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CLERK U.S. DISTRICT
SOUTHERN DISTRICT OF

U.S. DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CARTER THOMSON,
and AHRENS AGRICULTURAL
INDUSTRIES, CO., d/b/a MIRACO

Plaintiffs,

v.

HAWKEYE STEEL PRODUCTS,
INC.,

Defendant.

4:01-CV-70599
CIVIL ACTION NO:

COMPLAINT AND
DEMAND FOR JURY TRIAL

COME NOW the Plaintiffs and for their cause of action against the Defendant, state:

Count I- Patent Infringement

1. This is an action by Carter Thomson and Ahrens Agricultural Industries, Inc., d/b/a Miraco (hereinafter "Miraco") for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 271, et seq. This Court has jurisdiction under 28 U.S.C. § 1338(a).
2. Venue is proper in this district under the provisions of 28 U.S.C. §§ 1391 and 1400(b).
3. Plaintiff Carter Thomson is a resident of Iowa.
4. Plaintiff Miraco is a corporation organized and existing under the laws of the State of Iowa, with its principal place of business at 1000 Ferguson Road, Grinnell, Iowa 50112.

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5. Defendant Hawkeye Steel Products, (hereinafter "Hawkeye") is a corporation organized and existing under the laws of Delaware, with its principal place of business located at Highway 16 West, Houghton, Iowa 52631.
6. Plaintiff Carter Thomson is the inventor of an animal waterer claimed in United States Patent No. Des. 421,158 ("the '158 patent") issued February 22, 2000 entitled Animal Waterer. A copy of the '158 patent is attached hereto as exhibit A. Plaintiff Thomson has assigned all of his rights to the '158 patent to Plaintiff Miraco.
7. Defendant Hawkeye is engaged in and/or causing the manufacturing and marketing of an animal waterer covered by said '158 patent and is therefore infringing one or more of the claims of said '158 patent.
8. Defendant Hawkeye has infringed, induced the infringement of, and has contributorily infringed the '158 patent in this judicial district and throughout the United States, and has committed such infringement willfully.
9. The activities of Hawkeye with respect to the infringement of the '158 patent has been without the express or implied license of Miraco.
10. Plaintiffs have been damaged and will be damaged by the foregoing infringing activities of Hawkeye in an amount which cannot be accurately determined at this time.

WHEREFORE, Plaintiffs request the following relief:

- A. That judgment be entered that Hawkeye has willfully infringed and induced the infringement of U.S. Patent No. Des. 421,158; that Hawkeye has contributorily infringed the '158 patent; and that the '158 patent is valid and enforceable at law;
- B. That Hawkeye be temporarily restrained and enjoined preliminarily and permanently from such patent infringement whether it be direct, contributorily, or by inducement;
- C. That judgment be entered awarding Plaintiffs damages adequate to compensate for Hawkeye's infringement, but in no event less than a reasonable royalty for the use made of the invention by Hawkeye, together with interest and costs as fixed by the Court, as provided by 35 U.S.C. § 284;
- D. That damages be increased up to three times the amount found or assessed as provided in 35 U.S.C. § 284;
- E. That Hawkeye be ordered to pay the costs and attorneys' fees as provided for in 35 U.S.C. § 285;
- F. That Plaintiffs be awarded such further relief as this Court may deem just and equitable.

Count II- Unfair Competition and Deceptive Practices

- 11. Plaintiffs hereby restate paragraphs 3 through 6 as though fully set forth herein.
- 12. This is an action for unfair competition and deceptive trade practices under 15 U.S.C. § 1125(a). This Court has jurisdiction pursuant to 28 U.S.C. § 1338(a), and venue is proper under 28 U.S.C. §§ 1391(b) and (c).

13. For many years Plaintiff Miraco has sold throughout the United States an animal waterer for livestock and animal use. The unique, inherently distinctive, non-functional features, and successful use of the animal waterer, together with the extensive sales on the part of Plaintiffs have created substantial goodwill in the minds of the purchasing public in connection with the animal waterer, whereby the appearance of the animal waterer has acquired a secondary meaning in the minds of the purchasing public which identifies the animal waterer with Miraco. By reason of the expertise and marketing experience of Miraco, substantial know-how and trade secret information has been developed by Hawkeye over the years in regard to the animal waterer and the marketing thereof.
14. In 2000 and 2001 Defendant Hawkeye, without license or right, and in derogation of the rights of Plaintiffs began selling an animal waterer which is substantially identical to the animal waterer made and sold by Plaintiffs. Defendant Hawkeye's animal waterer incorporates both the functional and non-functional and inherently distinctive features of the Plaintiffs' animal waterer. Such copying of the Plaintiffs' animal waterer by Hawkeye creates a false designation of the origin of Plaintiffs' animal waterer.
15. The copying was done intentionally and deceptively, and the animal waterer has been transported or used in commerce among the several states, all to Plaintiffs' damage. Hawkeye's animal waterer so closely resembles the trade dress of Plaintiffs' animal waterer that certain customers and prospective customers, and

the public at large are likely to be confused between the animal waterers of Plaintiffs and Hawkeye, whereby Plaintiffs will be damaged.

