

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NEWELL OPERATING COMPANY,)

Plaintiff,)

v.)

LIBERTY HARDWARE MANUFACTURING)
CORPORATION,)

Defendant.)

No.

01C 4728

DOCKETED
JUL 25 2001

**COMPLAINT FOR PATENT INFRINGEMENT
AND TRADE DRESS INFRINGEMENT**

JUDGE RONALD GUZMAN

MAGISTRATE JUDGE DENLOW

This lawsuit is brought by Newell Operating Company against Liberty Hardware Manufacturing Corporation for Liberty Hardware's intentional infringement of the design patents and trade dress of Newell's decorative cabinet hardware. Newell complains as follows against Liberty Hardware.

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U.S. DISTRICT COURT

1. Plaintiff, Newell Operating Company ("Newell"), is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business and residency at 29 East Stephenson Street, Freeport, Illinois. Newell is in the business of selling a variety of consumer and other products, including decorative and other cabinet hardware through its Amerock division, located in Rockford, Illinois.

2. Defendant, Liberty Hardware Manufacturing Corporation ("Liberty Hardware"), is a corporation organized and existing under the laws of the State of Florida, with its principal place of business and residency at 314 South Chimney Rock Road, Greensboro, North Carolina. Liberty Hardware does business in the State of Illinois. Liberty Hardware is in the business of selling decorative and other cabinet hardware.

3. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400(b).

COUNT I (PATENT INFRINGEMENT)

5. Newell is the owner, by assignment and merger, of U.S. Design Patent D415,405 (the "405 Patent"), duly and legally issued by the United States Patent and Trademark Office on October 19, 1999 upon an application filed in the name of Robert A. O'Neil. The 405 Patent is a design patent for an ornamental design of a knob. Via assignment and merger, Newell is the true and proper owner of the 405 Patent. A true copy of the text and drawing of the 405 Patent is attached hereto as Exhibit A.

6. Newell is the owner, by assignment, of U.S. Design Patent D411,794 (the "794 Patent"), duly and legally issued by the United States Patent and Trademark Office on July 6, 1999 upon an application filed in the name of Robert A. O'Neil. The 794 Patent is a design patent for an ornamental design of a pull. A "pull" is a drawer or cabinet handle. Via assignment, Newell is the true and proper owner of the 794 Patent. A true copy of the text and drawing of the 794 Patent is attached hereto as Exhibit B.

7. Since at least 1998, Newell has marketed and sold cabinet knobs embodying the design protected by the 405 Patent and the distinctive trade dress associated with those products. Newell has sold and continues to sell those products under its "InspirationsTM" trademark. A photograph of the Newell knob utilizing the 405 Patent and the distinctive trade dress contained therein is attached hereto as Exhibit C.

8. Since at least 1998, Newell has marketed and sold cabinet pulls embodying the design protected by the 794 Patent and the distinctive trade dress associated with those products. Newell has sold and continues to sell those products under its "InspirationsTM" trademark. A photograph of the Newell pull utilizing the 794 Patent and the distinctive trade dress contained therein is attached hereto as Exhibit D.

9. The 405 Patent and the 794 Patent (collectively the "Newell Patents") each are presumed to be valid pursuant to 35 U.S.C. § 282. The Newell Patents are, in fact, valid. The knobs and pulls sold by Newell embodying the designs in the Newell Patents (hereinafter, "Newell Products") have been commercially successful.

10. Liberty Hardware has infringed, and continues to infringe, the Newell Patents, in violation of 35 U.S.C. § 271, through the introduction of several cabinet hardware designs that Liberty Hardware is marketing and selling under its "LaurelTM" line of products. These products appropriate the features of the Newell Patents as well as the overall appearance thereof, and are copies of the corresponding Newell Products.

11. More specifically, Liberty Hardware has infringed, and continues to infringe, the 405 Patent through its importation, marketing and sale of nearly identical knobs under Liberty Hardware part number PN0610. A photograph of the Liberty Hardware product PN0610, which infringes on the 405 Patent, is attached hereto as Exhibit E.

