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12 *Attorneys for Plaintiff*
13 **SOFPOOL LLC**

14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

16 SOFPOOL LLC, a California Limited Liability
17 Company,

18 Plaintiff,

19 vs.

20 KMART CORPORATION, a Michigan
21 Corporation, BIG LOTS, INC., an Ohio
22 Corporation and BIG LOTS STORES, INC., an
23 Ohio Corporation

24 Defendants.

Case No. 2:10-CV-03333-LKK (JMF)

**PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

Honorable Lawrence K. Karlton

25 KMART CORPORATION, a Michigan
26 Corporation, and BIG LOTS, INC., an Ohio
27 Corporation,

28 Counterclaimants,

vs.

SOFPOOL LLC, a California Limited Liability
Company,

Counterdefendant.

1 Plaintiff Sofpool LLC (“Sofpool”) files this first amended Complaint against Defendants
2 Kmart Corporation (“Kmart”), Big Lots, Inc (“Big Lots”), and Big Lots Stores, Inc. (“Big Lots
3 Stores”), and alleges as follows:

4 **THE PARTIES**

- 5 1. Sofpool LLC is a California limited liability company residing in Rancho Cordova,
6 California.
- 7 2. Kmart Corp. is a corporation duly organized and existing under the laws of the state of
8 Michigan.
- 9 3. Big Lots, Inc. is a corporation duly organized and existing under the laws of the state of
10 Ohio.
- 11 4. Big Lots Stores, Inc. is a corporation duly organized and existing under the laws of the
12 state of Ohio.

13 **JURISDICTION**

14 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a)
15 because this action arises under the patent laws of the United States, including 35 U.S.C. § 271, et
16 seq. The Court has personal jurisdiction over Defendants because they have committed acts within
17 California and this judicial district giving rise to this action and have established minimum contacts
18 with the forum such that the exercise of jurisdiction over Defendants would not offend traditional
19 notions of fair play and substantial justice.

20 **VENUE**

21 6. Defendants have committed acts within this judicial district giving rise to this action
22 and have done business in this district, including one or more of the infringing acts of offering for
23 sale, selling and using infringing products and providing service and support to its customers in this
24 district. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

25 **FACTUAL BACKGROUND**

26 7. On October 14, 2003, United States Patent No. D480, 817 (the “817 Patent”) was
27 duly and legally issued for an invention entitled “Above-Ground Swimming Pool.” Sofpool
28 currently holds all rights, title, and interest in the ‘817 Patent, as the assignee. (A true copy of the

1 '817 Patent is attached as Exhibit 1, hereto).

2 8. Plaintiff is a manufacturer and seller of above-ground swimming pools which are
3 covered under the '817 patent.

4 9. On information and belief, Defendants manufacture, have manufactured, market, use,
5 sell, offer for sale, and/or import oval above-ground pools covered by the '817 Patent.

6 10. The "Summer Escapes™" brand of oval above-ground pools constitute exemplary
7 products which infringe the '817 patent; more specifically, the Summer Escapes™ pools having
8 dimensions of 15' x 9' x 42" constitute a direct infringement of the '817 patent.

9 11. On information and belief, the Summer Escapes™ brand of oval above-ground pools
10 is sold to Defendants' customers in an unassembled condition along with instructions for assembly.
11 Upon assembly of the Summer Escapes™ products by Defendants' customers, an oval above-ground
12 pool is created which is an infringement of the '817 patent.

13 12. On information and belief, Defendants engage in a marketing campaign which
14 includes placing advertisements which show assembled Summer Escapes™ pools which infringe the
15 '817 patent.

16 **CLAIMS FOR RELIEF**

17 **COUNT 1**

18 **INFRINGEMENT OF U.S. PATENT NO. D480,817 S**

19 13. Sofpool hereby incorporates the allegations in paragraphs 1-11 above, as if fully set
20 forth herein.

21 14. Defendants have directly infringed and continue to directly infringe the '817 Patent
22 by manufacturing, having manufactured, using, marketing, selling, offering for sale, and/or
23 importing oval above ground pools covered by the '817 Patent. Defendants are liable for direct
24 infringement of the '817 Patent pursuant to 35 U.S.C. §§ 271 and 289.