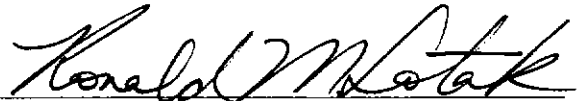
WHEREFORE, the Plaintiffs request the following relief:

- A. That Hawkeye be temporarily restrained and enjoined preliminarily and permanently from further sale of their animal waterer. Said permanent injunction should be as follows: Hawkeye, its officers, agents, servants, employees, and attorneys, and those in active concert or participation with them who receive actual notice of this Order are enjoined from selling or marketing an animal waterer which simulates the Miraco animal waterer, and from selling or marketing any components thereof, and from selling or marketing any other animal waterer which draws its pattern from the Miraco animal waterer, and which is confusingly similar in appearance to the Miraco animal waterer;
- B. That judgment be entered awarding Plaintiffs damages adequate to compensate for Hawkeye's unfair competition, and an accounting be ordered to determine such damages;
- C. That damages be increased up to three times the amount found or assessed as provided in 15 U.S.C. § 1117; and
- D. That Hawkeye be ordered to pay the costs and attorneys' fees of this action, and for such further relief as this Court may deem just and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury as to all issues triable by jury in this case as a matter of right.

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF

United States Patent [19]

[11] Patent Number: **Des. 421,158**

Thomson

[45] Date of Patent: **** Feb. 22, 2000**

[54] **ANIMAL WATERER**

[57] **CLAIM**

[75] Inventor: **Carter Thomson, Malcom, Iowa**

I claim the ornamental design for an animal waterer, as shown and described.

[73] Assignee: **Ahrens Agricultural Industries, Inc., Grinnell, Iowa**

DESCRIPTION

[**] Term: **14 Years**

FIG. 1 is a frontal perspective view of an animal waterer showing my new design.

[21] Appl. No.: **29/108,563**

FIG. 2 is a front elevational view thereof.

[22] Filed: **Jul. 29, 1999**

FIG. 3 is a rear elevational view thereof.

[51] LOC (7) Cl. **30-07**

FIG. 4 is an elevational view thereof from the left side as viewed in FIG. 2 with the right side being a mirror image thereof.

[52] U.S. Cl. **D30/121**

FIG. 5 is an elevational view thereof from the left side as viewed in FIG. 3 with the right side being a mirror image thereof.

[58] Field of Search **D30/121-133;**
119/51.01, 51.04, 51.11, 51.12, 51.13, 51.5,
52.2, 52.4, 54

FIG. 6 is a top plan view thereof.

[56] **References Cited**

FIG. 7 is a bottom plan view thereof.

U.S. PATENT DOCUMENTS

FIG. 8 is a frontal perspective view of an alternate embodiment.

D. 196,777	11/1963	Haynes	.....	D30/132
D. 254,453	3/1980	Strong	.....	D30/132
D. 257,691	12/1980	Peterson et al.	.....	D30/132
D. 374,516	10/1996	Lillelund et al.	.....	D30/132
D. 397,531	8/1998	Huff	.....	D30/132
D. 400,316	10/1998	Kolterman et al.	.....	D30/132
D. 402,428	12/1998	Chrisco	.....	D30/121
D. 406,926	3/1999	Kolozsvari	.....	D30/132

FIG. 9 is a front elevational view thereof.

FIG. 10 is a rear elevational view thereof.

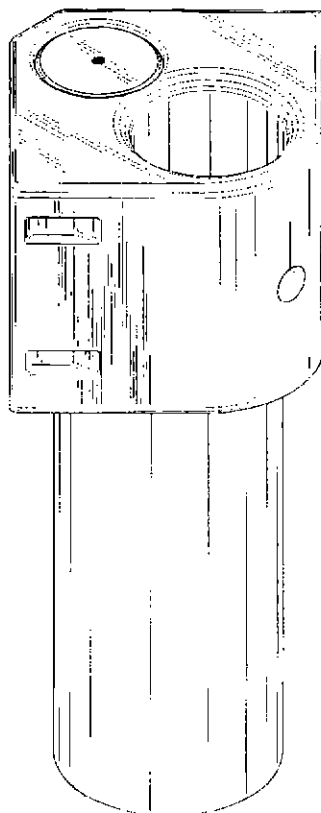
FIG. 11 is an elevational view thereof from the left side as viewed in FIG. 2 with the right side being a mirror image thereof.

FIG. 12 is an elevational view thereof from the left side as viewed in FIG. 3 with the right side being a mirror image thereof; and,

FIG. 13 is a bottom plan view thereof.

