

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

WILLIAM R. FLOYD, an individual,
and ROBERT E. BOWMAN, an individual,

Plaintiff,

Case No.: 4:09cv183/RS-WCS

vs.

JOHN ASHTON KERR,
an individual.

Defendant.

_____ /

**AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
AND PATENT INVALIDITY**

COMES NOW the Plaintiffs, WILLIAM R. FLOYD ("FLOYD") and ROBERT E. BOWMAN ("BOWMAN") pursuant to 28 U.S.C. §2201 and 2202, 35 U.S.C. §100 et seq., and Rule 3, Federal Rules of Civil Procedure, by and through their undersigned attorney, and file this Complaint seeking declaratory relief of patent invalidity against Defendant, JOHN ASHTON KERR ("JOHN KERR"), or, in the alternative, the correction of inventorship of U.S. Patent No. D565,785, and in support thereof allege as follows:

JURISDICTION AND VENUE

1. Plaintiff, WILLIAM R. FLOYD, is an individual residing in Monticello, Florida.
2. Plaintiff, ROBERT E. BOWMAN, is an individual residing in Tallahassee, Florida.
3. Defendant, JOHN ASHTON KERR, is an individual residing in Peraland, Texas.

4. Plaintiff FLOYD and BOWMAN are majority interest owners in WIT Industries, Inc., a Florida Corporation, with its principal place of business in Monticello, Florida.

5. Defendant, JOHN KERR, is a minority interest owner in WIT Industries, Inc.

6. This action arises under 28 U.S.C. §2201.

7. Jurisdiction is proper in this court pursuant to 28 U.S.C. §1331 as this is a civil action arising under the laws of the United States.

8. Venue is proper in this court pursuant to 28 U.S.C. §1391 because the events giving rise to this cause of action occurred primarily in this District.

GENERAL FACTUAL ALLEGATIONS

9. William Thomas Kerr of Monticello, Florida, is the named inventor of U.S. Patent No. D565,785 ("the '785 Patent"). The '785 Patent claims the ornamental design for a photocatalytic lamp module for an air purifier. A copy of the '785 Patent is attached hereto as Exhibit A.

10. On or about June 13, 2008, Mr. William Thomas Kerr passed away.

11. On information and belief all interest in the '785 Patent passed either by will or intestate to JOHN KERR, the named Defendant.

12. On or about August 16, 2004, WIT Industries received a purchase order from Waterwise, Inc., for the purchase of air purifiers which include the photocatalytic lamp module covered by the '785 Patent. On or about November 12, 2004, the first shipment of 50 such air purifiers was shipped to Waterwise, Inc. On or about November 29, 2005, the patent application which resulted in the issuance of the '785 Patent was filed listing Mr. William Thomas Kerr as the sole inventor.

13. At the time of the Patent filing Mr. William Thomas Kerr worked with FLOYD and BOWMAN at WIT Industries, Inc.

14. Mr. William Thomas Kerr, FLOYD and BOWMAN worked together to develop the invention disclosed in the '785 Patent. Additionally, a fourth individual, Mr. Lawrence Sexton, was paid by WIT Industries, Inc. to take part in developing the invention disclosed in the '785 Patent.

15. FLOYD, BOWMAN and Mr. Lawrence Sexton materially contributed to the invention, conception, and reduction to practice of the invention claimed in the '785 Patent. Therefore FLOYD, BOWMAN and Mr. Lawrence Sexton are inventors of the subject matter claimed in the '785 Patent as well as Mr. William Thomas Kerr.

16. The intent of filing the application which resulted in the '785 Patent was to assign the interest in the '785 Patent from FLOYD, BOWMAN, Mr. William Thomas Kerr and Mr. Lawrence Sexton over to WIT Industries, Inc. upon issuance of the Patent.

17. Mr. William Thomas Kerr was the primary contact for the patent attorney, Mr. Peter Loffler, hired by WIT Industries, Inc. to draft and file the application which resulted in the '785 Patent.

