

3. On information and belief, Richard N. Bradford (“Bradford”) is an individual who is a Florida resident in Seminole County, Florida. Bradford is also the sole inventor listed on U.S. Patent No. D541,685.

JURISDICTION

4. Superchips brings this civil action arising under the patent laws of the United States, Title 35 of the United States Code, and under 28 U.S.C. § 2201 and 2202 seeking a declaration of non-infringement, invalidity, and unenforceability with respect to United States Patent No. D541,685 (“the ‘685 patent”). The Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a). The Court also has supplemental jurisdiction over Superchip’s state law claims under 28 U.S.C. § 1367.
5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) & (c) and 1400(b).

FACTUAL BACKGROUND

6. In 2005, Superchips decided to up-date the design for certain of its tuner products. The existing product was a rather bulky product. Steve Madole, who was the Vice President, Engineering for Superchips, was assigned to the project. The new product is known commercially as the “Flashpaq” and “Tirepaq.” These plastic cases for the Flashpaq and Tirepaq have been referred to by Nelson Plastics and Superchips as the “FUIL case.” Accordingly, Superchips will use the general term “Flashpaq” when referring to the completed products and “FUIL case” when referring to only the plastic case.
7. Mr. Madole surveyed existing products on the market and decided that the new design should be a hand-held type device. Mr. Madole asked Richard Bradford of Nelson Plastics to assist in the design. Mr. Bradford and Nelson Plastics had

assisted Superchips in the past with manufacturing plastic cases for Superchip's products.

8. Mr. Madole explained his concept for the new device to Mr. Bradford. Mr. Madole provided Mr. Bradford with a magazine page showing a hand-held electronic device to help explain his concept. Mr. Madole advised Mr. Bradford that Superchips wanted a larger, full 3"x4" touch-screen monitor for the device to move away from the use of buttons on the front of the device for inputs.
9. Thereafter, Mr. Bradford presented Mr. Madole with three design choices for the new case product. At that time, Mr. Madole instructed Mr. Bradford that a full touch-screen monitor was too expensive, and that his concept now was for a smaller screen. Mr. Madole advised Mr. Bradford what the screen size should be for the new design. Mr. Madole also instructed Mr. Bradford that his conception for the design now was to have a few rubber buttons extending through the plastic face for the device. Mr. Madole also instructed Mr. Bradford that his concept design required that there be a place on the front of the device to place Superchip's name and an area on the front to place a label designating the car or truck for which the device was being sold.
10. In response to the ideas provided to him, Mr. Bradford provided a revised prototype to Mr. Madole. This prototype had a smaller screen panel and included three buttons. Mr. Madole further instructed Mr. Bradford to modify this prototype by including an indicator from the buttons to the screen. Pursuant to Mr. Madole's request, Mr. Bradford incorporated an indicator feature from the buttons to the screen.

11. During the design process, Mr. Madole also instructed Mr. Bradford to include two areas on the back of the device for placing Superchips' product information. Mr. Madole instructed Mr. Bradford as to the size each space should be to accommodate Superchips' information. Mr. Bradford incorporated these concepts.
12. Unbeknownst to Mr. Madole or Superchips on January 5, 2006, Mr. Bradford filed a design patent application with the United States Patent and Trademark Office listing himself as the sole inventor. Mr. Madole purposefully did not include Mr. Madole as a co-inventor for the design.
13. During prosecution of the '685 patent, no information was disclosed by Bradford to the Patent Office regarding the existence of Mr. Madole, and no information disclosure statement was filed listing any prior art to the design of the '685 patent or any material information regarding possible sale or public use thereof in the United States prior to filing the application.
14. In a Notice of Allowance, dated November 15, 2006, the Examiner of the '685 patent noted a conversation of 25 October 2006 with the Bradford's attorney of record, during which the nature of the claimed design was "clarified." The Examiner specifically stated that: "[t]he instrument with casing can be removed from the automobile and plugged into an internet-enabled computer as instructed at <http://www.flashpaq.com>." The flashpaq.com website, a website of Superchips, was officially cited as a reference by the Examiner and is listed on the front of the '685 patent.