Primary Examiner—Louis S. Zarfaz
Assistant Examiner—Catherine R. Oliver
Attorney, Agent, or Firm—Zarley,McKee,Thomte,Voorhees & Sease

1 Claim, 9 Drawing Sheets



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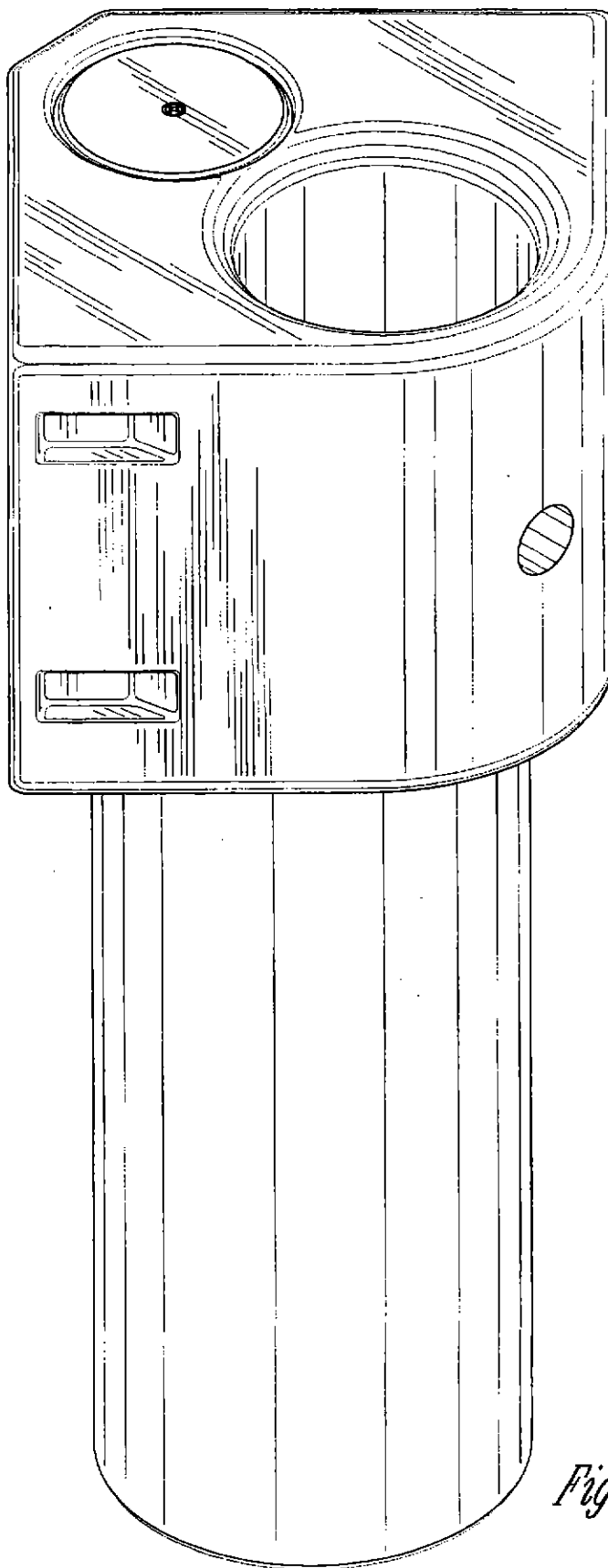


Fig. 1

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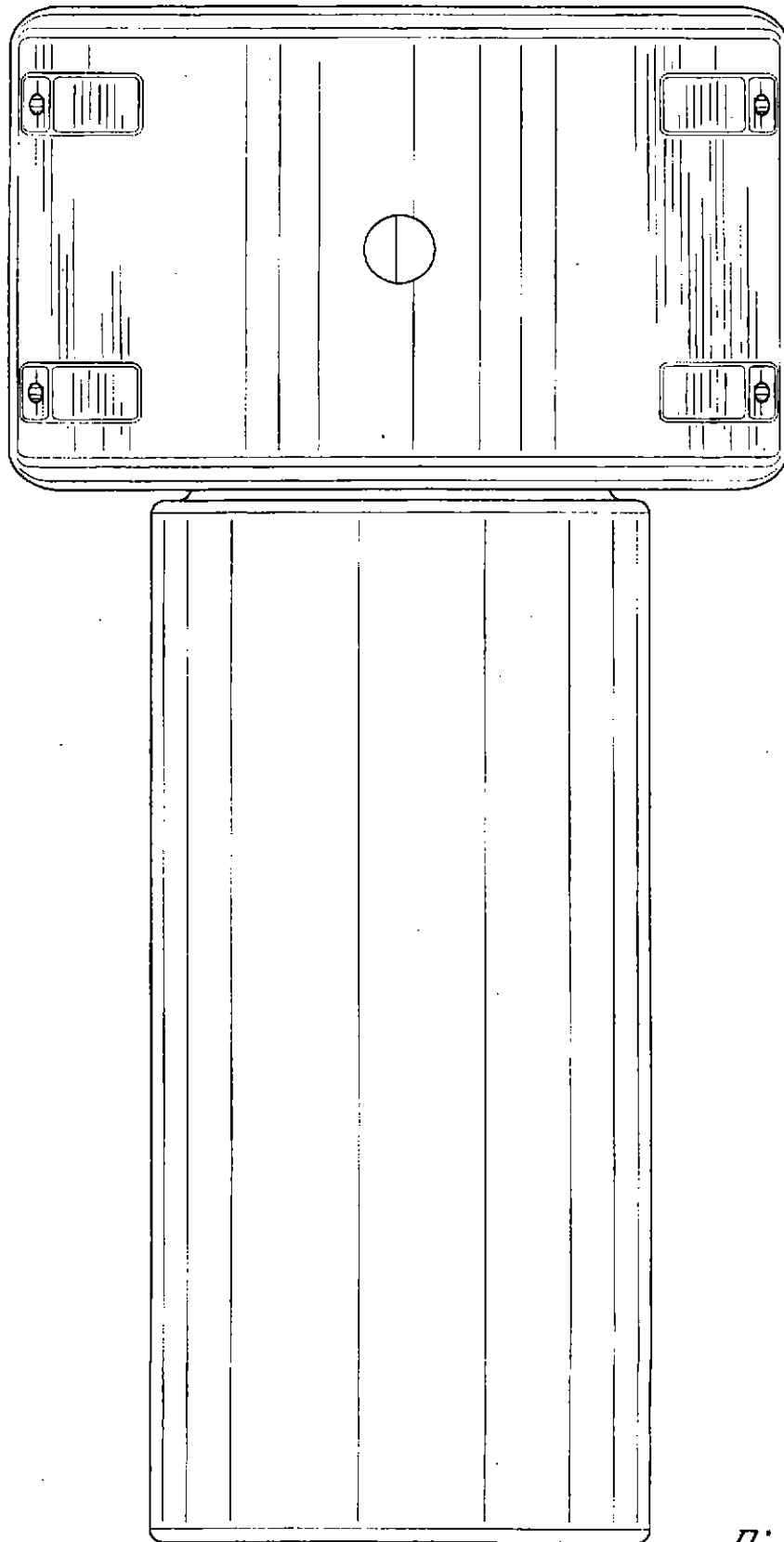