12. Liberty Hardware has infringed, and continues to infringe, the 794 Patent through its importation, marketing and sale of nearly identical pulls under Liberty Hardware part numbers PN0611 and PN0612. Photographs of the Liberty Hardware products PN0611 and PN0612, which infringe on the 794 Patent, are attached hereto as Exhibit F.

13. Liberty Hardware is selling its infringing knobs and pulls (the "Liberty Hardware Products") under its "Laurel™" line of products in its catalogs nationwide, on its website and at retail establishments in Illinois and nationwide.

14. Liberty Hardware's infringement of the Newell Patents is willful, deliberate and intentional, as evidenced by the fact that the Liberty Hardware Products are copies of the Newell Products.

15. Newell has been irreparably damaged by the infringing acts of Liberty Hardware, and will continue to be irreparably damaged, unless Liberty Hardware is enjoined from further acts of infringement.

COUNT II (TRADE DRESS INFRINGEMENT)

16. Newell repeats and realleges paragraphs 1 through 15 of Count I as paragraphs 1 through 15 of this Count II.

17. Newell's Amerock division has been engaged in the sale of high quality decorative cabinet hardware for more than fifty years, and has become well known throughout the United States and elsewhere as a source of high quality products. Amerock's products are distributed and sold to consumers through retailers throughout the United States, and to cabinet and furniture manufacturers as parts for their products.

18. As described above, since at least as early as 1998, Newell has sold the Newell Products, including Newell part numbers 1580 and 1581, using the distinctive trade dress shown in the Newell Patents depicted in Exhibits A and B. Newell has distributed and sold these products continuously in interstate commerce since that date.

19. Newell has expended substantial time, effort and money in conceiving, developing, advertising, promoting and marketing the Newell Products using their distinctive

trade dress. Newell's efforts have been successful, and Newell has sold a substantial number of Newell Products. The trade dress associated with each of the Newell Patents and the Newell Products are distinctive and nonfunctional and have attained secondary meaning in the market as an identifier of source.

20. Liberty Hardware markets and sells knobs and pulls which are copies of Newell's knobs and pulls and infringe the trade dress of the Newell products as follows:

Liberty Part No.	Newell Part No.
PN0611	1580
PN0612	1580
PN0610	1581

21. The Liberty Hardware Products are nearly identical to the Newell Products. They are sold through the same marketing channels and advertising media. They are sold to the same customers, who are likely to be confused by the virtually identical products.

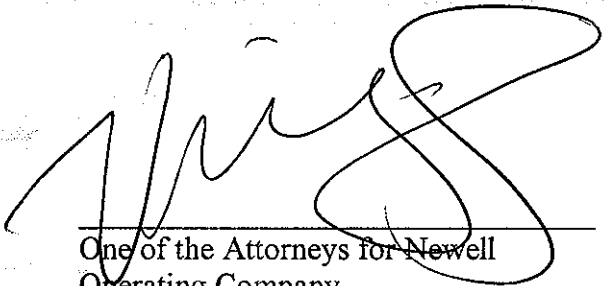
22. Liberty Hardware's copying of the trade dress of the Newell Products is intended to and is likely to cause confusion, reverse confusion, mistake, or deception as to the source, origin, affiliation, connection or association of Liberty Hardware's Products with the Newell Products, all to Newell's irreparable injury and Liberty Hardware's unjust enrichment, in violation of 15 U.S.C. § 1125(a).

WHEREFORE, Newell asks that the Court:

- A. adjudge and decree that the Newell Patents are valid and enforceable, and have been infringed by Liberty Hardware;
- B. adjudge and decree that Liberty Hardware has infringed Newell's trade dress in its Newell Products;

- C. enter a preliminary and permanent injunction, pursuant to 35 U.S.C. § 283, enjoining Liberty Hardware from manufacturing, advertising or selling the Liberty Hardware Products;
- D. order that Liberty Hardware deliver for destruction all articles of merchandise, displays, advertisements, packaging, brochures, catalogs and any other materials in its possession or control, or in the possession or control of its agents, which infringe on the Newell Patents or trade dress;
- E. order an accounting be had to assess the damages to Newell arising out of Liberty Hardware's willful patent and trade dress infringement, and that those damages be trebled and awarded to Newell with interest pursuant to 35 U.S.C. §§ 284 and 289, and 15 U.S.C. § 117(a);
- F. find that this is an exceptional case pursuant to 35 U.S.C. § 285 and 15 U.S.C. § 1119(a), and accordingly award Newell its reasonable attorneys' fees;
- G. award such other and further relief as this Court may deem just and proper.