15. In the Notice of Allowance, the Examiner also stated that “[t]he applicant should be aware that, in U.S. design patent illustration, contoured areas should not be defined with solid line. Solid line in U.S. design patent illustration should be used only to depict outlines, seams, sharp or defined edges, and linear detail. As the applicant has rendered the claimed design consistently from view to view, albeit in a manner different from the preferred U.S. practice, the examiner cannot require correction.” The Examiner also gave Bradford’s attorney of record a sample of a design patent with contours properly illustrated.
16. Bradford’s attorney of record made no further statement in the prosecution history regarding the Examiner interview of October 26, 2006, and did not file any amended drawings to attempt to correct the problem with the existing drawings as cited by the Examiner
17. On May 1, 2007, the United States Patent and Trademark Office issued U.S. Patent No. D541,685 (“the ‘685 patent”), entitled “Automotive Accessory Instrument” (attached hereto as Exhibit 1). The ‘685 patent purports to be directed to a design for an automotive accessory instrument case.
18. On information and belief, Richard Bradford claims to be the owner of the ‘685 patent and has purportedly exclusively licensed the ‘685 patent to Nelson Plastics without any notice to Mr. Madole or Superchips.

Facts Relating to Declaratory Judgment Jurisdiction

19. There is an actual controversy between the parties, namely a disputed claim of patent infringement, and a direct threat of litigation by Nelson Plastics, for patent infringement against Superchips.

20. On May 1, 2007, the same day the '685 patent was issued by the United States Patent and Trademark Office ("the PTO"), Richard Bradford, writing on behalf of Nelson Plastics, sent a letter to Superchips accusing Superchips of infringing the 685 patent (attached hereto as Exhibit 2). In the letter, Mr. Bradford stated that "Nelson Plastics hereby demands that Superchips not sell any more products incorporating cases that are covered by one or more claims of the enclosed [685] patent[] unless those cases are purchased from Nelson Plastics, Inc." In a following letter dated May 7, 2007, Douglas Bowdoin, Esq. wrote on behalf of Nelson Plastics to advise Superchips that Nelson Plastics "has the exclusive license to utilize and enforce Patent No. D541,685." (Attached hereto as Exhibit 3).
21. Based on the actions by Nelson Plastics and Richard Bradford that certain of Superchips' products allegedly infringe the '685 patent and the stated intention to enforce the patent against Superchips, there exists a case or controversy between Superchips and Defendants concerning whether any of Superchips' products previously sold and currently being sold infringe any valid claim of the '685 patent.

REQUESTED RELIEF

Claim I – Correct Inventorship

22. Superchips hereby incorporates the allegations contained in paragraphs 1-17 of this Complaint and further alleges as follows.
23. Under 35 U.S.C. § 256, Superchips requests that the Court direct the United States Patent and Trademark Office to list Mr. Steve Madole as a co-inventor for the 685 patent.

Claim II – Declaratory Judgment for Co-ownership

24. Superchips hereby incorporates the allegations contained in paragraphs 1-19 of this Complaint and further alleges as follows.
25. An actual, live and justiciable controversy exists between Superchips and Defendants as to whether Superchips is a co-owner of the '685 patent.
26. Mr. Steve Madole was an employee of Superchips during the time that he co-invented the subject matter claimed by the '685 patent. Mr. Madole had a duty to assign to Superchips any patent to which he was a co-inventor and that was made during the time of his employment with Superchips.
27. Because Superchips is a co-owner of the '685 patent, Superchips cannot be liable to Defendants for any alleged infringement of the patent.