25 15. Defendants' acts of infringement have caused damage to Sofpool, and Sofpool is
26 entitled to recover the damages sustained as a result of Defendants' wrongful acts in an amount
27 subject to proof at trial. Defendants' infringement of Sofpool's exclusive rights under the '817
28 Patent will continue to damage Sofpool, causing irreparable harm for which there is no adequate

1 remedy at law.

2 WHEREFORE, Sofpool prays for judgment and seeks relief against Defendants as follows:

- 3 a. For judgment that Defendants have infringed and will continue to infringe the
- 4 '817 Patent;
- 5 b. For an accounting by Defendants;
- 6 c. For preliminary and permanent injunctions enjoining the aforesaid acts of
- 7 infringement by Defendants, their officers, agents, servants, employees,
- 8 subsidiaries, and attorneys, and those persons in privity or acting in concert
- 9 with them, including related individuals and entities, customers,
- 10 representatives, OEMs, dealers, and distributors;
- 11 d. For actual damages together with pre- and post-judgment interest;
- 12 e. For the additional remedy for infringement of Plaintiff's '817 design patent as
- 13 enumerated in 35 U.S.C. § 289.
- 14 f. For all costs of suit; and
- 15 g. For such other and further relief as the Court may deem just and proper.

16 **DEMAND FOR JURY TRIAL**

17 Under Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by
18 jury of all issues properly triable by jury.

19 DATED: March 31, 2011

LAW OFFICE OF JACK SLOBODIN

20 By: _____ /s/ Jack Slobodin

21 JACK SLOBODIN
22 Attorney for Plaintiff
Sofpool LLC

23 DATED: March 31, 2011

COSTELLO LAW CORPORATION

24 By: _____ /s/ John P. Costello

25 JOHN P. COSTELLO
26 Attorney for Plaintiff
Sofpool LLC

EXHIBIT A

(12) **United States Design Patent** (10) Patent No.: **US D480,817 S**
Carreau (45) Date of Patent: **** Oct. 14, 2003**

(54) **ABOVE-GROUND SWIMMING POOL**

(76) Inventor: **Pierre R. Carreau**, 2336 Junction Ct.,
Rancho Cordova, CA (US) 95670

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

(21) Appl. No.: **29/159,714**

(22) Filed: **Apr. 26, 2002**

(51) LOC (7) Cl. **25-03**

(52) U.S. Cl. **D25/2**

(58) Field of Search D25/2; 4/506,
4/488, 513

(56) **References Cited**

U.S. PATENT DOCUMENTS

D408,546 S * 4/1999 Carreau D25/2

* cited by examiner

Primary Examiner—Doris Clark

(74) *Attorney, Agent, or Firm*—R. Michael West

(57) **CLAIM**

The design for an above-ground swimming pool, as shown
and described.

DESCRIPTION

FIG. 1 is a left-front perspective of a first embodiment of an
above-ground swimming pool, showing my new design;

FIG. 2 is an elevational view of one side, the other side
elevational view being substantially identical, thereto;

FIG. 3 is a top plan view, thereof;

FIG. 4 is an elevational view of one end, the other end
elevational view being substantially identical, thereto; and

FIG. 5 is a bottom plan view, thereof;

FIG. 6 is a left-front perspective of a second embodiment of
an above-ground swimming pool;

FIG. 7 is an elevational view of one side, the other side
elevational view being substantially identical, thereto;

