashlights and other flashlights and related products, and has had over
18 a billion dollars in sales of its flashlights and related products.

19 37. Mag Instrument's flashlights are manufactured exclusively in the
20 United States of America. Moreover, Mag Instrument's flashlights are sold with a
21 warranty, backed up by a full-service staff of full-time employees at the Ontario,
22 California facility. Mag Instrument also employs several people in its customer
23 service department located at Mag Instrument's headquarters.

24 38. Defendants have manufactured, advertised, distributed, marketed,
25 imported, promoted, offered for sale, and/or sold commercially in interstate
26 commerce certain flashlights, at least one of which is shown in **Exhibit 5** (the "AA-
27 Cell Snap-On flashlight"). The AA-Cell Snap-On flashlight bears a shape, style,
28

1 and overall appearance that is the same as, or confusingly similar to, the SSOA of
2 Mag Instrument's MINI MAGLITE® flashlight.

3 39. Defendants' manufacture, advertising, distribution, marketing,
4 importation, promotion, offer for sale, and/or sale of the AA-Cell Snap-On
5 flashlight, having a shape, style, and overall appearance that is the same as or
6 confusingly similar to that of Mag Instrument's MINI MAGLITE® flashlight, is
7 likely to cause confusion and, upon information and belief, has caused confusion
8 that the AA-Cell Snap-On flashlight is made by, sponsored by, or affiliated with
9 Mag Instrument.

10 40. Defendants' use of the shape, style, and overall appearance of the AA-
11 Cell Snap-On flashlight is without the permission of Mag Instrument. This use is
12 with the knowledge that the shape, style, and overall appearance of the AA-Cell
13 Snap-On flashlight is confusingly similar to Mag Instrument's MINI MAGLITE®
14 flashlight SSOA trademark, which has previously been and is being used by Mag
15 Instrument.

16 41. Upon information and belief, Defendants had knowledge of Mag
17 Instrument's MINI MAGLITE® flashlight and the considerable commercial success
18 it has achieved. Mag Instrument is informed and believes, and thereon alleges, that
19 Defendants willfully and with conscious disregard for Mag Instrument's product
20 configuration trademark in the MINI MAGLITE® flashlight manufactured,
21 advertised, distributed, marketed, imported, promoted, offered for sale, and/or sold
22 the AA-Cell Snap-On flashlight that is a colorable imitation of Mag Instrument's
23 product configuration trademark.

24 42. The above-recited acts by Defendants constitute trademark
25 infringement of Mag Instrument's federally registered trademark in violation of the
26 Lanham Act, 15 U.S.C. §1051, et seq., to the substantial and irreparable injury of
27 the public and of Mag Instrument's business reputation and goodwill.
28

1 43. As result of their acts, Defendants have been, and will continue to be,
2 unjustly enriched by profits that Defendants have made in connection with the
3 manufacture, advertising, distribution, marketing, importation, promotion, offer for
4 sale, and/or sale of the AA-Cell Snap-On flashlight having a shape, style, and
5 overall appearance that is confusingly similar to the SSOA of the MINI MAGLITE®
6 flashlight.

7 44. Defendants' continuing infringement has inflicted and, unless
8 restrained by this Court, will continue to inflict great and irreparable harm upon
9 Mag Instrument. Mag Instrument has no adequate remedy at law. Mag Instrument
10 is entitled to preliminary and permanent injunctions enjoining Defendants from
11 engaging in further acts of infringement.

12 45. As a direct and proximate result of the foregoing acts of Defendants,
13 Mag Instrument has suffered, and is entitled to, monetary damages in an amount
14 not yet determined. Mag Instrument is also entitled to its attorneys' fees and costs
15 of suit herein.

16 46. Upon information and belief, Defendants' acts were in conscious and
17 willful disregard for Mag Instrument's rights to the MINI MAGLITE® flashlight
18 SSOA trademark, and the resulting damage to Mag Instrument is such as to warrant
19 the trebling of damages in order to provide just compensation.

20 **FIFTH CAUSE OF ACTION**

21 **(False Designation of Origin – SSOA of the MINI MAGLITE® Flashlight)**

22 **(15 U.S.C. §1125(a))**

23 47. Mag Instrument repeats, realleges, and incorporates by reference, as
24 though fully set out herein, the allegations contained in paragraphs 1-10 and 33-46,
25 above.

26 48. Mag Instrument owns and enjoys common law trademark rights in the
27 SSOA of the MINI MAGLITE® flashlight, which rights are superior to any rights
28 that Defendants may claim in the product configuration with respect to the AA-Cell

1 Snap-On flashlight. The SSOA for the MINI MAGLITE® flashlight is inherently
2 distinctive, non-functional, and has acquired secondary meaning with the trade and
3 consuming public and/or has become distinctive in the minds of purchasers in that
4 this SSOA for flashlights is associated with Mag Instrument, as evidenced in part
5 by the grant of United States Trademark Registration No. 2,074,795 therefor.

6 49. Upon information and belief, Defendants have used and are using the
7 shape, style, and overall appearance of the AA-Cell Snap-On flashlight to sell,
8 market, and promote their flashlight with the intent of passing off and confusing the
9 public into believing that the AA-Cell Snap-On flashlight is the same as, originates
10 with, and/or is sponsored by Mag Instrument.

11 50. By manufacturing, advertising, distributing, marketing, importing,
12 promoting, offering for sale, and/or selling the AA-Cell Snap-On flashlight, having
13 a shape, style, and overall appearance that is confusingly similar to that of Mag
14 Instrument's MINI MAGLITE® flashlight, Defendants have infringed on Mag
15 Instrument's federal and common law trademark rights in the SSOA of the MINI
16 MAGLITE® flashlight in violation of Section 43(a) of the Lanham Act, 15 U.S.C.
17 §1125(a). Defendants' above-recited acts further constitute false designation of
18 origin, false description, false representation, and unfair competition in violation of
19 Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), as such acts are likely to
20 deceive customers and prospective customers into believing that the AA-Cell Snap-
21 On flashlight is from or sponsored by Mag Instrument and, as a consequence, are
22 likely to divert and have diverted customers away from Mag Instrument.

23 51. If not enjoined by the Court, Defendants will continue to sell the AA-
24 Cell Snap-On flashlight in commerce, which flashlight will be attributed to having
25 emanated from Mag Instrument. Mag Instrument, however, has no control over the
26 nature and quality of the AA-Cell Snap-On flashlight so rendered, and any fault or
27 objection with said flashlight will adversely affect future sales by Mag Instrument
28 of its flashlights under the MINI MAGLITE® flashlight SSOA trademark.

1 58. In connection with the AA-Cell Snap-On flashlight, Defendants began
2 using a shape, style, and overall appearance confusingly similar to the MINI
3 MAGLITE® flashlight SSOA trademark subsequent to the MINI MAGLITE®
4 flashlight SSOA trademark becoming famous.

5 59. Defendants' manufacture, advertising, distribution, marketing,
6 importation, promotion, offer for sale, and/or sale of the AA-Cell Snap-On
7 flashlight, that has a shape, style, and overall appearance that is the same or
8 confusingly similar to that of Mag Instrument's MINI MAGLITE® flashlight SSOA
9 trademark, causes dilution by lessening the capacity of the famous MINI
10 MAGLITE® flashlight SSOA of Mag Instrument's MINI MAGLITE® flashlight to
11 identify and distinguish flashlights.

12 60. By reason of their acts complained of herein, Defendants have caused
13 the dilution of the distinctive quality of the MINI MAGLITE® flashlight SSOA
14 trademark, and lessened the capacity of the famous MINI MAGLITE® flashlight
15 SSOA trademark to identify and distinguish flashlights in violation of 15 U.S.C.
16 §1125(c).

17 61. As a result of their acts, Defendants have been, and will continue to be,
18 unjustly enriched by profits that Defendants have made in connection with their
19 manufacture, advertising, distribution, marketing, importation, promotion, offer for
20 sale, and/or sale of the AA-Cell Snap-On flashlight bearing a shape, style, and
21 overall appearance that is confusingly similar to the MINI MAGLITE® flashlight
22 SSOA trademark.

23 62. As a direct and proximate result of the foregoing acts of Defendants,
24 Mag Instrument has suffered, and is entitled to, monetary damages in an amount
25 not yet determined. Mag Instrument is also entitled to its attorneys' fees and costs
26 of suit herein.

27 63. Upon information and belief, Defendants' acts were in conscious and
28 willful disregard for Mag Instrument's rights to the MINI MAGLITE® flashlight

1 SSOA trademark, and the resulting damage to Mag Instrument is such as to warrant
2 the trebling of damages in order to provide just compensation.

3 64. Upon information and belief, Defendants willfully intended to trade on
4 Mag Instrument's reputation and/or to cause dilution of Mag Instrument's famous
5 MINI MAGLITE® flashlight SSOA trademark. Defendants' acts and the resulting
6 damage to Mag Instrument are such as to warrant the trebling of damages in order
7 to provide just compensation. Unless Defendants are restrained and enjoined by
8 this Court, Defendants' actions will continue to cause irreparable harm and injury to
9 Mag Instrument.

10 **SEVENTH CAUSE OF ACTION**

11 **(California Statutory Unfair Competition)**

12 **(Cal. Bus. & Prof. Code §17200, et seq.)**

13 65. Mag Instrument repeats, realleges, and incorporates by reference, as
14 though fully set out herein, the allegations contained in paragraphs 1-10, 33-46, 48-
15 55, and 57-64, above.

16 66. In addition to its rights in the MINI MAGLITE® flashlight SSOA
17 trademark, Mag Instrument also owns and enjoys common law trademark rights in
18 the candle mode shape of its MINI MAGLITE® flashlight (the "Candle Mode
19 trademark"). This shape is distinctive, non-functional, and possesses secondary
20 meaning with the trade and consuming public and is distinctive in the minds of
21 purchasers of Mag Instrument's flashlights as being associated with Mag
22 Instrument. The AA-Cell Snap-On flashlight is capable of having a shape, style,
23 and overall appearance that is the same as, or confusingly similar to, the Candle
24 Mode trademark.

25 67. Mag Instrument has built valuable goodwill in its MINI MAGLITE®
26 flashlight SSOA trademark and the Candle Mode trademark. Defendants'
27 manufacture, advertising, distribution, marketing, importation, promotion, offer for
28 sale, and/or sale of the AA-Cell Snap-On flashlight, that has a shape, style, and

1 overall appearance that is the same or confusingly similar to that of Mag
2 Instrument's MINI MAGLITE® flashlight SSOA trademark and Candle Mode
3 trademark, is likely to and does permit Defendants to trade upon the goodwill of
4 Mag Instrument's marks and to confuse the public regarding a connection or
5 affiliation between Mag Instrument and Defendants. This conduct results in
6 damage to Mag Instrument's goodwill and reputation and unjust enrichment of
7 Defendants.

8 68. By manufacturing, advertising, distributing, marketing, importing,
9 promoting, offering for sale, and/or selling the AA-Cell Snap-On flashlight, that has
10 a shape, style, and overall appearance that is the same or confusingly similar to that
11 of Mag Instrument's MINI MAGLITE® flashlight SSOA trademark and Candle
12 Mode trademark, Defendants mislead others, and will continue to mislead others,
13 into assuming there is a connection between Defendants and Mag Instrument.

14 69. Defendants' use of the AA-Cell Snap-On flashlight, that bears the same
15 or a confusingly similar shape, style, and overall appearance to that of Mag
16 Instrument's MINI MAGLITE® flashlight SSOA trademark and Candle Mode
17 trademark, was and is without the consent of Mag Instrument.

18 70. Defendants' manufacture, advertising, distribution, marketing,
19 importation, promotion, offer for sale, and/or sale of the AA-Cell Snap-On
20 flashlight, that has a shape, style, and overall appearance that is the same or
21 confusingly similar to that of Mag Instrument's MINI MAGLITE® flashlight SSOA
22 trademark and Candle Mode trademark, constitutes unfair competition in violation
23 of §17200, et seq. of the California Business and Professions Code.

24 71. Mag Instrument is informed and believes and thereon alleges that,
25 unless restrained by this Court, Defendants will continue to infringe Mag
26 Instrument's marks, and pecuniary compensation will not afford Mag Instrument
27 adequate relief for the damage to its trademark in the public perception.

28

1 77. Injury to Mag Instrument and dilution of the SSOA Trademark will
2 continue, all to Mag Instrument's irreparable harm, unless Defendants are enjoined
3 by this Court.

4 78. Mag Instrument has no adequate remedy at law.

5 **NINTH CAUSE OF ACTION**

6 **(Common Law Trademark Infringement)**

7 79. Mag Instrument repeats, realleges, and incorporates by reference, as
8 though fully set out herein, the allegations contained in paragraphs 1-10, 33-46, 48-
9 55, 57-64, 66-72, and 74-78, above.

10 80. By reason of Mag Instrument's continuous use and promotion of the
11 MINI MAGLITE® flashlight SSOA trademark and the Candle Mode trademark, as
12 well as the distinctiveness of those marks, consumers associate and recognize the
13 SSOA trademark and the Candle Mode trademark as representing a single, even if
14 anonymous, source or sponsor of goods, and therefore the MINI MAGLITE®
15 flashlight SSOA trademark and the Candle Mode trademark are protectable
16 trademarks at common law.

17 81. Mag Instrument owns and enjoys common law trademark rights in the
18 overall commercial impression and presentations of its MINI MAGLITE®
19 flashlight, in both normal and candle mode, which rights are superior to any rights
20 that Defendants may claim in and to said trademarks with respect to their flashlight.
21 Mag Instrument's MINI MAGLITE® flashlight SSOA trademark and Candle Mode
22 trademark are inherently distinctive, non-functional, and have acquired secondary
23 meaning with the trade and consuming public and/or have become distinctive in the
24 minds of purchasers in that the MINI MAGLITE® flashlight SSOA trademark and
25 Candle Mode trademark for flashlights are associated with Mag Instrument.

26 82. Defendants have used the AA-Cell Snap-On flashlight, that bears a
27 confusingly similar appearance to Mag Instrument's MINI MAGLITE® flashlight in
28 normal and candle mode. Defendants' use of a similar appearance for the AA-Cell

1 Snap-On flashlight has created a likelihood that the trade and consuming public will
2 be confused as to the source of the products.

3 83. The manufacture, advertising, distribution, marketing, importation,
4 promotion, offer for sale, and/or sale by Defendants of the AA-Cell Snap-On
5 flashlight throughout the United States is likely to cause confusion and, upon
6 information and belief, has caused confusion as to the source of the AA-Cell Snap-
7 On flashlight, in that purchasers thereof will be likely to associate or have
8 associated such product as originating with Mag Instrument, all to the detriment of
9 Mag Instrument.

10 84. By reason of Defendants' actions alleged herein, Mag Instrument has
11 suffered, and will continue to suffer, irreparable injury to its rights and suffer
12 substantial loss of goodwill and in the value of its MINI MAGLITE® flashlight
13 SSOA trademark and Candle Mode trademark unless and until Defendants are
14 enjoined from continuing their wrongful acts.

15 85. By reason of Defendants' actions alleged herein, Mag Instrument has
16 been damaged in an amount not presently ascertained, and such damage will
17 continue and increase unless and until Defendants are enjoined from continuing
18 their wrongful acts.

19 86. Defendants' conduct in this cause of action is willful, wanton,
20 malicious, oppressive, and in conscious disregard of Mag Instrument's rights in its
21 MINI MAGLITE® flashlight SSOA trademark and Candle Mode trademark,
22 justifying the imposition of punitive and exemplary damages under California Civil
23 Code §3294.

24 **TENTH CAUSE OF ACTION**

25 **(Common Law Unfair Competition)**

26 87. Mag Instrument repeats, realleges, and incorporates by reference, as
27 though fully set out herein, the allegations contained in paragraphs 1-10, 33-46, 48-
28 55, 57-64, 66-72, 74-78, and 80-86, above.

1 88. Defendants' actions in connection with the AA-Cell Snap-On flashlight
2 are likely to cause confusion, to cause misrepresentation, to cause mistake, and/or
3 to deceive the public as to the affiliation, approval, sponsorship, or connection
4 between Defendants and Mag Instrument and constitute unfair competition at
5 common law.

