IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EUROPEAN COPPER, LLC, an Oklahoma Limited Liability Company,

Plaintiff,

v.

FABRAL, INC., a Delaware Corporation,

Defendant.

06CV 551 CVE-PJC

Civil Action No.: _____

JURY TRIAL DEMANDED

VERIFIED COMPLAINT
FOR PATENT INFRINGEMENT

Plaintiff European Copper, LLC, by and through its undersigned attorneys, brings this action against Fabral, Inc., ("Fabral"), for patent infringement of U.S. Patent No. 6,926,600 in violation of the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

PARTIES

1. Plaintiff European Copper, LLC ("European Copper") is a limited liability company organized under the laws of the State of Oklahoma and has its principal place of business in Tulsa County, Oklahoma.

2. Fabral is incorporated under the laws of the State of Delaware and has its principal place of business in Lancaster, Pennsylvania.

3. Fabral manufactures and sells copper chimney pots, roofing and siding for agricultural, post frame, architectural, industrial, commercial and residential applications. Fabral, acting through CopperCraft and its other divisions, regularly, systematically and purposefully conducts business in the State of Oklahoma by maintaining a manufacturing facility in Oklahoma, and having authorized dealers and distributors throughout Oklahoma and in this

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judicial district. It is the sale of chimney pots through its CopperCraft division that has resulted in the infringement giving rise to this action. Consistent with its business activities and presence in the State of Oklahoma, Fabral has qualified to do business in the State of Oklahoma. Fabral has designated the Corporation Company, 735 First National Bldg, Oklahoma City, Oklahoma, 73102, as its registered agent.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of European Copper's Complaint pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant Fabral because, among other things, it has physically conducted and continues to physically conduct business throughout the State of Oklahoma and in this judicial district.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

BACKGROUND

7. European Copper is a leading designer and manufacturer of copper chimney pots. Copper chimney pots by European Copper add tremendous benefits to fine homes around the United States. European Copper's chimney pots, among other features, are completely enclosed on top, preventing water from entering the home. European Copper's chimney pots also prevent small pests from entering the flue and greatly improve the smoke draw of the chimney.

8. On August 9, 2005, United States Patent No. 6,926,600 ("the '600 patent"), entitled "Chimney Cap Apparatus and Method," was duly and legally issued by the United States Patent and Trademark Office. The '600 patent names John G. Arnold, Jr. as its inventor and European Copper as its assignee. Accordingly, European Copper owns by assignment the entire

right, title, and interest in the '600 patent such that it may enforce that patent. A copy of European Copper's '600 patent is attached hereto as **Exhibit "A"**.

9. The '600 patent broadly claims a cap for a flue opening which extends the chimney in order to enhance draw of smoke, protect from the elements (such as rain, snow and wind) and from entry of animals and debris, and provides a decorative external feature for a building.

10. Plaintiff has placed the required statutory notice under 35 U.S.C. §287 on products and on literature describing the above patent and has put the Defendant Fabral on actual notice of the existence of the '600 patent. (See **Exhibit "B"** attached hereto and incorporated by reference.)

CAUSE OF ACTION

INFRINGEMENT OF THE '600 PATENT

1. European Cooper repeats and realleges the allegations of paragraphs 1 through 10 as though fully set forth herein.

2. Defendant Fabral has been and is directly infringing, actively inducing others to infringe and/or contributing to the infringement of the '600 patent by making, using, importing into the United States, offering for sale, selling, and/or otherwise distributing chimney caps in violation of 35 U.S.C. § 271.

3. Defendant Fabral's infringement has injured or will injure European Copper and European Copper is entitled to recover damages adequate to compensate it for Defendant's infringement, which in no event can be less than a reasonably royalty.

4. Defendant Fabral's infringement has been deliberate, willful, intentional, and with full knowledge of the existence of the '600 patent.

5. Defendant Fabral has caused or will cause European Copper substantial damage and irreparable injury by its infringement of the '600 patent, and European Copper will continue to suffer damage and irreparable injury unless and until Defendant is enjoined by this Court from continuing its infringement.

