

ORIGINAL

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10 IN THE UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 V.S.R. LOCK, INC., a Nevada Corporation

13 Plaintiff,

CV-S-05-0764-JCM-LRL

14 vs.

15 ATLANTIC CITY COIN & SLOT SERVICE
16 COMPANY, INC., a New Jersey Corporation;
17 and TC MILLWORK, INC., a Pennsylvania
18 Corporation.

Defendants.

19 **COMPLAINT FOR PATENT INVALIDITY; DAMAGES**
20 **JURY DEMAND**

21 Plaintiff, V.S.R. Lock, Inc., for its Complaint against Atlantic City Coin & Slot Service
22 Company, Inc. and TC Millwork, Inc., (collectively referred to as "Defendants") allege and aver as
23 follows:

24 **JURISDICTION AND VENUE**

25 1. This Court has jurisdiction of this Complaint under 28 U.S.C. §§ 1331, 1338 (a-b), 2201 (a)
26 and 2202. Venue is proper under 28 U.S.C. §§ 1391 (b-c).

27 **PARTIES**

28 2. Plaintiff V.S.R., Inc. is a Nevada corporation with its principal place of business at 6440
Polaris Avenue, Las Vegas, Nevada 89118.

3. Upon information and belief, Defendant Atlantic City Coin & Slot Service Company, Inc.,
("Atlantic City Coin") is a New Jersey Corporation, with its principal place of business in Nevada at

1 1120 Palms Airport Drive, Ste. F, Las Vegas, Nevada 89119 and its principal place of business in
2 New Jersey at 201 West Decatur Avenue, Pleasantville, New Jersey 08232.

3 4. Upon information and belief, Defendant TC Millwork, Inc. is a Pennsylvania Corporation
4 with its principal place of business at 600 Center Street, Bensalem, Pennsylvania 19020.

5 **ALLEGATIONS AND CLAIMS FOR RELIEF**

6 5. Plaintiff manufactures in the State of Nevada and markets, among other things, a gaming
7 machine base that also functions as a footrest for casino patrons (hereinafter referred to as "Plaintiff's
8 product.")

9 6. Upon information and belief, Defendants are co-assignees of United States Design Patent
10 No. D492,363 entitled "GAMING DEVICE BASE" (hereinafter "the '363 Design Patent") and work
11 in conjunction with each other with respect to the attempted enforcement of the patent and the alleged
12 anti-competitive practices alleged herein. (See United States Design Patent No. D492,363 attached
13 hereto as Exhibit A.)

14 **FIRST CLAIM FOR RELIEF**

15 (Declaratory Judgment of Patent Invalidity – United States Patent D492,363)

16 7. Upon information and belief, the '363 Design Patent is invalid pursuant to 35 U.S.C. §102
17 as anticipated by the prior art and pursuant to 35 U.S.C. §103 as obvious over the prior art including at
18 least United States Patent No. 4,678,234 ("234"), issued on July 7, 1987; United States Patent No.
19 4,991,908 ("908"), issued on February 12, 1991; United States Patent No. 5,419,618 ("618"), issued
20 on May 30, 1995; United States Patent No. Des. 367,968 ("968"), issued on March 19, 1996; United
21 States Patent No. 5,577,806 ("806"), issued on November 26, 1996; and United States Patent No.
22 5,584,535 ("535"), issued on December 17, 1996.

23 8. In addition and/or in the alternative, the '363 Design Patent is either invalid or
24 unenforceable because of inequitable conduct in its prosecution. The inequitable conduct includes,
25 but is not limited to, violation of the provisions of 37 C.F.R. §1.56 which consists of deliberately
26 withholding from the Examiner material fact(s) which include the fact that the claimed "ornamental"
27 feature was primarily intended to function as a footrest and also as a flip-up door for a storage area.

28 9. Upon information and belief, during the entire period between the filing of the application

1 for the '363 Design Patent and the issuance of the '363 Design Patent, Defendants' counsel knew that
 2 the claimed feature of the design primarily functioned as a footrest and at no time did counsel inform
 3 the Examiner of that fact. But for this willful nondisclosure, the '363 patent would not have issued.

4 10. The '363 Design Patent is invalid pursuant to 35 U.S.C. §171 in that the patented design is
 5 dictated by functional considerations and is not "ornamental" in nature as required by statute.