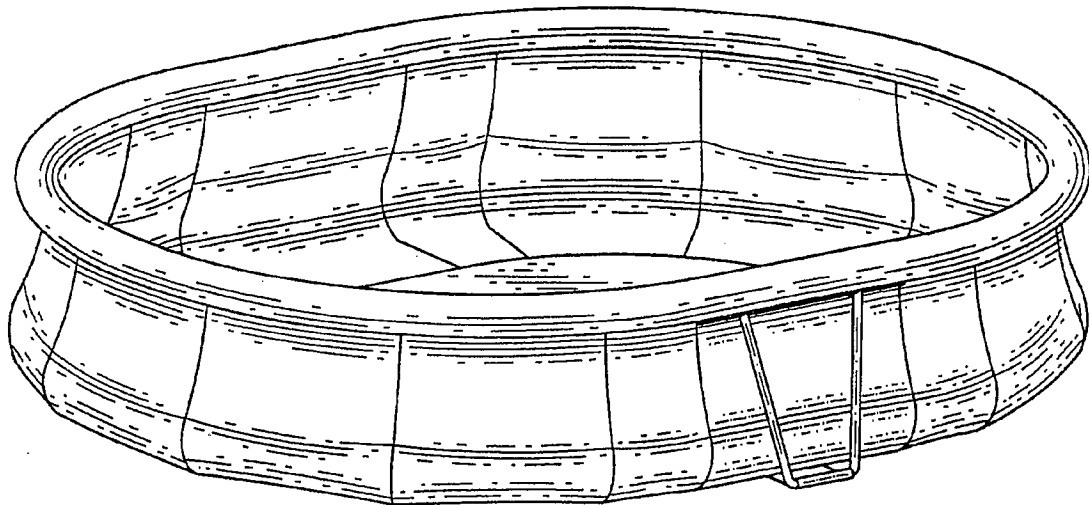
FIG. 8 is a top plan view, thereof;

FIG. 9 is an elevational view of one end, the other end
elevational view being substantially identical, thereto; and

FIG. 10 is a bottom plan view, thereof; and,

FIG. 11 is a left-front perspective view of a third embodi-
ment of an above-ground swimming pool, the broken lines
illustrate that the intermediate straight panel and strut assem-
blies are indefinitely repetitive throughout the length of the
above ground swimming pool.