Newell demands trial by jury.



One of the Attorneys for Newell
Operating Company

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Jose Lopez
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Phone: 312.701.9300
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EXHIBIT A



US 415405S

United States Patent [19]
O'Neil

[11] **Patent Number: Des. 415,405**
[45] **Date of Patent: ** Oct. 19, 1999**

- [54] **KNOB**
- [75] **Inventor: Robert A. O'Neil, Glen Ellyn, Ill.**
- [73] **Assignee: Newell Operating Company, Freeport, Ill.**
- [**] **Term: 14 Years**
- [21] **Appl. No.: 29/089,586**
- [22] **Filed: Jun. 18, 1998**
- [51] **LOC (6) CL 08-06**
- [52] **U.S. Cl. D8/305; D8/310**
- [58] **Field of Search D8/300, 305, 307, D8/310, 312; 16/110 R, 121; D11/37, 38, 63**

D. 368,638	4/1996	Sonnenleiter	D8/310
D. 396,179	7/1998	Burns et al.	D8/310
D. 401,834	12/1998	Burns et al.	D8/310

Primary Examiner—B. J. Bullock
Attorney, Agent, or Firm—Foley & Lardner

[57] **CLAIM**

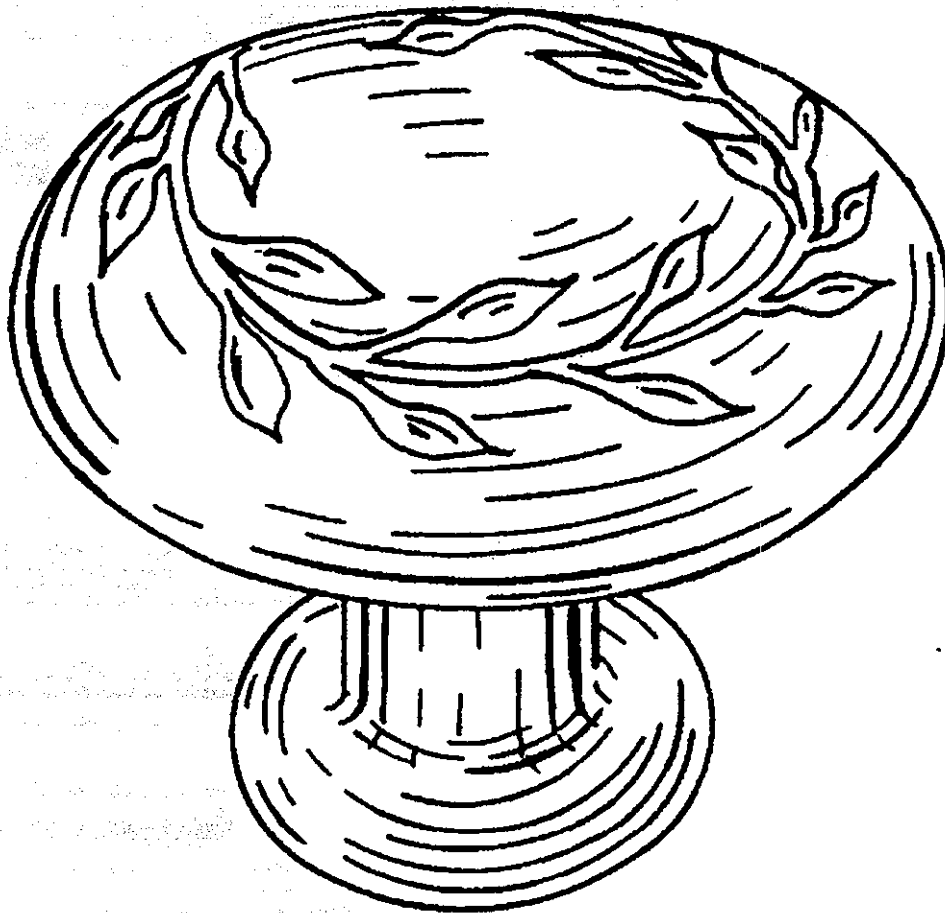
The ornamental design for a knob, as shown and described.

