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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Eastern Division**

WALTER ALBECKER.

Plaintiff,

v.

CONTOUR PRODUCTS, INC (FL)
CONTOUR PRODUCTS, INC (NC)

Defendant.

) 09CV631

) JUDGE CASTILLO

) MAGISTRATE JUDGE VALDEZ

) JURY TRIAL DEMANDED

FILED

JAN 30 2009
Jan 30 2009

MICHAEL W. GIBBINS
CLERK, U.S. DISTRICT COURT

NE

COMPLAINT FOR PATENT INFRINGEMENT and DECLARATORY JUDGMENT

Plaintiff, Walter Albecker, complains of Defendants Contour Products, Inc. (FL) and Contour Products, Inc. (NC) as follows:

Parties

1. Plaintiff, Walter Albecker, is an adult citizen of the City of Chicago, and owns United States Patent No. 5,836,653 ("the '653 Patent") (Exhibit A), titled "Backrests/Legless Leisure Chairs made with a Foundation", and has the right to license and enforce the '653 Patent. Albecker, thus, has standing to sue for infringement of the '653 Patent.

2. Defendant CONTOUR PRODUCTS, Inc. (NC) ("CONTOUR PRODUCTS (NC)") is a North Carolina corporation having its principle place of business at 4740 Dwight Evans Rd Ste, Charlotte NC 28217-0976.

3. Defendant CONTOUR PRODUCTS, INC (FL) is a Florida corporation having its principle place of business at 1061 NE 45th Street, Oakland Park, Florida, 33334.

4. Defendants are subject to the long arm statute of the State of Illinois, which provides in pertinent part:

5/2-209. Act submitting to jurisdiction--Process

§ 2-209. Act submitting to jurisdiction--Process. (a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:

(1) The transaction of any business within this State;

....

(b) A court may exercise jurisdiction in any action arising within or without this State against any person who:

(1) Is a natural person present within this State when served;

(2) Is a natural person domiciled or resident within this State when the cause of action arose, the action was commenced, or process was served;

(3) Is a corporation organized under the laws of this State; or

(4) Is a natural person or corporation doing business within this State.

(c) A court may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States.

5. Each Defendant transacts business in this judicial district and has committed acts of infringement in this judicial district, at least by operating websites and conducting business over those websites that are accessible to residents of Illinois and which infringe at least claims 10, 11, 12, 13, 15, 16 17, 18, 19, and 21 of the '653 Patent. Defendants have issued press releases and transacted business in trade shows in this state. Further, Defendants have actually sold infringing products within this state.

6. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b).

Patent Infringement

7. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has exclusive jurisdiction over the subject matter of this case under 28 U.S.C. § 1338(a).

8. Contour Products (FL) has infringed and continues to infringe the '653 Patent by knowingly and actively inducing others to infringe through the use of the Contour Products (FL).com website and by actively and knowingly aiding and abetting users' direct infringement through the use of the Contour Products (FL).com website. Contour Products (FL) had knowledge of the '653 Patent at the time it acted with the specific intent to induce infringement.

9. CONTOUR PRODUCTS (NC) has infringed and continues to infringe the '653 Patent by knowingly and actively inducing others to infringe through the manufacturing and distributing and by actively and knowingly aiding and abetting users' direct infringement through the use of the Contour Products (NC).com website. CONTOUR PRODUCTS (NC) had knowledge of the '653 Patent at the time it acted with the specific intent to induce infringement.

10. Plaintiff Albecker has complied with 35 U.S.C. § 287.

11. Defendants' acts of infringement have injured and continue to injure Plaintiff Albecker and he is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

12. WHEREFORE, Plaintiff Albecker respectfully requests this Court enter judgment against Defendants Contour Products (FL), and CONTOUR PRODUCTS (NC), individually and jointly, and against their subsidiaries, successors, parents, affiliates, officers, directors, agents,

servants, employees, and all persons in active concert or participation with them, granting the following relief:

- A. The entry of judgment in favor of Plaintiff and against each of the defendants;
- B. An award of damages adequate to compensate Plaintiff for the infringement that has occurred, together with prejudgment interest from the date the infringement began, but in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284;
- C. A permanent injunction prohibiting further infringement and/or acts of infringement and inducement of the '653 Patent; and,
- D. Such other relief that Plaintiff is entitled to under law and any other and further relief that this Court or a jury may deem just and proper.