Claim III – Declaratory Judgment for Noninfringement

28. Superchips hereby incorporates the allegations contained in paragraphs 1-17 of this Complaint and further alleges as follows.
29. An actual, live and justiciable controversy exists between Superchips and Defendants as to whether any of Superchips' Flashpaq products infringe the '685 patent.
30. Superchips' Flashpaq products do not literally infringe the '685 patent.
31. Superchips' Flashpaq products do not infringe the '685 patent under the doctrine of equivalents.
32. Superchips is entitled to a judgment declaring that its Flashpaq products do not infringe, literally or under the doctrine of equivalents, the '685 patent.

Claim IV – Declaratory Judgment of Invalidity

33. Superchips hereby incorporates the allegations contained in paragraphs 1-17 of this Complaint and further alleges as follows:
34. An actual controversy exists as to whether the 685 patent is invalid under 35 U.S.C. §§ 101 et seq.
35. The 685 patent is invalid under 35 U.S.C. §§ 101 et seq. Superchips is entitled to a judgment declaring that the 685 patent is invalid.

Claim V – Unfair Competition

36. Superchips hereby incorporates the allegations contained in paragraphs 1-17 of this Complaint and further alleges as follows.
37. Defendants, Nelson Plastics and Mr. Bradford, separately and jointly have made statements to the distributors and/or customers of Superchips' Flashpaq products that the sale and/or use of the Flashpaq products infringes upon the rights Defendants allegedly have in the '685 patent.
38. These statements, made by Defendants in commerce, are false, misleading, intended to deceive, and are likely to deceive a substantial segment of the intended audience. The Superchips' Flashpaq products that are sold through commercial channels that are authorized by Superchips cannot lead to infringement liability under the '685 patent to Defendants because Mr. Madole is a co-inventor for the '685 patent and he has assigned his rights in the 685 patent to Superchips. At the times when Defendants made these statements, Defendants knew that Mr. Madole was a co-inventor, and that he was omitted as a co-inventor with deceptive intent resulting in the patent being unenforceable, and Defendants

therefore had no subjective or objective good faith basis for the statements, but rather the statements were made in bad faith.

39. Defendants' actions are likely to influence purchasing decisions of Superchips' customers and potential customers in interstate commerce.
40. Defendants' conduct violates Section 43 of the Lanham Act, 15 U.S.C. § 1125(a). As a proximate cause of Defendants' false statements in the marketplace, Superchips has been damaged in an amount in excess of \$100,000.00 to be fully determined at trial.

Claim VI – Intentional Interference With Existing Contractual Relations

41. Superchips hereby incorporates the allegations contained in paragraphs 1-17 of this Complaint and further alleges as follows.
42. Superchips, through its distributors and other channels of sale, offers to customers its products using the FUIL case.
43. Since May 1, 2007, Defendants have and continue to threaten Superchips' distributors and potential customers with a patent infringement lawsuit for the 685 patent for selling and/or purchasing and using Superchips' products.
44. Defendants are purposefully inducing Superchips' distributors and potential customers to not sell and not buy Superchips' products.
45. Defendants have no right or privilege to purposefully induce Superchips' distributors to not sell Superchips' products and Superchips' potential customers to not buy and use Superchips' products.
46. Superchips has and will be continued to be harmed by Defendants' continued attempts to wrongfully induce Superchips' distributors from selling Superchips' products and Superchips' customers from buying and using Superchips' products.