6 89. By reason of Defendants' actions in connection with the AA-Cell
7 Snap-On flashlight, Mag Instrument has suffered, and will continue to suffer,
8 irreparable injury to its rights and suffer substantial loss of goodwill and in the
9 value of its MINI MAGLITE® flashlight SSOA trademark and Candle Mode
10 trademark unless and until Defendants are enjoined from continuing their wrongful
11 acts.

12 90. By reason of Defendants' actions in connection with the AA-Cell
13 Snap-On flashlight, Mag Instrument has been damaged in an amount not presently
14 ascertained, and such damage will continue and increase unless and until
15 Defendants are enjoined from continuing their wrongful acts.

16 91. Upon information and belief, Defendants' conduct in this cause of
17 action is willful, wanton, malicious, oppressive, and in conscious disregard of Mag
18 Instrument's rights in its MINI MAGLITE® flashlight SSOA trademark and Candle
19 Mode trademark, justifying the imposition of punitive and exemplary damages
20 under California Civil Code §3294.

21 **ELEVENTH CAUSE OF ACTION**

22 **(Federal Trademark Infringement – SSOA of the MAG-LITE® Flashlight)**

23 **(15 U.S.C. §1051, et seq.)**

24 92. Mag Instrument repeats, realleges, and incorporates by reference, as
25 though fully set forth herein, the allegations contained in paragraphs 1-10, above.

26 93. For many years, and prior to the acts of Defendants complained of
27 herein, Mag Instrument has continuously manufactured, advertised, assembled,
28 marketed, sold, and distributed, in interstate and international commerce, high-

1 quality machined, anodized aluminum, high-intensity, adjustable beam flashlights,
2 including, but not limited to, a line of D-Cell flashlights under the distinctive
3 trademark MAG-LITE®. These flashlights are also characterized by their
4 distinctive shape, style, and overall appearance ("SSOA"), which is a trademark of
5 Mag Instrument. These flashlights are further characterized by their outstanding
6 quality, extraordinary design, materials of construction, workmanship,
7 performance, reliability, durability, and outstanding optical features.

8 94. The SSOA of the D-Cell MAG-LITE® flashlight is inherently
9 distinctive, non-functional, and has acquired secondary meaning in that it has come
10 to be associated by the trade and consuming public exclusively with Mag
11 Instrument and, as a result, has come to signify Mag Instrument as the source of
12 flashlights bearing the same or similar characteristics.

13 95. Mag Instrument has obtained, and is the owner of, a federal
14 registration on the SSOA of the D-Cell MAG-LITE® flashlight. A copy of this
15 federal registration, United States Trademark Registration Number 2,687,693, is
16 attached hereto as **Exhibit 6**. This registration remains in full force and effect and
17 has become incontestable. At all relevant times, Mag Instrument has consistently
18 and continuously displayed the registration symbol "®" or its equivalent since the
19 mark has become registered.

20 96. Mag Instrument has manufactured, advertised, marketed, and
21 promoted its flashlights and related products so that the public associates them with
22 the idea of outstanding quality, extraordinary design, materials, workmanship,
23 performance, reliability, durability, and outstanding optical features. In furtherance
24 of that goal, Mag Instrument usually displays its products and the associated
25 trademarks in its advertising and promotional presentations. To date, Mag
26 Instrument has spent several millions of dollars advertising and promoting its
27 MAG-LITE® flashlights and other flashlights and related products, and has had over
28 a billion dollars in sales of its flashlights and related products.

1 97. Mag Instrument's flashlights are manufactured exclusively in the
2 United States of America. Moreover, Mag Instrument's flashlights are sold with a
3 warranty, backed up by a full-service staff of full-time employees at the Ontario,
4 California facility. Mag Instrument also employs several people in its customer
5 service department located at Mag Instrument's headquarters.

6 98. Defendants have manufactured, advertised, distributed, marketed,
7 imported, promoted, offered for sale, and/or sold commercially in interstate
8 commerce certain flashlights, at least one of which is shown in **Exhibit 7** (the "D-
9 Cell Snap-On flashlight"). The D-Cell Snap-On flashlight bears a shape, style, and
10 overall appearance that is the same as, or confusingly similar to, the SSOA of Mag
11 Instrument's D-Cell MAG-LITE® flashlight.

12 99. Defendants' manufacture, advertising, distribution, marketing,
13 importation, promotion, offer for sale, and/or sale of the D-Cell Snap-On flashlight,
14 having a shape, style, and overall appearance that is the same as or confusingly
15 similar to that of Mag Instrument's D-Cell MAG-LITE® flashlight, is likely to cause
16 confusion and, upon information and belief, has caused confusion that the D-Cell
17 Snap-On flashlight is made by, sponsored by, or affiliated with Mag Instrument.

18 100. Defendants' use of the shape, style, and overall appearance of the D-
19 Cell Snap-On flashlight is without the permission of Mag Instrument. This use is
20 with the knowledge that the shape, style, and overall appearance of the D-Cell
21 Snap-On flashlight is confusingly similar to Mag Instrument's D-Cell MAG-LITE®
22 trademark, which has previously been and is being used by Mag Instrument.

23 101. Upon information and belief, Defendants had knowledge of Mag
24 Instrument's D-Cell MAG-LITE® flashlight and the considerable commercial
25 success it has achieved. Mag Instrument is informed and believes, and thereon
26 alleges, that Defendants willfully and with conscious disregard for Mag
27 Instrument's product configuration trademark in the D-Cell MAG-LITE® flashlight
28 manufactured, advertised, distributed, marketed, imported, promoted, offered for

1 sale, and/or sold the D-Cell Snap-On flashlight that is a colorable imitation of Mag
2 Instrument's product configuration trademark.

3 102. The above-recited acts by Defendants constitute trademark
4 infringement of Mag Instrument's federally registered trademark in violation of the
5 Lanham Act, 15 U.S.C. §1051, et seq., to the substantial and irreparable injury of
6 the public and of Mag Instrument's business reputation and goodwill.

7 103. As result of their acts, Defendants have been, and will continue to be,
8 unjustly enriched by profits that Defendants have made in connection with the
9 manufacture, advertising, distribution, marketing, importation, promotion, offer for
10 sale, and/or sale of the D-Cell Snap-On flashlight having a shape, style, and overall
11 appearance that is confusingly similar to the SSOA of the D-Cell MAG-LITE®
12 flashlight.

13 104. Defendants' continuing infringement has inflicted and, unless
14 restrained by this Court, will continue to inflict great and irreparable harm upon
15 Mag Instrument. Mag Instrument has no adequate remedy at law. Mag Instrument
16 is entitled to preliminary and permanent injunctions enjoining Defendants from
17 engaging in further acts of infringement.

18 105. As a direct and proximate result of the foregoing acts of Defendants,
19 Mag Instrument has suffered, and is entitled to, monetary damages in an amount
20 not yet determined. Mag Instrument is also entitled to its attorneys' fees and costs
21 of suit herein.

22 106. Upon information and belief, Defendants' acts were in conscious and
23 willful disregard for Mag Instrument's rights to the D-Cell MAG-LITE® flashlight
24 SSOA trademark, and the resulting damage to Mag Instrument is such as to warrant
25 the trebling of damages in order to provide just compensation.

TWELFTH CAUSE OF ACTION

(Federal False Designation of Origin – SSOA of the MAG-LITE® Flashlight)

(15 U.S.C. §1125(a))

107. Mag Instrument repeats, realleges, and incorporates by reference, as though fully set out herein, the allegations contained in paragraphs 1-10 and 93-106, above.

108. Mag Instrument owns and enjoys common law trademark rights in the SSOA of the D-Cell MAG-LITE® flashlight, which rights are superior to any rights that Defendants may claim in the product configuration with respect to the D-Cell Snap-On flashlight. The SSOA for the D-Cell MAG-LITE® flashlight is inherently distinctive, non-functional, and has acquired secondary meaning with the trade and consuming public and/or has become distinctive in the minds of purchasers in that this SSOA for flashlights is associated with Mag Instrument, as evidenced in part by the grant of United States Trademark Registration No. 2,687,693 therefor.

109. Upon information and belief, Defendants have used and are using the shape, style, and overall appearance of the D-Cell Snap-On flashlight to sell, market, and promote their flashlight with the intent of passing off and confusing the public into believing that the D-Cell Snap-On flashlight is the same as, originates with, and/or is sponsored by Mag Instrument.

110. By manufacturing, advertising, distributing, marketing, importing, promoting, offering for sale, and/or selling the D-Cell Snap-On flashlight, having a shape, style, and overall appearance that is confusingly similar to that of Mag Instrument's D-Cell MAG-LITE® flashlight, Defendants have infringed on Mag Instrument's federal and common law trademark rights in the SSOA of the D-Cell MAG-LITE® flashlight in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a). Defendants' above-recited acts further constitute false designation of origin, false description, false representation, and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), as such acts are likely to

1 deceive customers and prospective customers into believing that the D-Cell Snap-
2 On flashlight is from or sponsored by Mag Instrument and, as a consequence, are
3 likely to divert and have diverted customers away from Mag Instrument.

4 111. If not enjoined by the Court, Defendants will continue to sell the D-
5 Cell Snap-On flashlight in commerce, which flashlight will be attributed to having
6 emanated from Mag Instrument. Mag Instrument, however, has no control over the
7 nature and quality of the D-Cell Snap-On flashlight so rendered, and any fault or
8 objection with said flashlight will adversely affect future sales by Mag Instrument
9 of its flashlights under the D-Cell MAG-LITE® flashlight SSOA trademark.

10 112. As a result of their acts, Defendants have been, and will continue to be,
11 unjustly enriched by profits that Defendants have made in connection with their
12 manufacture, advertising, distribution, marketing, importation, promotion, offer for
13 sale, and/or sale of the D-Cell Snap-On flashlight, that bears a shape, style, and
14 overall appearance that is confusingly similar to the D-Cell MAG-LITE® flashlight
15 SSOA trademark.

16 113. Defendants' continuing infringement has inflicted and, unless
17 restrained by this Court, will continue to inflict great and irreparable harm upon
18 Mag Instrument. Mag Instrument has no adequate remedy at law. Mag Instrument
19 is entitled to preliminary and permanent injunctions enjoining Defendants from
20 engaging in further acts of infringement.

21 114. As a direct and proximate result of the foregoing acts of Defendants,
22 Mag Instrument has suffered, and is entitled to, monetary damages in an amount
23 not yet determined. Mag Instrument is also entitled to its attorneys' fees and costs
24 of suit herein.

25 115. Upon information and belief, Defendants' acts were in conscious and
26 willful disregard for Mag Instrument's rights to the D-Cell MAG-LITE® flashlight
27 SSOA trademark, and the resulting damage to Mag Instrument is such as to warrant
28 the trebling of damages in order to provide just compensation.

THIRTEENTH CAUSE OF ACTION

(Federal Trademark Dilution – MAG-LITE® Flashlight SSOA Trademark)

(15 U.S.C. § 1125(c))

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4 116. Mag Instrument repeats, realleges, and incorporates by reference, as
5 though fully set out herein, the allegations contained in paragraphs 1-10, 93-106,
6 and 108-115, above.

7 117. The D-Cell MAG-LITE® flashlight SSOA trademark is a distinctive
8 and famous mark.

9 118. In connection with the D-Cell Snap-On flashlight, Defendants began
10 using a shape, style, and overall appearance confusingly similar to the D-Cell
11 MAG-LITE® flashlight SSOA trademark subsequent to the D-Cell MAG-LITE®
12 flashlight SSOA trademark becoming famous.

13 119. Defendants' manufacture, advertising, distribution, marketing,
14 importation, promotion, offer for sale, and/or sale of the D-Cell Snap-On flashlight,
15 that has a shape, style, and overall appearance that is the same or confusingly
16 similar to that of Mag Instrument's D-Cell MAG-LITE® flashlight SSOA trademark,
17 causes dilution by lessening the capacity of the famous SSOA of Mag Instrument's
18 D-Cell MAG-LITE® flashlight to identify and distinguish flashlights.

19 120. By reason of their acts complained of herein, Defendants have caused
20 the dilution of the distinctive quality of the D-Cell MAG-LITE® flashlight SSOA
21 trademark, and lessened the capacity of the famous D-Cell MAG-LITE® flashlight
22 SSOA trademark to identify and distinguish flashlights in violation of 15 U.S.C.
23 §1125(c).

24 121. As a result of their acts, Defendants have been, and will continue to be,
25 unjustly enriched by profits that Defendants have made in connection with their
26 manufacture, advertising, distribution, marketing, importation, promotion, offer for
27 sale, and/or sale of the D-Cell Snap-On flashlight bearing a shape, style, and overall
28

1 appearance that is confusingly similar to the D-Cell MAG-LITE® flashlight SSOA
2 trademark.

3 122. As a direct and proximate result of the foregoing acts of Defendants,
4 Mag Instrument has suffered, and is entitled to, monetary damages in an amount
5 not yet determined. Mag Instrument is also entitled to its attorneys' fees and costs
6 of suit herein.

7 123. Upon information and belief, Defendants' acts were in conscious and
8 willful disregard for Mag Instrument's rights to the D-Cell MAG-LITE® flashlight
9 SSOA trademark, and the resulting damage to Mag Instrument is such as to warrant
10 the trebling of damages in order to provide just compensation.

11 124. Upon information and belief, Defendants willfully intended to trade on
12 Mag Instrument's reputation and/or to cause dilution of Mag Instrument's famous
13 D-Cell MAG-LITE® flashlight SSOA trademark. Defendants' acts and the resulting
14 damage to Mag Instrument are such as to warrant the trebling of damages in order
15 to provide just compensation. Unless Defendants are restrained and enjoined by
16 this Court, Defendants' actions will continue to cause irreparable harm and injury to
17 Mag Instrument.

18 **FOURTEENTH CAUSE OF ACTION**

19 **(California Statutory Unfair Competition)**

20 **(Cal. Bus. & Prof. Code §17200, et seq.)**

21 125. Mag Instrument repeats, realleges, and incorporates by reference, as
22 though fully set out herein, the allegations contained in paragraphs 1-10, 93-106,
23 108-115, and 117-124, above.

24 126. Mag Instrument has built valuable goodwill in its D-Cell MAG-LITE®
25 flashlight SSOA trademark. Defendants' manufacture, advertising, distribution,
26 marketing, importation, promotion, offer for sale, and/or sale of the D-Cell Snap-
27 On flashlight, that has a shape, style, and overall appearance that is the same or
28 confusingly similar to that of Mag Instrument's D-Cell MAG-LITE® flashlight

1 SSOA trademark, is likely to and does permit Defendants to trade upon the
2 goodwill of Mag Instrument's mark and to confuse the public regarding a
3 connection or affiliation between Mag Instrument and Defendants. This conduct
4 results in damage to Mag Instrument's goodwill and reputation and unjust
5 enrichment of Defendants.

6 127. By manufacturing, advertising, distributing, marketing, importing,
7 promoting, offering for sale, and/or selling the D-Cell Snap-On flashlight, that has a
8 shape, style, and overall appearance that is the same or confusingly similar to that
9 of Mag Instrument's D-Cell MAG-LITE® flashlight SSOA trademark, Defendants
10 mislead others, and will continue to mislead others, into assuming there is a
11 connection between Defendants and Mag Instrument.

12 128. Defendants' use of the D-Cell Snap-On flashlight, that bears the same
13 or a confusingly similar shape, style, and overall appearance to that of Mag
14 Instrument's D-Cell MAG-LITE® flashlight SSOA trademark, was and is without
15 the consent of Mag Instrument.

16 129. Defendants' manufacture, advertising, distribution, marketing,
17 importation, promotion, offer for sale, and/or sale of the D-Cell Snap-On flashlight,
18 that has a shape, style, and overall appearance that is the same or confusingly
19 similar to that of Mag Instrument's D-Cell MAG-LITE® flashlight, constitutes
20 unfair competition in violation of §17200, et seq. of the California Business and
21 Professions Code.

22 130. Mag Instrument is informed and believes and thereon alleges that,
23 unless restrained by this Court, Defendants will continue to infringe Mag
24 Instrument's mark, and pecuniary compensation will not afford Mag Instrument
25 adequate relief for the damage to its trademark in the public perception.