Fig. 2

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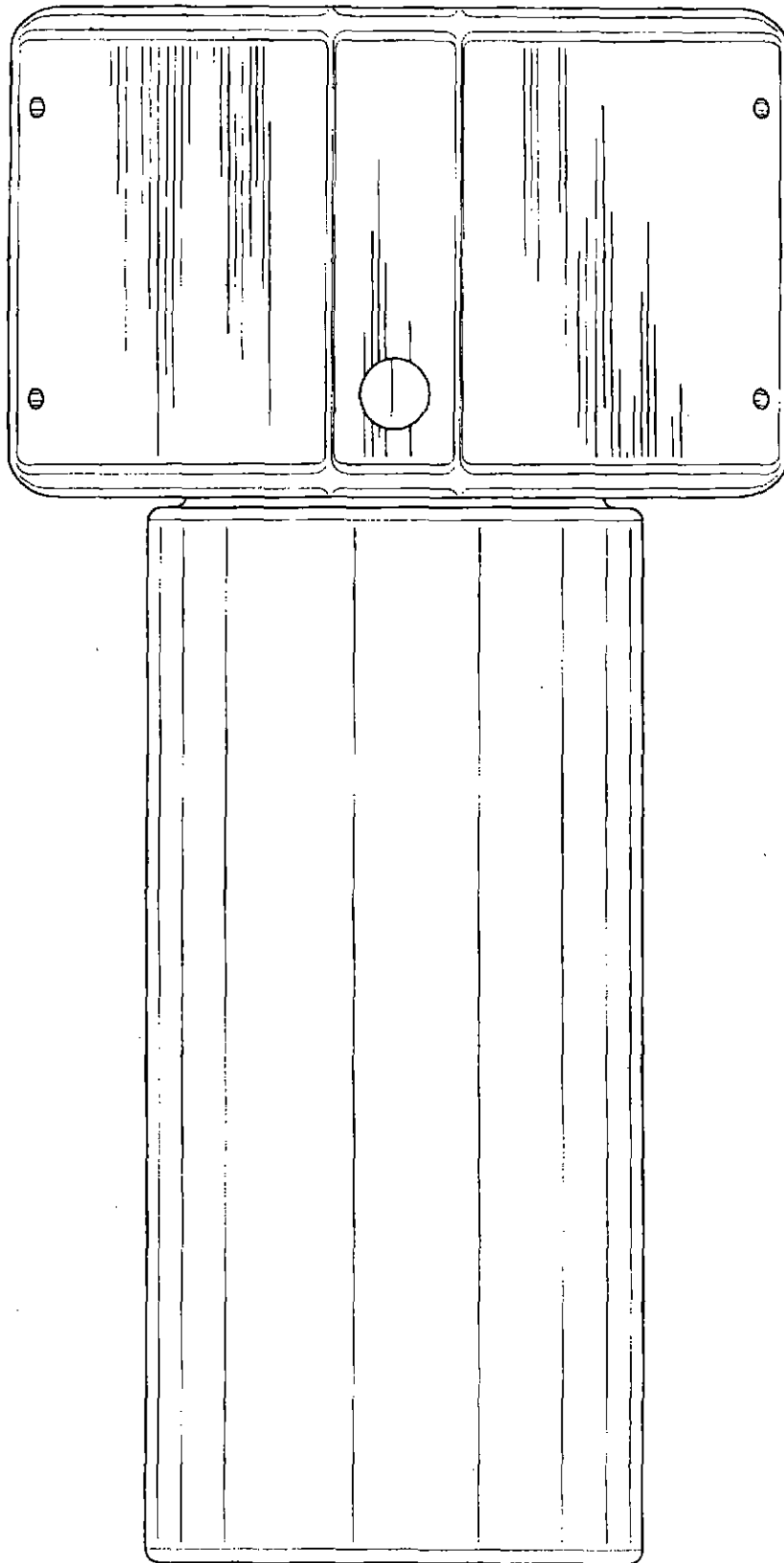