6. European Copper is entitled to injunctive relief and compensatory relief, including attorneys' fees and costs, as well as enhanced damages pursuant to 35 U.S.C. §§ 271, 281 and 283-85.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff European Copper respectfully requests that this Court enter Judgment in favor of European Copper against the Defendant Fabral, and grant to European Copper all of the following relief:

A. Enter judgment that Defendant Fabral has infringed and is infringing the '600 patent;

B. Enter judgment that the aforementioned infringement by Defendant Fabral has been and is willful;

C. Enter orders preliminarily and permanently enjoining Defendant Fabral, and its respective officers, agents, employees, and all others in active concert or participation with Defendant or any of them from further infringing, whether directly or indirectly, the '600 patent;

D. Award European Copper its damages in an amount sufficient to compensate European Copper for Defendant Fabral's infringement of the '600 patent, together with pre-judgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284;

E. Award enhanced damages to European Copper in an amount not less than three times the compensatory damages awarded by this Court for Defendant Fabral's willful infringement of the '600 patent, pursuant to 35 U.S.C. § 284;

F. Declare this case to be "exceptional" under 35 U.S.C. § 285, and award European Copper its attorneys' fees, expenses and costs incurred in this action; and

G. Award European Copper such other and further relief as this Court deems just and proper.

Date: October 5th, 2006

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Counsel for Plaintiff
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DEMAND FOR A JURY TRIAL

Plaintiff demands a trial by jury on all the issues raised in this action.

VERIFICATION

State of Oklahoma)
) ss.
County of Tulsa)

John G. Arnold, Jr., being duly sworn says that he is the President of European Attic, Inc., who is the manager of European Copper, LLC, who in turn is the Plaintiff in this action, that he has read the foregoing Complaint, that the same is true to his own knowledge except to matters therein alleged on information and belief and as to those matters he believes the same to be true.

John G. Arnold, Jr.

Sworn to and Subscribed before me, this 4th day of October, 2006.

Commission Expires: 08-11-2008
Commission No. 00013338

Desiree A. Willmann
Notary Public

Seal: DESIREE A. WILLMANN NOTARY PUBLIC IN AND FOR STATE OF OKLAHOMA TULSA COUNTY

US006926600B1

(12) United States Patent
Arnold, Jr.

(10) Patent No.: US 6,926,600 B1
(45) Date of Patent: Aug. 9, 2005

(54) **CHIMNEY CAP APPARATUS AND METHOD**

(75) Inventor: **John G. Arnold, Jr.**, Tulsa, OK (US)

(73) Assignee: **European Copper, LLC**, Tulsa, OK (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **10/847,418**

(22) Filed: **May 17, 2004**

(51) **Int. Cl.**[7] **F23J 13/08**
(52) **U.S. Cl.** **454/12**; 454/40
(58) **Field of Search** 454/12, 13, 14, 454/35, 39, 40

(56) **References Cited**

U.S. PATENT DOCUMENTS

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* cited by examiner

Primary Examiner—Harold Joyce
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(57) **ABSTRACT**

A cap for a flue opening of a chimney in order to enhance draw of smoke and in order to protect from entry of animals and debris. The device includes sidewalls fabricated from flat sheet metal and a top attached to the sidewalls from fasteners. A plurality of louver openings are provided in the sidewalls in order to draw air. A plurality of exit vent openings in the sidewalls above the louver openings are at least equal to a cross-sectional area of the flue opening. An inner frame and mounting assembly includes a mechanism to both anchor the device to the chimney flue and to level the device.