1 Claim, 4 Drawing Sheets



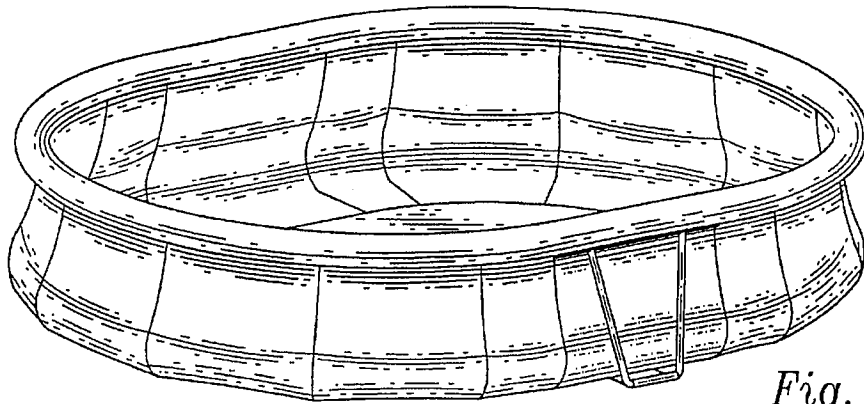


Fig. 1

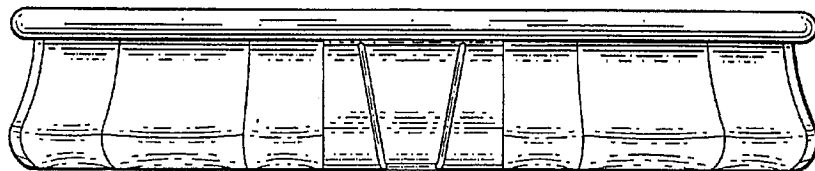


Fig. 2

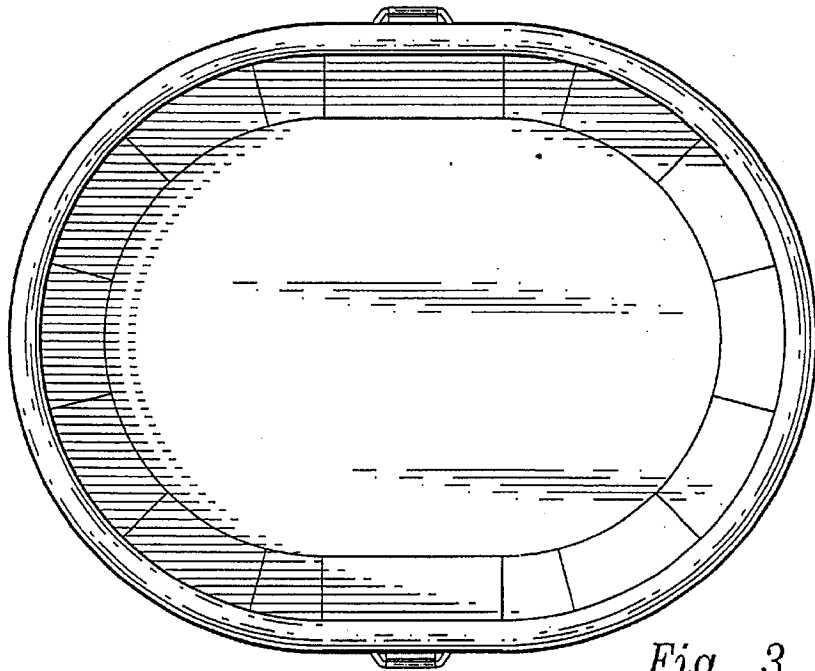


Fig. 3



