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John C. Wynne (Bar No. 83041)
Bernard L. Kleinke (Bar No. 119021)
Kevin L. Wheeler (Bar No. 207662)
DUCKOR SPRADLING METZGER & WYNNE
A Law Corporation
3043 4th Avenue
San Diego, California 92103
(619) 209-3000; (619) 209-3043 fax

Attorneys for Plaintiff
ALLIANCE OUTDOOR LIGHTING, INC.

FILED
2008 MAY -6 PM 4: 29
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY Y. W. H. DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALLIANCE OUTDOOR LIGHTING,
INC.,

Plaintiff,

v.

UNIQUE LIGHTING SYSTEMS, INC.,
and DOES 1 through 20, inclusive

Defendants.

CASE NO.: '08 CV 0822 JLS WMC

**COMPLAINT FOR DECLARATORY
JUDGMENT**

Plaintiff ALLIANCE OUTDOOR LIGHTING, INC. ("Alliance"), by and through its attorneys, alleges as follows:

CK

1 its catalog and online through its company website. Specifically, Alliance advertises one of its
2 products, the SL100, a puck-styled step light that it sells via its catalog and through distributors
3 throughout Southern California.

4 9. On or about April 29, 2008, ULSI, as the assignee of the '588 patent, threatened to
5 initiate action against Alliance for infringement of the '588 patent. Specifically, ULSI sent a
6 written communication to Alliance stating that Alliance's "Model No. SL100 falls within the
7 scope of the '588 patent. Accordingly, any manufacture, use, offer to sell, sale or importation
8 into the United States of the SL100, or of any similarly designed product, after the date of receipt
9 of this letter will constitute intentional and willful infringement." A true and correct copy of the
10 April 29, 2008 letter is attached hereto as Exhibit "B."

11 10. Alliance denies that the '588 patent is or has been infringed by Alliance and
12 disputes the patent's validity.

13 11. Based on ULSI's communication with Alliance, its assertion that Alliance
14 infringes the '588 patent, and its assertion that it would engage in litigation with Alliance unless
15 Alliance "immediately stop making, using, offering for sale, selling or importing into the United
16 States the step light product identified above and notify your distributors and third party resellers
17 to whom you have sold the SL100," ULSI has created in Alliance a reasonable apprehension that
18 it will initiate a patent infringement suit against Alliance, alleging that Alliance infringes the '588
19 patent.

20 12. Therefore, an actual and justiciable controversy exists between Alliance and ULSI
21 as to whether the '588 patent is valid and/or infringed. Absent a declaration of invalidity and/or
22 noninfringement, ULSI will continue to wrongfully assert the patent against Alliance, and thereby
23 continue to cause Alliance injury and damage.

24 **FIRST CLAIM**

25 **DECLARATORY JUDGMENT OF INVALIDITY OF THE '588 PATENT**

26 13. Alliance hereby restates and realleges the allegations set forth in paragraphs 1
27 through 12 above and incorporates them by reference.

28 14. The claim of the '588 patent is invalid and/or unenforceable for failure to comply

1 comply with the requirements of the Patent Laws of the United States, including but not limited
2 to the provisions of 35 U.S.C. §§ 102, 103, and 112.

3 15. ULSI's conduct, unless enjoined and restrained by this Court, will cause great and
4 irreparable injury to Alliance in that its use, sale or offering for sale of its products and business
5 reputation will be subjected to continued unjustified attacks adversely affecting its business.

6 16. Alliance has no adequate remedy at law for the injuries which it will incur from
7 ULSI's conduct unless the '588 patent is declared invalid and ULSI is enjoined from asserting the
8 patent against Alliance.

9 **SECOND CLAIM**

10 **DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '588 PATENT**

11 17. Alliance hereby restates and realleges the allegations set forth in paragraphs 1
12 through 12 above and incorporates them by reference.

13 18. Alliance does not infringe and is not infringing directly, indirectly, literally, or
14 contributorily or under the doctrine of equivalence the claim of the '588 patent since the patent is
15 invalid as a matter of law.

16 19. ULSI's conduct, unless enjoined and restrained by this Court, will cause great and
17 irreparable injury to Alliance in that its use, sale or offering for sale of its products and business
18 reputation will be subjected to continued unjustified attacks adversely affecting its business.

19 20. Alliance has no adequate remedy at law for the injuries which it will incur from
20 ULSI's conduct unless the '588 patent is declared not infringed and ULSI is enjoined from
21 asserting the patent against Alliance.

22 **THIRD CLAIM**

23 **DECLARATORY JUDGMENT OF UNENFORCEABILITY OF THE '588 PATENT**

24 21. Alliance hereby restates and realleges the allegations set forth in paragraphs 1
25 through 12 above and incorporates them by reference.