DESCRIPTION

FIG. 1 is a top perspective view of a knob showing the new design.
 FIG. 2 is a top plan view of the design.
 FIG. 3 is a front elevation view of the design. The rear elevation view is substantially identical thereto, and.
 FIG. 4 is a bottom plan view of the design.
 The right side and left side elevation views are substantially identical to the front elevation view.
 The broken line disclosure in the FIGURES is for illustrative purposes only and forms no part of the claimed design.

- [56] **References Cited**
U.S. PATENT DOCUMENTS
D. 213,901 4/1969 Beringer.
D. 219,422 12/1970 Tegner.

1 Claim, 1 Drawing Sheet



U.S. Patent

Oct. 19, 1999

Des. 415,405

FIG. 1

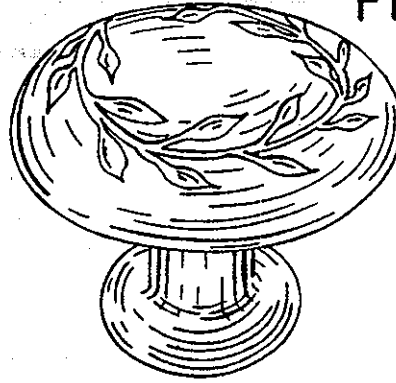


FIG. 2



FIG. 3

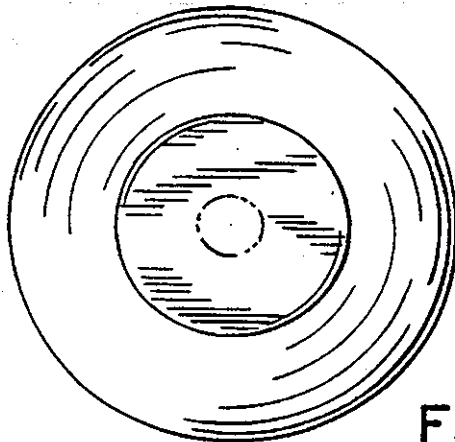
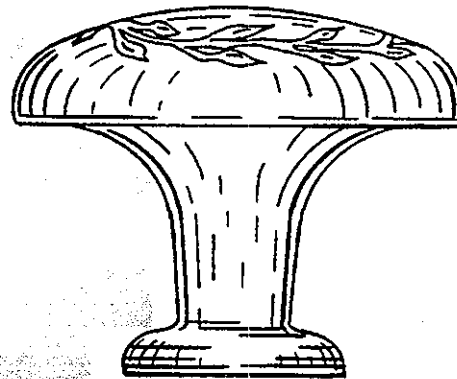


FIG. 4

EXHIBIT B



US00L411794S

United States Patent [19]
O'Neil

[11] **Patent Number: Des. 411,794**
[45] **Date of Patent: ** Jul. 6, 1999**

- [54] **PULL**
- [75] **Inventor: Robert A. O'Neil, Glen Ellyn, Ill.**
- [73] **Assignee: Newell Operating Company, Freeport, Ill.**
- [**] **Term: 14 Years**
- [21] **Appl. No.: 29/089,610**
- [22] **Filed: Jun. 18, 1998**
- [51] **LOC (6) CL 08-06**
- [52] **U.S. CL D8/305; D8/317**
- [58] **Field of Search D8/300-302, 305, D8/315-320; 16/110 R, 111 R; D3/276, 279, 282, 291; D11/37, 38, 63**

[56] **References Cited**

U.S. PATENT DOCUMENTS

- D. 95,926 6/1935 Rettich .
- D. 213,901 4/1969 Beringer .
- D. 246,426 11/1977 Ridgway et al. D8/318

OTHER PUBLICATIONS

Allison Cabinet Hardware; p. 4; pull 252 PB ©1991.
National Lock Decorative Hardware; p. 12; pull C6298-4L
Aug. 11, 1987.