Declaratory Judgment

13. This is an action for Declaratory Judgment and other relief brought under the Federal Declaratory Judgment Act, 28, U.S.C. §§2201-2202.

14. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), in that it involves substantial claims arising under the United States Patent Act, 35 U.S.C. § 1 *et seq.*

15. This Court may declare the rights and other legal relations of the parties pursuant to 21 U.S.C. § 355(j)(5)(C) and 28 U.S.C. §§ 2201 and 2202 because this is a case of actual controversy within the Court's jurisdiction which seeks a declaratory judgment that the '545 patent is invalid and would not be infringed.

16. Venue is proper in this judicial district based on 28 U.S.C. § 1400(b) and/or 28 U.S.C. § 1391(b), (c) and (d).

17. In court documents, directed at the '653 Patent, Defendant Contour Products, Inc. (FL) through it's CEO, E. Scott Davis, asserted that is the owner of U.S. Patent No. 6,823,545, (the '545 Patent)entitled "back support systems". (Exhibit B)

18. The alleged inventor of the '545 Patent is E. Scott Davis, CEO of Defendants Contour Products, Inc.

19. As stated in court documents directed at the '653 Patent, E. Scott Davis claimed that he told Plaintiff Walter Albecker on April 8, 2008, that "Contour Products had a patent on its product and, as a result, I did not understand why [Albecker] believed his patent had been infringed."

20. All of Claims on the '545 patent are arguably readable on embodiments in Figs 2F and 1B in the '653 Patent.

21. The '653 patent disclosed is was filed earlier than the '545 patent was filed.

22. The resolution of the validity question of the '545 patent is an indispensable part of the question of infringement of the '653 patent by products made and sold by Defendants.

23. Accordingly, there is an actual, substantial, and continuing case and controversy between Albecker and Defendants regarding the validity and infringement of '545 patent, over which this Court can and should exercise jurisdiction and declare the rights of the parties. Albecker is therefore entitled to bring and maintain this action for declaratory judgment. 21 U.S.C. § 355(j)(5)(C).

24. The claims of the '545 are invalid under 35 U.S.C. § 101-103.

25. WHEREFORE, Albecker respectfully requests the Court enter judgment against Contour Products Inc. to include a declaration that United States Patent No. 6,823,545 is invalid.

Jury Demand

Plaintiff demands a trial by jury on all issues presented in this Complaint.

WALTER ALBECKER

By: 
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EXHIBIT A



US005836653A

United States Patent [19]

Albecker

[11] Patent Number: **5,836,653**
 [45] Date of Patent: **Nov. 17, 1998**

[54] **BACKRESTS/LEGLESS LEISURE CHAIRS
MADE WITH A FOUNDATION**

4,635,306 1/1987 Willey 5/632
 5,432,967 7/1995 Raftery 5/633

[76] Inventor: **Walter J. Albecker**, 838 S. May,
Chicago, Ill. 60607

FOREIGN PATENT DOCUMENTS

1023403 12/1977 Canada 5/633

[21] Appl. No.: **492,170**

Primary Examiner—Peter R. Brown

[22] Filed: **Jun. 19, 1995**

[57] ABSTRACT

Related U.S. Application Data

[63] Continuation-in-part of Ser. No. 899,750, Jun. 17, 1992, Pat. No. 5,425,567, and Ser. No. 721,179, Jun. 26, 1991, abandoned.

