

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

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U.S. DISTRICT COURT

HOSLEY INTERNATIONAL)
TRADING CORP.,)
an Illinois corporation,)

Plaintiff,)

v.)

K MART CORP., a Michigan corporation,)
and DESIGNCO, an Indian company,)

Defendants.)

Civil Action No.

02C 2398

JUDGE GETTLEMAN

U.S. Patent No. Des. 412,369

MAGISTRATE JUDGE
GERALDINE SOAT BROWN

JURY TRIAL REQUESTED

DOCKETED

APR 04 2002

COMPLAINT FOR DESIGN PATENT INFRINGEMENT

Plaintiff, Hosley International Trading Corporation ("Hosley"), for its complaint herein alleges as follows:

THE PARTIES

1. Plaintiff Hosley is an Illinois corporation having its principal office and place of business at 20530 South Stoney Island Ave, Lynwood, Illinois 60411.

2. On information and belief, one of the Defendants, K Mart, Corp., is a corporation incorporated under the laws of the State of Michigan, having its principal place of business in the State of Michigan, and having an office at 3250 West Big Beaver Road Suite 329, Troy, MI 48084.

3. On information and belief, one of the Defendants, Designco, is a company having its principal place of business in the Country of India, and having an office at Galshaheed Road, Moradabad-244 001, India.

4. On information and belief, Defendant K Mart, Corp. is engaged in the business of marketing, distributing and selling, among other things, cauldron-shaped votive candle holders.

5. On information and belief, Defendant K Mart, Corp. has offered for sale in this district and/or is currently offering for sale in this district cauldron-shaped votive candle holders.

11

6. On information and belief, Defendant Designco has sold and is offering for sale cauldron-shaped votive candle holders to customers in the United States.

7. On information and belief, Defendant Designco has sold and is offering for sale cauldron-shaped votive candle holders to customers in this district.

8. On information and belief, Defendant Designco has imported and continues to import cauldron-shaped votive candle holders to customers in the United States.

9. On information and belief, Defendant Designco has imported and continues to import cauldron-shaped votive candle holders to customers in this district.

JURISDICTION AND VENUE

10. This is an action for patent infringement brought pursuant to Title 35, United States Code, Section 271 et seq. This court has original subject matter jurisdiction of Plaintiff's action for patent infringement under the provisions of Title 28, United States Code, Section 1332(a).

11. Venue for this action is proper in this Court under Title 28, United States Code, Sections 1391, 1400(a) and (b).

COUNT I: DESIGN PATENT INFRINGEMENT

12. U.S. Design Patent No. 412,369, a copy of which is attached hereto as Exhibit A, was duly and legally issued to Piush Kumar on July 27, 1999. All rights in said patent have been assigned to Hosley which is and has been the sole owner of said patent since the grant thereof, with the right to sue thereon and recover for infringement thereof.

13. Defendants have, individually or collectively, infringed and continue to infringe said U.S. Design Patent No. 412,369 in the United States and within this District without authority of the Plaintiff and in violation of 35 U.S.C. Section 271 by selling, offering for sale, or importing decorative cauldron-shaped votive candle holders embodying the invention covered by U.S. Design Patent No. 412,369.

14. Upon information and belief, Defendants, with actual knowledge of U.S. Design Patent No. 412,369, has willfully and deliberately infringed said U.S. Design Patent No. 412,369 and will continue to do so unless enjoined by this Court.

15. Hosley has suffered damage by reason of the infringement of said U.S. Design Patent No. 412,369 by the Defendants, and will suffer additional irreparable damage and impairment of the value of its patent rights unless Defendants are enjoined by this Court from continuing their infringement of said U.S. Design Patent No. 412,369.

16. The acts of infringement by the Defendants have been committed with full knowledge of the rights of Hosley under said U.S. Design Patent No. 412,369, and with willful and wanton disregard thereof, rendering this an exceptional case under 35 U.S.C. Section 285.