6 11. The Defendants have made allegations of patent infringement against Plaintiff and
 7 therefore an actual and justifiable controversy exists between the parties as to the infringement,
 8 validity and enforceability of the patent-in-suit.

9 13. Declaratory relief is appropriate at this time so that the parties may ascertain their rights
 10 and duties relating to such patent.

11 14. The patent-in-suit is invalid, unenforceable and not infringed by Plaintiff's product and
 12 should be declared as such by the Court.

13 15. Upon information and belief, this is an exceptional case under 35 U.S.C. §285 entitling the
 14 Plaintiff to its reasonable attorney's fees.

15 **SECOND CLAIM FOR RELIEF**

16 (Interference with Contract and Prospective Economic Advantage)

17 16. Plaintiff incorporates by reference paragraphs 1-15 of this Complaint as if fully set
 18 forth herein at this point.

19 17. Defendants knew that Plaintiff had prospective contractual relationships with third
 20 parties for the sale of significant quantities of its gaming machine base.

21 18. Defendants intended to harm and prevent those relationships by: (a) making false
 22 statements about infringement of the '363 Design Patent; (b) making false representations that a suit
 23 had been filed to enforce the '363 Design Patent before any suit was ever filed; and (c) filing a
 24 Complaint, which it knows is based upon an invalid patent which was acquired by inequitable conduct
 25 and which is not infringed.

26 19. There is no privilege or justification for Defendants' unlawful conduct, and upon
 27 information and belief Plaintiff lost contracts and/or potential customers for its gaming machine base
 28 as a result of the Defendants' conduct.

20. Defendants' willful and tortious conduct has damaged Plaintiff in an amount to be proven at trial.

21. Plaintiff has been forced to hire attorneys to pursue this claim and is therefore entitled to recover its reasonable attorney's fees and costs.

THIRD CLAIM FOR RELIEF

(§43(a) Lanham Act Claim)

22. Plaintiff incorporates by reference paragraphs 1-21 of this Complaint as if fully set forth herein at this point.

23. Based on the conduct alleged herein the Defendants' have engaged in unfair competition by statements made in interstate commerce threatening Plaintiff's customers with patent infringement litigation and by making false statements of fact to Plaintiff's customers, the effect of which was to deceive a substantial portion of the intended audience.

24. Defendants' conduct is in violation of §43(a) of the Lanham Act, 15 U.S.C. §1125(a) entitling the Plaintiff to the remedies set forth therein.

25. As a result of Defendants' conduct, Plaintiff has been damaged in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF

(Product Disparagement)

26. Plaintiff incorporates by reference paragraphs 1-25 of this Complaint as if fully set forth herein at this point.

27. The conduct and statements of Defendants regarding Plaintiff's rights to manufacture, sell, use or import footrest gaming machine bases, as alleged above, are false, disparaging and defamatory because they willfully and without justification or privilege convey to other persons (including Plaintiff's current, former, and prospective customers, dealers and distributors) statements that Plaintiff's product infringes upon Defendants' '363 Design Patent.

28. Defendants' statements have a tendency to injure Plaintiff in its occupation because as a proximate result of Defendants' publication of these statements, prospective customers have been deterred from buying Plaintiff's product and from otherwise dealing with Plaintiff, and Plaintiff has

1 accordingly suffered injury to its business and pecuniary losses in an amount to be determined at trial.

2 29. Defendants' statements, as set forth above, were oppressive, fraudulent or malicious, such
3 that both compensatory and punitive damages are warranted under NRS 42.005.

4 30. The Plaintiff has been forced to hire attorneys to prosecute this claim and is therefore
5 entitled to recover its reasonable attorney's fees.

6 **FIFTH CLAIM FOR RELIEF**

7 (Deceptive Trade Practices – Nev. Rev. Stat. §§ 598.0915, et. seq.)

8 31. Plaintiff incorporates by reference paragraphs 1-28 of this Complaint as if fully set
9 forth herein at this point.

10 32. Defendants' conduct and other activities as herein alleged, constitutes deceptive trade
11 practices under common law and Nev. Rev. Stat. § 598.0915. Nev. Rev. Stat. § 41.600 provides for a
12 private remedy for a violation of Nev. Rev. Stat. § 598.0915.