26 131. As a result of their acts complained of herein, Defendants have been,
27 and will continue to be, unjustly enriched by profits which Defendants made in
28 connection with the manufacture, advertising, distribution, marketing, importation,

1 promotion, offer for sale, and/or sale of the D-Cell Snap-On flashlight, bearing a
2 shape, style, and overall appearance that is the same or confusingly similar to that
3 of Mag Instrument's D-Cell MAG-LITE® flashlight SSOA trademark.

4 **FIFTEENTH CAUSE OF ACTION**

5 **(California Trademark Dilution – MAG-LITE® Flashlight SSOA Trademark)**

6 **(Cal. Bus. & Prof. Code §14247)**

7 132. Mag Instrument repeats, realleges, and incorporates by reference, as
8 though fully set out herein, the allegations contained in paragraphs 1-10, 93-106,
9 108-115, 117-124, and 126-131, above.

10 133. The D-Cell MAG-LITE® flashlight SSOA trademark is a distinctive
11 and famous mark. Mag Instrument, through the D-Cell MAG-LITE® flashlight
12 SSOA trademark, enjoys a reputation in California for excellence and style for the
13 products it sells.

14 134. In connection with the D-Cell Snap-On flashlight, Defendants began
15 using a shape, style, and overall appearance confusingly similar to the D-Cell
16 MAG-LITE® flashlight SSOA trademark after the D-Cell MAG-LITE® flashlight
17 SSOA trademark became famous.

18 135. Defendants' manufacture, advertising, distribution, marketing,
19 importation, promotion, offer for sale, and/or sale of the D-Cell Snap-On flashlight,
20 that has a shape, style, and overall appearance that is the same or confusingly
21 similar to that of Mag Instrument's D-Cell MAG-LITE® flashlight SSOA trademark,
22 has injured the business reputation of Mag Instrument and dilutes and/or is likely to
23 dilute the distinctive value of the D-Cell MAG-LITE® flashlight SSOA trademark in
24 violation of California Business and Professions Code §14247.

25 136. Injury to Mag Instrument and dilution of the D-Cell MAG-LITE®
26 flashlight SSOA trademark will continue, all to Mag Instrument's irreparable harm,
27 unless Defendants are enjoined by this Court.

28 137. Mag Instrument has no adequate remedy at law.

1 On flashlight, in that purchasers thereof will be likely to associate or have
2 associated such product as originating with Mag Instrument, all to the detriment of
3 Mag Instrument.

4 143. By reason of Defendants' actions alleged herein, Mag Instrument has
5 suffered, and will continue to suffer, irreparable injury to its rights and suffer
6 substantial loss of goodwill and in the value of its D-Cell MAG-LITE® flashlight
7 SSOA trademark unless and until Defendants are enjoined from continuing their
8 wrongful acts.

9 144. By reason of Defendants' actions alleged herein, Mag Instrument has
10 been damaged in an amount not presently ascertained, and such damage will
11 continue and increase unless and until Defendants are enjoined from continuing
12 their wrongful acts.

13 145. Defendants' conduct in this cause of action is willful, wanton,
14 malicious, oppressive, and in conscious disregard of Mag Instrument's rights in its
15 D-Cell MAG-LITE® flashlight SSOA trademark, justifying the imposition of
16 punitive and exemplary damages under California Civil Code §3294.

17 **SEVENTEENTH CAUSE OF ACTION**

18 **(Common Law Unfair Competition)**

19 146. Mag Instrument repeats, realleges, and incorporates by reference, as
20 though fully set out herein, the allegations contained in paragraphs 1-10, 93-106,
21 108-115, 117-124, 126-131, 133-137, and 139-145, above.

22 147. Defendants' actions in connection with the D-Cell Snap-On flashlight
23 are likely to cause confusion, to cause misrepresentation, to cause mistake, and/or
24 to deceive the public as to the affiliation, approval, sponsorship, or connection
25 between Defendants and Mag Instrument and constitute unfair competition at
26 common law.

27 148. By reason of Defendants' actions in connection with the D-Cell Snap-
28 On flashlight, Mag Instrument has suffered, and will continue to suffer, irreparable

1 injury to its rights and suffer substantial loss of goodwill and in the value of its D-
2 Cell MAG-LITE® flashlight SSOA trademark unless and until Defendants are
3 enjoined from continuing their wrongful acts.

4 149. By reason of Defendants' actions in connection with the D-Cell Snap-
5 On flashlight, Mag Instrument has been damaged in an amount not presently
6 ascertained, and such damage will continue and increase unless and until
7 Defendants are enjoined from continuing their wrongful acts.

8 150. Upon information and belief, Defendants' conduct in this cause of
9 action is willful, wanton, malicious, oppressive, and in conscious disregard of Mag
10 Instrument's rights in its D-Cell MAG-LITE® flashlight SSOA trademark, justifying
11 the imposition of punitive and exemplary damages under California Civil Code
12 §3294.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Mag Instrument respectfully demands judgment:

15 1. That Defendants, their officers, directors, agents, servants, employees,
16 attorneys, confederates, and all persons and/or entities acting for, with, by, through,
17 or in concert with them or any of them be enjoined preliminarily and permanently:

- 18 (a) from infringing the '131 patent, either directly or contributorily;
19 (b) from inducing others to infringe the '131 patent;
20 (c) from infringing the '438 patent, either directly or contributorily;
21 (d) from inducing others to infringe the '438 patent;
22 (e) from infringing the '439 patent, either directly or contributorily;
23 (f) from inducing others to infringe the '439 patent;
24 (g) from manufacturing, advertising, distributing, marketing,
25 importing, promoting, offering for sale, and/or selling the AA-Cell Snap-On
26 flashlight and/or the D-Cell Snap-On flashlight;
27 (h) from using the MINI MAGLITE® flashlight SSOA trademark,
28 the Candle Mode trademark, the D-Cell MAG-LITE® flashlight SSOA trademark,

1 and/or any other designation that is a colorable imitation of and/or is confusingly
2 similar to the MINI MAGLITE® flashlight SSOA trademark, the Candle Mode
3 trademark, and/or the D-Cell MAG-LITE® flashlight SSOA trademark in
4 connection with the manufacture, advertising, distribution, marketing, importation,
5 promotion, offering for sale, and/or sale of flashlights neither originating from nor
6 authorized by Mag Instrument;

7 (i) from representing in any manner, or by any method whatsoever,
8 that goods, services, or other products provided by Defendants are sponsored,
9 approved, authorized by, or originate from Mag Instrument, or otherwise taking any
10 action likely to cause confusion, mistake, or deception as to the origin, approval,
11 sponsorship, or certification of such goods or services;

12 (j) from infringing and/or diluting the distinctive quality of the
13 MINI MAGLITE® flashlight SSOA trademark, the Candle Mode trademark, and/or
14 the D-Cell MAG-LITE® flashlight SSOA trademark; and

15 (k) from unfairly competing with Mag Instrument in any manner.

16 2. That Defendants be required to deliver up to the Court any and all
17 flashlights in their possession, custody, and/or control that infringe the '131 patent,
18 the '438 patent, the '439 patent, the MINI MAGLITE® flashlight SSOA trademark,
19 the Candle Mode trademark, and/or the D-Cell MAG-LITE® flashlight SSOA
20 trademark.

21 3. That Defendants be required to prepare and deliver to the Court a
22 complete list of entities from whom Defendants purchased, and to whom they
23 distributed and/or sold, flashlights that infringe the '131 patent, the '438 patent, the
24 '439 patent, the MINI MAGLITE® flashlight SSOA trademark, the Candle Mode
25 trademark, and/or the D-Cell MAG-LITE® flashlight SSOA trademark, and to serve
26 a copy of such list on Mag Instrument's attorneys.

27 4. That Defendants be required to deliver to the Court any and all
28 documents reflecting or relating to the purchase, sale, and/or distribution of any

1 flashlights that infringe the '131 patent, the '438 patent, the '439 patent, the MINI
2 MAGLITE® flashlight SSOA trademark, the Candle Mode trademark, and/or the D-
3 Cell MAG-LITE® flashlight SSOA trademark.

4 5. That Defendants be required to deliver to the Court all products,
5 containers, packages, labels, literature, catalogs, signs, advertising material, and the
6 like bearing the MINI MAGLITE® flashlight SSOA trademark, the Candle Mode
7 trademark, the D-Cell MAG-LITE® flashlight SSOA trademark, a shape, style, and
8 overall appearance that is confusingly similar to the MINI MAGLITE® flashlight,
9 and/or a shape, style, and overall appearance that is confusingly similar to the D-
10 Cell MAG-LITE® flashlight, together with all plates, molds, and other means of
11 making the same.

12 6. That Defendants, within thirty (30) days after service of judgment with
13 notice of entry thereof upon them, be required to file with the Court and serve upon
14 Mag Instrument's attorneys a written report, under oath, setting forth in detail the
15 manner in which Defendants have complied with paragraphs 1-5, above.

16 7. That Defendants be required to account for and pay over to Mag
17 Instrument their profits and the cumulative damages sustained by Mag Instrument
18 by reason of Defendants' unlawful acts of patent infringement, trademark
19 infringement, dilution, and unfair competition herein alleged, that the amount of
20 recovery be increased as provided by law, up to three times, and that interest and
21 costs be awarded to Mag Instrument.

22 8. That the Court order disgorgement and/or restitution of Defendants'
23 profits to Mag Instrument.

24 9. That Mag Instrument be awarded its reasonable costs and attorneys'
25 fees.

26 10. That the present case be found exceptional and that attorneys' fees be
27 awarded to Mag Instrument under 35 U.S.C. §285.

28 11. That Mag Instrument be awarded punitive damages.

1 12. That Mag Instrument have such other and further relief as the Court
2 may deem equitable.

3
4 Dated: April 29, 2008

JONES DAY

5
6 By: 
7 Charles A. Kertell

8 Attorneys for Plaintiff
9 MAG INSTRUMENT, INC.

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DEMAND FOR JURY TRIAL

Pursuant to Fed.R.Civ.P. 38(b) and Local Rule 38-1, Mag Instrument, Inc.
hereby demands a trial by jury on all issues triable in this action.

Dated: April 29, 2008

JONES DAY

By: 
Charles A. Kertell

Attorneys for Plaintiff
MAG INSTRUMENT, INC.

EXHIBIT 1



US005267131A

United States Patent [19]

[11] **Patent Number:** 5,267,131

Anthony et al.

[45] **Date of Patent:** * Nov. 30, 1993

[54] **SHOCK ABSORBING LENS HOLDER AND ANTI-ROLL DEVICE**

[56]

References Cited

U.S. PATENT DOCUMENTS

1,934,214	11/1933	Stimson	240/10.66
2,309,687	2/1940	Wood	240/10.66
2,838,750	6/1958	Rose	362/208
3,114,143	2/1962	Robinson	340/321
3,258,589	3/1964	Doring	240/10.6
3,368,069	9/1967	Trott	240/6.4
4,800,472	1/1989	Burton et al.	362/158

[75] **Inventors:** Maglica Anthony, Anaheim; Fred R. McAlister, Riverside, both of Calif.

[73] **Assignee:** MAG Instrument, Inc., Ontario, Calif.

[*] **Notice:** The portion of the term of this patent subsequent to Nov. 24, 2009 has been disclaimed.

[21] **Appl. No.:** 947,348

[22] **Filed:** Sep. 18, 1992

Related U.S. Application Data

[63] Continuation of Ser. No. 818,751, Jan. 8, 1992, Pat. No. 5,165,782.

[51] **Int. Cl.³** F21C 15/00

[52] **U.S. Cl.** 362/208; 362/202; 362/390; 362/457

[58] **Field of Search** 362/157, 186, 189, 190, 362/202, 208, 390, 457, 376

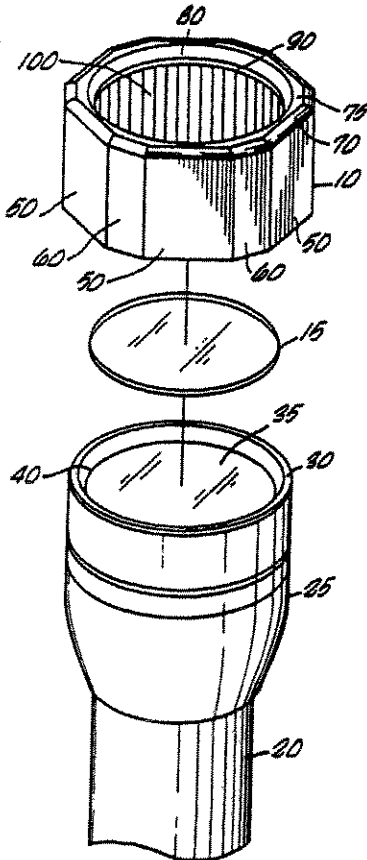
Primary Examiner—Richard R. Cole
Attorney, Agent, or Firm—Lyon & Lyon

[57]

ABSTRACT

A molded thermal plastic accessory cover attaching to the head assembly of a flashlight provides inwardly extending ribs to seat on the flashlight and to provide shock absorbing characteristics. A seat is provided for an auxiliary lens and the outside of the cover includes flat surfaces to inhibit rolling of the assembled cover and flashlight.