WHEREFORE, Plaintiff Hosley prays that:

(a) Defendants be adjudged and decreed individually and/or collectively to have infringed U.S. Design Patent No. 412,369;

(b) A preliminary and permanent injunction issue restraining and enjoining said Defendants individually and/or collectively, its officers, agents, attorneys, and employees, and those acting in privity or concert with them, and each of them, from further infringement of U.S. Design Patent No. 412,369;

(c) Defendants, individually and/or collectively, be ordered to pay damages adequate to compensate Hosley for Defendants' infringement together with prejudgment interest;

(d) Such damages be trebled by the Court pursuant to 35 U.S.C. Section 284 by reason of the willful, wanton and deliberate nature of such infringement;

(e) Defendants, individually and/or collectively, be ordered to pay Hosley damages in an amount equal to Defendants' total profits pursuant to 35 U.S.C. Section 289, together with prejudgment interest;

(f) This be decreed an "exceptional case" within the meaning of 35 U.S.C. Section 285 and that reasonable attorney's fees contemplated by 35 U.S.C. Section 285 be awarded to Hosley;

- (g) Hosley be awarded costs; and
- (h) Hosley be granted such other and further relief as the Court may deem proper under the circumstances.

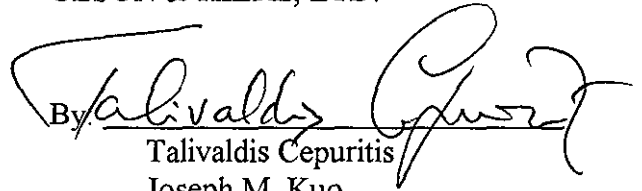
DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury of all issues so triable.

Dated: April 3, 2002

Respectfully submitted,

OLSON & HIERL, LTD.

By 

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Attorneys for Plaintiff
HOSLEY INTERNATIONAL
TRADING CORPORATION



US00D412369S

United States Patent [19]
Kumar

[11] **Patent Number: Des. 412,369**
 [45] **Date of Patent: ** Jul. 27, 1999**

[54] **CAULDRON-SHAPED VOTIVE CANDLE HOLDER**

[75] **Inventor: Pius Kumar, Munster, Ind.**

[73] **Assignee: Hosley International Trading Corporation, Lynwood, Ill.**

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

[21] **Appl. No.: 29/079,610**

[22] **Filed: Dec. 4, 1997**

[51] **LOC (6) Cl. 26-01**

[52] **U.S. Cl. D26/16**

[58] **Field of Search D26/6, 7, 9, 10, D26/11; 431/288, 291, 292, 125, 126; D7/354; D11/121, 125**

[56] **References Cited**

U.S. PATENT DOCUMENTS

D. 345,621	3/1994	McLaughlin	D26/9
D. 373,001	8/1996	O'Donnell	D11/121
848,988	4/1907	Tyndall	D11/121
3,244,872	4/1966	McCormick	D26/9

OTHER PUBLICATIONS

The Gift and Art Buyer catalog; cauldron candle holder; p.42, Jul. 1955.

Blinky catalog; #1303 pumpkin bucket; p. 3, Feb. 1995.

Lillian Vernon catalog; Terra Cotta Jack-O'-Lantern Votives; p. 8, Aug. 1995.

Primary Examiner—Robin V. Taylor

Attorney, Agent, or Firm—Olson & Hierl, Ltd.

[57] **CLAIM**

The ornamental design for a cauldron-shaped votive candle holder, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view of one embodiment of a

cauldron-shaped votive candle holder of the present invention, showing a hanging stand in broken lines for purposes of illustration only and forming no part of the claimed design;

FIG. 2 is a front elevational view of a cauldron-shaped votive candle holder;

FIG. 3 is a rear elevational view of a cauldron-shaped votive candle holder;

FIG. 4 is a side elevational view of a cauldron-shaped votive candle holder;

FIG. 5 is an opposite side elevational view of a cauldron-shaped votive candle holder;

FIG. 6 is a top plan view of a cauldron-shape votive candle holder;

FIG. 7 is a bottom plan view of a cauldron-shaped votive candle holder;

FIG. 8 is a perspective view of an alternate embodiment of a cauldron-shaped votive candle holder of the present invention, showing a hanging stand and a decorative detail in broken lines for purposes of illustration only and forming no part of the claimed design;