A number of generally wedge shaped backrests and legless leisure chairs for sitting on the floor or on a bed, which orient the user's upper back at a higher angle than the user's lower back. These are ideally suited for people who want to be in a reclining type position, but yet want to do something like watch television. The backrests/leisure chairs disclosed use a support foundation (42 and 46). The backrests/leisure chairs described also have a way of maintaining the lumbar region of the user's back in a relatively natural lordotic curve, some through a high firmness lumbar support member (28) on the support foundation (42 and 46) placed in a hollow in the back of the main cushion (26), and others through making a convex contour on the lower portion of the backrest/leisure chair. All of the leisure chairs for sitting on the floor have a seat cushion (34) to prevent the user from slipping down out of place and these chairs can also have a pillow (32) for a headrest. Also disclosed are a number of seat cushion and legrest alternatives (34) for the leisure chairs including folding seat cushions and a two piece seat and legrest cushion system.

[51] Int. Cl.⁶ **A47C 20/00**

[52] U.S. Cl. **297/452.31; 297/452.16;
297/452.32; 5/632; 5/633**

[58] Field of Search **297/452.1, 452.16,
297/452.31, 452.32; 5/630, 632, 633, 653**

[56] References Cited

U.S. PATENT DOCUMENTS

D. 167,666 9/1952 Argento 5/633 X
 2,281,629 5/1942 Snow 297/456.17 X
 3,009,172 11/1961 Eidam 5/632
 3,555,502 1/1971 Radford 5/632
 3,680,917 8/1972 Harris 5/633 X
 4,171,549 10/1979 Morrell et al. 5/632
 4,627,423 12/1986 Kampner 5/633 X

21 Claims, 13 Drawing Sheets

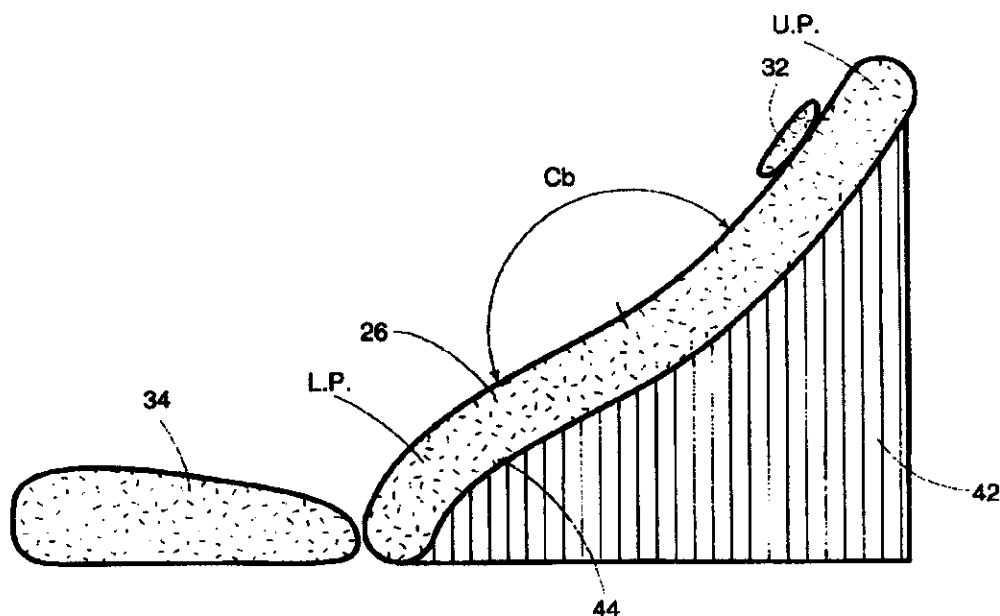


EXHIBIT B



US006823545B1

(12) **United States Patent**
Davis

(10) Patent No.: **US 6,823,545 B1**
(45) Date of Patent: **Nov. 30, 2004**

(54) **BACK SUPPORT SYSTEM**

(75) Inventor: **Edmund Scott Davis, Ft. Lauderdale, FL (US)**

(73) Assignee: **Banyan Licensing LC, Ft. Lauderdale, FL (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.: **10/439,725**