10 Claims, 3 Drawing Sheets

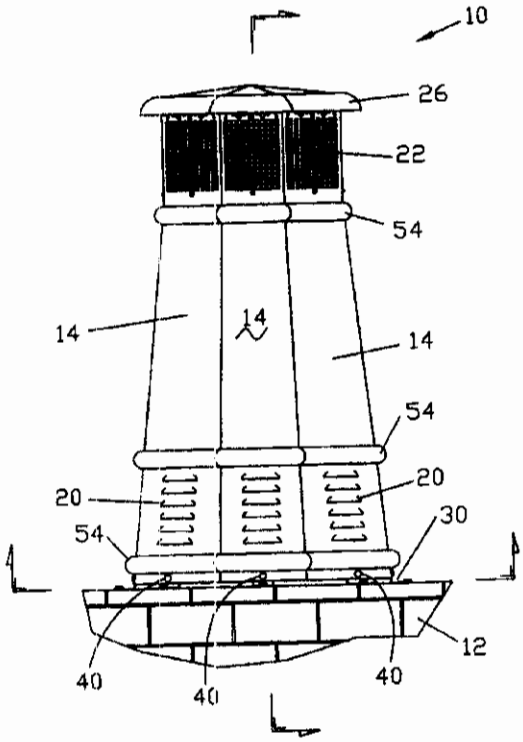

EXHIBIT A
PAGE 1 OF 7

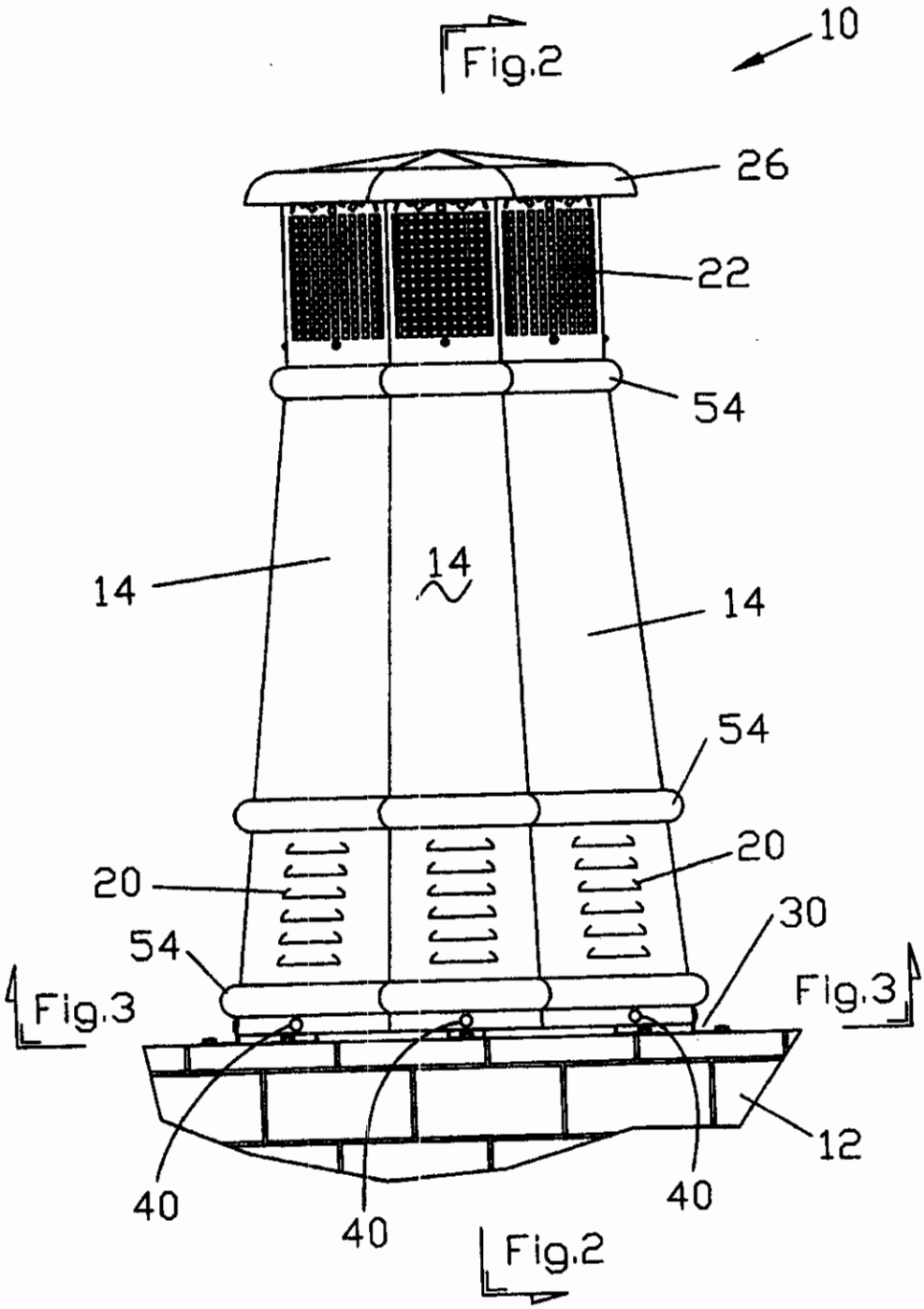

Fig.1

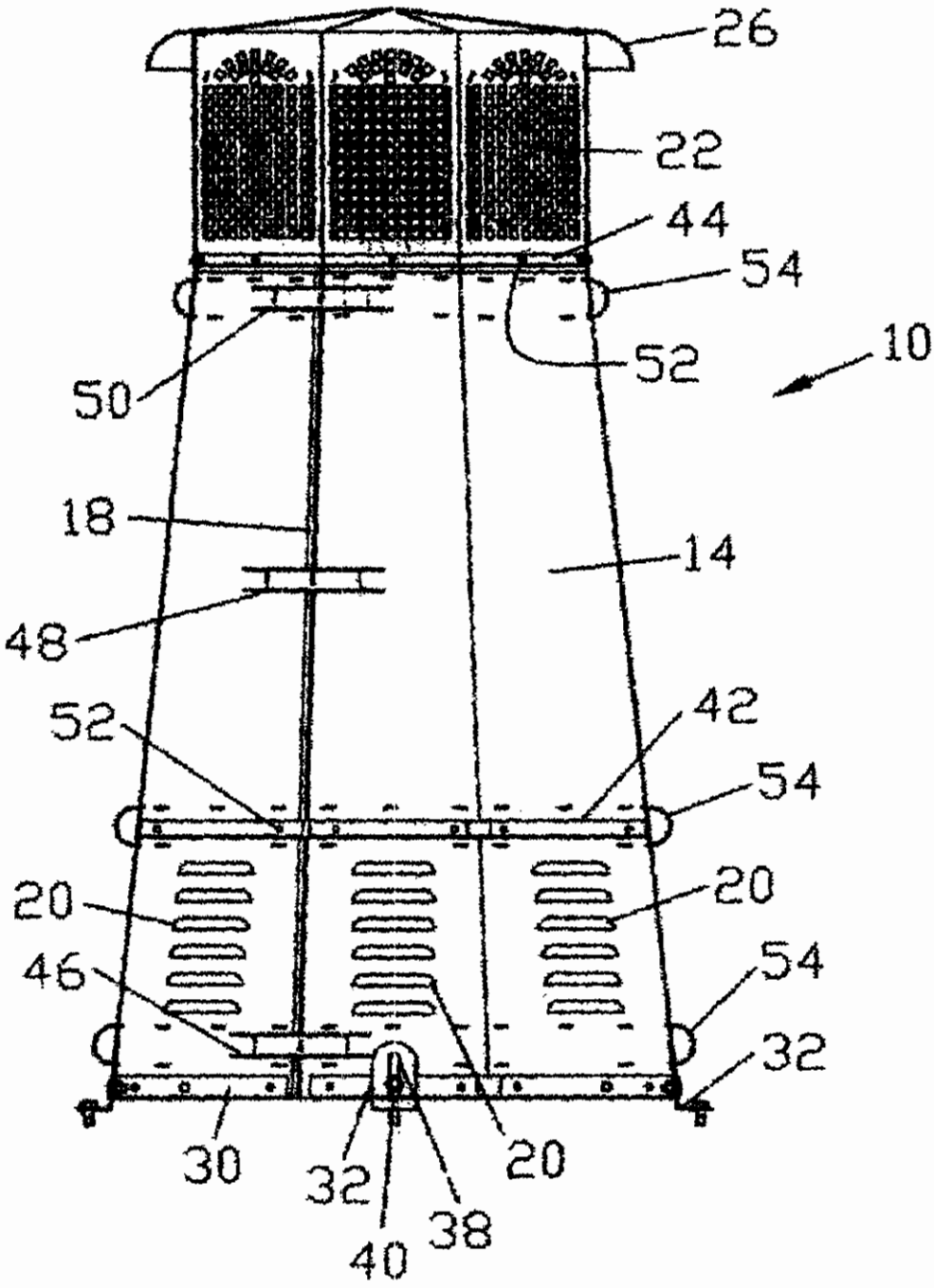

Fig.2

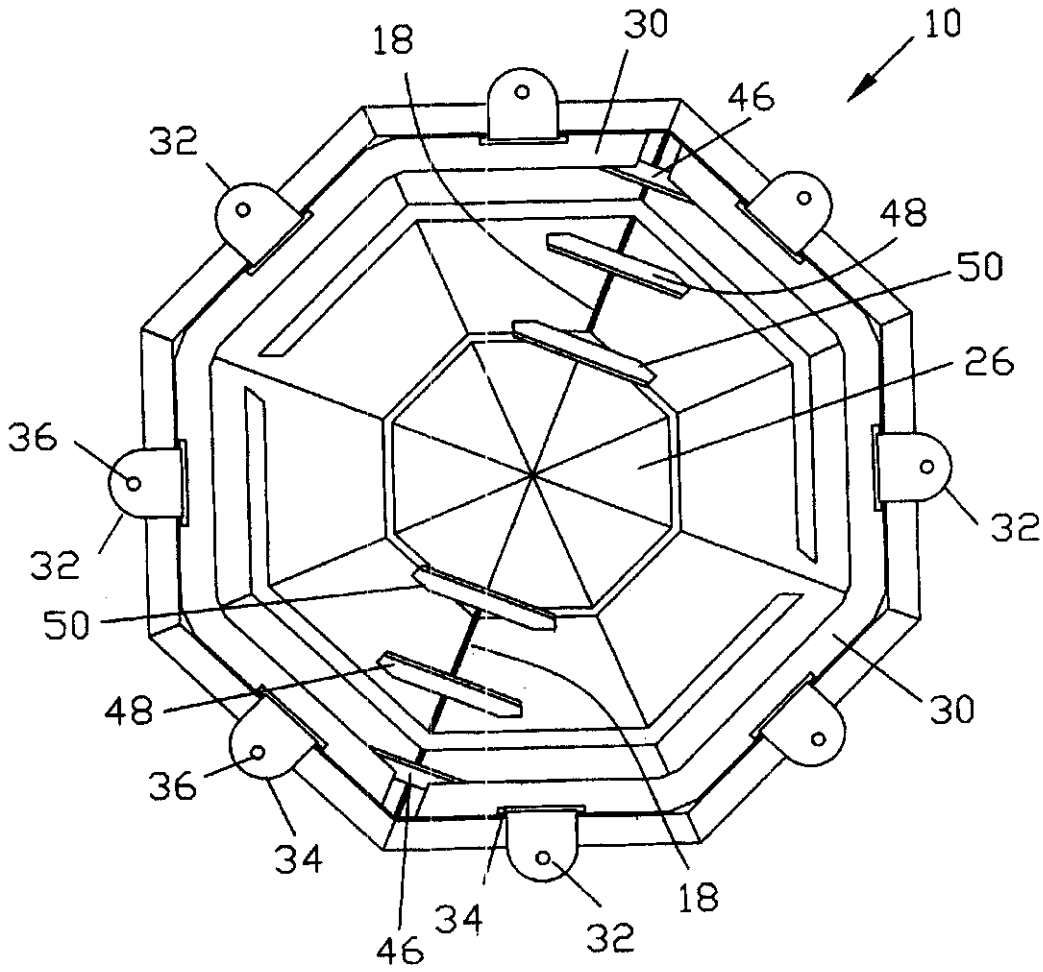

Fig.3

EXHIBIT A
PAGE 4 OF 7

CHIMNEY CAP APPARATUS AND METHOD

BACKGROUND OF THE INVENTION

1. Field of the Invention

The present invention is directed to a cap for a flue opening of a chimney. In particular, the present invention is directed to a cap for a flue opening which extends the chimney in order to enhance draw of smoke, protect from the elements (such as rain, snow, and wind) and from entry of animals and debris, and provide a decorative external feature for a building.

2. Prior Art

Chimneys for houses and other buildings typically include a flue liner in a chimney which carries the smoke and exhaust upward to be disbursed into the atmosphere. Various caps have been proposed in the past to prevent rain and other elements from entering the opening of the flue. Various prior chimney caps also have been utilized to extend the length of the chimney. By way of example, Munyon (U.S. Pat. No. 2,381,178) provides a chimney extension formed of sheet metal secured by rivets 9 and clamps 10 having brackets 11 or 15. Past chimney caps also have been designed to prevent entry of debris or small animals into the chimney flue

Various chimney caps in the past have been constructed of clay and masonry. While functional and decorative, they are extremely heavy and difficult to move to a roof top.