PRAYER FOR RELIEF

WHEREFORE, Superchips prays that this Court enter judgment as follows:

- a. Declaring that Steve Madole is a co-inventor for the '685 patent.
- b. Declaring that Superchips is a co-owner for the '685 patent.
- c. Declaring that Superchips' products do not infringe, literally or under the doctrine of equivalents, the '685 patent;
- d. Declaring that the '685 patent is invalid and that the '685 patent is unenforceable;
- e. Award Superchips its reasonable attorneys' fees, expenses, and costs of this action and declaring this action an exceptional case under 35 U.S.C. § 284;
- f. Award Superchips damages adequate to compensate it for actual injuries sustained as a result of Defendants' actions;
- g. Award Superchips treble damages pursuant to 15 U.S.C. § 1117(a);
- h. Enjoin Defendants from:
 - (1) charging Superchips, its agents, distributors, or customers with infringement of the 685 patent;
 - (2) representing to others that Superchips is liable for infringement of the 685 patent;
 - (3) making any further false statements regarding alleged infringement of the 685 patent;
 - (4) further interfering with Superchips' contractual relationships with its distributors and customers; and
- i. Granting Superchips such other and further relief, either in equity or law, as the Court deems appropriate under the circumstances of this case.

Dated: this 25th day of MAY 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'DC', enclosed within a large, loopy oval shape.

DAVID E. CANNELLA
Florida Bar Number 983837
CARLTON FIELDS, P.A.
P.O. Box 1171
Orlando Fl 32802-1171
Telephone: 407.244.8235
Facsimile: 407.648.9099
Email: dcannella@carltonfields.com
ATTORNEYS FOR PLAINTIFF

Of Counsel:

Gary H. Levin

David R. Bailey

Lance D. Reich

WOODCOCK WASHBURN LLP

Cira Centre – 12th Floor

2929 Arch St.

Philadelphia PA, 19104

(215) 568-3100 (phone)

(215) 568-3439 (fax)



US00D541685S

(12) **United States Design Patent** (10) Patent No.: **US D541,685 S**
Bradford (45) Date of Patent: **** May 1, 2007**

(54) **AUTOMOTIVE ACCESSORY INSTRUMENT CASE**

(76) Inventor: **Richard N. Bradford, 578 North St., Longwood, FL (US) 32750**

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

(21) Appl. No.: **29/251,262**

(22) Filed: **Jan. 5, 2006**

(51) LOC (8) Cl. **10-04**

(52) U.S. Cl. **D10/78**

(58) Field of Classification Search **D3/273, D3/294, 302, 295, 905; D10/46, 78; D13/184; D14/341, 345, 356-358; 324/76.12; 340/439; 701/24, 29, 35; 702/57**

See application file for complete search history.

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OTHER PUBLICATIONS

Flashpaq. Downloaded Oct. 25, 2006 at <http://www.flash-paq.com/>.*

* cited by examiner

Primary Examiner—Philip S. Hyder
 Assistant Examiner—RoseLynn (Ulm) Cady
 (74) Attorney, Agent, or Firm—James H. Beusse; Beusse Wolter Sanks Mora & Maire, P.A.

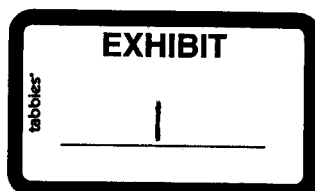
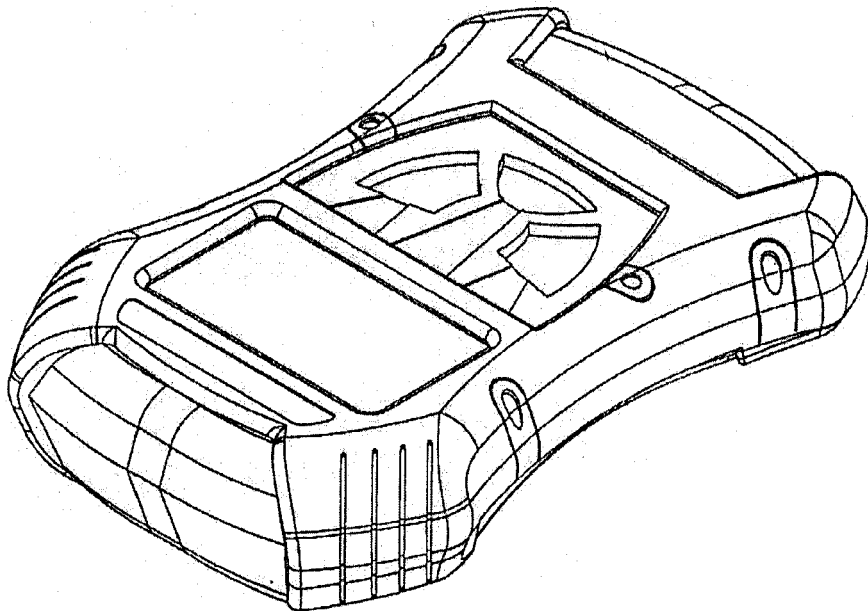
(57) **CLAIM**