Fig. 3

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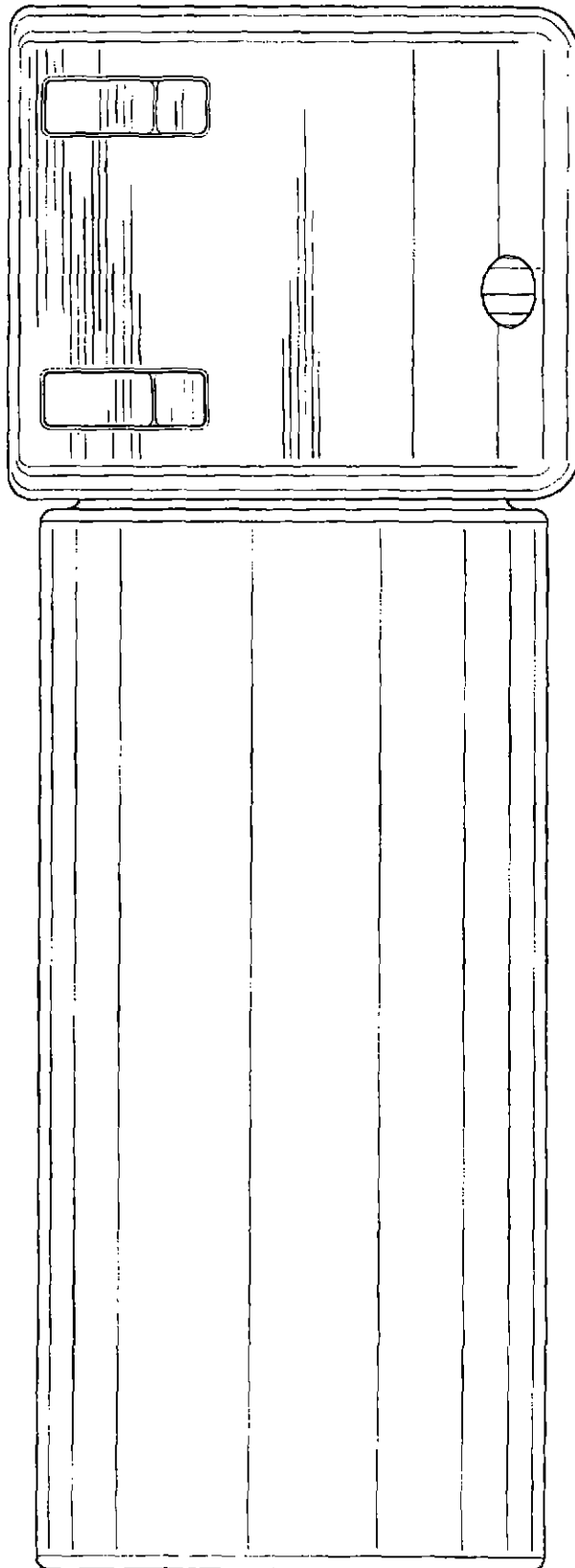