FIG. 9 is a front elevational view of FIG. 8;

FIG. 10 is a rear elevational view of FIG. 8;

FIG. 11 is a side elevational view of FIG. 8;

FIG. 12 is an opposite side elevational view of FIG. 8;

FIG. 13 is a top plan view of FIG. 8;

FIG. 14 is a bottom plan view of FIG. 8;

FIG. 15 is a perspective view of an alternate embodiment of a cauldron-shaped votive candle holder of the present invention, showing a hanging stand in broken lines for purposes of illustration only and forming no part of the claimed design;

FIG. 16 is a front elevational view of FIG. 15.

FIG. 17 is a rear elevational view of FIG. 15;

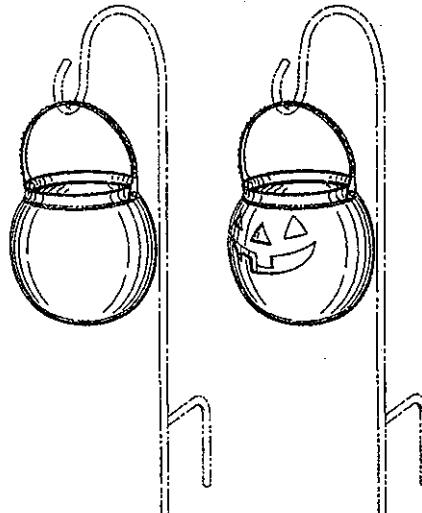
FIG. 18 is a side elevational view of FIG. 15;

FIG. 19 is an opposite side elevational view of FIG. 15;

FIG. 20 is a top plan view of FIG. 15; and,

FIG. 21 is a bottom plan view of FIG. 15.