Primary Examiner—B. J. Bullock
Attorney, Agent, or Firm—Foley & Lardner

[57] **CLAIM**

The ornamental design for a pull, as shown and described.

DESCRIPTION

FIG. 1 is a top perspective view of a pull showing the new design.

FIG. 2 is a top plan view of the design.

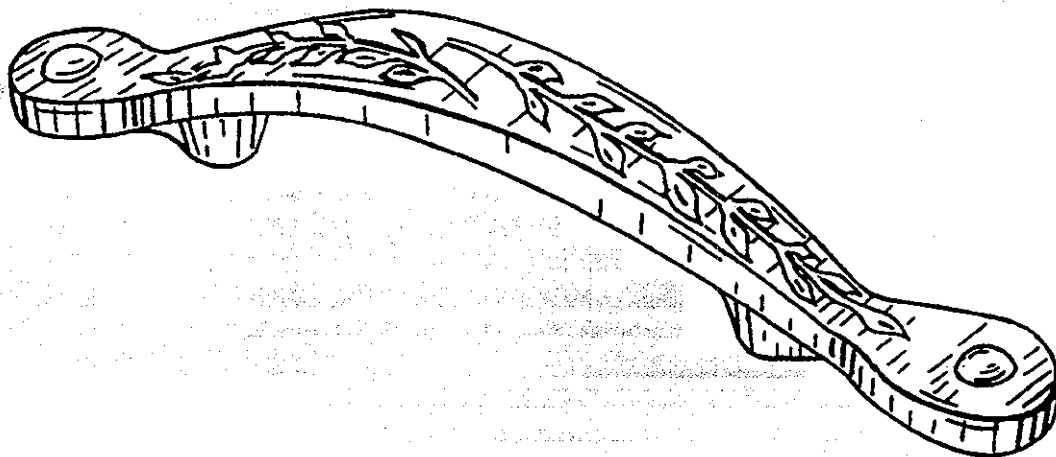
FIG. 3 is a front elevation view of the design. The rear elevation view is identical thereto.

FIG. 4 is a bottom plan view of the design; and,

FIG. 5 is a right side elevation view of the design. The left side elevation view is identical thereto.

The broken line disclosure in the FIGURES is for illustrative purposes only and forms no part of the claimed design.