13 33. By reason of the foregoing, the Plaintiff has sustained or will sustain substantial
14 monetary injuries, loss and damages to its business, and will sustain further irreparable injury and
15 damage to said rights if such deceptive trade practices are not enjoined.

16 34. The Plaintiff has been damaged by the Defendants' willful deceptive trade practices in
17 an amount to be proven at trial.

18 35. The Plaintiff has been forced to hire attorneys to prosecute this claim and is therefore
19 entitled to recover its reasonable attorney's fees.

20 WHEREFORE, Plaintiff prays as follows:

21 a. That the patent-in-suit be declared invalid, unenforceable and not infringed and an
22 appropriate judgment entered;

23 b. That Plaintiff be awarded all of its damages, including compensatory and punitive
24 damages;

25 c. That attorney's fees and costs be awarded pursuant to 35 U.S.C. § 285;

26 d. That Defendant be enjoined from continuing any and all anti-competitive practices
27 against Plaintiff; and
28

DATED this 21st day of June, 2005.

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JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a jury on all issues triable
by jury.

DATED this 24th day of June, 2005.

WATSON ROUNDS

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EXHIBIT A

(10) **Patent No.:** **US D492,363 S**
(45) **Date of Patent:** **** Jun. 29, 2004**

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U.S. Patent

Jun. 29, 2004

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US D492,363 S

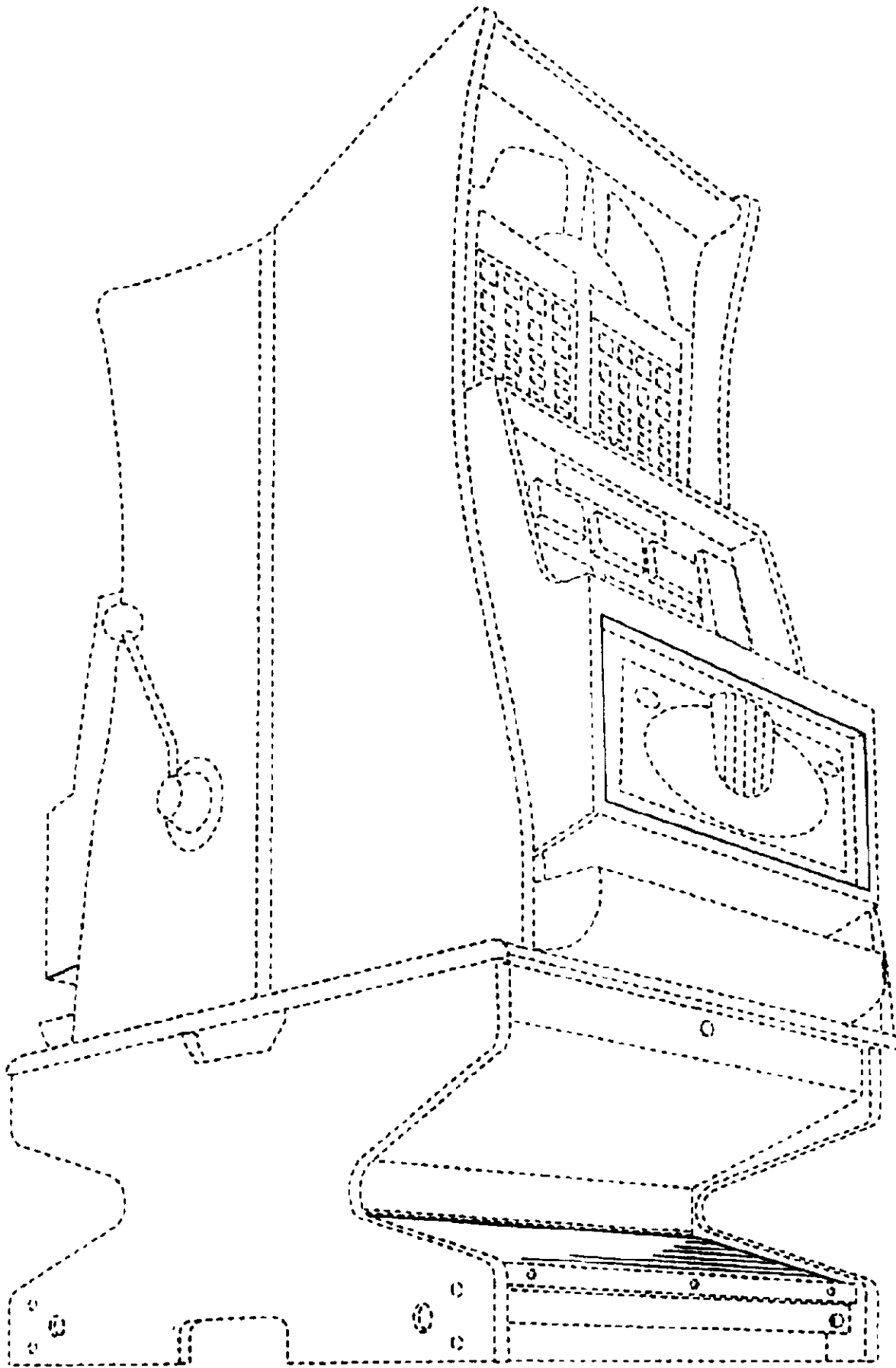


FIG. 1.

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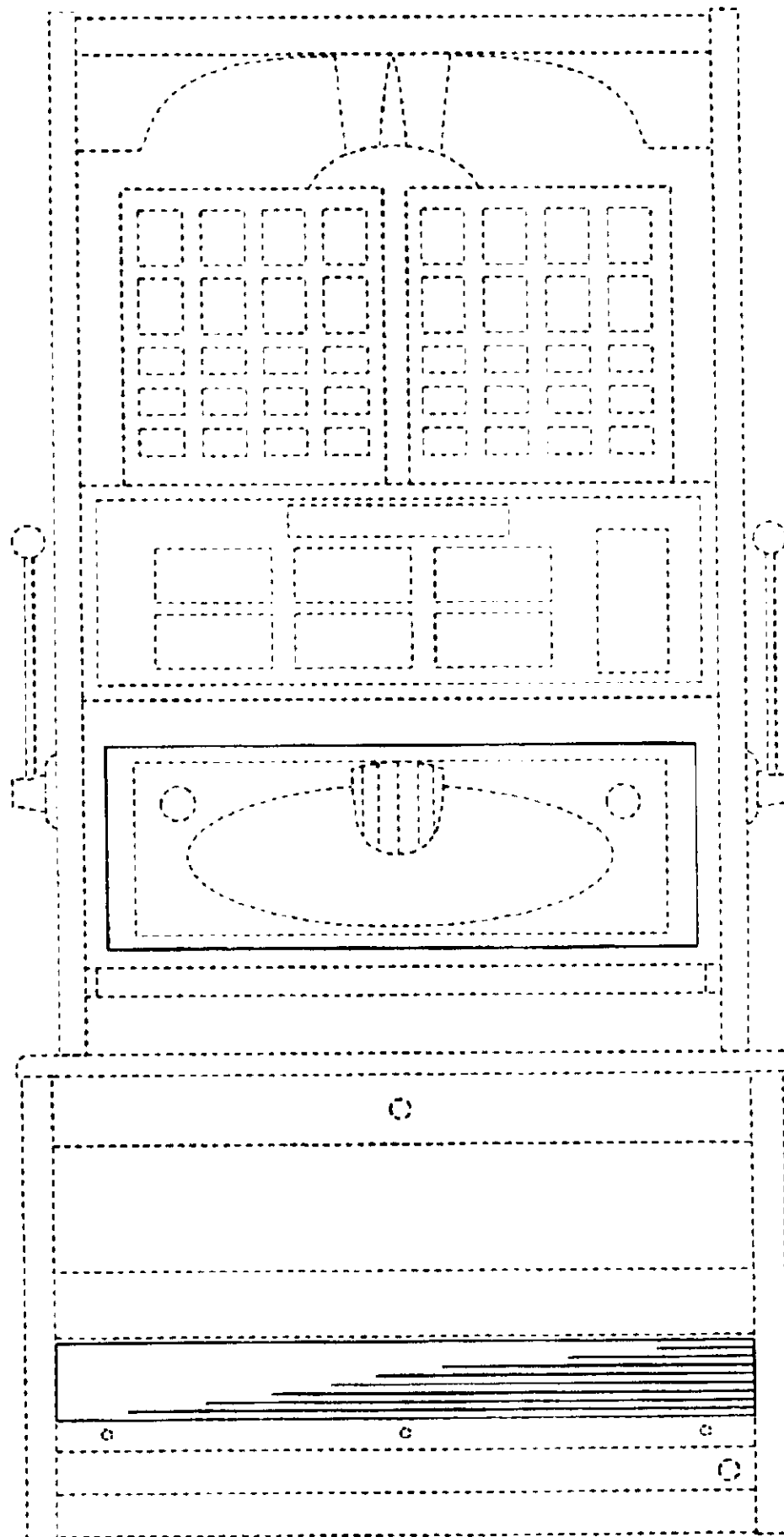