26 22. The '588 patent is unenforceable as a matter of law because, upon information and
27 belief, the inventor of the '588 patent failed to disclose to the United States Patent & Trademark
28 Office information that is and was material to the issue of patentability of the '588 patent in

1 violation of the duty of candor and good faith required for issuance of the '588 patent pursuant to
2 37 C.F.R. §1.56

3 23. ULSI's conduct, unless enjoined and restrained by this Court, will cause great and
4 irreparable injury to Alliance in that its use, sale or offering for sale of its products and business
5 reputation will be subjected to continued unjustified attacks adversely affecting its business.

6 24. Alliance has no adequate remedy at law for the injuries which it will incur from
7 ULSI's conduct unless the '588 patent is declared unenforceable and ULSI is enjoined from
8 asserting the patent against Alliance.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Alliance prays for judgment as follows:

11 1. Declaring that Alliance has not infringed and is not infringing, directly, indirectly
12 or contributorily and claims of the '588 patent;

13 2. Declaring that each of the claims of the '588 patent is invalid;

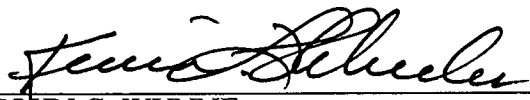
14 3. Declaring that Defendant ULSI and each of its officers, employess, agents, alter
15 egos, attorneys, and any persons in active concert, support or participation with them be
16 restrained and enjoined from further prosecuting or instituting any action against Alliance
17 claiming that the '588 patent is valid or infringed, or from representing that any of Alliance's
18 products or services or others' use thereof, infringes the '588 patent;

19 4. Declaring this case exceptional under 35 U.S.C. § 285 and awarding Alliance its
20 attorneys' fees and costs in connection with this case;

21 5. Awarding Alliance such other and further relief as the Court deems just and
22 proper.

23 DATED: May 6, 2008

DUCKOR SPRADLING METZGER & WYNNE
A Law Corporation

24
25 By: 
26 JOHN C. WYNNE
27 BERNARD L. KLEINKE
28 KEVIN L. WHEELER
Attorneys for Plaintiff
ALLIANCE OUTDOOR LIGHTING, INC.



US00D563588S

(12) **United States Design Patent** (10) **Patent No.:** **US D563,588 S**
Mullen (45) **Date of Patent:** **** Mar. 4, 2008**

(54) **LIGHT FIXTURE**

D393,095 S * 3/1998 Fiorato D26/85
D505,739 S * 5/2005 Hajianpour D26/37

(76) **Inventor:** **Nate Mullen**, 1240 Simpson Way,
Escondido, CA (US) 92029

* cited by examiner

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

Primary Examiner—Clare E Heflin
(74) *Attorney, Agent, or Firm*—Kelly Lowry & Kelley, LLP

(21) **Appl. No.:** **29/254,070**

(57) **CLAIM**

(22) **Filed:** **Feb. 16, 2006**

The ornamental design for a light fixture, as shown and described.

(51) **LOC (8) Cl.** **26-03**

(52) **U.S. Cl.** **D26/85; D26/89**

(58) **Field of Classification Search** D26/72,
D26/85-92, 37; 362/147, 431, 432, 362,
362/155-157

See application file for complete search history.

DESCRIPTION

FIG. 1 is a perspective view of the light fixture embodying the new design;

FIG. 2 is a front view of the present invention;

FIG. 3 is a back view of the present invention;

FIG. 4 is a side view of the present invention, the other side view being a mirror image of this side view as shown; and,

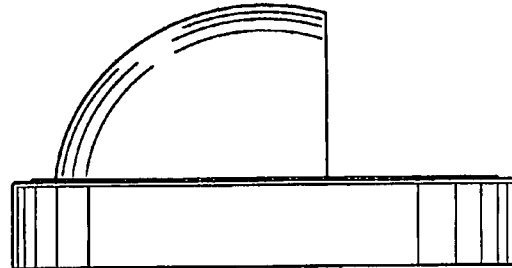
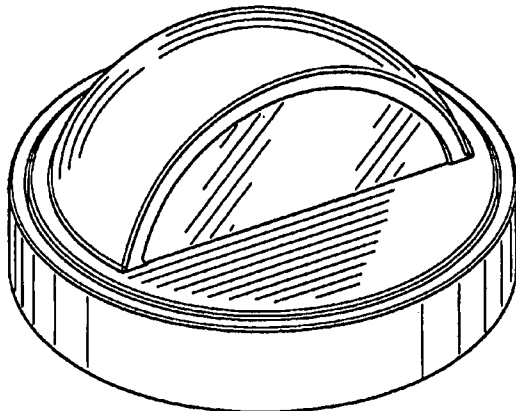
FIG. 5 is a top view of the light fixture.