1 Claim, 6 Drawing Sheets



EXHIBIT

A

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U.S. Patent

Jul. 27, 1999

Sheet 1 of 6

Des. 412,369

FIG.1

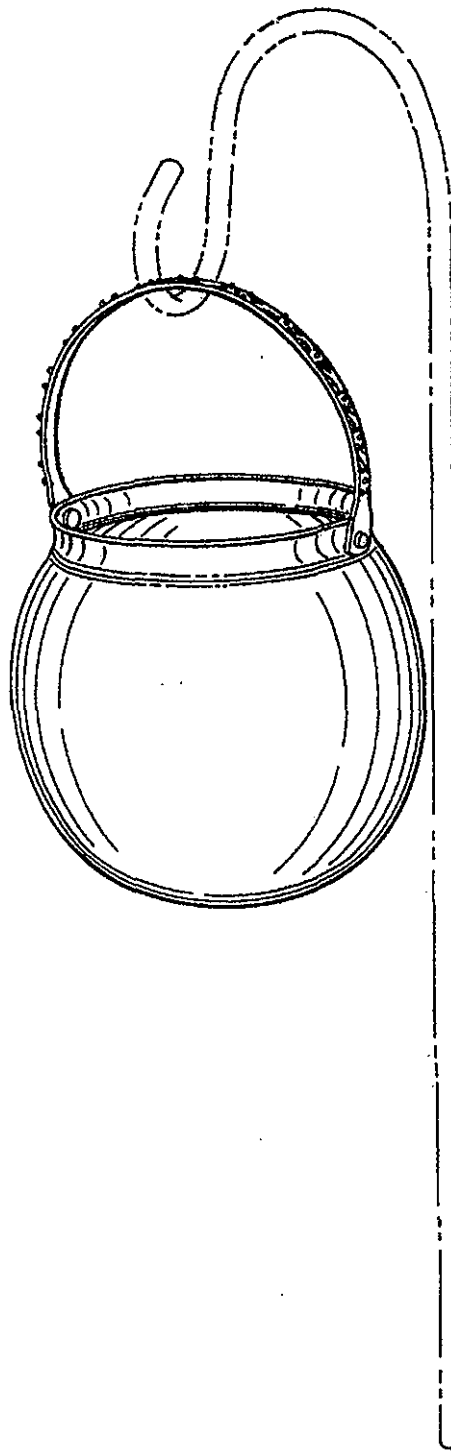


FIG.2

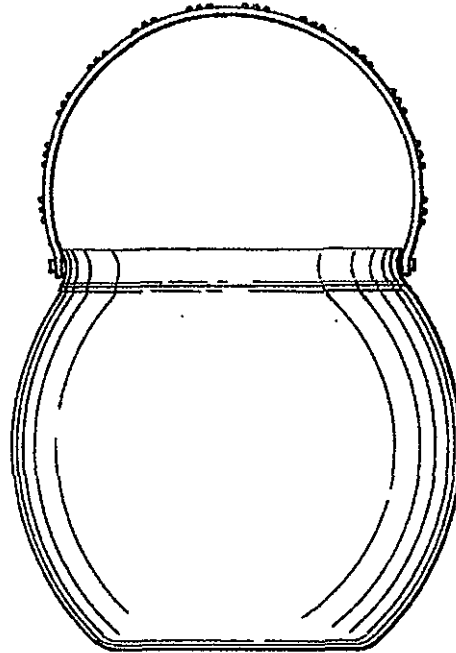
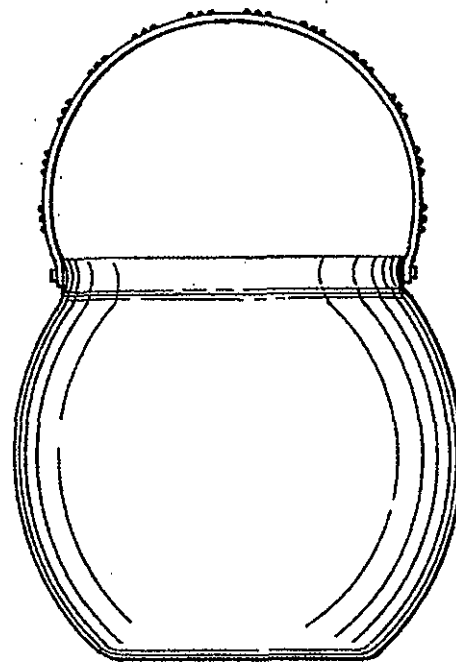