COUNT I
**(Plaintiffs' request for Declaratory Judgment of
Patent Invalidity Under 28 U.S.C. §2201)**

18. Paragraphs 1-17 above are incorporated herein by reference.

19. Mr. William Thomas Kerr had full knowledge that FLOYD, BOWMAN and Mr. Lawrence Sexton each materially contributed to the invention, conception and reduction to practice of the invention claimed in the '785 Patent.

20. Despite Mr. William Thomas Kerr's knowledge, he intentionally failed to communicate to Mr. Peter Loffler, the Patent Attorney, that FLOYD, BOWMAN and Mr. Lawrence Sexton should be named as inventors on the application which resulted in the '785 Patent.

21. Until recently, FLOYD and BOWMAN were unaware that Mr. William Thomas Kerr was the only listed inventor on the application that resulted in the '785 Patent.

22. The failure to name FLOYD as an inventor in the '785 Patent was not the result of any deceptive intent of FLOYD.

23. The failure to name BOWMAN as an inventor in the '785 Patent was not the result of any deceptive intent of BOWMAN.

24. At least as early as August 16, 2004, WaterWise, Inc., contracted with WIT Industries for the purchase of air purifiers including the lamp element covered by the '785 Patent. On or about November 12, 2004, WaterWise received approximately 54 of such air purifiers. These air purifiers were sold under the name "AIRWISE."

25. In August of 2008, JOHN KERR informed WIT Industries, Inc.'s customer, WaterWise, Inc., that he owned the '785 Patent and could institute a patent infringement lawsuit against WaterWise, Inc, related to WaterWise's sale of AIRWISE units.

26. JOHN KERR has had a minority interest in WIT Industries, Inc., since October of 2004.

27. JOHN KERR's threats have seriously impacted FLOYD's relationship and BOWMAN's relationship with their customers and have tarnished the reputation of WIT Industries, Inc., a business operated and owned by FLOYD, BOWMAN and JOHN KERR.

28. FLOYD and BOWMAN are under a reasonable apprehension that they may be sued for patent infringement by JOHN KERR. Accordingly, there presently exists a real controversy as to whether the '785 Patent is invalid.

29. FLOYD and BOWMAN have been damaged by JOHN KERR's actions.

30. The failure to name FLOYD, BOWMAN and Mr. Lawrence Sexton as inventors to the '785 Patent was done knowingly and with deceptive intent by the applicant of the '785 Patent. The '785 Patent should therefore be found invalid pursuant to 35 U.S.C. §§102(f), 116, 256 and 282. The product covered by the '785 Patent was offered for sale and sold more than one year prior to the date that the application (which later matured into the '785 Patent) was filed. The '785 Patent should also be found invalid pursuant to 35 U.S.C. §102(b).

WHEREFORE, Plaintiff respectfully requests a judgment declaring that U.S. Patent D565,785 is invalid in its entirety and such other relief as is just and proper.

COUNT II
(Correction of Inventorship Under 35 U.S.C. §256)

31. Paragraphs 1-17 above are incorporated herein by reference.

32. In the alternative to Count I, if the Court finds that there is no deceptive intent on the part of Mr. William Thomas Kerr's failure to communicate the correct inventorship, the '785 Patent is subject to correction.

33. The failure to name FLOYD and BOWMAN as inventors of the '785 Patent was without the deceptive intent of FLOYD and BOWMAN, as each were unaware that Mr. William Thomas Kerr was the only inventor listed on the application which resulted in the '785 Patent.

34. The '785 Patent is therefore subject to correction to name FLOYD, BOWMAN and Mr. Lawrence Sexton as inventors of the invention disclosed therein.

WHEREFORE, Plaintiff respectfully requests in the alternative to the relief sought in Count I, a judgment ordering correction of U.S. Patent No. D565,785 and such other relief as the court deems proper and just.

Respectfully submitted this 2nd day of October, 2009.