7 Claims, 2 Drawing Sheets

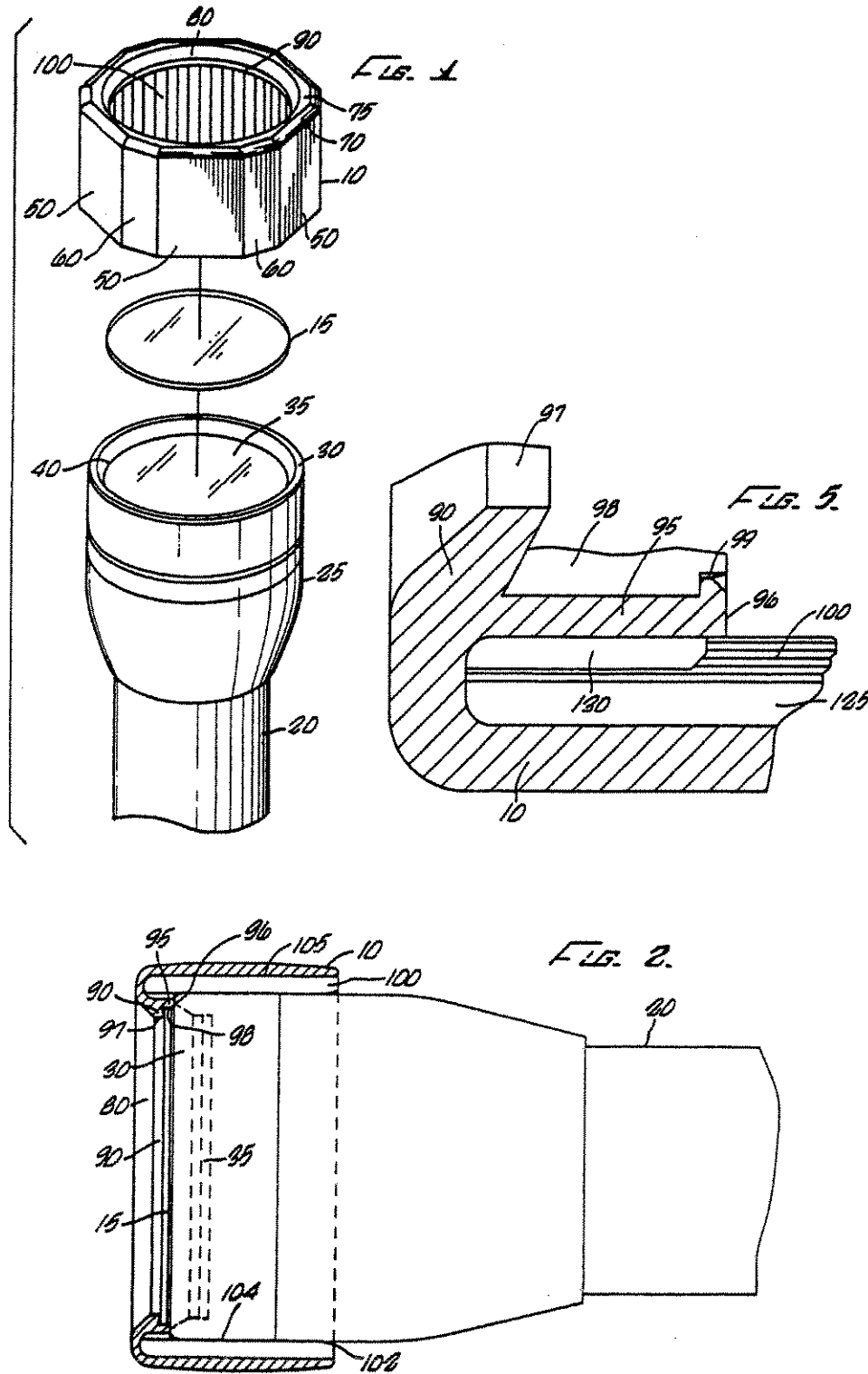


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U.S. Patent

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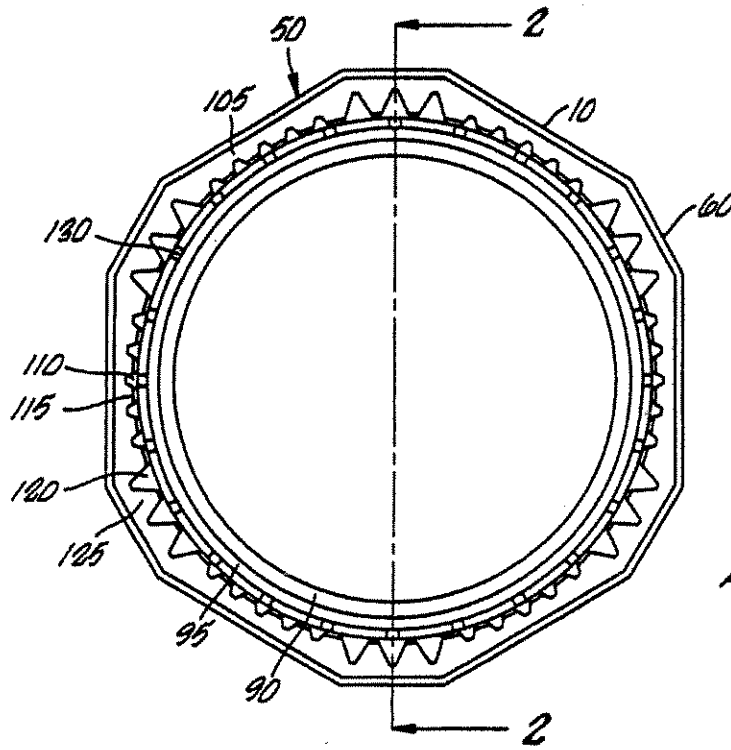


FIG. 3

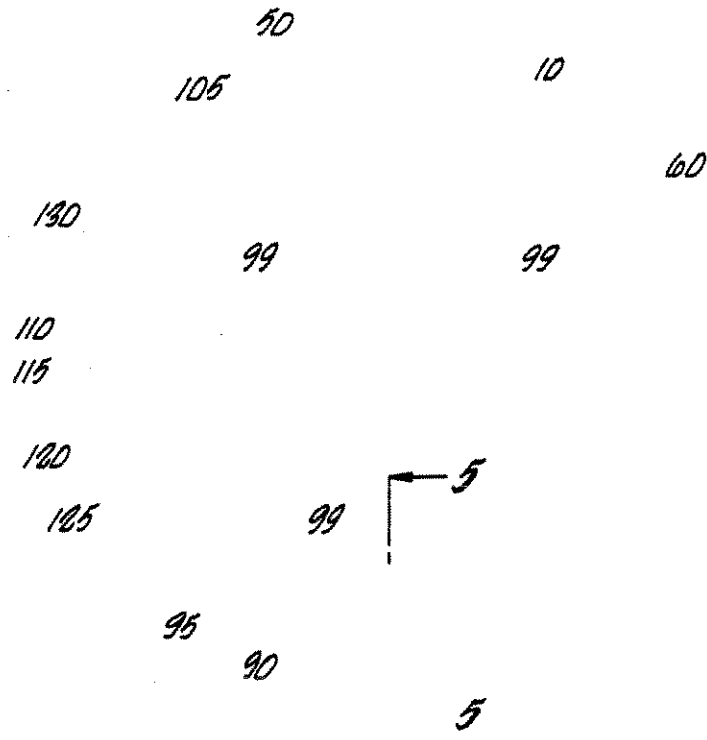


FIG. 4.

5,267,131

1

SHOCK ABSORBING LENS HOLDER AND ANTI-ROLL DEVICE

This application is a continuation of application Ser. No. 07/818,751, filed Jan. 8, 1992, now U.S. Pat. No. 5,165,782.

BACKGROUND OF THE INVENTION

The field of the present invention is accessory devices for flashlights.

Flashlights come in a variety of shapes and sizes. A common design in the art comprises a barrel-shaped body with a cylindrical head assembly. This design best accommodates standard, cylindrical batteries as the power source of the flashlight. The head assembly typically contains a lamp covered by a clear lens, the lens being recessed from the outermost end of the head assembly to help protect it by reducing its exposure to contact with foreign objects.

It is often desirable to change the color or intensity of the light emitting from a flashlight. A known method of accomplishing this is to remove the clear lens from the head assembly and insert a particular colored lens in its place. However, this method can be cumbersome and time consuming. Another method is known whereby a colored, accessory lens is placed over the existing lens at the end of the head assembly and secured by a "lens holder" device.

It is also desirable to prevent a flashlight from rolling along a surface. A known method of accomplishing this is to equip the head assembly with an attachment accessory having a plurality of flat sides which inhibit the flashlight from rolling. This attachment, or "anti-roll" device is typically made of molded plastic or rubber material and is designed to fit over a cylindrical flashlight head assembly.

It is further known to combine the utility features of a lens holder with those of an anti-roll attachment in a single flashlight accessory device.

SUMMARY OF THE INVENTION

The present invention is directed to combining the features of an anti-roll accessory device with means for absorbing shock caused by dropping or other impact, thereby providing protection to the lamp, lens and other components of the head assembly, but doing so with minimum material requirements and complexity.

According to a first aspect of the present invention, a flashlight accessory device is provided which forms a cover for the head of a flashlight. A hollow cylindrical body open at each end is provided with multiple flat sides and ribs extending inwardly about the inner periphery of the body. The ribs extend to receive the flashlight head and provide energy absorbing characteristics to protect against physical shock.

In a second aspect of the present invention, such a flashlight head cover includes an inwardly extending flange having a first shoulder for abutting against one end of the flashlight head, a second shoulder for receiving a secondary lens such as a colored lens and an annular seat having an interlocking structure spaced from the second shoulder so as to be capable of retaining a secondary lens in position.

Thus, it is an object of the present invention to provide an improved head cover for a flashlight. Other objects and advantages will appear hereinafter.

2

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is an exploded perspective view of a flashlight and a flashlight head cover of the present invention.

FIG. 2 is a cross-sectional side view of the cover with a flashlight shown in place taken along line 2—2 of FIG. 3.

FIG. 3 is a bottom view of the flashlight head cover.

FIG. 4 is a bottom view of the flashlight head cover illustrating locking members to retain a secondary lens.

FIG. 5 is a cross-sectional side detail view taken along line 5—5 of FIG. 4.

DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENT

Turning in detail to the drawings, a flashlight head cover 10 is shown retaining a color lens 15 on a flashlight 20. The flashlight has a cylindrical head assembly 25 with an outer wall 30 and a clear lens 35. The lens 35 is mounted within a recess 40 of the head assembly. Other components within the head assembly, such as a lamp and reflector, are not illustrated. The cover is integrally formed of molded resilient plastic or rubber. The resilience and softness of the material employed are preferably selected to improve shock characteristics and durability.

The cover 10 has multiple flat, rectangular external sides to form a ring-like structure. The sides include wide sides 50 and narrow sides 60 in an alternating pattern to form a cylindrical multi-faceted body 65. The body is hollow, being open at each end. There are six wide sides 50 giving the cover a hexagonal look. The narrow sides are provided at the corners of this hexagon. The sides are useful in inhibiting the rolling of a flashlight when positioned on a flat surface.

The cover 10 has a first end defined by inwardly sloping portions 70 adjacent to each flat side 50 and 60. Inwardly of the sloping portions there is a uniform flat top surface 75. Inwardly therefrom is an inwardly concave surface 80. This end extends inwardly as a flange 90. The flange 90 includes a stop 95 which is substantially cylindrical, extending to a first shoulder 96 against which the head assembly wall 30 abuts to locate the cover 10. The flange 90 also includes a second shoulder 97 for receiving an accessory lens 15. The second shoulder 97 is angled inwardly as can best be seen in FIG. 5. This angle creates a lip seal for sealing the accessory lens 15 to prevent moisture and dirt from entering into the area between the accessory lens 15 and the primary lens 35.

In between the first shoulder 96 and the second shoulder 97 is an annular seat 98. The annular seat 98 extends from the outer end of the first shoulder 96 to the inner end of the second shoulder 97. This seat 98 is arranged such that the end adjacent to the first shoulder has an interlocking configuration. In the embodiment illustrated in FIG. 2, the seat is tapered inwardly away from the second shoulder 97. This results in an undercut seat retain the lens 15 abutting against the second shoulder 97. In FIG. 5, the seat 98 is cylindrical with retainers 99 extending inwardly and spaced from the second shoulder 97.

The interior of the hollow cylindrical body 65 includes a plurality of ribs 100 extending inwardly. The ribs 100 have a tapered portion 102 to facilitate insertion of the head assembly 25 into the cover 10. The ends of the ribs 100 terminate at a surface of rotation which, in the preferred embodiment, is a circular cylinder. This

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surface of rotation approximates the surface of the flashlight head and is preferably slightly smaller than the flashlight head to insure an interference fit between the cover 10 and the flashlight head 25. As the hollow cylindrical body 65 may be considered to have a substantially uniform wall thickness 105, the ribs 100 are of varying heights so as to extend to the surface of rotation defined above. On the wide sides 50, small pitch serrations 110 define the ribs 115 while the narrow sides 60 have large pitch serrations 120 to define larger ribs 125.

The inwardly extending flange 90 is shown to extend downwardly with rectangular bosses 130 extending outwardly from the flange. These bosses 130 assist in insuring proper location of the flashlight head 25, help rigidify the cylindrical stop 95 and provide shock absorbing properties to the structure against impact.

When the cover 10 is placed over the head assembly 25 of a flashlight 20, that portion of the wall 30 which extends beyond the flashlight lens 35 extends through and abuts against the inwardly extending flange 90 and the stops 130. The head 25 is retained in interference fit by the ribs 100. If the flashlight is dropped on the head assembly or otherwise struck, the cover provides means for reducing the force that translates to the components of the head assembly. This protection is provided about the periphery of the head and on the end of the head assembly.

Thus, a cover capable of protecting the head of a flashlight, providing anti-roll characteristics and providing a seat for an auxiliary lens is disclosed. While embodiments and applications of this invention have been shown and described, it would be apparent to those skilled in the art that many more modifications are possible without departing from the inventive concepts herein. The invention, therefore is not to be restricted except in the spirit of the appended claims.

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What is claimed is:

1. A cover for a flashlight, comprising a hollow body open at each end to receive at least a portion of a flashlight therein and having an outer surface with multiple surface portions, which portions are not outwardly convex and an inner side within the hollow body; elements extending inwardly from said inner side and being mutually displaced, said elements terminating at a surface of rotation approximating an outer surface of a portion of a flashlight to be received in said hollow body.
2. The cover of claim 7 further comprising an inwardly extending flange at one end of said hollow body to receive an end of a flashlight positioned in said hollow body.
3. The cover of claim 2 wherein said inwardly extending flange is circular about its inner periphery and includes a first shoulder on one side thereof to receive a flashlight, a second shoulder extending inwardly from said first shoulder and an annular seat extending from a first end at said first shoulder to a second end at said second shoulder.
4. The cover of claim 3 wherein said annular seat includes means displaced from said second shoulder for retaining a lens in said annular seat abutting against said second shoulder.
5. The cover of claim 4 wherein said means for retaining a lens in said annular seat includes retainers extending inwardly from said annular seat and displaced from said second shoulder.
6. The cover of claim 1 wherein said hollow body is of substantially uniform wall thickness, said elements being of varying heights.
7. The cover of claim 6 wherein said hollow body and said elements are integrally formed.

* * * * *

EXHIBIT 2



US00D530438S

(12) **United States Design Patent** (10) **Patent No.:** **US D530,438 S**
Maglica (45) **Date of Patent:** **** Oct. 17, 2006**

(54) **MINIATURE FLASHLIGHT**

1,116,048 A 11/1914 Farber

(Continued)

(75) **Inventor:** **Anthony Maglica, Anaheim, CA (US)**

FOREIGN PATENT DOCUMENTS

(73) **Assignee:** **Mag Instrument, Inc., Ontario, CA (US)**

AU 114558 1/1942

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

(Continued)

(21) **Appl. No.:** **07/411,576**

OTHER PUBLICATIONS

(22) **Filed:** **Sep. 22, 1989**

P. 243 of Japanese Patent Gazette Feb. 16, 1982—Utility Model 42071.

Related U.S. Application Data

(Continued)

(62) Division of application No. 07/356,361, filed on May 23, 1989, now Pat. No. 4,942,505, which is a continuation of application No. 07/222,378, filed on Jul. 19, 1988, now Pat. No. 4,899,265, which is a continuation of application No. 07/034,918, filed on Apr. 6, 1987, now abandoned, which is a continuation of application No. 06/828,729, filed on Feb. 11, 1986, now Pat. No. 4,658,336, which is a continuation of application No. 06/648,032, filed on Sep. 6, 1984, now Pat. No. 4,577,263.

Primary Examiner—Alan P. Douglas

(74) *Attorney, Agent, or Firm*—Jones Day

(57) **CLAIM**

The ornamental design for a miniature flashlight, as shown and described.

(51) **LOC (8) Cl.** 26-02

(52) **U.S. Cl.** D26/49

(58) **Field of Classification Search** D26/37-50;
362/157-8, 183-208

See application file for complete search history.

DESCRIPTION

FIG. 1 is a front top perspective view of a miniature flashlight showing my new design;

FIG. 2 is a side elevational view thereof, the other side being identical

FIG. 3 is a top plan view thereof; and,

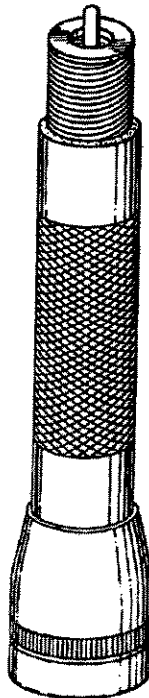
FIG. 4 is a bottom plan view thereof.