Fig. 4

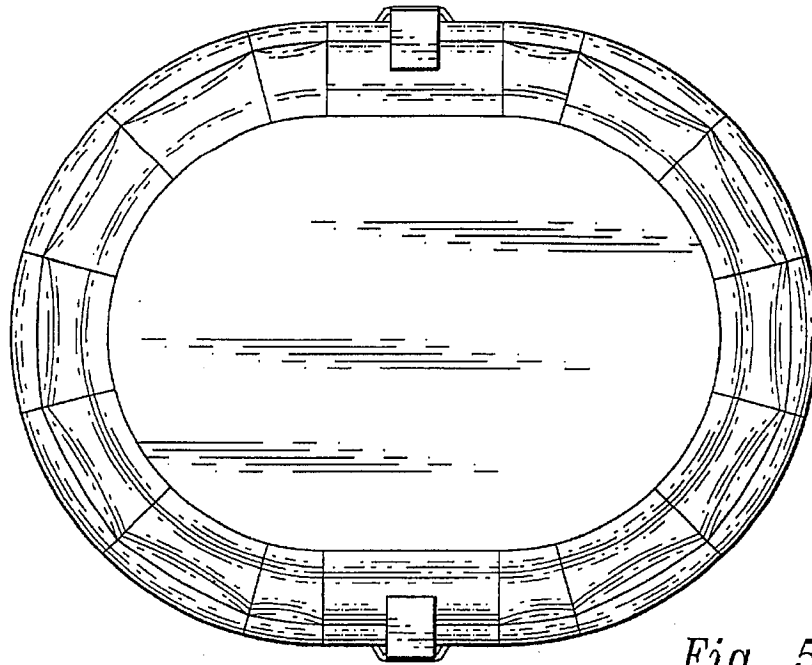


Fig. 5

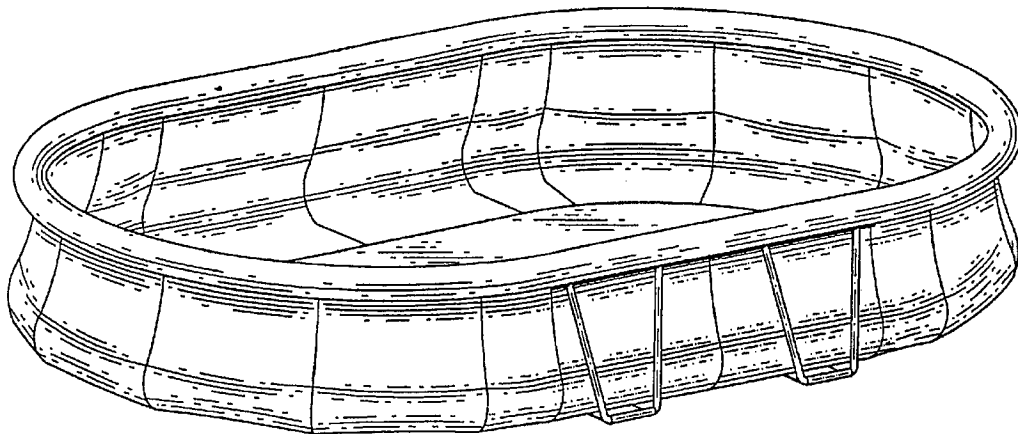


Fig. 6

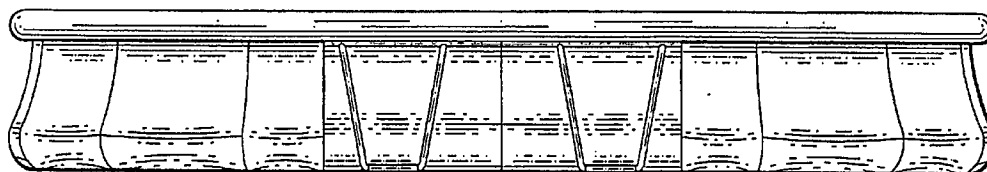


Fig. 7