(56) **References Cited**

U.S. PATENT DOCUMENTS

D283,555 S * 4/1986 Levi D26/85
D346,869 S * 5/1994 Houssian D26/26
D378,621 S * 3/1997 Landefeld D26/85

1 Claim, 2 Drawing Sheets



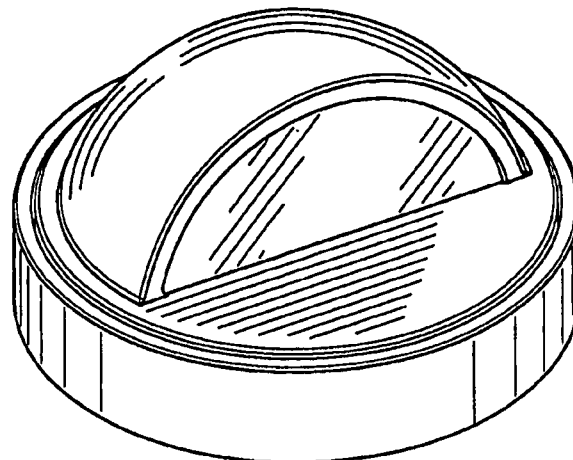


FIG. 1

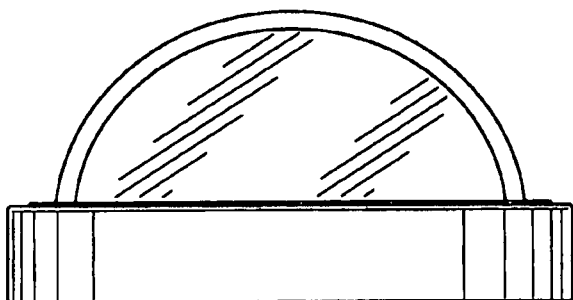


FIG. 2

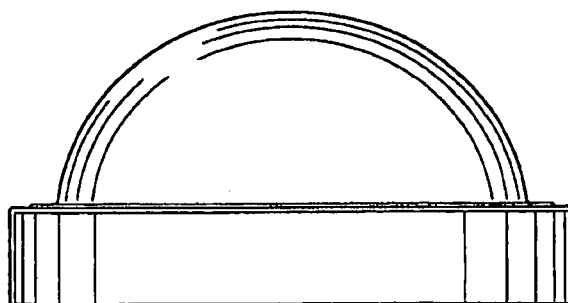


FIG. 3

U.S. Patent

Mar. 4, 2008

Sheet 2 of 2

US D563,588 S

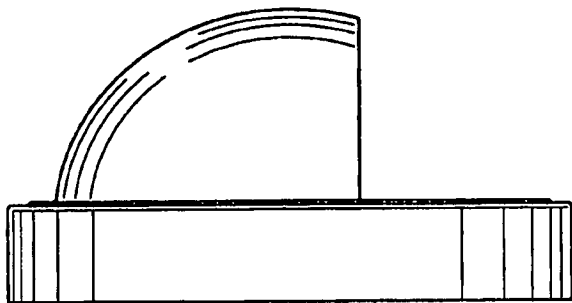


FIG. 4

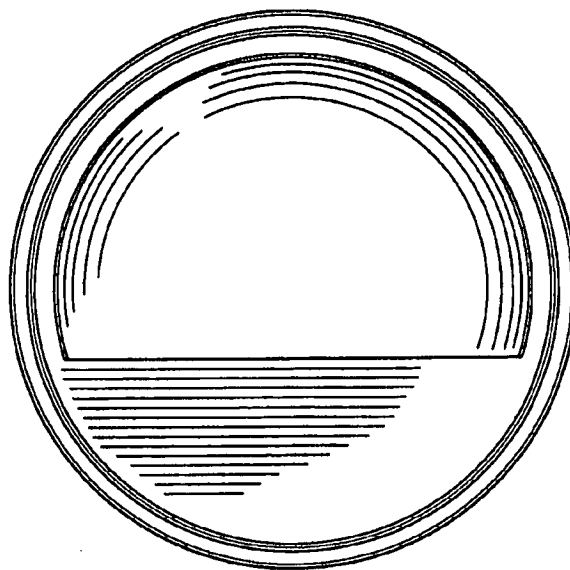


FIG. 5

Knobbe Martens Olson & Bear LLP

Intellectual Property Law

550 West C Street
Suite 1200
San Diego CA 92101
Tel 619-235-8550
Fax 619-235-0176
www.kmob.com

Cynthia Arko
619-685-8687
cynthia.arko@kmob.com

April 29, 2008

VIA FEDERAL EXPRESS

Robert McKay
Alliance Outdoor Lighting, Inc.
31588 Culbertson Lane
Temecula, CA 92591

Re: Unique Lighting Systems' U.S. Design Patent No. D563,588
Our Reference: UNIQ.0211S

Dear Mr. McKay:

On March 4, 2008, the United States Patent and Trademark Office granted Nate Mullen U.S. Design Patent No. D563,588, entitled "Light Fixture" ("the '588 Patent"), a copy of which is enclosed. Unique Lighting is the owner by assignment of the '588 Patent.