(56) **References Cited**

U.S. PATENT DOCUMENTS

1,109,415 A 9/1914 Harris

1 Claim, 1 Drawing Sheet



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U.S. PATENT DOCUMENTS

1,559,481	A	10/1925	Voorhees	
1,568,093	A	1/1926	Shannon	
1,584,539	A	5/1926	Hopkins	
1,599,095	A	9/1926	McCabe	
1,603,272	A	10/1926	Eaton	
1,638,716	A	8/1927	Surles	
1,644,126	A	10/1927	Harris	
1,674,650	A	6/1928	Leser	
1,680,169	A	8/1928	Osean	
1,680,188	A	8/1928	Weber	
1,680,484	A	8/1928	Stimson	
1,768,554	A	1/1930	Freitag	
1,758,835	A	5/1930	Hime	
1,769,436	A	7/1930	Koretzky	
1,895,913	A	1/1933	Buchholz	
1,905,787	A	4/1933	Barber	
2,016,819	A	10/1935	Meginniss	240/10.66
2,051,889	A	8/1936	Nygard	240/10.6
2,097,222	A	10/1937	Tompkins et al.	340/10.66
2,173,650	A	9/1939	Fullmer	240/10.66
2,176,301	A	10/1939	Haas	240/10.66
2,180,228	A	11/1939	Florman	240/10.68
2,210,312	A	8/1940	Wood	240/10.6
2,212,103	A	8/1940	Rothenberg et al.	240/10.69
2,229,486	A	1/1941	Barash et al.	240/10.66
2,249,691	A	7/1941	Gelardin	240/10.66
2,259,106	A	10/1941	Hagers	200/60
2,272,907	A	2/1942	Deibel	240/10.61
2,298,042	A	10/1942	Desimone	240/10.66
2,338,078	A	12/1943	Wood	240/10.66
2,339,356	A	1/1944	Sachs	240/10.66
2,341,057	A	2/1944	Muldoon	240/10.66
2,347,531	A	4/1944	Yardeny	200/60
D142,277	S	8/1945	Lippincott	D48/24
2,396,046	A	3/1946	Hipwell et al.	240/10.66
2,443,539	A	6/1948	Kopp	200/60
2,483,665	A	10/1949	Phillips	240/10.63
2,490,830	A	12/1949	Norton	240/10.63
2,493,205	A	1/1950	Muldoon	240/10.67
2,530,913	A	11/1950	Shackel	240/10.6
2,540,683	A	2/1951	MacLean	200/60
2,570,838	A	10/1951	Nathan et al.	240/10.68
2,599,295	A	6/1952	Thomas	200/60
2,737,574	A	3/1956	Muller	240/6.4
2,769,896	A	11/1956	Lambert	240/10.6
2,780,722	A	2/1957	Lambert	362/205
2,830,280	A	4/1958	Webber	339/191
2,852,634	A	9/1958	Garland	200/60
2,876,410	A	3/1959	Fry	320/48
2,915,621	A	12/1959	Garland	240/10.66
2,931,005	A	3/1960	Saurwein et al.	339/182
2,945,944	A	7/1960	Gillespie	240/10.68
3,014,125	A	12/1961	Draudt	240/10.68
3,076,891	A	2/1963	Moore	240/10.66
3,078,761	A	2/1963	Zorn	38/24
D197,082	S	12/1963	Oakley et al.	D48/24
3,184,589	A	5/1965	Gibbens	240/10.67
3,264,464	A	8/1966	Gits	240/10.67
3,323,118	A	5/1967	Chan	340/321
D208,940	S	10/1967	Moore	D48/24
3,521,050	A	7/1970	Shagena, Jr.	240/10.66
3,526,765	A	9/1970	Rossi	240/10.6
3,652,846	A	3/1972	Starck, II	240/10.63
3,737,649	A	6/1973	Nelson et al.	D26/48 X
D231,560	S	4/1974	Keller	D26/2
3,825,740	A	7/1974	Friedman et al.	240/10.6
3,829,676	A	8/1974	Nelson et al.	240/10.6
3,835,272	A	9/1974	Wisembaker	200/60
3,890,498	A	6/1975	Toth, Sr.	240/10.66
3,924,116	A	12/1975	Brindley	240/10.6

RE29,047	E	11/1976	Brindley	240/10.66
D242,277	S	11/1976	Waldorf	
3,992,596	A	11/1976	Miller	200/60
4,060,723	A	11/1977	Nelson	362/205
4,092,580	A	5/1978	Prinsze	320/2
4,114,187	A	9/1978	Uke	362/158
4,151,583	A	4/1979	Miller	362/205
4,156,271	A	5/1979	Vercellotti	362/202
4,171,534	A	10/1979	Strowe	362/183
4,187,532	A	2/1980	Naffier	362/186
4,203,150	A	5/1980	Shamlian	362/183
4,220,985	A	9/1980	Hukuba	362/203
4,234,913	A	11/1980	Ramme	362/158
4,237,526	A	12/1980	Wood	362/158
4,261,026	A	4/1981	Boiha	362/101
4,286,311	A	8/1981	Maglica	362/205
D263,170	S	2/1982	Maglica	D26/49
4,322,782	A	3/1982	Wong	362/183
4,327,401	A	4/1982	Siiberg	362/183
4,329,740	A	5/1982	Colvin	362/184
4,348,715	A	9/1982	Christensen et al.	362/109
4,357,648	A	11/1982	Nelson	362/184 X
4,388,673	A	6/1983	Maglica	362/183
4,398,238	A	8/1983	Nelson	362/187
4,415,954	A	11/1983	Schaefer	362/202
4,429,351	A	1/1984	Petzl et al.	362/202
4,472,766	A	9/1984	Hung	362/158
4,479,171	A	10/1984	Mains	362/102
4,495,551	A	1/1985	Foltz	362/205
4,504,890	A	3/1985	Chan	362/203
4,514,790	A	4/1985	Will	362/183
4,527,223	A	7/1985	Maglica	362/187
4,531,178	A	7/1985	Uke	362/158
4,577,263	A	3/1986	Maglica	362/187
4,581,686	A	4/1986	Nelson	362/204
4,656,565	A	4/1987	Maglica	362/187
4,658,336	A	4/1987	Maglica	362/205 X
4,695,551	A	9/1987	Samhaber et al.	435/292
4,725,932	A	2/1988	Gammache	362/202
4,733,337	A	3/1988	Bieberstein	362/206
4,750,095	A	6/1988	Huang	362/202 X
4,777,582	A	10/1988	Sharah	362/202 X
D306,492	S	3/1990	Sharah	D26/49

FOREIGN PATENT DOCUMENTS

AU	138873	10/1950
DE	2408928	1/1976
FR	1430456	3/1966
FR	2372382	6/1978
GB	292836	6/1928
GB	411218	6/1934
GB	549104	11/1942
GB	752619	7/1956
GB	812980	5/1959
GB	884212	12/1961
GB	2091863	8/1982

OTHER PUBLICATIONS

Kel-Lite Flashlight Advertising—Near indestructible pages) (Ex. DX 5010).
 Kel-Lite Advertising (4 pages) (Ex. DX 5022).
 Kel-Lite Advertising "The Original Flashlight Made To Last a Lifetime!", 1 pg. (Ex. DX 50??).
 Kel-Lite article (1 pg.) from *The Wall Street Journal*, Thursday, Jun. 2, 1977 (Pt's Ex. 3051).
 Eddie Bauer—"Indispensibles for Home, Sports and Travel"—3—page ad (Ex. DX 5014).

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- Eddie Bauer—"Indispensables for Home, Sports and Travel"—2-page ad—w/note from Bud Folcke (Sue) to Don dated Aug. 6, 1974 (Ex. DX 5019).
- _____, Inc. "Outdoor Sportsmans Supplies", Summer 1979 "Over 300 Price Cuts" (2 pgs.) (Ex. DX 5508).
- "Law and Order", vol. 30, No. 10, Oct. 1982 (3 pgs.—cover, editorial and p. 26) (Ex. DX 5505).
- "Trooper™ Superlight" (1 pg. ad) (Ex. DX 5579).
- "Lumilite®" 2-page ad. re flashlights (Ex. DX 5578).
- "Krypton" 2-pg. ad re flashlights (Ex. DX 5577).
- "Magna-Force", "Aluminum Extruded Handlights 70% Brighter!" ad (1 page) (Ex. DX 5254).
- "First of its Kind! Streamlite-20." ad (2 pg.) (Ex. DX 5068).
- "The Longer, Stronger Streamlite-35." (2 pg. ad) (Ex. DX 5070).
- "Who says they're the best? You do!" (1 pg. ad) (Ex. DX 5069).
- "The Power of Light", Streamlight, Inc., 11 pg. brochure (Ex. DX 5073).
- Gem Products, a Division of Expert Precision Products, Inc., 4 pg. brochure, marked Exhibit DX 5058.
- "Luma-Tech" brochure, 11 pg. brochure (Ex. BRX 203).
- "Smoke-Cutter", "The Professional Fire-Fighter's Flashlight" brochure, 2 pg. (Ex. DX 5055).
- F. Morton Pitt Co., brochure re "Code Four"™, 4 pages (Ex. DX 5053).
- "Code Four", "No Further Assistance Needed", 2 page ad (Ex. DX 5054).
- Police Equipment Division ad re Flashlights and Accessories, 2 pages, (Ex. BRX 202).
- "Power Probe—Medical Flashlight" ad by Police Equipment Division (1978), 1 pg., (Ex. BRX 204).
- "The Perfect Premium/Incentive" by Tru-Grit® Flashlights, 1 pg. (Ex. DX 5046).
- "Yardney Presents 2 Bright Lights", Yardney Electric Corporation, 1 pg. (Ex. DX 5047).
- B-Lite™, "America's finest Hand Held Flashlight"—"C" cell, 1 pg. price list and order form (Ex. DX 5043).
- B-Lite™, "For Those Who Demand The Very Best!", 2 pg. ad, (Ex. DX 5042).
- B-Lite, 2 pg. cut-away view and order form and price list (Ex. DX 5039).
- Bianchi B-Lite "The World's Finest Handheld Spotlight", 3 pg. ad re Police Accessories (Ex. DX 5038).
- Bianchi B-Lite, 3 pg. 1977 Catalog (Ex. DX 5040).
- Bianchi B-Lite, 4 pg. 1978 listing (Ex. DX 5041).
- B-Lite, The world standard by which all gunleather is judged™, 2 pg. ad (Ex. BRX 207).
- Bianchi B-Lite, 1 pg. ad and price list (Ex. 6471).
- Bianchi Super B-Lite, "New High Intensity Reflector!", 1 pg. ad (Ex. 6472).
- B-Lite "All New Push-Button Switch!", 1 pg. ad (Ptf's Ex. 3045).
- Bianchi Super B-Lite, New High Intensity Reflector ad marked Ptf's Exh. 3044.
- Bianchi B-Lite, 1 pg. ad marked Ptf's Ex. 3043.
- Safariland, 4 pg. brochure (Ex. DX 5015).
- Safariland 76, 4 pg. brochure (Ex. DX 5020).
- Safariland 1977, 5 pg. brochure (Ex. DX 5017).
- 1978 Safariland brochure, 6 pgs. (Ex. DX 5018).
- Safariland 1980 brochure, 8 pgs. (Ex. DX 5021).
- Safariland Kel-lite: "The Last Flashlight You'll Ever Have To Buy", 3 pg. brochure (Ex. BRX 200).
- Safariland Pursuit Case—Firepower, 2 pg. ad (Ptf's Ex. 3042).
- Pro-Light brochure, Jabsco Products ITT (1978), 4 pg. brochure (Ex. DX 5026).
- Pro-Light brochure, 6 pgs. (Ex. DX 5027).
- Sireno Pro-Light, Professional Flashlights, 1 pg. ad by Jabsco Products ITT (1978) (Ex. DX 5028).
- Greystone Marketing, 4 pg. Ordering Information and price list (Ex. DX 5029).
- Pro-Light "Distributor Price Schedule" by Greystone Marketing, 4 pgs. (Ex. DX 5030).
- Pro-Light™, Professional Flashlights, brochure, "Introducing Pro-Loc Adjustable Beam Flashlight", by Greystone Marketing, Inc. (1982), 16 pgs. (Ex. DX 5031).
- Pro-Light™, Professional Flashlights brochure, 8 pgs. (Ptf's Ex. 478-A).
- Pro-Light brochure, by VSI Recreation Products, 2 pgs. (Ptf's Ex. CX-1312).
- Rayovac Corporation, 4 pg. brochure re Police Flashlights, (Ex. BRX-342).
- "Defensive Tactics Flashlights", Official DTI Manual by John G. Peters, Jr., 31 pgs. (Ex. BRX 212).
- Bass Pro Shops, Christmas 1983 catalog, 3 pgs., (Ex. BRX 210).
- "The Law Officer's Magazine—Police", FBI, The Hoover Years, 2 pg. ad re Mag-Lite (Ex. BRX 302).
- "The Law Officer's Magazine—Police", Mar.—Apr. 1978, vol. 2, No. 2, cover and 3 pgs. (Ptf's Ex. CX-1314).
- "Lights", brochure by Justrite®, 5 pgs. (Ptf's Ex. CX-1310).
- Sa-So Sargent-Sowell Inc. brochure, 7 pgs. (Ex. BRX 206).
- "Home & Auto" ad (Nov. 1980), 3 pgs. (Ex. BRX 216).
- "Mag-Lite", "Standard Head "D" & "C" Size Commercial Specifications", 2 pg. marked Confidential—Counsel Eyes Only—(Ex. BRX 119).
- G.T. Price Products, Inc. "The Professional Line" catalog, 9 pgs. (Ptf's Ex. CX 1431).
- National Law Enforcement Supply, "Off-Duty Gift Catalog", 5 pgs. (Ptf's Ex. CX 1313).
- "Magnificent!", Mag Charger by Mag Instrument, 2 pg. ad May 1984 (Ex. BRX 213).
- Mag Lite ad "They demand . . . the very best.", 1 pg. (Ex. BRX 291).
- Mag-Lite™ ad, "Strength & Reliability", 1 pg. (Ex. BRX 202 (Depo. Ex. PX 82)).
- "The Last Flashlight You'll Ever Have to Buy" (Ptf's Ex. 3050).
- The Sunday Oregonian, Dec. 1982 "From: GI Joe's", 1 pg. ad re Mag-Lite (Ptf's Ex. 3055).
- Mag-Lite, 1 pg. ad by The 63rd CSGA Annual National Convention and Exhibition, Feb. 3-6, 1980 (Ex. BRX 219).
- Mag Instrument ad, 1 pg. (Ex. BRX 211).
- Mag-Lite add, 1 pg. by Nationwide Sports Distributor, (Ex. BRX 220).
- "Mag-lite™, The right light . . . for the job." 4 pg. brochure, (Ptf's Ex. 425).
- "A precision tool . . .", by Mag-lite, 1 pg. (Ptf's Ex. 422-A).
- "Pick up the lighters", by Mag Instrument, 1 pg. ad (Ptf's Ex. 422-B).
- Mag-lite®, 1 pg. ad re C-Cell & D-Cell, (Ptf's Ex. 483).
- View of flashlight, Ex. DX 5625.
- View of flashlight, Ex. DX 5626.
- View of flashlight, Ex. DX 5628.
- View of flashlight, Ex. DX 5629.
- View of flashlight, Ex. DX 5640.

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View of flashlight, Ex. DX 5641.
View of flashlight, Ex. DX 5642.
View of flashlight, Ex. DX 5643.
View of flashlight, (Ptf's Ex. 92).
View of flashlight, (Ptf's Ex. 93).
View of flashlight, (Ptf's Ex. 95).
View of flashlight, (Ptf's Ex. 96).
View of flashlight, (Ptf's Ex. 98).
View of flashlight, (Ptf's Ex. 100).
View of flashlight, (Ptf's Ex. 103).
View of flashlight, (Ptf's Ex. 104).
View of flashlight, (Ptf's Ex. 106).
View of flashlight, (Ptf's Ex. 108).
View of flashlight, (Ptf's Ex. 247).
View of flashlights, (6) (Ptf's Ex. 415).
View of flashlight, (Ptf's Ex. 699).
View of flashlight, (Ptf's Ex. 701).
View of flashlight, (Ptf's Ex. 702).
View of flashlight, (Ptf's Ex. 704).
View of flashlight, (Ptf's Ex. 709).
View of flashlight, (Ptf's Ex. 713).
View of flashlight, (Ptf's Ex. 714).
View of flashlight, (Ptf's Ex. 724).
View of flashlight, (Ptf's Ex. 728).
View of flashlight, (Ptf's Ex. 748 or 743?) (has carrying strap).
View of flashlight, (Ptf's Ex. 740).
View of flashlight, (Ptf's Ex. 744).
View of flashlight, (Ptf's Ex. 747).
Eveready Masterlites, The Light of a New Age, 11 pg. catalog, marked Ex. DX 5326.
Eveready Daylo, Dealer's Edition Catalog No. 736, (1918), 8 pgs. (Ex. DX 5327).
"The History of Portable Light in America", 24 pg. by Eveready (Ex. DX 5325).
"Eveready Automatic Spotlights", 15 pg. brochure (Ex. DX 5324).
50-pg. booklet, 1st legible page reads "To the founders and past presidents of the Bridgeport Metal Goods Manufacturing Company . . .", (Ex. No. not legible).
View of flashlight with Coca Cola can and ruler, marked "5001".
View of flashlight with Coca Cola can and ruler, marked "5002".
View of flashlight with Coca Cola can and ruler, marked "5003".
View of flashlight with Coca Cola can and ruler, marked "5004".
View of flashlight with Coca Cola can and ruler, marked "5005".
View of flashlight with Coca Cola can and ruler, marked "5006".
View of flashlight with Coca Cola can and ruler, marked "5007".
View of flashlight with Coca Cola can and ruler, marked "5008".
View of flashlight with Coca Cola can and ruler, marked "5009".
View of flashlight with Coca Cola can and ruler, marked "5023".
View of flashlight with Coca Cola can and ruler, marked "5024".
View of flashlight with Coca Cola can and ruler, marked "5025".
View of flashlight with Coca Cola can and ruler, marked "5032".
View of flashlight with Coca Cola can and ruler, marked "5033".
View of flashlight with Coca Cola can and ruler, marked "5034".
View of flashlight with Coca Cola can and ruler, marked "5035".
View of flashlight with Coca Cola can and ruler, marked "5036".
View of flashlight with Coca Cola can and ruler, marked "5045".
View of flashlight with Coca Cola can and ruler, marked "5048".
View of flashlight with Coca Cola can and ruler, marked "5049".
View of flashlight with Coca Cola can and ruler, marked "5050".
View of flashlight with Coca Cola can and ruler, marked "5051".
View of flashlight with Coca Cola can and ruler, marked "5052".
View of flashlight with Coca Cola can and ruler, marked "5056".
View of flashlight with Coca Cola can and ruler, marked "5057".
View of flashlight with Coca Cola can and ruler, marked "5060".
View of flashlight with Coca Cola can and ruler, marked "5061".
View of flashlight with Coca Cola can and ruler, marked "5062".
View of flashlight with Coca Cola can and ruler, marked "5063".
View of flashlight with Coca Cola can and ruler, marked "5064".
View of flashlight with Coca Cola can and ruler, marked "5065".
View of flashlight with Coca Cola can and ruler, marked "5067".
View of flashlight with Coca Cola can and ruler, marked "5074A".
View of flashlight with Coca Cola can and ruler, marked "5075A".
View of flashlight with Coca Cola can and ruler, marked "5076".
View of flashlight with Coca Cola can and ruler, marked "5078".
View of flashlight with Coca Cola can and ruler, marked "5079".
View of flashlight with Coca Cola can and ruler, marked "5080".
View of flashlight with Coca Cola can and ruler, marked "5081".
View of flashlight with Coca Cola can and ruler, marked "5082".
View of flashlight with Coca Cola can and ruler, marked "5083".
View of flashlight with Coca Cola can and ruler, marked "5084".
View of flashlight with Coca Cola can, "Maxlite 5-3-2" box and ruler, marked "5111".
View of flashlight with Coca Cola can and ruler, marked "5112".