(22) Filed: **May 16, 2003**

(51) Int. Cl.⁷ **A47C 20/00**

(52) U.S. Cl. **5/630; 5/632; 5/633; 5/652; 5/657**

(58) Field of Search **5/630, 632-634, 5/652, 657**

(56) **References Cited**

U.S. PATENT DOCUMENTS

3,469,882 A	9/1969	Larsen	
3,742,526 A	7/1973	Lillard	
3,902,759 A	9/1975	Monteforte et al.	
4,171,549 A	* 10/1979	Morrell et al.	5/632
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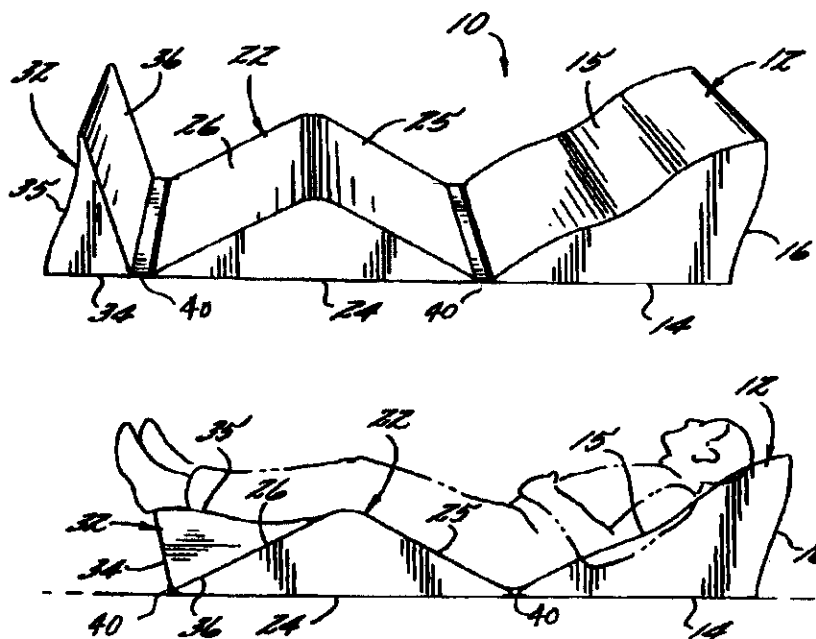
Primary Examiner—Michael Trettel

(74) Attorney, Agent, or Firm—Alston & Bird LLP

(57) **ABSTRACT**

There is provided a back support system of three foam members serving as a piece of recreational or therapeutic furniture. The three foam support members each have a generally rectangular shape when viewed from above and a triangular shaped when viewed from their sides and vary in size. The unique triangular shape of each of the three members enables the pieces to be assembled in a variety of positions depending upon the desires of the user. For example, one of the triangular pieces may be positioned to fit underneath the back and head area of the user while the second member may be placed under the legs of the user to lift the knee area and the third and smallest member may be placed under the lower leg area to keep the feet in an elevated position. Each cushion is made of a resilient foam polymeric material that is covered with a protective fabric. When positioning the members, the members may be held in place by fabric hinges have various widths and zippers incorporated therein to allow the three pieces to be used separately or together. When the three members are folded to nest together, a unitary object is formed for easy shipment or storage.

9 Claims, 4 Drawing Sheets



Notice Of Claims Involving Patents Or Trademarks

35 U.S.C. 290 Notice of patent suits.

Names of Parties

Plaintiff

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Defendants

CONTOUR PRODUCTS, INC (FL)
1061 NE 45th Street, Oakland Park, Florida, 33334

CONTOUR PRODUCTS, INC (NC)
4740 Dwight Evans Rd Ste, Charlotte NC 28217-0976

Name of Inventor

Walter Albecker United States Patent No. 5,836,653

Name of Inventor

E. Scott Davis U.S. Patent No. 6,823,545