Fig. 4

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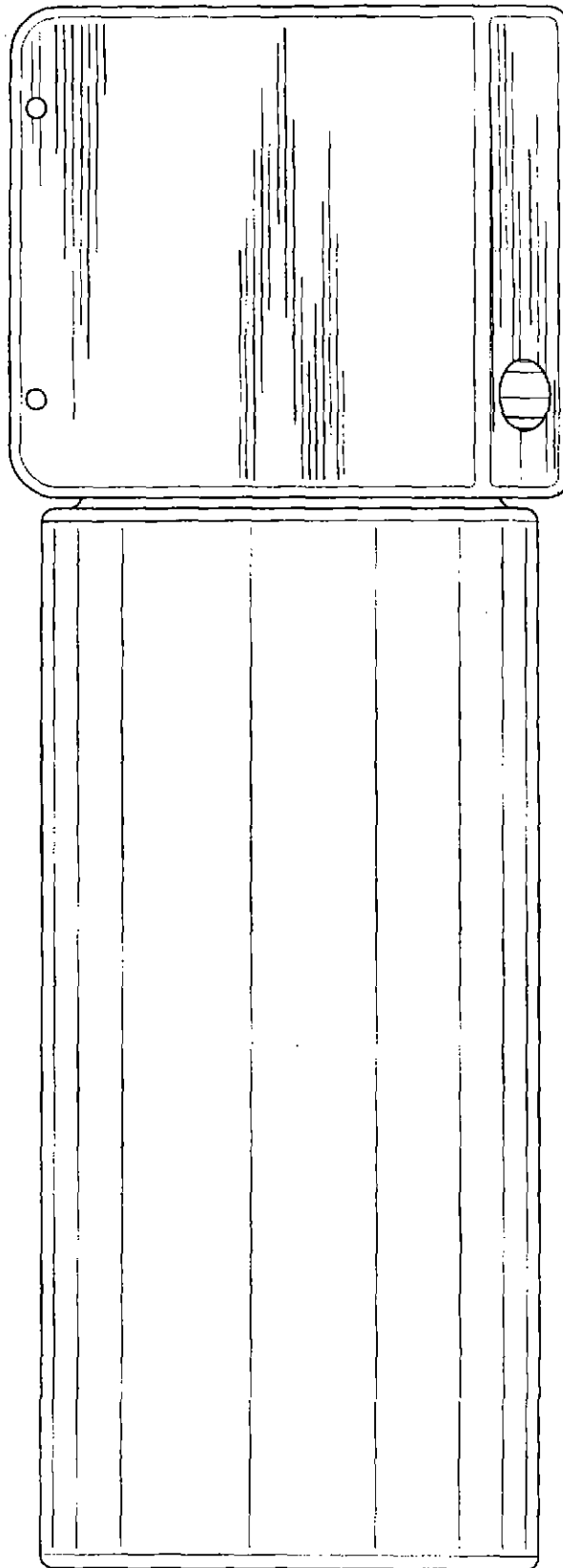


Fig. 5

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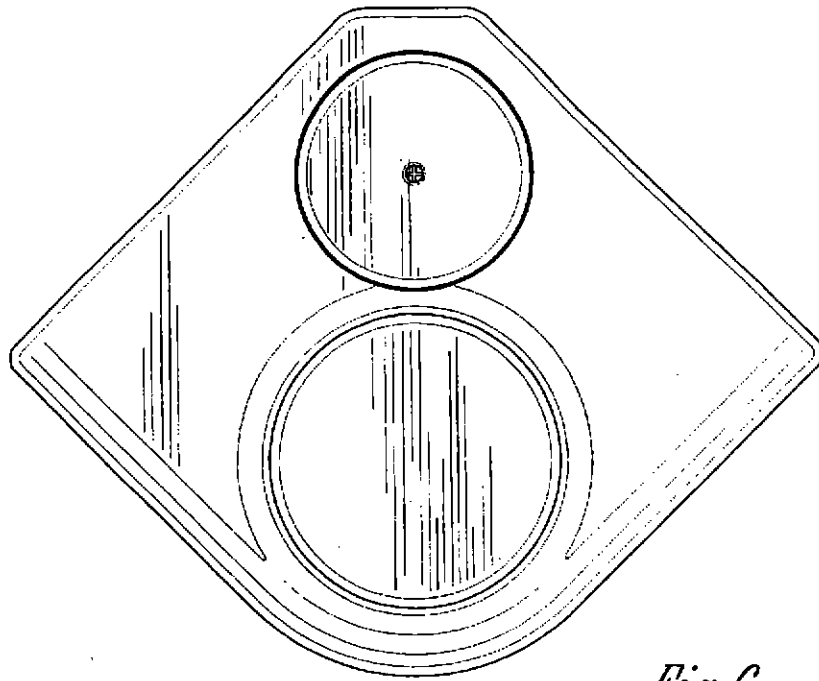