FIG.3



U.S. Patent

Jul. 27, 1999

Sheet 2 of 6

Des. 412,369

FIG.4

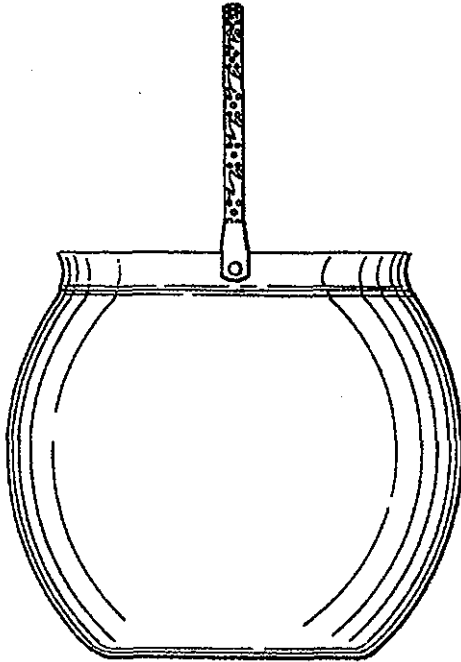


FIG.5

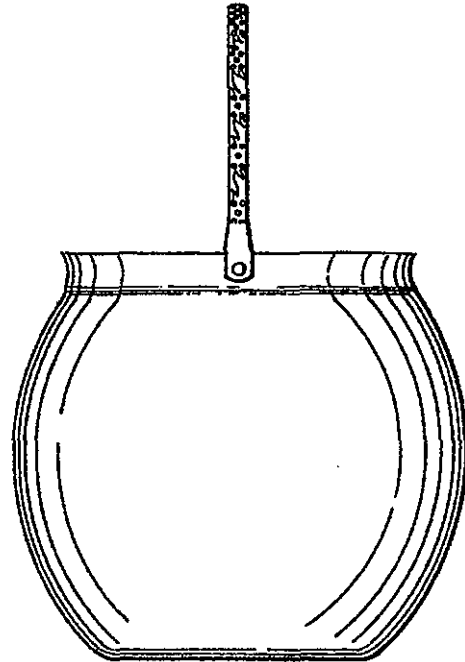


FIG.6

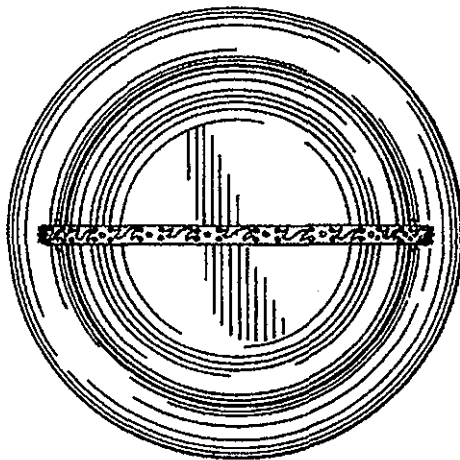
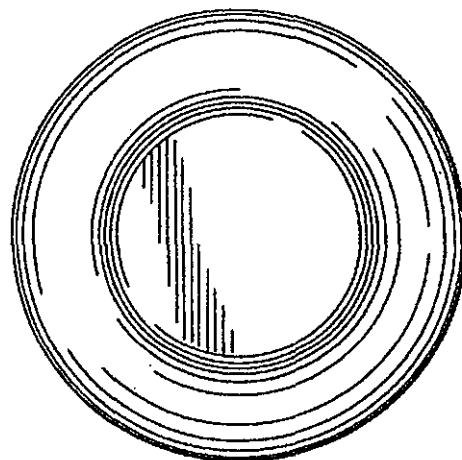


FIG.7



U.S. Patent

Jul. 27, 1999

Sheet 3 of 6

Des. 412,369

FIG.8



FIG.9

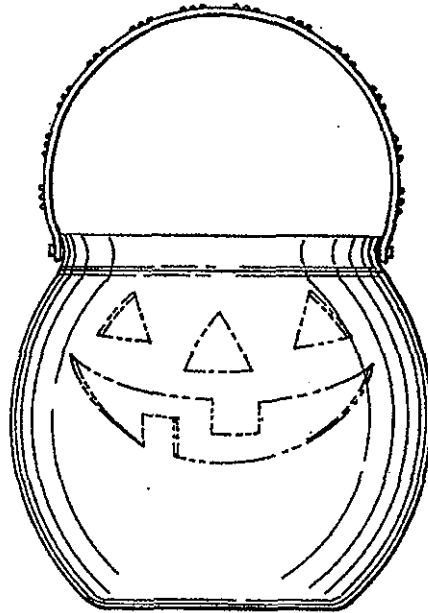
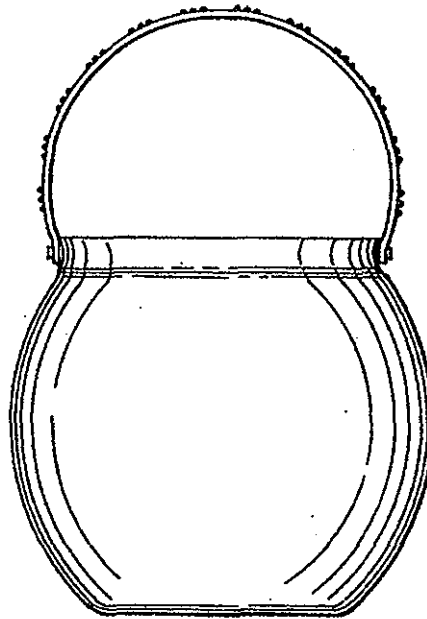