The ornamental design for an automotive accessory instrument case, as shown and described.

DESCRIPTION

FIG. 1 is a top, left front side perspective view of my new automotive accessory instrument case;
 FIG. 2 is a bottom, rear perspective;
 FIG. 3 is a right side elevation;
 FIG. 4 is a rear elevation;
 FIG. 5 is a front elevation;
 FIG. 6 is a top plan view; and,
 FIG. 7 is a bottom plan view.

1 Claim, 3 Drawing Sheets



U.S. Patent

May 1, 2007

Sheet 1 of 3

US D541,685 S

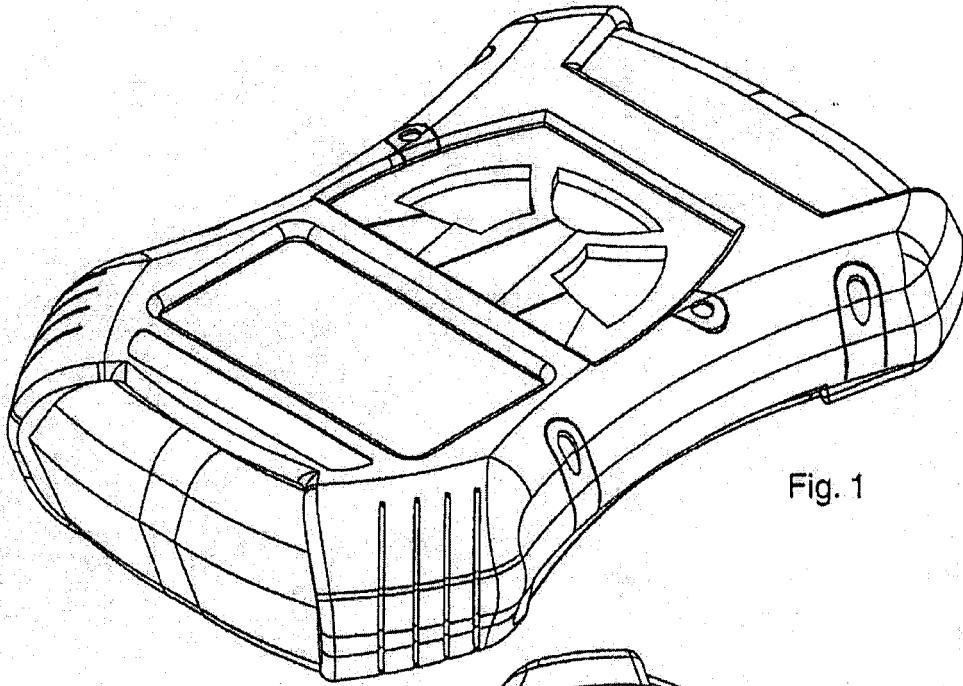


Fig. 1

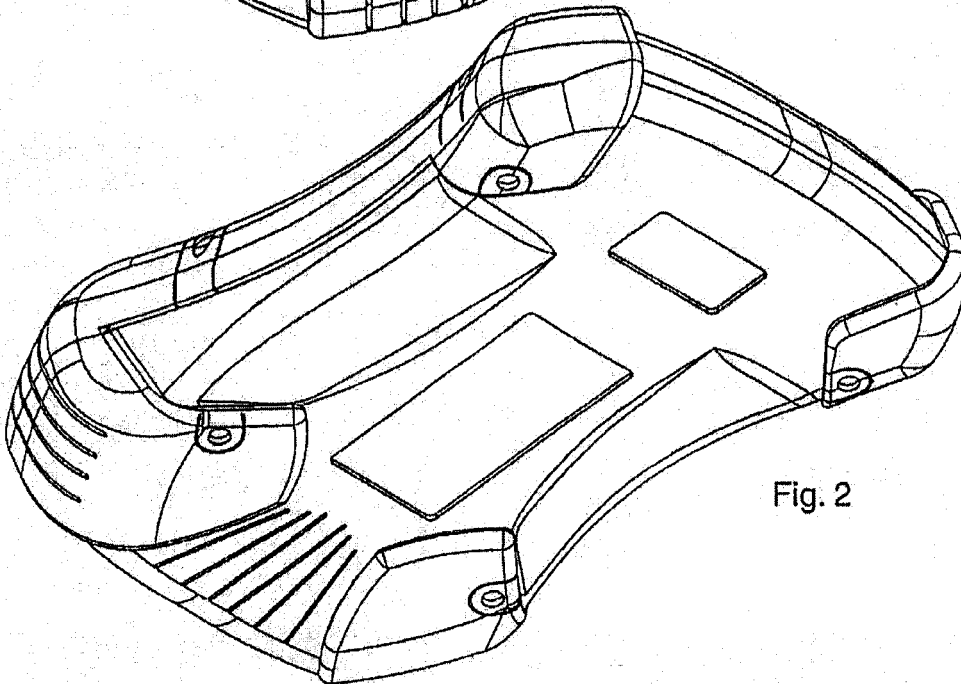


Fig. 2

U.S. Patent

May 1, 2007

Sheet 2 of 3

US D541,685 S

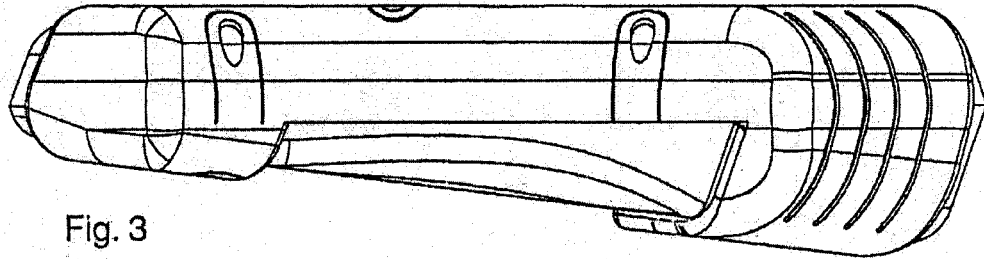


Fig. 3

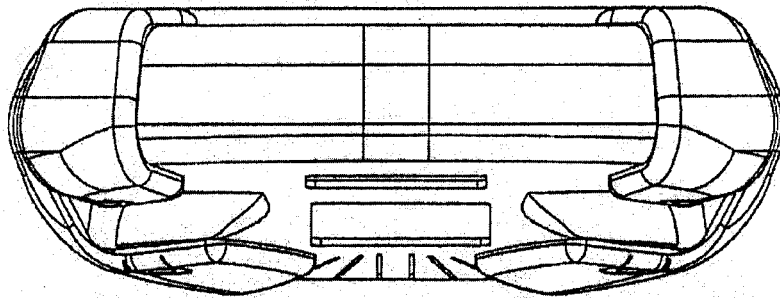


Fig. 4

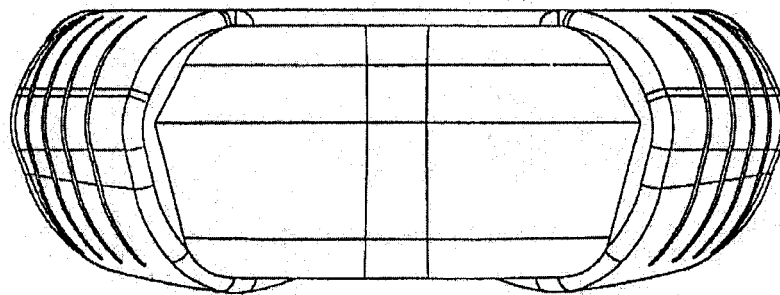