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View of flashlight with Coca Cola can and ruler, marked "5115".

View of flashlight with Coca Cola can and ruler, marked "5118".

View of flashlight with Coca Cola can and ruler, marked "5118A".

View of flashlight with Coca Cola can and ruler, marked "5126".

View of flashlight with Coca Cola can and ruler, marked "5127".

View of flashlight with Coca Cola can and ruler, marked "5129".

View of flashlight with Coca Cola can and ruler, marked "5130".

View of flashlight with Coca Cola can and ruler, marked "5131".

View of flashlight with Coca Cola can and ruler, marked "5132".

View of flashlight with Coca Cola can and ruler, marked "5133".

View of flashlight with Coca Cola can and ruler, marked "5137A".

View of flashlight with Coca Cola can and ruler, marked "5145".

View of flashlight with Coca Cola can and ruler, marked "5147".

View of flashlight with Coca Cola can and ruler, marked "5149".

View of flashlight with Coca Cola can and ruler, marked "5154".

View of flashlight with Coca Cola can and ruler, marked "5279".

View of flashlight with Coca Cola can and ruler, marked "5300".

View of flashlight with Coca Cola can, "Fulton" box and ruler, marked "5301".

View of flashlight with Coca Cola can, "Fulton" box and ruler, marked "5302".

View of flashlight with Coca Cola can, "Rayovac Police Flashlight" box and ruler, marked "5303".

View of flashlight with Coca Cola can and ruler, marked "5304".

View of flashlight with Coca Cola can and ruler, marked "5305".

View of flashlight with Coca Cola can and ruler, marked "5306".

View of flashlight with Coca Cola can and ruler, marked "5307".

View of flashlight with Coca Cola can and ruler, marked "5308".

View of flashlight with Coca Cola can and ruler, marked "5309".

View of flashlight with Coca Cola can and ruler, marked "5310".

View of flashlight with Coca Cola can and ruler, marked "5311".

View of flashlight with Coca Cola can and ruler, marked "5312".

View of flashlight with Coca Cola can and ruler, marked "5313".

View of flashlight with Coca Cola can and ruler, marked "5314".

View of flashlight with Coca Cola can and ruler, marked "5315".

View of flashlight with Coca Cola can and ruler, marked "5317".

View of flashlight with Coca Cola can and ruler, marked "5318".

View of flashlight with Coca Cola can and ruler, marked "5319".

View of flashlight with Coca Cola can and ruler, marked "5320".

View of flashlight with Coca Cola can and ruler, marked "5321".

View of flashlight with Coca Cola can and ruler, marked "5322".

View of flashlight with Coca Cola can and ruler, marked "5841".

View of flashlight with Coca Cola can and ruler, marked "5845".

View of flashlight with Coca Cola can and ruler, marked "5846".

View of flashlight with Coca Cola can and ruler, marked "5971".

View of flashlight with Coca Cola can and ruler, marked "5972".

View of flashlight with Coca Cola can and ruler, marked "5973".

View of flashlight with Coca Cola can and ruler, marked "5974".

View of flashlight with Coca Cola can, "Bianci" box and ruler, marked "6005A".

View of flashlight with Coca Cola can and ruler, marked "6005A".

View of flashlight with Coca Cola can and ruler, marked "6112".

View of flashlight with Coca Cola can and ruler, marked "6118".

View of flashlight with Coca Cola can and ruler, marked "6119".

View of flashlight with Coca Cola can and ruler, marked "6120".

View of flashlight with Coca Cola can and ruler, marked "6121".

View of flashlight with Coca Cola can and ruler, marked "6124".

View of flashlight with Coca Cola can, container, and ruler, marked "12A".

View of flashlight with Coca Cola can, "Little Commander Pocketlight" packaging and ruler, marked "468".

View of flashlight with Coca Cola can and ruler, marked "2577".

View of flashlight with Coca Cola can and ruler, marked "2578".

View of flashlight with Coca Cola can and ruler, marked "2579".

View of flashlight with Coca Cola can and ruler, marked "2580".

View of flashlight with Coca Cola can and ruler, marked "2581".

View of flashlight with Coca Cola can and ruler, marked "2582".

View of flashlight with Coca Cola can and ruler, marked "2584".

View of flashlight with Coca Cola can and ruler, marked "2570".

View of flashlight with Coca Cola can and ruler, marked "2571".

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View of flashlight with Coca Cola can and ruler, marked "2572".
View of flashlight with Coca Cola can and ruler, marked "2574".
View of flashlight with Coca Cola can and ruler, marked "2577".
View of flashlight with Coca Cola can and ruler, marked "2677".
View of flashlight with Coca Cola can and ruler, marked "2742".
View of flashlight with Coca Cola can and ruler, marked "2749".
View of flashlight with Coca Cola can and ruler, marked "2753".
View of flashlight with Coca Cola can and ruler, marked "2755".
View of flashlight with Coca Cola can and ruler, marked "2874".
View of flashlight with Coca Cola can and ruler, marked "3717".
View of flashlight marked "2678".
View of flashlight marked "2679".
View of flashlight, with two additional parts, marked "2580".
View of flashlight with ruler.

View of flashlight with Coca Cola can and ruler, marked "464 (CPX-55)".
View of flashlight with Coca Cola can and ruler, marked "CPX-422".
View of flashlight with Coca Cola can and ruler, marked "CPX-393".
View of flashlight with Coca Cola can and ruler, marked "CPX-385".
View of flashlight with Coca Cola can and ruler, marked "CPX-264".
View of flashlight with Coca Cola can and ruler, marked "349".
View of flashlight with Coca Cola can and ruler, marked "SL575".
View of flashlight with Coca Cola can and ruler, marked "SL351".
View of flashlight with Coca Cola can and ruler, marked "SL699".
View of flashlight with Coca Cola can and ruler, marked "SL102".
View of flashlight, marked Deposition Exhibit 45 (?).
Weston, "Mini Flash Lite", advertisement.

* cited by examiner

U.S. Patent

Oct. 17, 2006

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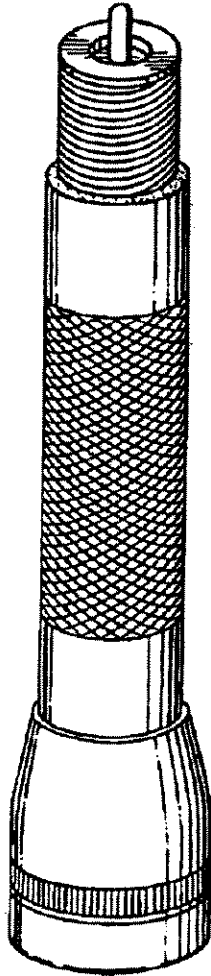


Fig. 1

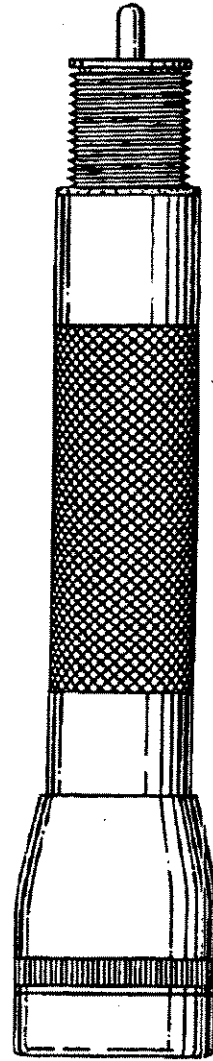


Fig. 2

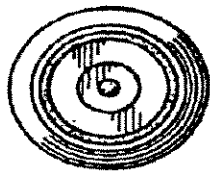


Fig. 3

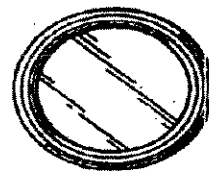


Fig. 4

EXHIBIT 3

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U.S. PATENT DOCUMENTS

2,173,650 A	9/1939	Fullmer	240/10.66	4,322,782 A	3/1982	Wong	362/183
2,176,301 A	10/1939	Haas	240/10.66	4,327,401 A	4/1982	Sieberg	362/183
2,180,228 A	11/1939	Floorman	240/10.68	4,329,740 A	5/1982	Colvin	362/184
2,210,312 A	8/1940	Wood	240/10.6	4,348,715 A	9/1982	Christensen et al.	362/109
2,212,103 A	8/1940	Rothenberg et al.	240/10.69	4,357,648 A	11/1982	Nelson	362/183
2,229,486 A	1/1941	Barash et al.	240/10.66	4,388,673 A	6/1983	Maglica	362/183
2,249,691 A	7/1941	Geiardin	240/10.66	4,398,232 A	8/1983	Elmore	361/47
2,259,106 A	10/1941	Hagers	200/60	4,398,238 A	8/1983	Nelson	362/187
2,272,907 A	2/1942	Deibeles	240/10.61	4,415,954 A	11/1983	Schaefer	362/202
2,298,042 A	10/1942	Desimone	240/10.66	4,429,351 A	1/1984	Petzl et al.	362/202
2,338,078 A	12/1943	Wood	240/10.66	4,472,766 A	9/1984	Hung	362/158
2,339,356 A	1/1944	Sachse	240/10.66	4,479,171 A	10/1984	Mains	362/102
2,341,057 A	2/1944	Muldoon	240/10.66	4,495,551 A	1/1985	Foltz	362/205
2,347,531 A	4/1944	Yardeny	200/60	4,504,890 A	3/1985	Chan	362/203
D142,277 S	8/1945	Lippincott	D48/24	4,514,790 A	4/1985	Will	362/183
2,396,046 A	3/1946	Hipwell et al.	240/10.66	4,527,223 A	7/1985	Maglica	362/187
2,443,539 A	6/1948	Kopp	200/60	4,531,178 A	7/1985	Uke	362/158
2,483,665 A	10/1949	Phillips	240/10.63	4,577,263 A	3/1986	Maglica	362/187
2,490,830 A	12/1949	Norton	240/10.63	4,581,686 A	4/1986	Nelson	362/204
2,493,205 A	1/1950	Muldoon	240/10.67	4,656,565 A	4/1987	Maglica	362/187
2,530,913 A	11/1950	Shackel	240/10.6	4,658,336 A	4/1987	Maglica	362/197
2,540,683 A	2/1951	MacLeanz	200/60	4,695,551 A	9/1987	Samhaber et al.	435/292
2,570,838 A	10/1951	Nathan et al.	240/10.68	4,725,932 A	2/1988	Gammache	362/202
2,599,295 A	6/1952	Thomas	200/60	4,733,337 A	3/1988	Bieberstein	362/206
D169,981 S	7/1953	Lambert	D48/24	4,750,095 A	6/1988	Huang	362/190
2,737,574 A	3/1956	Muller	240/6.4	D297,669 S	9/1988	Rinaldi et al.	D26/49
2,769,896 A	11/1956	Lambert	240/10.6	4,777,582 A	10/1988	Sharrah	362/205
2,830,280 A	4/1958	Webber	339/191	D306,492 S	3/1990	Sharrah	D26/49
2,852,634 A	9/1958	Garland	200/60	D306,910 S	3/1990	Kung	D26/49
2,876,410 A	3/1959	Fry	320/48	D308,109 S	5/1990	Maglica et al.	D26/49
2,915,621 A	12/1959	Garland	240/10.66	D308,257 S	5/1990	Staubitz et al.	D26/49
2,931,005 A	3/1960	Saurwein et al.	339/182	D308,258 S	5/1990	Kung-kit et al.	D26/49
2,945,944 A	7/1960	Gillespie	240/10.68				
3,264,464 A	8/1961	Gijs	240/10.67				
3,014,125 A	12/1961	Draudt	240/10.68				
3,076,689 A	2/1963	Taylor	8/119				
3,076,891 A	2/1963	Moore	240/10.66				
3,078,761 A	2/1963	Zorn	38/24				
D197,082 S	12/1963	Oakley et al.	D48/24				
3,184,589 A	5/1965	Gibbens	240/10.67				
3,323,118 A	5/1967	Chan	340/321				
D208,940 S	10/1967	Moore	D48/24				
3,521,050 A	7/1970	Shagena, Jr.	240/10.66				
3,526,765 A	9/1970	Rossi	240/10.6				
3,622,776 A	11/1971	Wyrick	240/10.6				
3,652,846 A	3/1972	Starck, II	240/10.63				
3,737,649 A	6/1973	Nelson et al.	240/6.42				
D231,560 S	4/1974	Keller	D26/2				
3,825,740 A	7/1974	Friedman et al.	240/10.6				
3,829,676 A	8/1974	Nelson et al.	240/10.6				
3,835,272 A	9/1974	Wisembaker	200/60				
3,890,498 A	6/1975	Toth, Sr.	240/10.66				
3,924,116 A	12/1975	Brindley	240/10.6				
RE29,047 E	11/1976	Brindley	240/10.66				
D242,277 S	11/1976	Waldorf	D22/26				
3,992,596 A	11/1976	Miller	200/60				
4,060,723 A	11/1977	Nelson	362/205				
4,092,580 A	5/1978	Prinsze	320/2				
4,114,187 A	9/1978	Uke	362/158				
4,151,583 A	4/1979	Miller	362/205				
4,156,271 A	5/1979	Vercellotti	362/202				
4,171,534 A	10/1979	Strowe	362/183				
4,187,532 A	2/1980	Naffier	362/186				
4,203,150 A	5/1980	Shamlian	362/183				
4,220,985 A	9/1980	Hukuba	362/203				
4,234,913 A	11/1980	Ramme	362/158				
4,237,526 A	12/1980	Wood	362/158				
4,261,026 A	4/1981	Bolha	362/101				
4,286,311 A	8/1981	Maglica	362/205				
D263,170 S	2/1982	Maglica	D26/49				

OTHER PUBLICATIONS

P. 433 of Japanese Patent Gazette Apr. 1, 1981 (Taiwan)—Utility Model.

Kel-Lite Flashlight Advertising—Near Indestructible pages (Ex. DX 5010).