It has come to our attention that your company is marketing at least one step light product, Model No. SL100. This letter is to put your company on notice that Alliance Outdoor Lighting's Model No. SL100 falls within the scope of the '588 Patent. Accordingly, any manufacture, use, offer to sell, sale, or importation into the United States of the SL100, or of any similarly designed product, after the date of receipt of this letter, will constitute intentional and willful infringement. The patent laws provide that a patent owner may obtain injunctive relief against infringers, 35 U.S.C. § 283, and may recover up to three times the amount of money damages found adequate to compensate for the infringement if the infringement is found to be willful. 35 U.S.C. § 284. In addition, the prevailing party in patent infringement litigation may be entitled to recover its attorney's fees from the other side. 35 U.S.C. § 285.

Orange County
949-760-0404

San Francisco
415-954-4114

Los Angeles
310-551-3450

Riverside
951-781-9231

Seattle
206-405-2000

Washington, DC
202-640-6400

Knobbe Martens Olson & Bear LLP

Robert McKay
April 29, 2008
Page -2-

We demand that you immediately stop making, using, offering for sale, selling or importing into the United States the step light product identified above and notify your distributors and third party resellers to whom you have sold the SL100. Please contact us no later than May 6, 2008 to confirm your compliance.

Sincerely,



Cynthia Arko

Enclosure (U.S. Design Patent No. D563,588)

cc: Unique Lighting Systems, Inc.
Boris Zelkind

4161324\cey
082007

JS 44 (Rev. 12/07)

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 the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED

<p>I. (a) PLAINTIFFS ALLIANCE OUTDOOR LIGHTING, INC.</p> <p>(b) County of Residence of First Listed Plaintiff <u>Riverside</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) Duckor Spradling Metzger & Wynne, 3043 Fourth Ave. San Diego, CA 92103 - phone no. (619) 209-3000</p>	<p>DEFENDANTS UNIQUE LIGHTING SYSTEMS, INC.; and DOES 1 through 20, inclusive</p> <p>County of Residence of First Listed Defendant <u>San Diego</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED: <u>WVF</u> DEPUTY</p> <p>Attorneys (If Known) '08 CV 0822 JLS WMC</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:33%;">PTF DEF</td> </tr> <tr> <td style="text-align: center;">X</td> <td style="text-align: center;">1</td> <td style="text-align: center;">1</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">4</td> <td style="text-align: center;">4</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">2</td> <td style="text-align: center;">2</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">3</td> <td style="text-align: center;">3</td> </tr> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">5</td> <td style="text-align: center;">5</td> </tr> <tr> <td style="text-align: center;">6</td> <td style="text-align: center;">6</td> <td style="text-align: center;">6</td> </tr> </table>	Citizen of This State	Incorporated or Principal Place of Business In This State	PTF DEF	X	1	1	4	4	4	2	2	2	3	3	3	5	5	5	6	6	6
Citizen of This State	Incorporated or Principal Place of Business In This State	PTF DEF																				
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<p>IV. NATURE OF SUIT (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>CONTRACT</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p>	<p>TORTS</p> <p><input type="checkbox"/> 362 Personal Injury - Med. Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food & Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. & Truck</p> <p><input type="checkbox"/> 650 Airline Regs.</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input checked="" type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
35 U.S.C. §§ 101, et seq.

Brief description of cause:
Declaratory Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 05/06/2008

SIGNATURE OF ATTORNEY OF RECORD: [Signature]

FOR OFFICE USE ONLY

RECEIPT # 15091 AMOUNT \$350.00 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

MB 05/06/08

ck

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

150591 - MB

**May 06, 2008
16:38:10**

Civ Fil Non-Pris

USAO #: 08CV0822 CIVIL FILING
Judge.: JANIS L. SAMMARTINO
Amount.: \$350.00 CK
Check#.: BC10008

Total-> \$350.00

**FROM: ALLIANCE OUTDOOR LIGHTING INC
VS UNIQUE LIGHTING SYSTEMS, ET**