FIG. 2.

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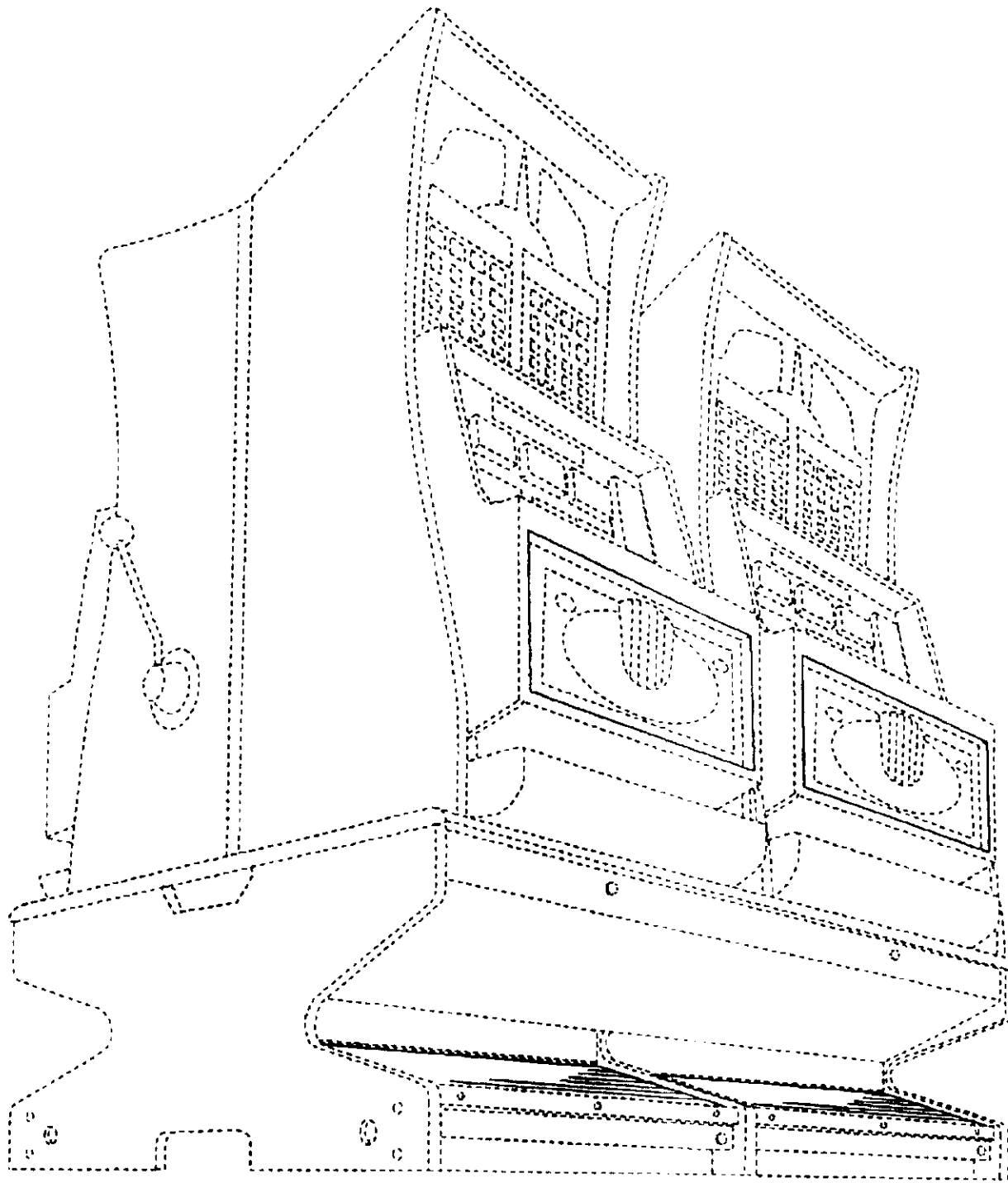


FIG. 3.