Kel-Lite Advertising (4 pages) (Ex. DX 5022).

Kel-Lite Advertising "The Original Flashlight Made To Last a Lifetime!", 1 pg. (Ex. DX 50??).

Kel-Lite article (1 pg.) from *The Wall Street Journal*, Thursday, Jun. 2, 1977 (Ptf's Ex. 3051).

Eddie Bauer—"Indispensables for Home, Sports and Travel"—3-page ad (Ex. DX 5014).

Eddie Bauer—"Indispensables for Home, Sports and Travel"—2-page ad—w/note from Bud Folcke (Sue) to Don dated Aug. 6, 1974 (Ex. DX 5019).

___, Inc. "Outdoor Sportsmans Supplies", Summer 1979 "Over 300 Price Cuts" (2 pgs.) (Ex. DX 5508).

"Law and Order", vol. 30, No. 10, Oct. 1982 (3 pgs.—cover, editorial and p. 26) (Ex. DX 5505).

"Trooper™ Superlight" (1 pg. ad) (Ex. DX 5579).

"Lumilite®" 2-page ad. re flashlights (Ex. DX 5578).

"Krypton" 2-pg. ad re flashlights (Ex. DX 5577).

"Magna-Force", "Aluminum Extruded Handlights 70% Brighter!" ad (1 page) (Ex. DX 5254).

"First of its Kind! Streamlite-20." ad (2 pg.) (Ex. DX 5068).

"The Longer, Stronger Streamlite-35." (2 pg. ad) (Ex. DX 5070).

"Who says they're the best? You do!" (1 pg. ad) (Ex. DX 5069).

"The Power of Light", Streamlight, Inc., 11 pg. brochure (Ex. DX 5073).

Gem Products, a Division of Expert Precision Products, Inc., 4 pg. brochure, marked Exhibit DX 5058.

"Luma-Tech" brochure, 11 pg. brochure (Ex. BRX 203).

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- "Smoke-Cutter", "The Professional Fire-Fighter's Flashlight" brochure, 2 pg. (Ex. DX 5055).
- F. Morton Pitt Co., brochure re "Code Four"™, 4 pages (Ex. DX 5053).
- "Code Four", "No Further Assistance Needed", 2 page ad (Ex. DX 5054).
- Police Equipment Division ad re Flashlights and Accessories, 2 pages, (Ex. BRX 202).
- "Power Probe—Medical Flashlight" ad by Police Equipment Division (1978), 1 pg., (Ex. BRX 204).
- "The Perfect Premium/Incentive" by Tru-Grit® Flashlights, 1 pg. (Ex. DX 5046).
- "Yardney Presents 2 Bright Lights", Yardney Electric Corporation, 1 pg. (Ex. DX 5047).
- B-Lite™, "America's finest Hand Held Flashlight"—"C" cell, 1 pg. price list and order form (Ex. DX 5043).
- B-Lite™, "For Those Who Demand The Very Best!", 2 pg. ad, (Ex. DX 5042).
- B-Lite, 2 pg. cut-away view and order form and price list (Ex. DX 5039).
- Bianchi B-Lite "The World's Finest Handheld Spotlight", 3 pg. ad re Police Accessories (Ex. DX 5038).
- Bianchi B-Lite, 3 pg. 1977 Catalog (Ex. DX 5040).
- Bianchi B-Lite, 4 pg. 1978 listing (Ex. DX 5041).
- B-Lite, The world standard by which all gunleather is judged™, 2 pg. ad (Ex. BRX 207).
- Bianchi B-Lite, 1 pg. ad and price list (Ex. 6471).
- Bianchi Super B-Lite, "New High Intensity Reflector!", 1 pg. ad (Ex. 6472).
- B-Lite "All New Push-Button Switch!", 1 pg. ad (Ptf's Ex. 3045).
- Bianchi Super B-Lite, New High Intensity Reflector ad marked Ptf's Exh. 3044.
- Bianchi B-Lite, 1 pg. ad marked Ptf's Ex. 3043.
- Safariland, 4 pg. brochure (Ex. DX 5015).
- Safariland 76, 4 pg. brochure (Ex. Dx 5020).
- Safariland 1977, 5 pg. brochure (Ex. DX 5017).
- 1978 Safariland brochure, 6 pgs. (Ex. DX 5018).
- Safariland 1980 brochure, 8 pgs. (Ex. DX 5021).
- Safariland Kel-lite: "The Last Flashlight You'll Ever Have To Buy", 3 pg. brochure (Ex. BRX 200).
- Safariland Pursuit Case—Firepower, 2 pg. ad (Ptf's Ex. 3042).
- Pro-Light brochure, Jabsco Products ITT (1978), 4 pg. brochure (Ex. DX 5026).
- Pro-Light brochure, 6 pgs. (Ex. DX 5027).
- Sireno Pro-Light, Professional Flashlights, 1 pg. ad by Jabsco Products ITT (1978) (Ex. DX 5028).
- Greystone Marketing, 4 pg. Ordering Information and price list (Ex. DX 5029).
- Pro-Light Distributer Price Schedule * by Greystone Marketing, 4 pgs. (Ex. DX 5030).
- Pro-Light™, Professional Flashlights, brochure "Introducing Pro-Loc Adjustable Beam Flashlights", by Greystone Marketing, Inc. (1982), 16 pgs. (Ex. DX 5031).
- Pro-Light™, Professional Flashlights brochure, 8 pgs. (Ptf's Ex. 478-A).
- Pro-Light brochure, by VSI Recreation Products, 2 pgs. (Ptf's Ex. CX-1312).
- Rayovac Corporation, 4 pg. brochure re Police Flashlights, (Ex. BRX-342).
- "Defensive Tactics Flashlights", official DTI Manual by John G. Peters, Jr., 31 pgs. (Ex. BRX 212).
- Bass Pro Shops, Christmas 1983 catalog, 3 pgs., (Ex. BRX 210).
- "The Law Officer's Magazine—Police", FBI, The Hoover Years, 2 pg. ad re Mag-Lite (Ex. BRX 302).
- "The Law Officer's Magazine—Police", Mar.-Apr. 1978, vol. 2, No. 2, cover and 3 pgs. (Ptf's Ex. CX-1314).
- "Lights", brochure by Justrite®, 5 pgs. (Ptf's Ex. CX-1310).
- Sa-So Sargent-Sowell Inc. brochure, 7 pgs. (Ex. BRX 206).
- "Home & Auto" ad (Nov. 1980), 3 pgs. (Ex BRX 216).
- "Mag-Lite", "Standard Head "D" & "C" Size Commercial Specifications", 2 pg. marked Confidential—Counsel Eyes Only—(Ex BRX 119).
- G.T. Price Products, Inc. "The Professional Line" catalog, 9 pgs. (Ptf's Ex. CX 1431).
- National Law Enforcement Supply, "Off-Duty Gift Catalog", 5 pgs. (Ptf's Ex. CX 1313).
- "Magnificent!", Mag Charger by Mag Instrument, 2 pg. ad May 1984 (Ex. BRX 213).
- Mag Lite ad "They demand . . . the very best.", 1 pg. (Ex. BRX 291).
- Mag-Lite™ ad, "Strength & Reliability", 1 pg. (Ex. BRX 202 (Depo. Ex. PX 82)).
- "The Last Flashlight You'll Ever Have to Buy" (Ptf's Ex. 3050).
- The Sunday Oregonian, Dec. 1982 "From: GI Joe's", 1 pg. ad re Mag-Lite (Ptf's Ex. 3055).
- Mag-Lite, 1 pg. ad by The 63rd CSGA Annual National Convention and Exhibition, Feb. 3-6, 1980 (Ex. BRX 219).
- Mag Instrument ad, 1 pg. (Ex. BRX 211).
- Mag-Lite add, 1 pg. by Nationwide Sports Distributor, (Ex. BRX 220).
- "Mag-Lite™, The right light . . . for the job." 4 pg. brochure, (Ptf's Ex. 425).
- "A precision tool . . ." by Mag-lite, 1 pg. (Ptf's Ex. 422-A).
- "Pick up the lighters", by Mag Instrument, 1 pg. ad (Ptf's Ex. 422-B).
- Mag-lite®, 1 pg. ad re C-Cell & D-Cell, (Ptf's Ex. 483).
- View of flashlight, Ex. DX 5625.
- View of flashlight, Ex. DX 5626.
- View of flashlight Ex. DX 5628.
- View of flashlight, Ex. DX 5629.
- View of flashlight, Ex. DX 5640.
- View of flashlight, Ex. DX 5641.
- View of flashlight, Ex. DX 5642.
- View of flashlight, Ex. DX 5643.
- View of flashlight, (Ptf's Ex. 92).
- View of flashlight, (Ptf's Ex. 93).
- View of flashlight, (Ptf's Ex. 95).
- View of flashlight, (Ptf's Ex. 96).
- View of flashlight, (Ptf's Ex. 98).
- View of flashlight, (Ptf's Ex. 100).
- View of flashlight, (Ptf's Ex. 103).
- View of flashlight, (Ptf's Ex. 104).
- View of flashlight, (Ptf's Ex. 106).
- View of flashlight, (Ptf's Ex. 108).
- View of flashlight, (Ptf's Ex. 247).
- View of flashlights, (6) (Ptf's Ex. 415).
- View of flashlight, (Ptf's Ex. 699).
- View of flashlight, (Ptf's Ex. 701).
- View of flashlight, (Ptf's Ex. 702).
- View of flashlight, (Ptf's Ex. 704).
- View of flashlight, (Ptf's Ex. 709).
- View of flashlight, (Ptf's Ex. 713).
- View of flashlight, (Ptf's Ex. 714).

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View of flashlight, (Ptf's Ex. 724).
View of flashlight, (Ptf's Ex. 728).
View of flashlight, (Ptf's Ex. 748 or 743?) (has carrying strap).
View of flashlight, (Ptf's Ex. 740).
View of flashlight, (Ptf's Ex. 744).
View of flashlight, (Ptf's Ex. 747).
Eveready Masterlites, The Light of a New Age, 11 pg. catalog, marked Ex. DX 5326.
Eveready Daylo, Dealer's Edition Catalog No. 736, (1918), 8 pgs. (Ex. DX 5327).
"The History of Portable Light in America", 24 pg. by Eveready (Ex. DX 5325).
"Eveready Automatic Spotlights", 15 pg. brochure (Ex. DX 5324).
50-pg. booklet, 1st legible page reads "To the founders and past presidents of the Bridgeport Metal Goods Manufacturing Company . . .", (Ex. No. not legible).
View of flashlight with Coca Cola can and ruler, marked "5001".
View of flashlight with Coca Cola can and ruler, marked "5002".
View of flashlight with Coca Cola can and ruler, marked "5003".
View of flashlight with Coca Cola can and ruler, marked "5004".
View of flashlight with Coca Cola can and ruler, marked "5005".
View of flashlight with Coca Cola can and ruler, marked "5006".
View of flashlight with Coca Cola can and ruler, marked "5007".
View of flashlight with Coca Cola can and ruler, marked "5008".
View of flashlight with Coca Cola can and ruler, marked "5009".
View of flashlight with Coca Cola can and ruler, marked "5023".
View of flashlight with Coca Cola can and ruler, marked "5024".
View of flashlight with Coca Cola can and ruler, marked "5025".
View of flashlight with Coca Cola can and ruler, marked "5032".
View of flashlight with Coca Cola can and ruler, marked "5033".
View of flashlight with Coca Cola can and ruler, marked "5034".
View of flashlight with Coca Cola can and ruler, marked "5035".
View of flashlight with Coca Cola can and ruler, marked "5036".
View of flashlight with Coca Cola can and ruler, marked "5045".
View of flashlight with Coca Cola can and ruler, marked "5048".
View of flashlight with Coca Cola can and ruler, marked "5049".
View of flashlight with Coca Cola can and ruler, marked "5050".
View of flashlight with Coca Cola can and ruler, marked "5051".
View of flashlight with Coca Cola can and ruler, marked "5052".
View of flashlight with Coca Cola can and ruler, marked "5056".
View of flashlight with Coca Cola can and ruler, marked "5057".
View of flashlight with Coca Cola can and ruler, marked "5060".
View of flashlight with Coca Cola can and ruler, marked "5061".
View of flashlight with Coca Cola can and ruler, marked "5062".
View of flashlight with Coca Cola can and ruler, marked "5063".
View of flashlight with Coca Cola can and ruler, marked "5064".
View of flashlight with Coca Cola can and ruler, marked "5065".
View of flashlight with Coca Cola can and ruler, marked "5067".
View of flashlight with Coca Cola can and ruler, marked "5074A".
View of flashlight with Coca Cola can and ruler, marked "5075A".
View of flashlight with Coca Cola can and ruler, marked "5076".
View of flashlight with Coca Cola can and ruler, marked "5078".
View of flashlight with Coca Cola can and ruler, marked "5079".
View of flashlight with Coca Cola can and ruler, marked "5080".
View of flashlight with Coca Cola can and ruler, marked "5081".
View of flashlight with Coca Cola can and ruler, marked "5082".
View of flashlight with Coca Cola can and ruler, marked "5083".
View of flashlight with Coca Cola can and ruler, marked "5084".
View of flashlight with Coca Cola can, "Maxlite 5-3-2" box and ruler, marked "5111".
View of flashlight with Coca Cola can and ruler, marked "5112".
View of flashlight with Coca Cola can and ruler, marked "5115".
View of flashlight with Coca Cola can and ruler, marked "5118".
View of flashlight with Coca Cola can and ruler, marked "5118A".
View of flashlight with Coca Cola can and ruler, marked "5126".
View of flashlight with Coca Cola can and ruler, marked "5127".
View of flashlight with Coca Cola can and ruler, marked "5129".
View of flashlight with Coca Cola can and ruler, marked "5130".
View of flashlight with Coca Cola can and ruler, marked "5131".
View of flashlight with Coca Cola can and ruler, marked "5132".
View of flashlight with Coca Cola can and ruler, marked "5133".
View of flashlight with Coca Cola can and ruler, marked "5137A".

US D530,439 S

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View of flashlight with Coca Cola can and ruler, marked "5145".

View of flashlight with Coca Cola can and ruler, marked "5147".

View of flashlight with Coca Cola can and ruler, marked "5149".

View of flashlight with Coca Cola can and ruler, marked "5154".

View of flashlight with Coca Cola can and ruler, marked "5279".

View of flashlight with Coca Cola can and ruler, marked "5300".

View of flashlight with Coca Cola can, "Fulton" box and ruler, marked "5301".

View of flashlight with Coca Cola can, "Fulton" box and ruler, marked "5302".

View of flashlight with Coca Cola can, "Rayovac Police Flashlight" box and ruler, marked "5303".

View of flashlight with Coca Cola can and ruler, marked "5304".

View of flashlight with Coca Cola can and ruler, marked "5305".

View of flashlight with Coca Cola can and ruler, marked "5306".

View of flashlight with Coca Cola can and ruler, marked "5307".

View of flashlight with Coca Cola can and ruler, marked "5308".

View of flashlight with Coca Cola can and ruler, marked "5309".

View of flashlight with Coca Cola can and ruler, marked "5310".

View of flashlight with Coca Cola can and ruler, marked "5311".

View of flashlight with Coca Cola can and ruler, marked "5312".

View of flashlight with Coca Cola can and ruler, marked "5313".

View of flashlight with Coca Cola can and ruler, marked "5314".

View of flashlight with Coca Cola can and ruler, marked "5315".

View of flashlight with Coca Cola can and ruler, marked "5315".

View of flashlight with Coca Cola can and ruler, marked "5317".

View of flashlight with Coca Cola can and ruler, marked "5318".

View of flashlight with Coca Cola can and ruler, marked "5319".

View of flashlight with Coca Cola can and ruler, marked "5320".

View of flashlight with Coca Cola can and ruler, marked "5321".

View of flashlight with Coca Cola can and ruler, marked "5322".

View of flashlight with Coca Cola can and ruler, marked "5841".

View of flashlight with Coca Cola can and ruler, marked "5845".

View of flashlight with Coca Cola can and ruler, marked "5846".

View of flashlight with Coca Cola can and ruler, marked "5971".

View of flashlight with Coca Cola can and ruler, marked "5972".

View of flashlight with Coca Cola can and ruler, marked "5973".