/s/ William H. Hollimon
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 2, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF which will send notification of such filing to parties of record:

John R. Zoesch, III
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/s/William H. Hollimon



US00D565785S

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

(10) **Patent No.:** **US D565,785 S**
(45) **Date of Patent:** **** Apr. 1, 2008**

(54) **PHOTOCATALYTIC LAMP MODULE FOR AN AIR PURIFIER**
(76) Inventor: **William Thomas Kerr**, 2522 W. Washington, Monticello, FL (US) 32344

(**) Term: **14 Years**
(21) Appl. No.: **29/243,712**
(22) Filed: **Nov. 29, 2005**

(51) **LOC (8) Cl.** **26-99**
(52) **U.S. Cl.** **D26/113**
(58) **Field of Classification Search** **D26/72,**
D26/63, 85, 28, 124, 118, 65, 60, 40, 41,
D26/42, 80, 87, 68, 67, 37, 49, 74, 77, 86,
D26/88, 89, 93, 103, 104, 105, 113, 114,
D26/119, 122, 123, 128, 138, 142, 143, 152;
362/365, 96, 147, 151, 153, 217, 643, 654,
362/257, 290, 296, 297, 301, 302, 309, 317,
362/341, 342, 343, 347, 348, 349, 362, 364,
362/395, 404, 405, 410, 441; 126/258
See application file for complete search history.

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Primary Examiner—Freda S. Nunn
Assistant Examiner—Kevin K Rudzinski
(74) *Attorney, Agent, or Firm*—Peter Loffler

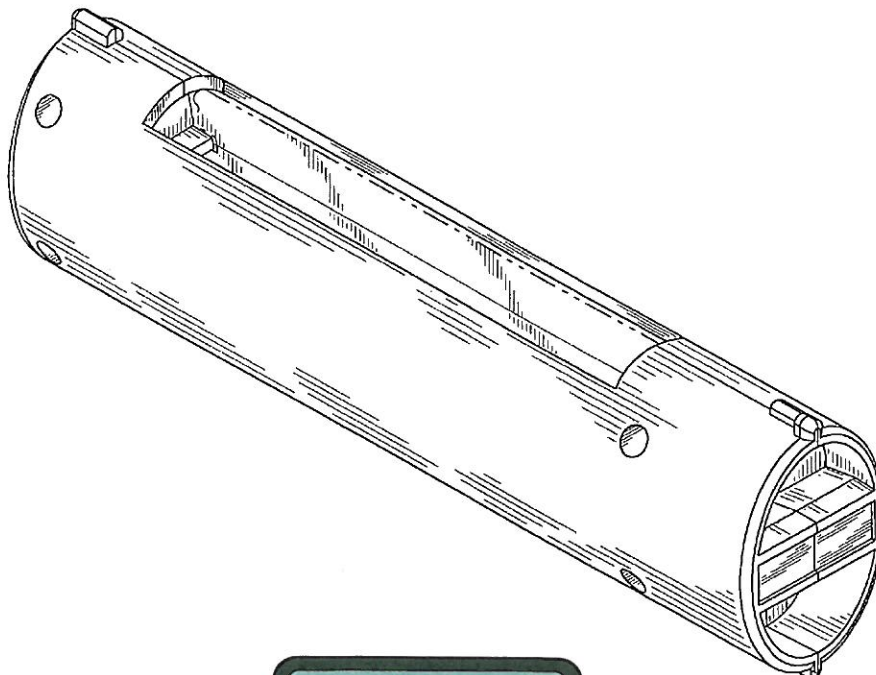
(57) **CLAIM**

The ornamental design for a photocatalytic lamp module for an air purifier, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view of the photocatalytic lamp module for an air purifier;
FIG. 2 is a left side elevation view thereof;
FIG. 3 is a right side elevation view thereof;
FIG. 4 is a top plan view thereof;
FIG. 5 is a front elevation view thereof;
FIG. 6 is a rear elevation view thereof; and,
FIG. 7 is a bottom plan view thereof.
The broken line showing is included for the purpose of illustration only and forms no part of the claimed design.