Also by way of example, Giumenta et al. (U.S. Pat. Nos. 4,732,078 and 5,402,613) disclose a chimney cap with four perforated sides formed from a flat metal blank. Flanges are used to attach to the chimney and a roof may be welded to the perforated sides of the chimney cap.

Notwithstanding the foregoing, there remains a need for a lightweight, decorative chimney cap that may be attached to a chimney with minimal effort and that may be adjustable in order to level the cap to the particular application and in order to permit easy removal if necessary.

There remains a need to provide a lightweight, decorative chimney cap that may be manufactured inexpensively without welding.

There remains a need to provide a lightweight, decorative chimney cap without clay or masonry that may be easily moved to the top of a roof.

SUMMARY OF THE INVENTION

The present invention provides a chimney cap apparatus or device to be installed over a flue opening of a chimney. The device includes a plurality of planar sidewalls fabricated from flat sheet metal. The sidewalls may be fabricated from two flat metal sheets, each flat metal sheet comprised of four panels each. The two sheets are brought together and joined at their seams.

Each sidewall panel may include a plurality of louver openings stamped or otherwise made into the sidewalls. Each louver opening faces upward away from the chimney. At the top of each sidewall panel, opposed to the louver openings are a plurality of exit openings. The total area of the exit openings is at least equal to the cross-sectional area of the flue opening.

A top is attached to the upper end of the sidewalls and may also be fabricated from flat sheet metal.

An inner frame and mounting assembly includes a mechanism to both anchor the device to the chimney and to level the device with respect to the chimney. The assembly includes a series of L-brackets fabricated from metal which is non-reactive and compatible with the sidewall flat sheet metal.

The mounting assembly also includes a plurality of clips which are receivable in receptacles in the L-brackets of the inner frame and mounting assembly. One side of the clip includes an opening for receiving a fastener which will be connected to the chimney. Each clip also includes an elongated slot which receives a fastener such as a bolt which would pass through the slot and through an opening in the sidewall. Accordingly, by adjusting the positioning of the fastener in the slot, the clip may be utilized to adjust the level of the device with respect to the chimney.

The device also includes a pair of parallel, continuous internal brace rings which are parallel to the L-brackets of the inner frame and mounting assembly. Internal corner braces supplement the stability and assist in joining together the sidewalls.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. **1** is a plan view of a chimney cap apparatus attached to a chimney as constructed in accordance with the present invention;

FIG. **2** is a sectional view of the chimney cap shown in FIG. **1** taken along section line **2**—**2** of FIG. **1** apart from the chimney; and

FIG. **3** is a bottom view of the chimney cap apparatus shown in FIG. **1** taken along section line **3**—**3** of FIG. **1**.

DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

The embodiments discussed herein are merely illustrative of specific manners in which to make and use the invention and are not to be interpreted as limiting the scope of the instant invention.

While the invention has been described with a certain degree of particularity, it is to be noted that many modifications may be made in the details of the invention's construction and the arrangement of its components without departing from the spirit and scope of this disclosure. It is understood that the invention is not limited to the embodiments set forth herein for purposes of exemplification.

Referring to the drawings in detail, FIG. **1** illustrates a plan view of a cap apparatus or device **10** constructed in accordance with the present invention. The cap device is installed over a flue opening of a chimney **12**, a portion of which is shown in FIG. **1**. The device **10** would sit at the top of the chimney **12** and surround a flue opening (not visible). The device may be mounted on chimneys of various materials and configurations.

The device **10** includes a plurality of planar sidewalls which are fabricated from flat sheet metal. In the present embodiment, the sidewalls form an octagon and are truncated so to narrow moving away from the chimney toward the top. It will be understood that the device may have a cross-section in the form of a hexagon, square or other configuration within the spirit and scope of the present invention.

FIG. **2** illustrates a sectional view of the device **10** taken along section line **2**—**2** of FIG. **1** apart from the chimney. The sidewalls **14** may be fabricated from two flat metal sheets, each flat metal sheet comprised of four panels each. The two sheets are then brought together and joined at seams **18**. Each sidewall panel may include a plurality of louver openings **20** which are stamped, punched, formed or other-

EXHIBIT A
PAGE 5 OF 7

wise made into the sidewalls **14**. Each louver opening **20** faces upward away from the chimney in the direction of the exiting smoke.