Fig. 6

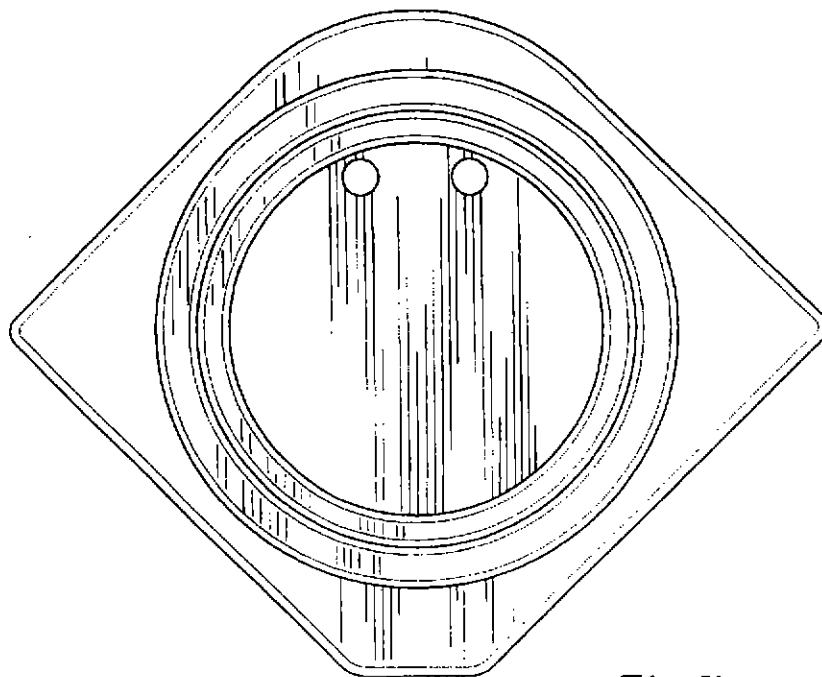


Fig. 7

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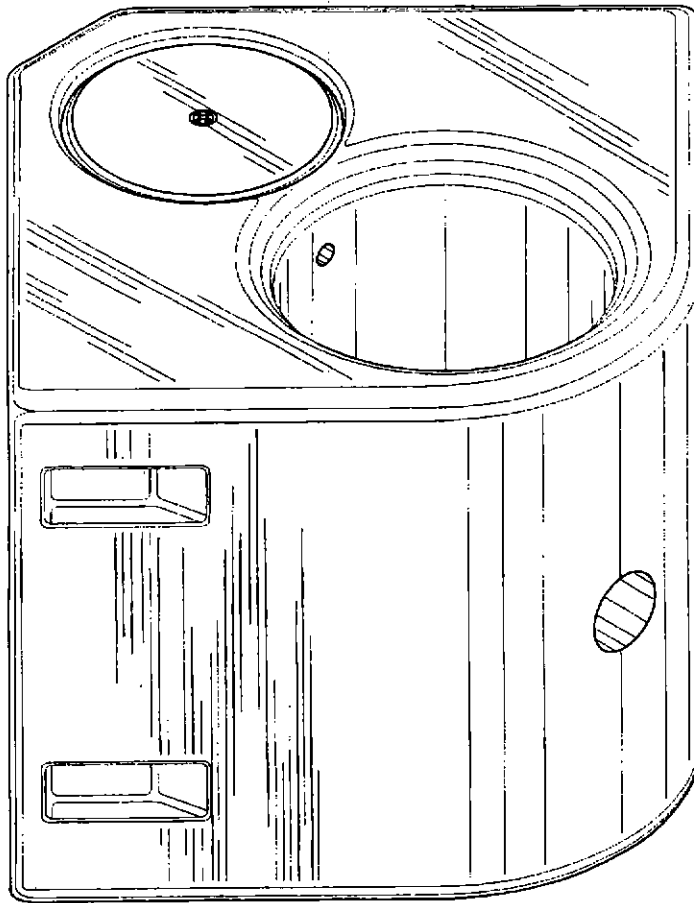


Fig. 8

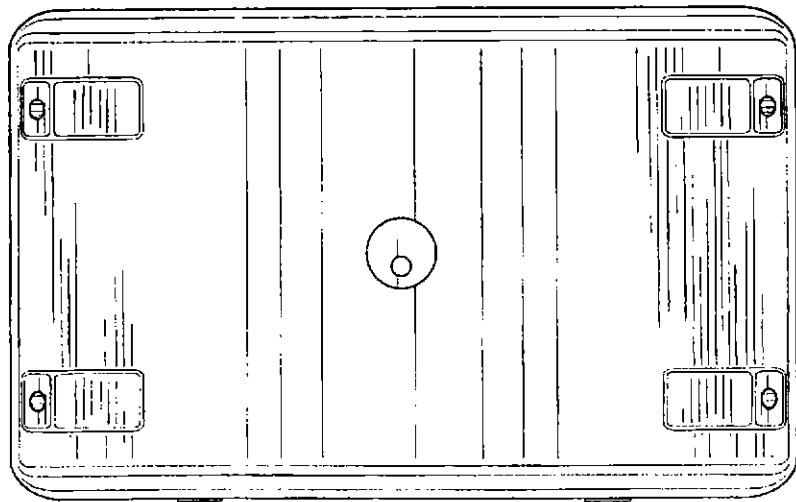


Fig. 9

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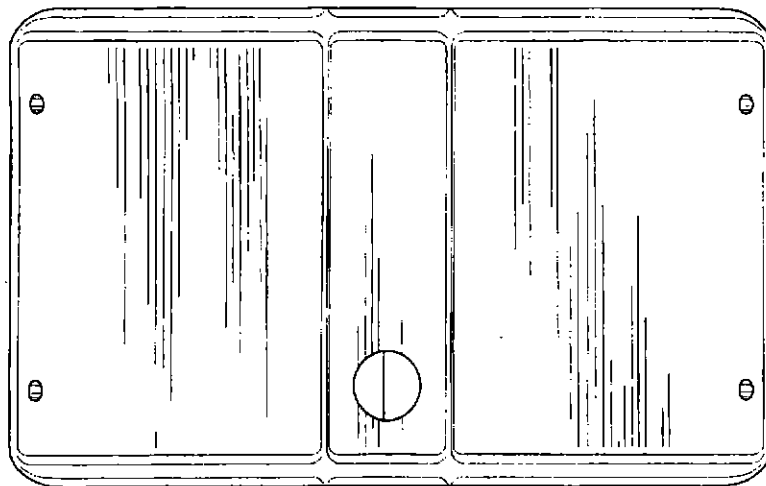