1 Claim, 1 Drawing Sheet



U.S. Patent

Jul. 6, 1999

Des. 411,794

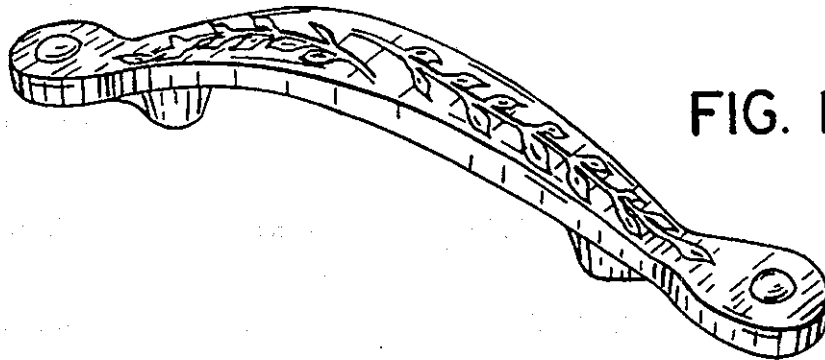


FIG. 1

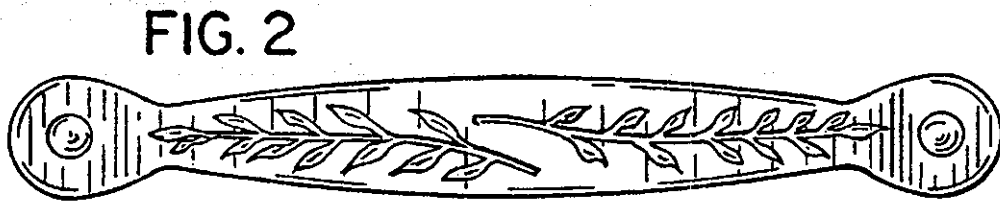


FIG. 2

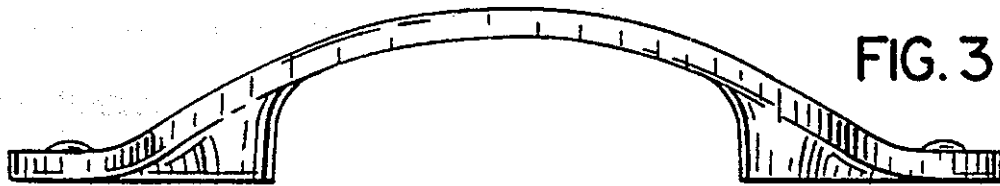


FIG. 3

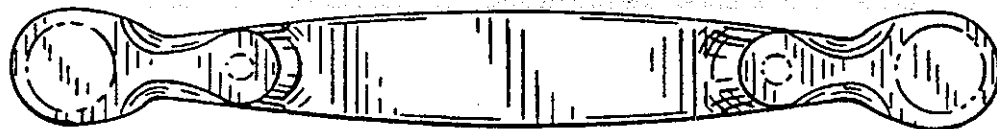


FIG. 4



FIG. 5

EXHIBIT C

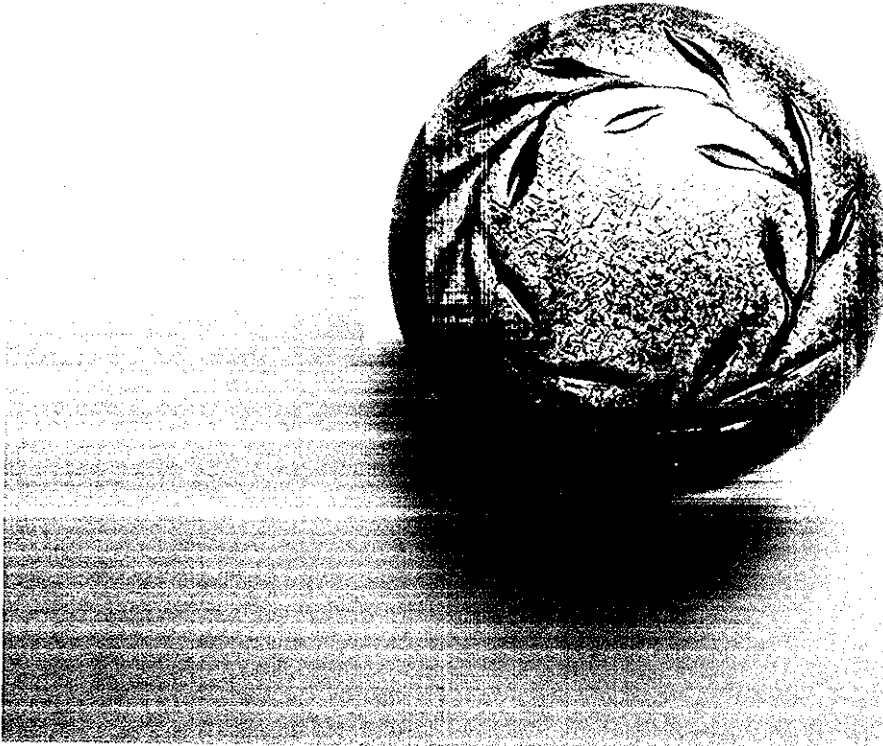


EXHIBIT C
Newell Knob

EXHIBIT D

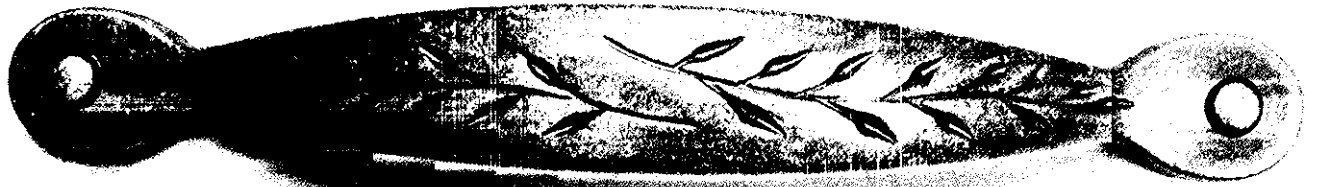


EXHIBIT D
Newell Pull

EXHIBIT E



EXHIBIT E
Liberty Knob

EXHIBIT F

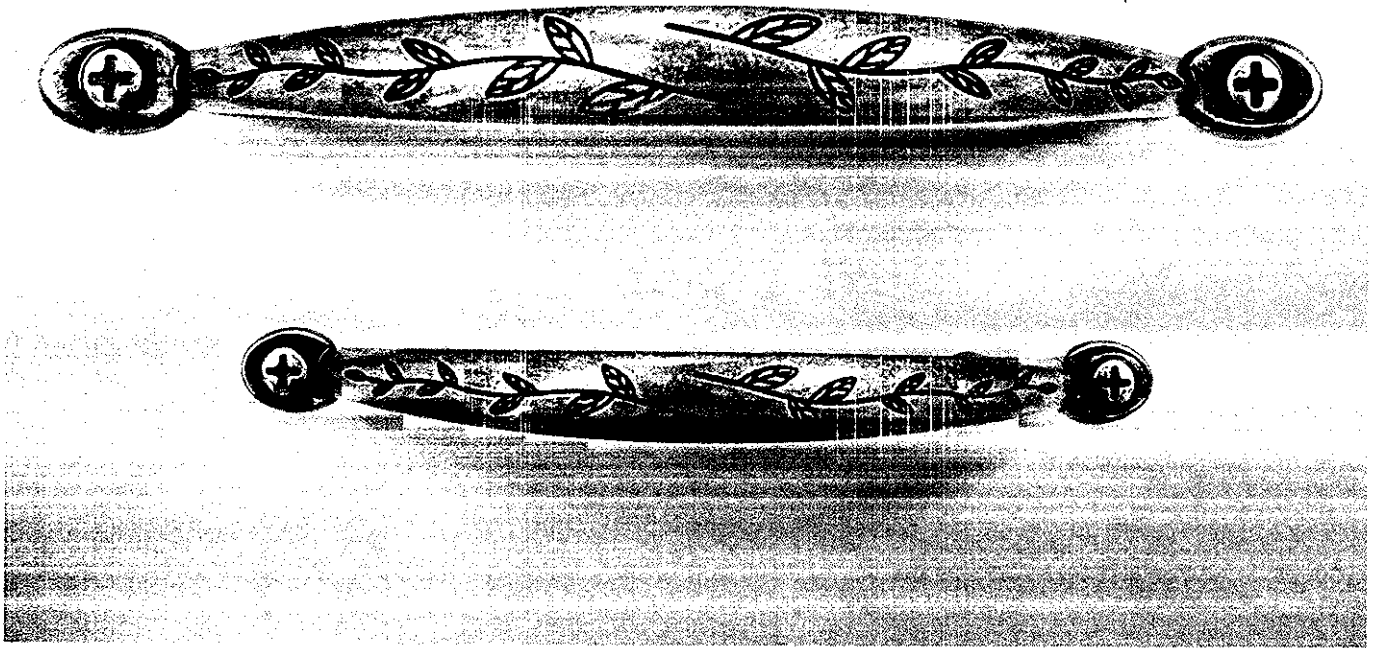


EXHIBIT F
Liberty Pulls

COPY

AO 121 (6/90)

TO: COMMISSIONER OF PATENTS AND TRADEMARKS WASHINGTON, D.C. 20231	REPORT ON THE FILING OF DETERMINATION OF AN ACTION OR APPEAL REGARDING A COPYRIGHT
------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------

In compliance with the Act of July 19, 1952 (66 Stat. 814; 35 U.S.C. 290) you are hereby advised that a court action has been filed on the following patent(s) in the U.S. District Court:

DOCKET NO. 01-CV-4728	DATE FILED 06/21/01	UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION
PLAINTIFF Newell Operating Company		DEFENDANT Liberty Hardware Manufacturing Corp.
PATENT NO.	DATE OF PATENT	PATENTEE
1) Des. 415,405	10/19/99	Robert A. O'Neil
2) Des. 411,794	07/06/99	Robert A. O'Neil