Fig. 5

U.S. Patent

May 1, 2007

Sheet 3 of 3

US D541,685 S

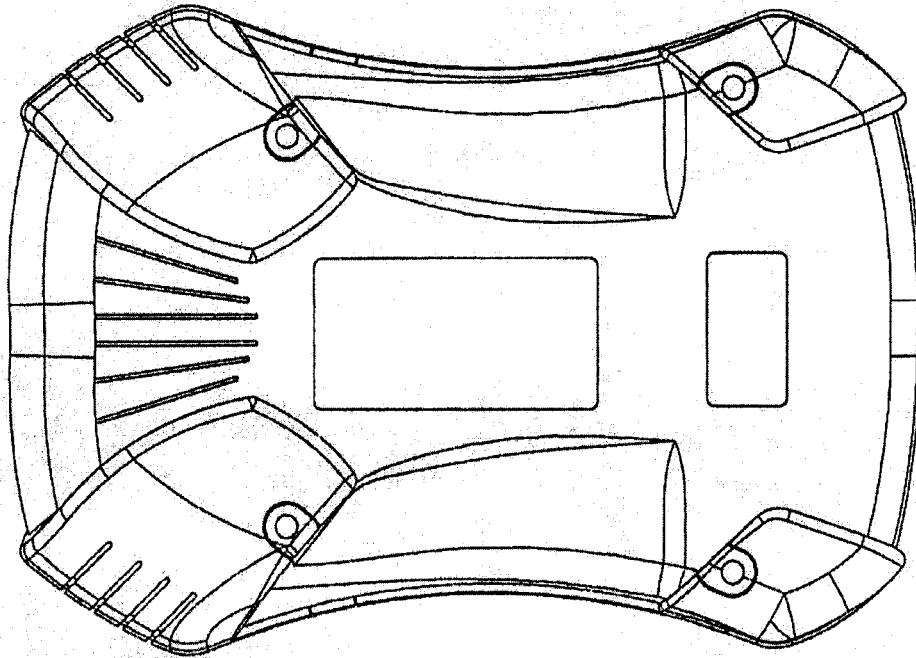


FIG. 7

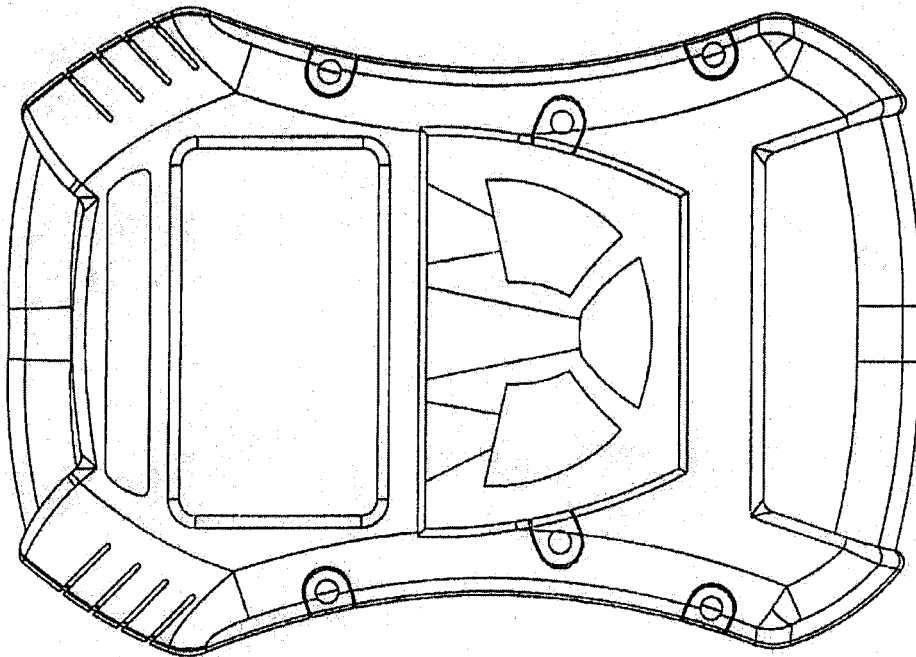


FIG. 6



May 1, 2007

Dave Martinez, General Manager
SuperChips, Inc.
1790 East Airport Boulevard
Sanford, FL 32773

Phil Preston, Vice President of Operations
SuperChips, Inc.
1790 East Airport Boulevard
Sanford, FL 32773

Gentlemen:

Enclosed are copies of Patent No. D541,685 entitled Automotive Accessory Instrument Case and Patent No. D490,731 entitled Automotive Accessory Instrument Case.

Nelson Plastics, Inc., holds the exclusive license under each of these design patents and the exclusive license to grant sublicenses under each of these two patents.

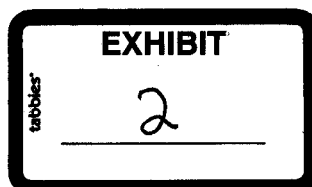