FIG.10



U.S. Patent

Jul. 27, 1999

Sheet 4 of 6

Des. 412,369

FIG. II

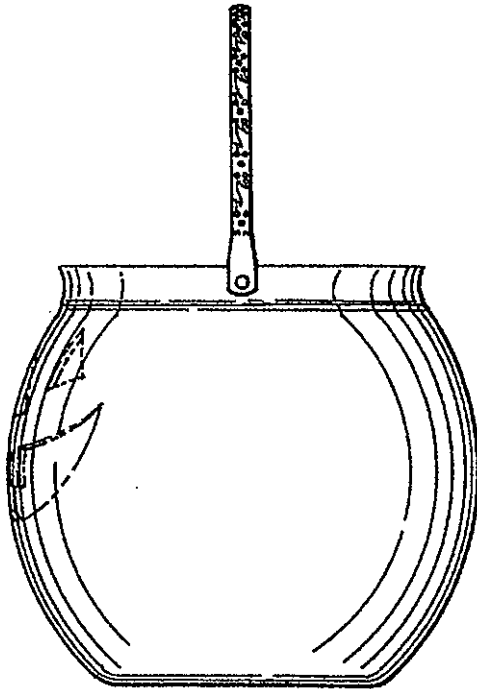


FIG. I2

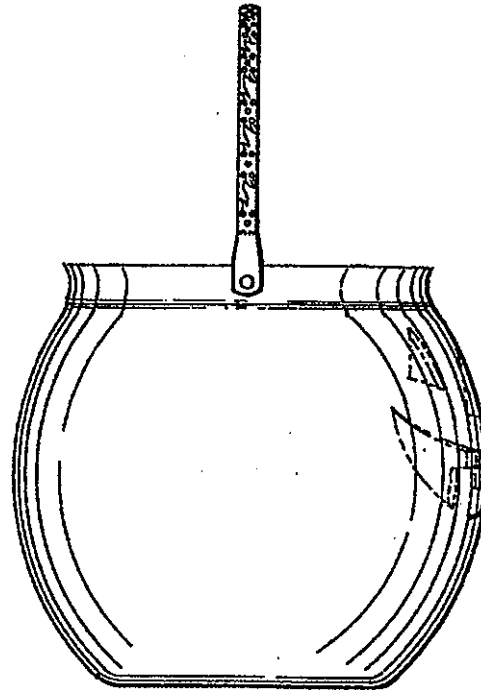


FIG. I3

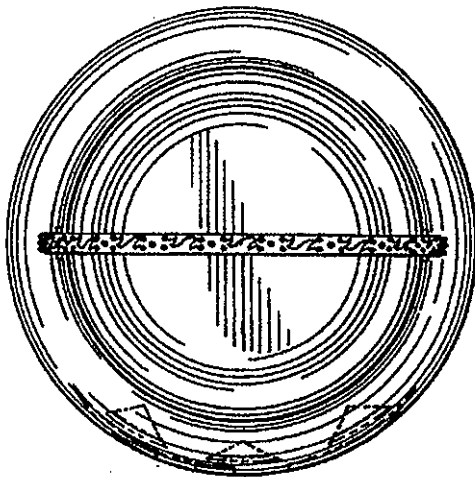
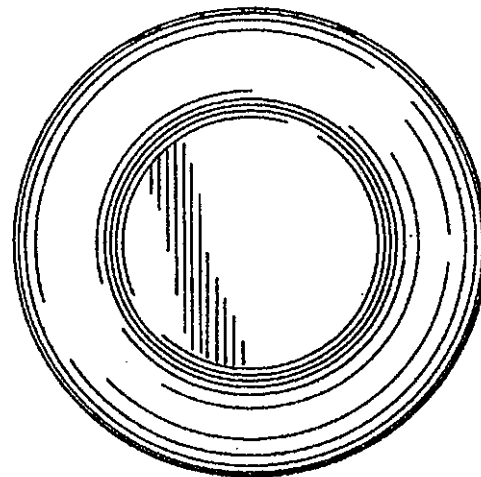