1 Claim, 3 Drawing Sheets



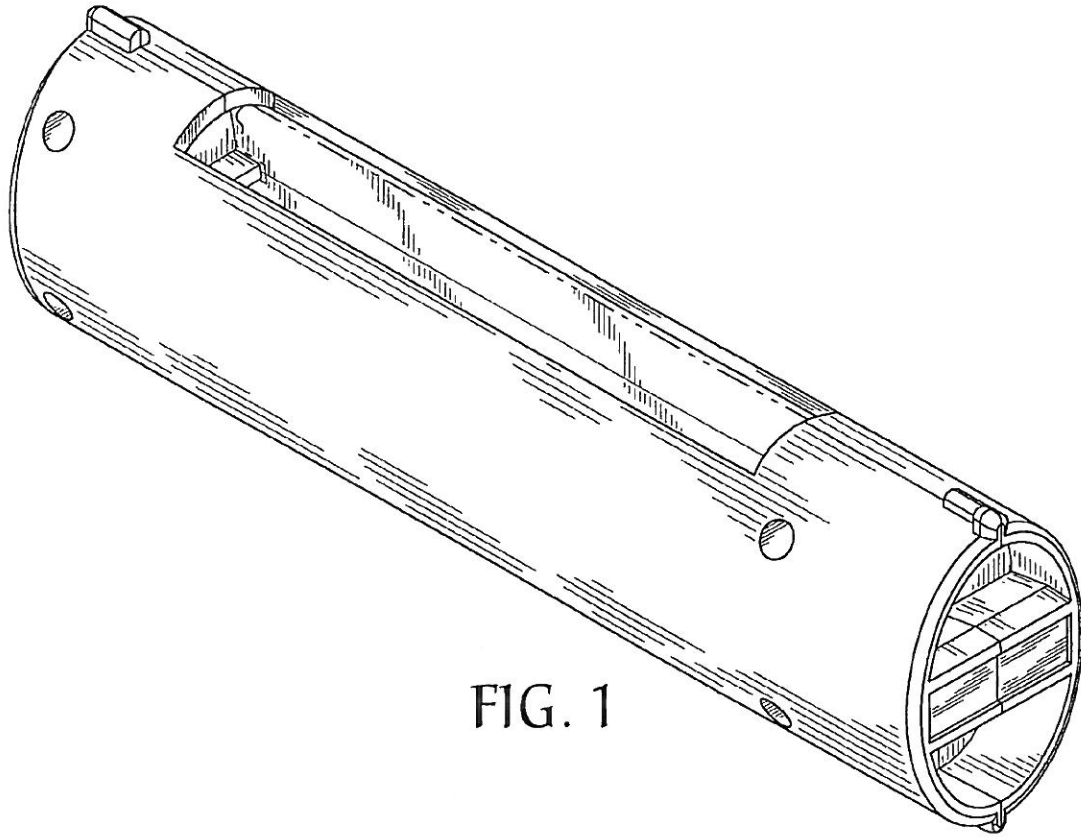


FIG. 1

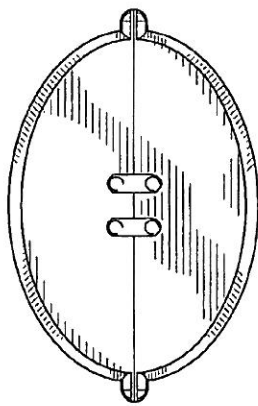


FIG. 2

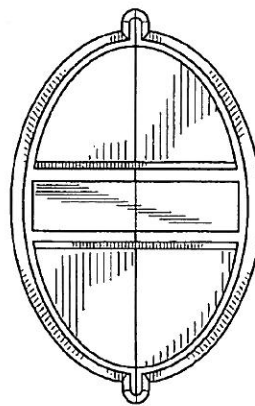


FIG. 3