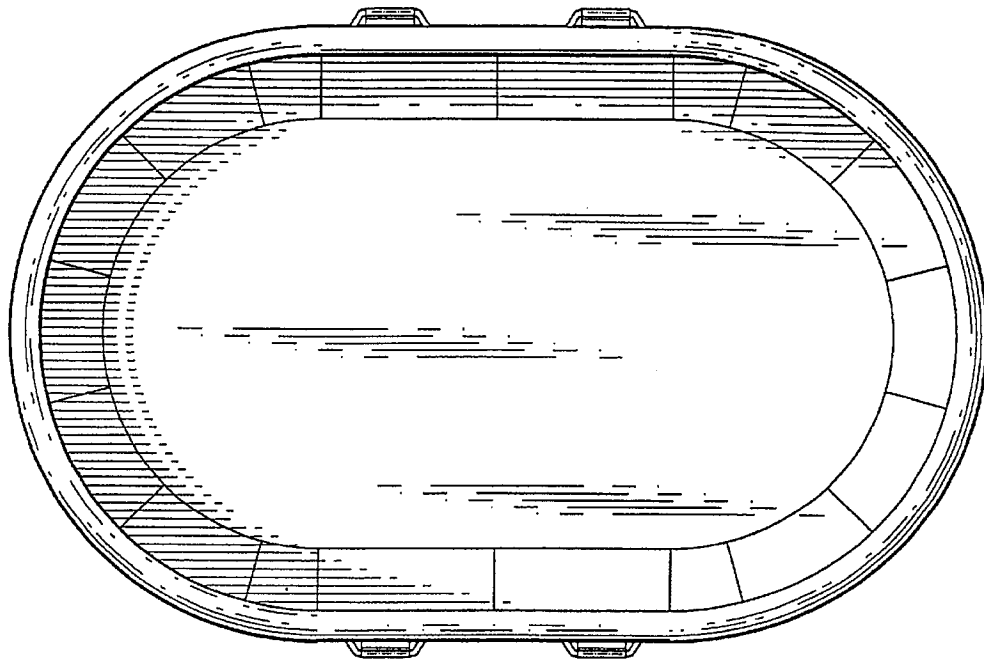


Fig. 8

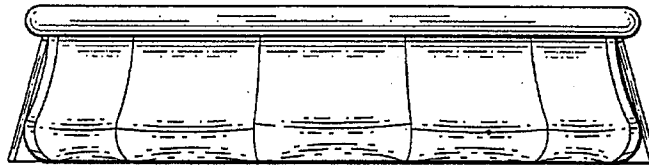


Fig. 9

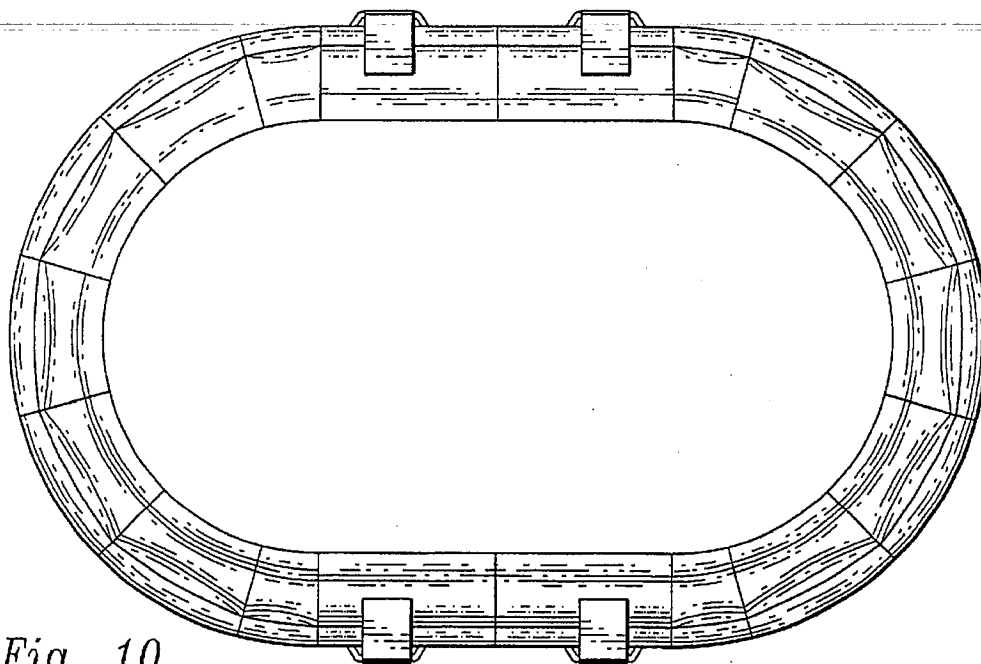


Fig. 10

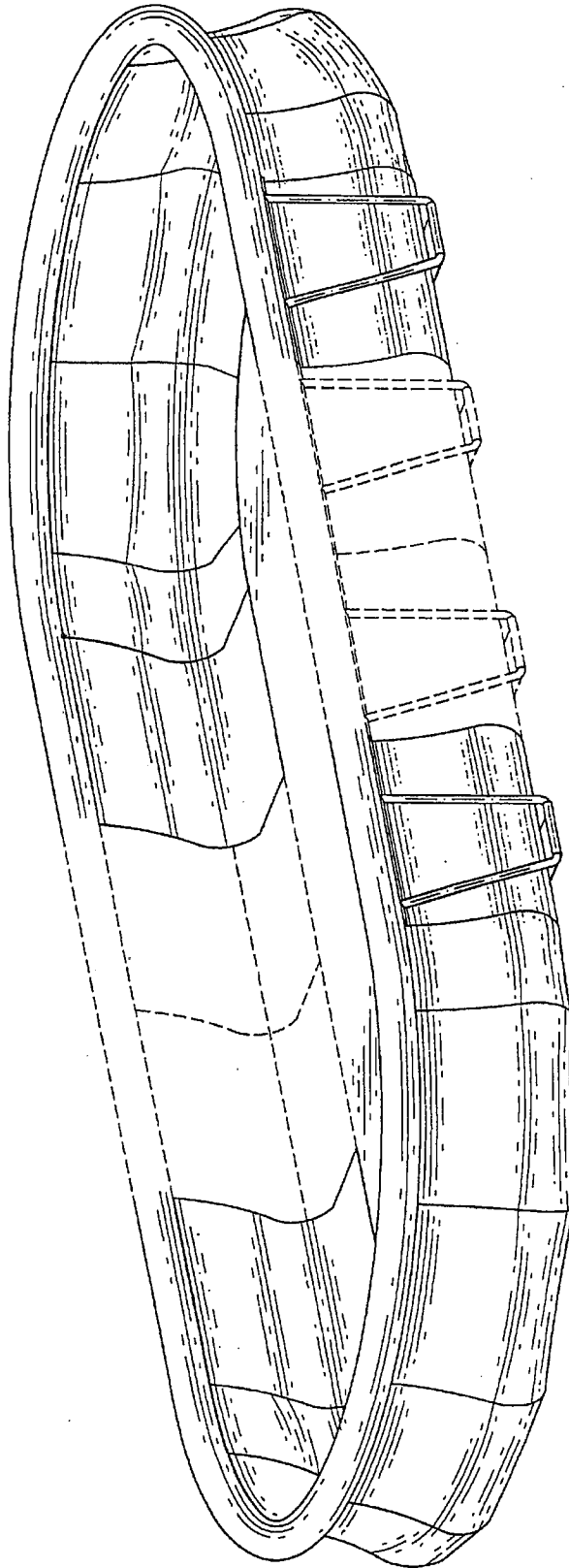


Fig. 11