Fig. 10

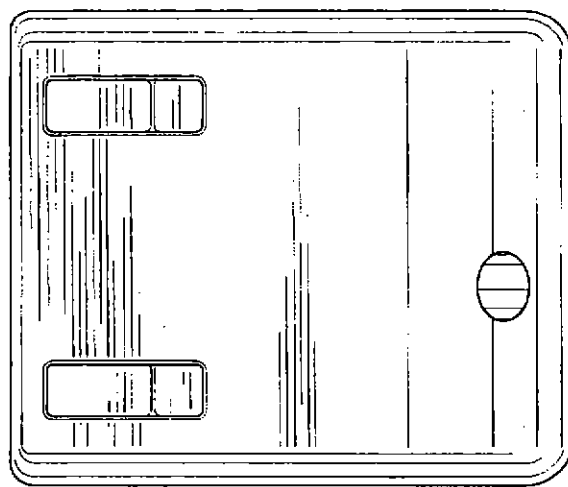


Fig. 11

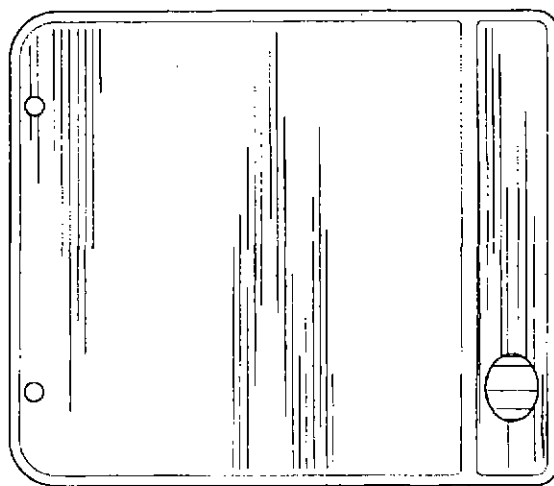


Fig. 12

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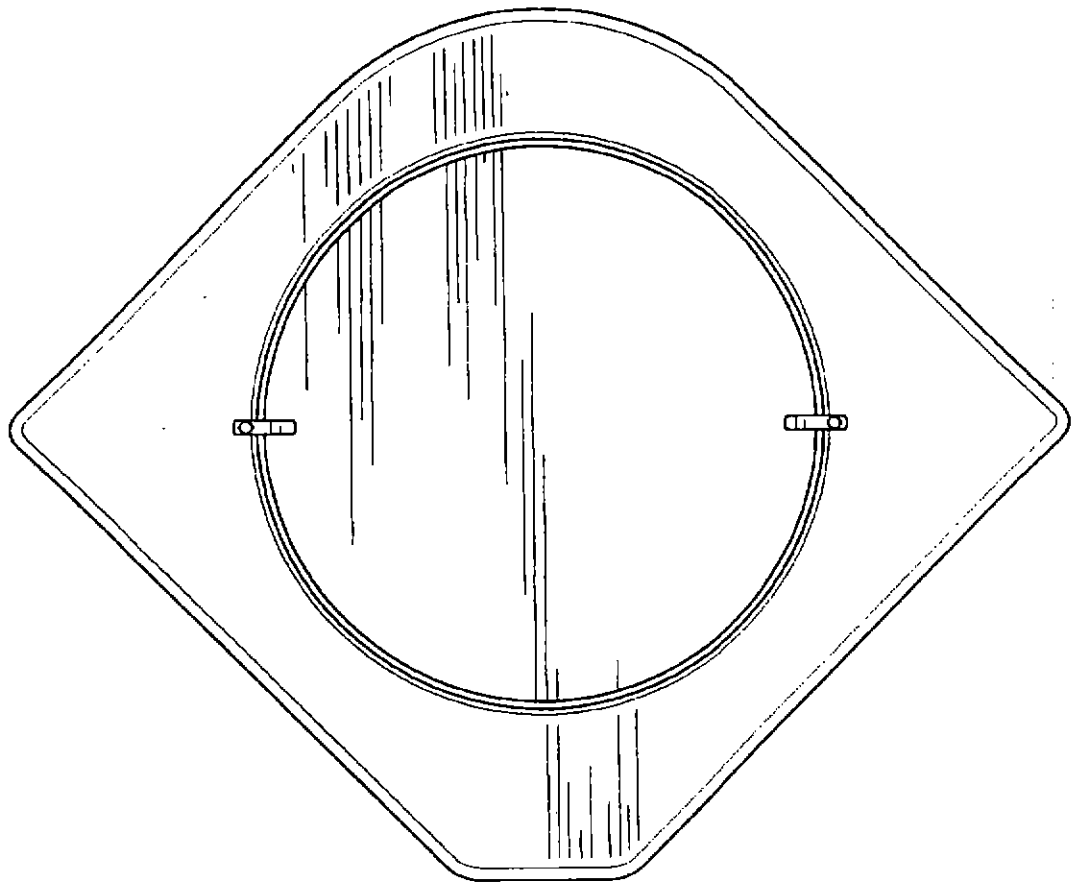


Fig. 13