At the top of each sidewall panel, opposed to the louver openings are a plurality of exit openings **22** in the sidewalls. The exit openings **22** are stamped, punched, formed or otherwise made into the sidewalls. Each exit opening **22** is relatively small and would not allow for birds, squirrels, or other small animals to crawl therethrough. The exit openings **22** are provided so that the total area of the exit openings is at least equal to the cross sectional area of the flue opening and, in a preferred embodiment, is greater than the cross sectional area of the flue opening.

A top **26** is attached to the upper end of the sidewalls. The top **26** may also be fabricated from flat sheet metal. In the embodiment shown, the outer edge of the top is slit and the top is then rolled or pressed.

In the present embodiment, the sidewalls **14** and the top **26** are fabricated from copper metal which is decorative and lightweight but relatively soft.

The device **10** also includes an inner frame and mounting assembly **30**. The assembly **30** includes a mechanism to both anchor the device **10** to the chimney and to level the device with respect to the chimney. As best seen in FIG. **2**, the assembly **30** includes a series of L-brackets fabricated from metal which is non-reactive and compatible with the sidewall flat sheet metal. In the present preferred embodiment, the sidewalls are copper and the inner frame mounting assembly is constructed of stainless steel.

The mounting assembly also includes a plurality of clips **32**. FIG. **3** illustrates a bottom view of the device taken along section line **3**—**3** of FIG. **1**. Each clip **32** is receivable in a receptacle **34** in the L-brackets. One side of the clip includes an opening **36** for receiving a fastener which will be connected to the chimney **12**.

As best seen in FIG. **2**, each clip **32** also includes an elongated slot **38** which receives a fastener **40**, such as a bolt, which will pass through the slot **38** and through an opening in the sidewall **14** of the device. Accordingly, by adjusting the positioning of the fastener **40** in the slot **38**, the clip **32** may be used to adjust the level of the device with respect to the chimney **12**.

The device **10** also includes a pair of parallel, internal brace rings **42** and **44**. The brace rings are parallel to the L-brackets of the inner frame **30**. The continuous internal brace rings **42** and **44** may also be fabricated from L-shaped stainless steel or other metal which is compatible and non-reactive to the sidewalls and be attached by fasteners such as screws or rivets **52** to the sidewalls **14**.

As best seen in FIGS. **2** and **3**, the sidewall panels are joined together by internal corner braces **46**, **48** and **50**. The corner braces **46**, **48** and **50** may be held to the sidewalls by tabs and slots.

Finally, semi-cylindrical molding **54** may be fastened to the sidewalls **14** both as a decorative feature and to hide the fasteners for the internal brace rings as best seen in FIG. **2**. The edges of the molding terminates in extending tabs which are receivable in slots punched in to the sidewalls. Once inserted, the tabs are twisted to lock in place.

The entire device may be fabricated without welding, which eliminates undesirable weld marks and which is easy to manufacture.

In order to manufacture or fabricate the device **10**, a pair of flat metal plates are fabricated by punching and folding so that each sheet forms four panels. The two sheets are then brought together and joined at the seams **8** so that a truncated octagon is formed. During the stamping process, the louver openings **20** and the exit openings **22** are stamped into the sidewalls.

Additionally, a top **26** is fabricated from flat sheet metal by stamping and folding or rolling. The top is connected to the sidewalls by fasteners such as rivets. The inner frame and mounting assembly **30** is attached to the sidewalls **14** by rivets. Additionally, the pair of continuous internal inner brace rings **42** and **44** are attached to the sidewalls by rivets.

The tabs on the moldings **54** are inserted into slots in the sidewalls and the tabs on the moldings are twisted in order to lock the moldings in place.

The assembled device **10** is lightweight and may be moved to a rooftop for attachment to the chimney **12** using the clips **32**.

Whereas, the present invention has been described in relation to the drawings attached hereto, it should be understood that other and further modifications, apart from those shown or suggested herein, may be made within the spirit and scope of this invention.