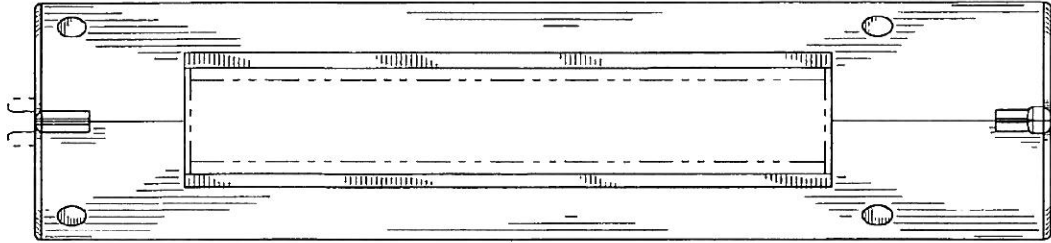


FIG. 4

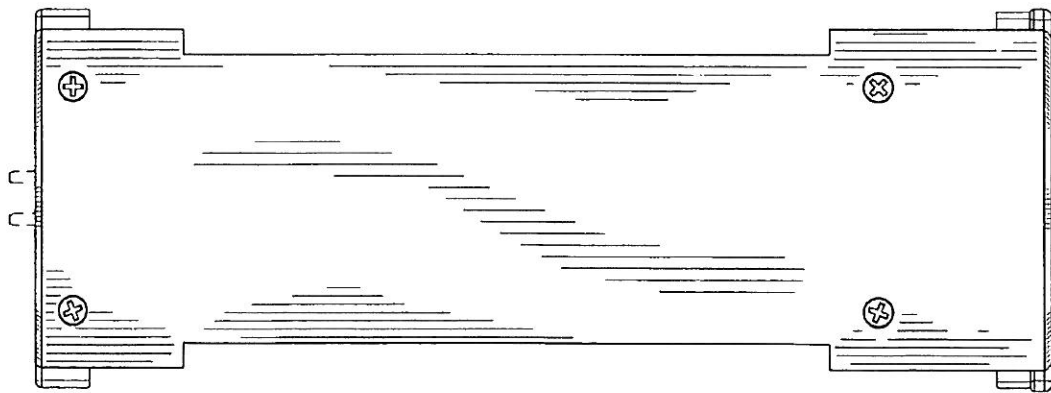


FIG. 5

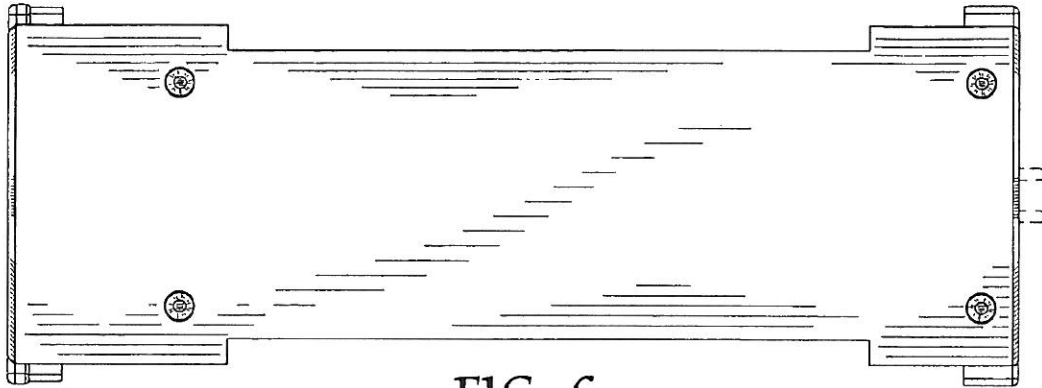


FIG. 6

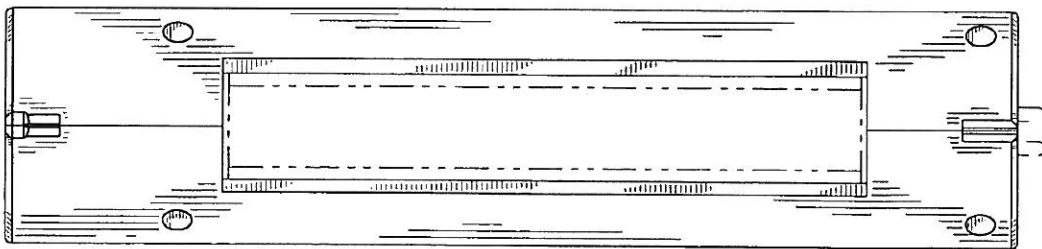


FIG. 7