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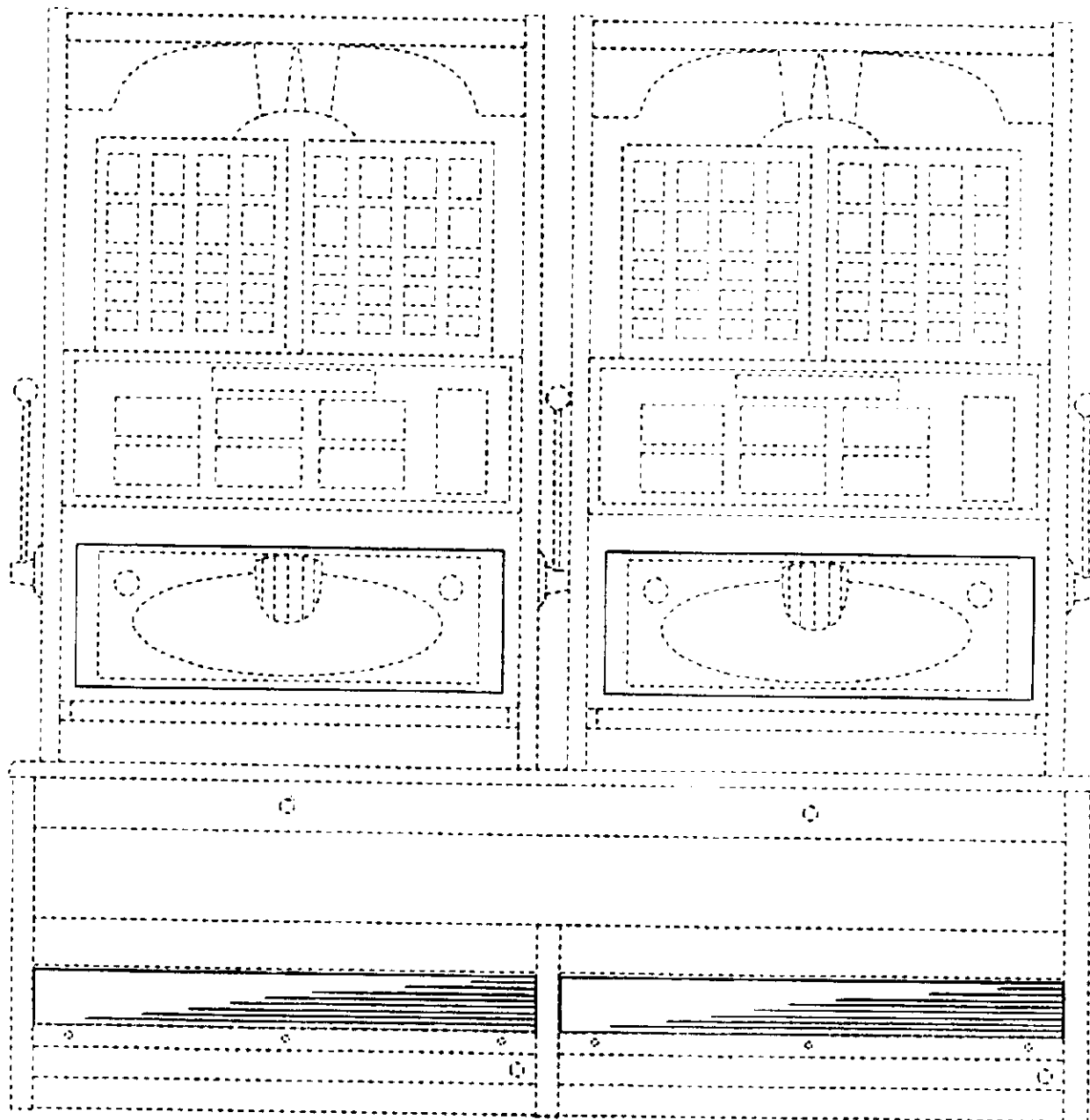


FIG. 4.