View of flashlight with Coca Cola can and ruler, marked "5974".

View of flashlight with Coca Cola can, "Bianchi" box and ruler, marked "6005A".

View of flashlight with Coca Cola can and ruler, marked "6005A".

View of flashlight with Coca Cola can and ruler, marked "6112".

View of flashlight with Coca Cola can and ruler, marked "6118".

View of flashlight with Coca Cola can and ruler, marked "6119".

View of flashlight with Coca Cola can and ruler, marked "6120".

View of flashlight with Coca Cola can and ruler, marked "6121".

View of flashlight with Coca Cola can and ruler, marked "6124".

View of flashlight with Coca Cola can, container, and ruler, marked "12A".

View of flashlight with Coca Cola can, "Little Commander Pocketlight" packaging and ruler, marked "468".

View of flashlight with Coca Cola can and ruler, marked "2577".

View of flashlight with Coca Cola can and ruler, marked "2578".

View of flashlight with Coca Cola can and ruler, marked "2579".

View of flashlight with Coca Cola can and ruler, marked "2580".

View of flashlight with Coca Cola can and ruler, marked "2581".

View of flashlight with Coca Cola can and ruler, marked "2582".

View of flashlight with Coca Cola can and ruler, marked "2584".

View of flashlight with Coca Cola can and ruler, marked "2570".

View of flashlight with Coca Cola can and ruler, marked "2571".

View of flashlight with Coca Cola can and ruler, marked "2572".

View of flashlight with Coca Cola can and ruler, marked "2574".

View of flashlight with Coca Cola can and ruler, marked "2677".

View of flashlight with Coca Cola can and ruler, marked "2742".

View of flashlight with Coca Cola can and ruler, marked "2749".

View of flashlight with Coca Cola can and ruler, marked "2753".

View of flashlight with Coca Cola can and ruler, marked "2755".

View of flashlight with Coca Cola can and ruler, marked "2874".

View of flashlight with Coca Cola can and ruler, marked "3717".

View of flashlight marked "2678".

View of flashlight marked "2679".

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Page 6

- View of flashlight, with two additional parts, marked "2580".
- View of flashlight with ruler.
- View of flashlight with Coca Cola can and ruler, marked "464 (CPX-55)".
- View of flashlight with Coca Cola can and ruler, marked "CPX-422".
- View of flashlight with Coca Cola can and ruler, marked "CPX-393".
- View of flashlight with Coca Cola can and ruler, marked "CPX-385".
- View of flashlight with Coca Cola can and ruler, marked "CPX-264".
- View of flashlight with Coca Cola can and ruler, marked "349".
- View of flashlight with Coca Cola can and ruler, marked "SL575".
- View of flashlight with Coca Cola can and ruler, marked "SL351".
- View of flashlight with Coca Cola can and ruler, marked "SL699".
- View of flashlight with Coca Cola can and ruler, marked "SL102".
- View of flashlight, marked Deposition Exhibit 45 (?).
- Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Central Purchasing, Inc.*, No. 89-4668 ER (JRx), filed Apr. 1990.
- Consent Judgment and Injunction in *Mag Instrument, Inc. v. Dayton Hudson Corporation*, No. 89-0529 ER (JRx), filed Feb. 1990.
- Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Gila Products Limited*, No. 89-CV-7802, filed Nov. 1988.
- Consent Judgment and Injunction in *Mag Instrument, Inc. v. Jadico Limited, Inc.*, No. 89-4259-CV-C-9, filed Jun. 1989.
- Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Jadico Limited, Inc.*, No. 89-4260-CV-C-5, filed Jul. 1989.
- Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Jomira/Advance, Inc.*, No. 89-20286 RPA, filed Aug. 1989.
- Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Jomira/Advance, Inc.*, No. 89-20447 RFP, filed Aug. 1989.
- Initial Determination, in the matter of Certain Small Aluminum Flashlights and Components Thereof, Investigation No. 337-TA-254.
- Views of the Commission, in the matter of Certain Small Aluminum Flashlights and Components Thereof, Investigation No. 337-TA-254.
- Decision in *Mag v. The U.S. Int'l Trade Commission (Kassner Imports, Inc.; Brinkmann Corporation; Brinkmann International (Hong Kong), Ltd.; and J. Baxter Brinkmann International Corporation, Intervenor*, — 88-1313 decided Feb. 15, 1989.
- Notice of Issuance of General Exclusion Order, in the matter of Certain Small Aluminum Flashlights and Components Thereof, Investigation No. 337-TA-254.
- General Exclusion Order, in the matter of Certain Small Aluminum Flashlights and Components Thereof, Investigation No. 337-TA-254.
- Opinion; Findings of Fact and Conclusions of Law, in *Kassnar Imports, Inc. v. Mag Instrument & Mag Instrument, Inc. v. Kassnar Imports, Inc.*— CV 86-802 FFF, filed Jan. 6, 1989.
- Judgment in *Kassnar Imports, Inc. v. Mag Instrument & Mag Instrument, Inc. v. Kassnar Imports, Inc.* — CV 86-802 FFF, filed Jan. 6, 1989.
- Xscribe Computer-Aided Transcription—George Price Testimony Nov. 4, 1988 "Price—Direct", pp. DA-77 through DA-81.
- Xscribe Computer-Aided Transcription—Gerald Ford Testimony Nov. 2, 1988, pp. 4, 23 & 24.
- Injunction and Partial Consent Judgment re *Mag Instrument, Inc. v. K Mart Corporation*, No. 89-1203-ER (JRx), filed Aug. 31, 1989.
- Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Longs Drug Stores Californai, Inc.*, No. C 619212, filed Jan. 22, 1990.
- Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Outdoor Sports Headquarters, Inc.*, No. C-3-89-411, filed Oct. 13, 1989.
- Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Outdoor Sports Headquarters, Inc.*, No. C-3-89-410, filed Oct. 13, 1989.
- Injunction and Consent Judgment in *Mag Instrument, Inc. v. Sears, Roebuck & Company*, No. 89-0972 ER (JRx), filed Dec. 13, 1989.
- Injunction and Consent Judgment, in *Mag Instrument, Inc. v. Sears, Roebuck and Co.*, No. 89-0972 ER (JRx), filed Jan. 17, 1990.
- Consent Judgment and Permanent Injunction, in *Mag Instrument, Inc. v. Streamlight, Inc.*, No. 85-6104 SVW(Kx), filed Jan. 16, 1986.
- Final Judgment by Consent and Permanent Injunction, in *Mag Instrument, Inc. v. Streamlight, Inc.*, No. CV-87-02530 ER (JRx), filed Sep. 10, 1990.
- Weston, "Mini Flash Lite", advertisement received in U.S. Patent & Trademark Office, Jul. 11, 1949.
- Brinkmann, Micro-Max 1 package Insert, Copyright 1987, (Photocopies of flashlight Included in Package and Pictures of Disassembled Flashlight Enclosed).

U.S. Patent

Oct. 17, 2006

US D530,439 S

FIG. 1.

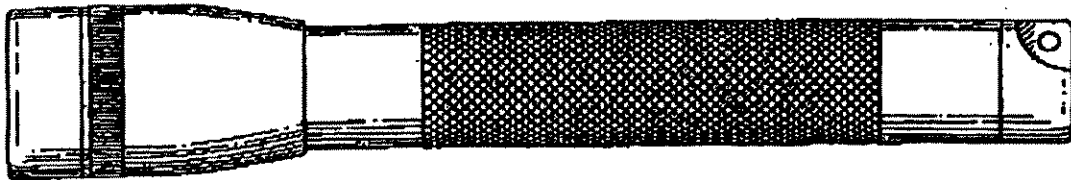
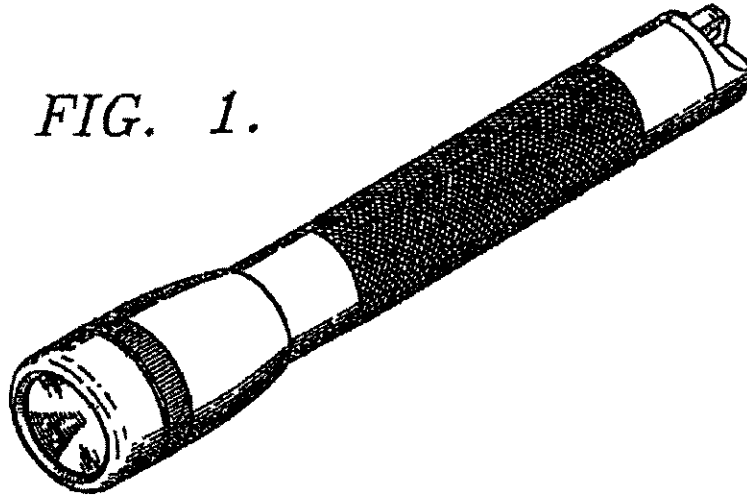


FIG. 2.

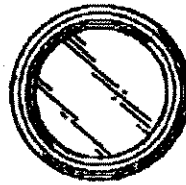


FIG. 3.

EXHIBIT 4

Int. Cl.: 11

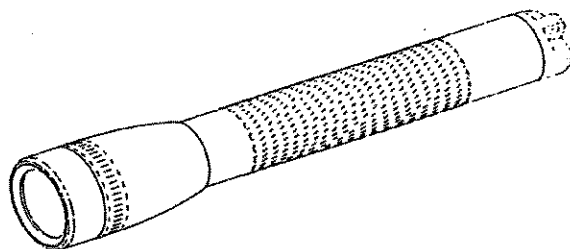
Prior U.S. Cl.: 21

Reg. No. 2,074,795

United States Patent and Trademark Office

Registered July 1, 1997

**TRADEMARK
PRINCIPAL REGISTER**



MAG INSTRUMENT, INC. (CALIFORNIA CORPORATION)
1635 SOUTH SACRAMENTO AVENUE
ONTARIO, CA 91776

FOR: FLASHLIGHTS, IN CLASS 11 (U.S. CL. 21).

FIRST USE 1-0-1984; IN COMMERCE 1-0-1984.

THE MARK IS THE SHAPE, STYLE AND OVERALL APPEARANCE OF THE FLASHLIGHT ITSELF WHICH IS CHARACTERIZED BY THE RATIO OF THE LENGTH OF THE

HEAD TO THE OVERALL LENGTH OF THE FLASHLIGHT, THE RATIO OF THE OUTER DIAMETER OF THE HEAD TO THE OUTER DIAMETER OF THE BARREL, AND THE PROFILE OF THE TRANSITION FROM THE GREATEST OUTER DIAMETER OF THE HEAD TO THE OUTER DIAMETER OF THE BARREL.

SEC. 2(F).

SER. NO. 74-403,053, FILED 6-14-1993.

RANDY RICARDO, EXAMINING ATTORNEY

EXHIBIT 5





EXHIBIT 6

Int. Cl.: 11

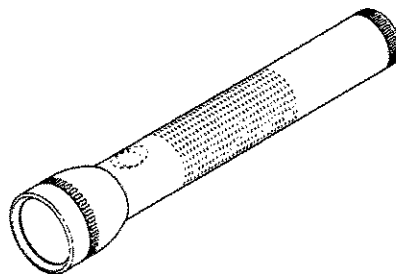
Prior U.S. Cls.: 13, 21, 23, 31 and 34

United States Patent and Trademark Office

Reg. No. 2,687,693

Registered Feb. 18, 2003

**TRADEMARK
PRINCIPAL REGISTER**



MAG INSTRUMENT, INC. (CALIFORNIA CORPORATION)
1635 SOUTH SACRAMENTO AVENUE
ONTARIO, CA 917611083

FOR: FLASHLIGHTS, IN CLASS 11 (U.S. CLS. 13, 21, 23, 31 AND 34).

FIRST USE 0-0-1979; IN COMMERCE 0-0-1979.

OWNER OF U.S. REG. NO. 2,074,795.

THE MARK CONSISTS OF THE CONFIGURATION OF THE SHAPE, STYLE, AND OVERALL APPEARANCE OF THE FLASHLIGHT, WHICH IS CHARACTERIZED BY THE RATIO OF (RANGING APPROXIMATELY BETWEEN 0.24 TO 0.11) OF THE LENGTH OF THE HEAD TO THE OVERALL LENGTH OF THE FLASHLIGHT, THE RATIO (OF

APPROXIMATELY 1.44) OF THE OUTER DIAMETER OF THE HEAD TO THE OUTER DIAMETER OF THE BARREL, THE PROFILE OF THE TRANSITION FROM THE GREATEST OUTER DIAMETER OF THE HEAD TO THE OUTER DIAMETER OF THE BARREL, AND THE OVERALL SLEEK APPEARANCE CREATED BY THE CONSTANT PROFILE OF THE BARREL UNINTERRUPTED BY A PROTRUDING SWITCH. THE FEATURES SHOWN IN BROKEN LINES FORM NO PART OF THE MARK.

SEC. 2(F).

SER. NO. 75-502,427, FILED 6-15-1998.

CATHERINE CAIN, EXAMINING ATTORNEY

EXHIBIT 7



**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Percy Anderson and the assigned discovery Magistrate Judge is Ralph Zarefsky.

The case number on all documents filed with the Court should read as follows:

CV08- 2781 PA (RZx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MAG INSTRUMENT, INC., a California corporation,
v. PLAINTIFF,
JS PRODUCTS, INC., a Nevada corporation, and DOES 1-10,
DEFENDANTS.

CASE NUMBER
CV08-02781 PA (RZW)

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney

Robert C. Weiss, whose address is:

JONES DAY
555 South Flower Street, 50th Floor
Los Angeles, CA 90071
(213) 489-3939

An answer to the COMPLAINT, _____ AMENDED COMPLAINT,
(1", 2", etc.)
 COUNTERCLAIM, CROSS-CLAIM which is herewith served upon you within 20 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will
be taken against you for the relief demanded in the complaint.

CLERK, U. S. DISTRICT COURT

NATALIE LONGORIA

By _____
Deputy Clerk



(SEAL OF THE COURT)

DATE: APR 29 2008

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) MAG INSTRUMENT, INC., a California corporation	DEFENDANTS JS Products, Inc., a Nevada corporation, and DOES 1-10
(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): San Bernardino	County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):
(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Robert C. Weiss JONES DAY 555 South Flower Street, 50th Floor Los Angeles, CA 90071 (213) 489-3939	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:30%; border: none;">Citizen of This State</td> <td style="width:10%; border: none; text-align: center;">PTF</td> <td style="width:10%; border: none; text-align: center;">DEF</td> <td style="width:40%; border: none;"></td> <td style="width:10%; border: none; text-align: center;">PTF</td> <td style="width:10%; border: none; text-align: center;">DEF</td> </tr> <tr> <td style="border: none;"></td> <td style="border: none; text-align: center;"><input type="checkbox"/> 1</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 1</td> <td style="border: none;">Incorporated or Principal Place of Business in this State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 4</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF		PTF	DEF		<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF	DEF		PTF	DEF																				
	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No
 MONEY DEMANDED IN COMPLAINT: \$ To Be Determined

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Patent Infringement -- 35 United States Code, Section 271, et seq.
 Trademark Infringement -- 15 United States Code, Section 1051, et seq.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities /Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTIC <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Liquor Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUIT <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? No Yes

If yes, list case number(s):

CV08-02781

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM JS-44C, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? No Yes

If yes, list case number(s): See Notice Of Related Cases

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- A. Appear to arise from the same or substantially identical transactions, happenings, or events;
 - B. Involve the same or substantially the same parties or property;
 - C. Involve the same patent, trademark or copyright;
 - D. Call for determination of the same or substantially identical questions of law, or
 - E. Likely for other reasons may entail unnecessary duplication of labor if heard by different judges.

IX. VENUE: List the California County, or State if other than California, in which EACH named plaintiff resides (Use an additional sheet if necessary)
 Check here if the U.S. government, its agencies or employees is a named plaintiff.

San Bernardino

List the California County, or State if other than California, in which EACH named defendant resides. (Use an additional sheet if necessary).
 Check here if the U.S. government, its agencies or employees is a named defendant.

Los Angeles

List the California County, or State if other than California, in which EACH claim arose. (Use an additional sheet if necessary)
Note: In land condemnation cases, use the location of the tract of land involved.

Los Angeles

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Chak A. Katt

Date April 29, 2008

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relative to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))