In the above-entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY			
	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT NO.	DATE OF PATENT	PATENTEE		
1				
2				
3				

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT

CLERK MICHAEL W. DOBBINS	(BY) DEPUTY CLERK	DATE
--------------------------	-------------------	------

Copy 1 - Upon initiation of action, mail this copy to Commissioner Copy 3 - Upon termination of action, mail this copy to Commissioner
 Copy 2 - Upon filing document adding patent(s), mail this copy to Commissioner Copy 4 - Case file copy

JS 44A
(Rev. 11/82)
Chicago

Cap

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September, 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet. (For more detailed instructions, see separate instruction sheet.)

010 4728

PLAINTIFFS

Newell Operating Company

DEFENDANTS

JUDGE RONALD GUZMAN
MAGISTRATE JUDGE DENLOW
Liberty Hardware Manufacturing Corporation

COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Stephenson
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Steven A. Weiss, Veronica Gomez,
Jose A. Lopez
SCHOPF & WEISS
312 West Randolph Street, Suite 300
Chicago, Illinois 60606 312-701-9300

ATTORNEYS (IF KNOWN)

[Signature]
U.S. DISTRICT COURT
01 JUN 21 PM
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(PLACE AN IN ONE BOX ONLY)

BASIS OF JURISDICTION

- 1 U.S. PLAINTIFF 2 U.S. DEFENDANT 3 FEDERAL QUESTION (U.S. NOT A PARTY) 4 DIVERSITY

IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1332, 1441)

CAUSE OF ACTION (CITE THE U.S. STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

35 U.S.C. Section 271, Design Patent Infringement

DOCKETED
JUL 25 2001

(PLACE AN IN ONE BOX ONLY)

NATURE OF SUIT

CONTRACT	TORTS	ACTIONS UNDER STATUTES			
		CIVIL RIGHTS	FORFEITURE/PENALTY	OTHER STATUTES	
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of

NEWELL OPERATING COMPANY

v.

LIBERTY HARDWARE MANUFACTURING CORPORATION

01C 4728

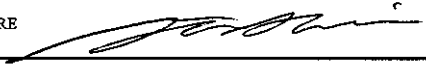
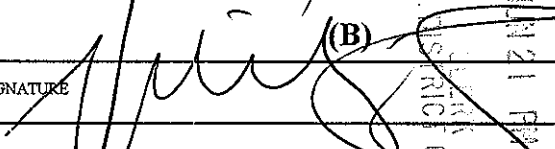
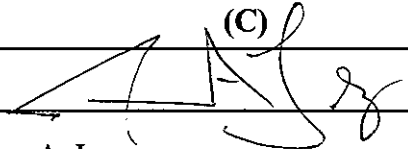
Case Number:

JUDGE RONALD GUZMAN

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

Plaintiff, Newell Operating Company

MAGISTRATE JUDGE DENISE

(A)	(B)
SIGNATURE 	SIGNATURE 
NAME Steven A. Weiss	NAME Verónica Gómez
FIRM Schopf & Weiss	FIRM Schopf & Weiss
STREET ADDRESS 312 West Randolph Street; Suite 300	STREET ADDRESS 312 West Randolph; Suite 300
CITY/STATE/ZIP Chicago, Illinois 60606	CITY/STATE/ZIP Chicago, Illinois 60606
TELEPHONE NUMBER 312.701.9300	TELEPHONE NUMBER 312.701.9300
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 3127802	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6225042
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>
(C)	(D)
SIGNATURE 	SIGNATURE
NAME Jose A. Lopez	NAME
FIRM Schopf & Weiss	FIRM
STREET ADDRESS 312 West Randolph Street; Suite 300	STREET ADDRESS
CITY/STATE/ZIP Chicago, Illinois 60606	CITY/STATE/ZIP
TELEPHONE NUMBER 312.701.9300	TELEPHONE NUMBER
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6229739	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)
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TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>

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U.S. DISTRICT COURT
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JUL 25 2001