Nelson Plastics, Inc., has not licensed to Superchips, Inc., nor to any other entity, the right to make, use, or sell products which are covered by either of the enclosed patents and which are not purchased from Nelson Plastics, Inc.

Nelson Plastics hereby demands that Superchips not sell any more products incorporating cases that are covered by one or more claims of the enclosed patents unless those cases are purchased from Nelson Plastics, Inc.

This letter constitutes notice under Title 35, United States Code, Section 287. You should also note that Section 284 of the Statute provides that the court may award treble damages for willful infringement and that Section 289 provides that the infringer of a design patent shall be liable to the patent owner to the extent of his total profit but not less than \$250 for the sale of any article of manufacture.

Cordially,

Rick Bradford



DOUGLAS BOWDOIN, PA

ATTORNEY AT LAW

SUITE 800, CITRUS CENTER
255 SOUTH ORANGE AVENUE
ORLANDO, FLORIDA 32801

POST OFFICE BOX 2254
ORLANDO, FLORIDA 32802-2254
TELEPHONE (407) 422-0025
FACSIMILE (407) 843-2448
DBOWDOIN@BOWDOINLAW.COM

May 7, 2007

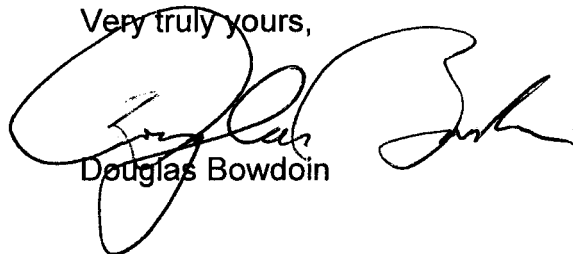
David E. Cannella, Esquire
Carlton Fields
450 South Orange Avenue, Suite 500
Orlando, FL 32801-3336

RE: Nelson Plastics/Superchips

Dear Mr. Cannella:

Thank you for your letter of May 4, 2007. Nelson Plastics, Inc., has the exclusive license to utilize and enforce Patent No. D541,685 and Patent No. D490,731.

Very truly yours,



Douglas Bowdoin

DB/ct

cc: Nelson Plastics, Inc.

db:ct:c:\nelson plastics\cannella lt3