FIG. I4



U.S. Patent

Jul. 27, 1999

Sheet 5 of 6

Des. 412,369

FIG.15



FIG.16

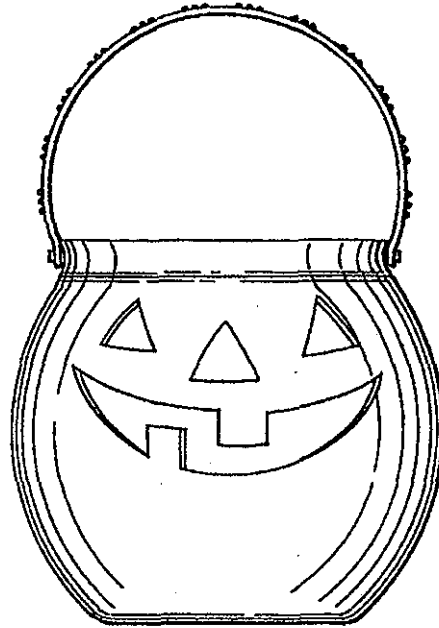
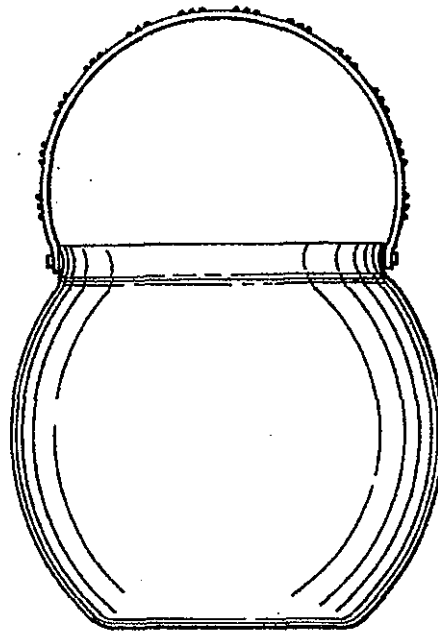