What is claimed is:

1. A cap device for a flue opening of a chimney to enhance draw of smoke and to protect from entry of animals and debris, which device comprises:

sidewalls fabricated from flat sheet metal forming a tubular housing;

a top attached to said sidewalls by fasteners;

a plurality of louver openings in the lower portion of said sidewalls to draw air;

a plurality of exit openings in the upper portion of said sidewalls above said louver openings wherein said exit openings are at least equal to a cross-sectional area of said flue opening, said side wall having an imperforated portion between said lover and upper portion;

an inner frame and mounting assembly attached to the lower edge of each sidewalls; and

anchoring and leveling means to anchor said inner frame and mounting assembly to said chimney and to level said device with respect to said chimney.

2. A cap device as set forth in claim **1** wherein said inner frame and mounting assembly is fabricated from L-bracket metal which is non-reactive and compatible with said sidewall flat sheet metal.

3. A cap device as set forth in claim **2** wherein said sidewalls and top are copper and said inner frame and mounting assembly are stainless steel.

4. A cap device as set forth in claim **1** wherein said inner frame and mounting assembly includes receptacles, said anchoring and leveling means includes a plurality of clips attachable to said chimney wherein said clips are receivable in said receptacles in said inner frame and mounting assembly of said device.

5. A cap device as set forth in claim **4** wherein each said clip includes an elongated slot to adjust said level of said device.

6. A cap device as set forth in claim **1** including a plurality of continuous brace rings spaced along the internal surface of said housing.

7. A cap device as set forth in claim **6** including a pair of said brace rings parallel to each other.

8. A cap device as set forth in claim **1** wherein said sidewalls include discreet panels joined by internal corner braces.

9. A cap device as set forth in claim **1** wherein said housing has a cross-section in a form chosen from the group consisting of an octagon, a hexagon, a square or a rectangle.

EXHIBIT A

PAGE 6 OF 7

10. A cap device for a flue opening of a chimney to enhance draw of smoke and to protect from entry of animals and debris, which device comprises:

sidewalls fabricated from flat sheet metal forming a tubular housing;

a top fabricated from flat sheet metal attached to said sidewalls by fasteners;

a plurality of louver openings facing said top stamped in the lower portion of said sidewalls to draw air;

a plurality of exit openings stamped in the upper portion of said sidewalls above said louver openings wherein said exit openings are at least equal to a cross-sectional area of said flue opening; said side wall having an imperforated portion between said lower and upper portion;

an inner frame and mounting assembly including receptacles, a plurality of clips attachable to said chimney, wherein said clips are receivable in said receptacles in said inner frame and mounting assembly wherein each said clip includes one side which fastens to said chimney and another side which includes an elongated wherein fasteners pass there through, slot to both anchor said device to said chimney and to level said device; and

a plurality of continuous brace rings spaced along the internal surface of said housing.

* * * * *

EXHIBIT A

PAGE 7 OF 7

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◦◦Minnesota
◇◇Missouri and Oklahoma
«Nebraska
≡New Mexico
⌐⌐New Mexico and Oklahoma
» New Jersey
≥North Dakota
++ Rhode Island
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August 31, 2006

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Keller, Texas 76248

First Class Mail and
Certified Mail – Return Receipt Requested

In re: Patent Infringement of Chimney Cap Apparatus and Method
Our File No. EUR213-00/04455A

Dear Sirs:

I am writing on behalf of our client, European Copper, LLC, which is the owner of U.S. Patent No. 6,926,600 and other pending U.S. patent applications. A copy of the patent is enclosed herewith.

We have recently been informed you are marketing and selling a device under the name "Consentino Chimney Cap" directed towards a lightweight, architecturally attractive copper chimney cap. We have examined the Consentino Chimney Cap shown on your website at www.coppercraft.com/chimney.htm and believe it is a direct and literal infringement of our client's patent rights and may also violate our client's pending patent applications. This is to notify and inform you that presently you are not only subject to an injunction but damages for sales of any of the products. Please inform us immediately if there are any circumstances of which we are unaware.

Our client insists that you immediately cease and desist all further manufacture, sale and distribution of the Consentino Chimney Cap. We also request an indication of the number of units sold to date. Please contact me within ten (10) days from receipt of this letter to provide your written assurance that you will not do so in the future, failing which I will recommend that our client take action to protect its legal rights.

Very truly yours,

Kenneth M. Smith
FOR THE FIRM

KMS:ac
Encl.
cc: European Copper, LLC
Mark G. Kachigian, Esq.

EXHIBIT "B"