FIG.17



U.S. Patent

Jul. 27, 1999

Sheet 6 of 6

Des. 412,369

FIG. 18

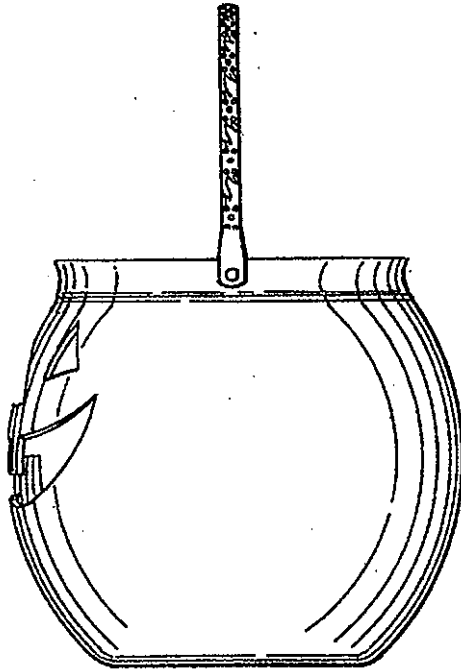


FIG. 19

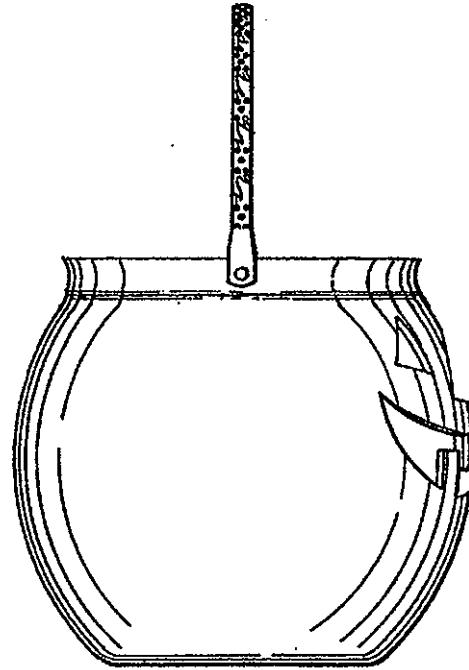


FIG. 20

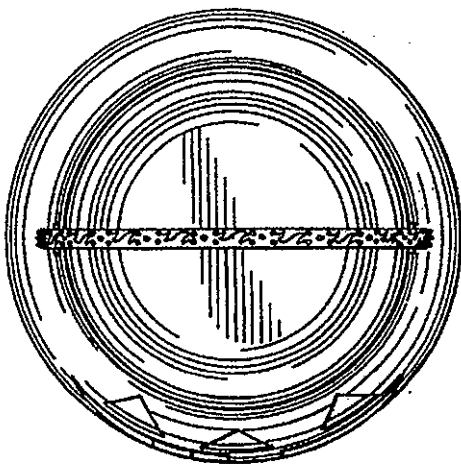
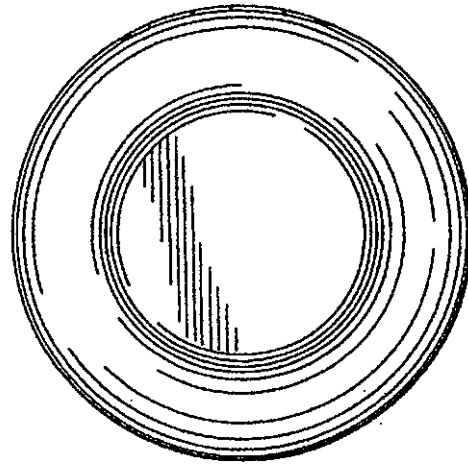


FIG. 21



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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Civil Cover Sheet **02C 2398**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

Plaintiff(s): HOSLEY INTERNATIONAL TRADING CORP., an Illinois corporation,

Defendant(s): K MART CORP., a Michigan corporation, and DESIGNCO, an Indian company,

County of Residence: Cook

County of Residence: Oakland

Plaintiff's Atty: Talivaldis Cepuritis
Olson & Hierl, Ltd.
20 N. Wacker Dr., 36th Floor,
Chicago, IL 60606
(312) 580-1180

Defendant's Atty:

DOCKETED
APR 04 2002

JUDGE GETTLEMAN

MAGISTRATE JUDGE
GERALDINE SOAT BROWN

II. Basis of Jurisdiction: **4. Diversity (complete item III)**

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: -N/A
Defendant: -N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **830 Patent**

VI. Cause of Action: **Design patent infringement under the patent laws of the United States, 35 U.S.C. Sec. 271 et seq.**

VII. Requested in Complaint
Class Action: No
Dollar Demand:
Jury Demand: **Yes**

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U.S. DISTRICT COURT

VIII. This case **IS NOT** a refiling of a previously dismissed case.

Signature: Talivaldis Cepuritis
Date: 3 April 2002

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it.

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of Hosley International Trading Corporation, an Illinois Corporation,

Plaintiff,

vs.

K Mart Corp., a Michigan corporation,
and Designco, an Indian company,

Defendants.

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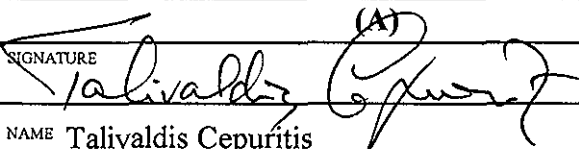
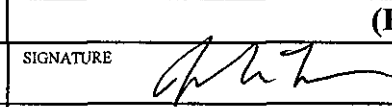
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Case Number: **020 2398**
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U.S. DISTRICT COURT

JUDGE GETTLEMAN

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

MAGISTRATE JUDGE
GERALDINE SOAT BROWN

(A)		(B)	
SIGNATURE 		SIGNATURE 	
NAME Talivaldis Cepuritis		NAME Joseph M. Kuo	
FIRM Olson & Hierl, Ltd.		FIRM Olson & Hierl, Ltd.	
STREET ADDRESS 20 North Wacker Drive, 36 th Floor		STREET ADDRESS 20 North Wacker Drive, 36 th Floor	
CITY/STATE/ZIP Chicago, IL 60606		CITY/STATE/ZIP Chicago, IL 60606	
TELEPHONE NUMBER (312) 580-1180	FAX NUMBER (312) 580-1189	TELEPHONE NUMBER (312) 580-1180	FAX NUMBER (312) 580-1189
E-MAIL ADDRESS tcepuritis@olsonhierl.com		E-MAIL ADDRESS jkuo@olsonhierl.com	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 0418676		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6216400	
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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"/>
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TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS		E-MAIL ADDRESS	
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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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