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AND THE TREASURER OF THE U.S.

MAR 11 2009

U.S. DISTRICT COURT  
HOUSTON, TEXAS

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

A.V. DIAMONDS, INC.,

Plaintiff,

vs.

GOLD STAR JEWELLERY, LLC,  
GOLD STAR JEWELLERY, LTD, and  
ALKESH SHAH,

Defendants.

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§

CIVIL ACTION NO. \_\_\_\_\_

**H-09-719**

JURY TRIAL DEMANDED

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff, A.V. Diamonds, Inc. ("AV"), by and through undersigned counsel, for its Complaint for Declaratory Judgment against Gold Star Jewellery, LLC, Gold Star Jewellery, Ltd., and Alkesh Shah (collectively "Goldstar"), states as follows:

**NATURE OF THE ACTION**

1. This is an action for declaratory judgment of non-infringement, invalidity, and unenforceability of United States Design Patent No. D570,727 S (the "'727 Patent") pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and the Patent Laws of the United States, 35U.S.C. § 100 et seq., as well as for declaratory judgment that AV has not unfairly competed with Goldstar under either Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a) or under any statutory or common law of any state in the United States of America, has not damaged Goldstar in any way, and for such other relief as the Court deems just and proper.

2. Plaintiff A.V. Diamonds, Inc. is a corporation organized and existing under the laws of the State of Texas, having its principal place of business at 7500 Bellaire Blvd., Suite 333, in Houston, Texas and is doing business in this District.

3. Defendant Gold Star Jewellery, LLC., upon information and belief, is a company organized and existing under the laws of New York and having a principal place of business at 20 West 37th Street, New York, New York 10018, U.S.A.

4. Defendant Gold Star Jewellery, Ltd., upon information and belief, is a company organized and existing under the laws of New York and having a principal place of business at 20 West 37th Street, New York, New York 10018, U.S.A.

5. Defendant Alkesh Shah, upon information and belief, is a United States citizen who resides or has a place of business at 13, Aryavarta Narayan Dabholkar Road, Mumbai, India 400 004.

6. As alleged herein, Defendants have engaged in various acts in and directed to the State of Texas.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), 1367, 2201, and 2202, and the Patent Laws of the United States, 35 U.S.C. § 1, et seq. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

8. Goldstar purports to be “world-renowned purveyors of diamond jewelry, including the Aleena collection” and “the owner of all rights in and to the designs in Gold Star’s Aleena jewelry collection, including U.S. Design Patent No. D570,727 (the ‘Aleena Ring Design’” *See* Exhibit “A” hereto. Goldstar has made statements and representations threatening to assert the '727 Patent against AV and has affirmatively

stated that at least one of the products in AV's "Exotica Collection" "is an exact copy of the Aleena Ring Design." *Id.* Furthermore, Goldstar has confirmed its ability and willingness to file suit and pursue "all appropriate remedies, which may include injunctive relief, claims for compensatory and exemplary damages, attorneys' fees and all other costs associated with [Goldstar's] claims." *Id.* Moreover, the letter of Exhibit "A" (from an attorney in New York) is not the only threatening letter that had been sent to AV on behalf of Goldstar. Two months prior to the letter of Exhibit "A", AV received the letter of Exhibit "B", from an attorney in Illinois, who insisted that AV "immediately stop advertising, importing or exporting into the US, selling or offering for sale [the AV product shown in a given AV advertisement] or any other product that contains the design shown [in the stated AV advertisement]." *See* Exhibit "B" attached hereto. AV has not infringed and does not infringe, either directly or indirectly, any valid and enforceable claim of the '727 Patent, nor does it unfairly compete with Goldstar in any way. A substantial controversy exists between the parties which is of sufficient immediacy and reality to warrant declaratory relief.

9. This Court has personal jurisdiction over Goldstar. Goldstar has conducted business in and directed to Texas and has engaged in various acts in and directed to Texas. Moreover, Goldstar has singled out AV, a Texas company, as an infringer of the '727 Patent and has accusing AV, through several emails and letters mailed to Texas, of such infringement and unfair competition, and, upon information and belief, is slandering AV by spreading false accusations and rumors with regard to AV that are directed at companies in Texas.

10. The '727 Patent is titled "Gemstone Arrangement (Anora)" and bears an issuance date of June 10, 2008. A copy of the '727 Patent is attached hereto as Exhibit "C".

### **COUNT I**

#### **Declaration of Noninfringement of U.S. Patent No. D570,727 S**

11. AV repeats and realleges the allegations in paragraphs 1 - 10 as though fully set forth herein.

12. AV has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '727 Patent.

13. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

14. A judicial declaration is necessary and appropriate so that AV may ascertain its rights regarding the '727 Patent.

### **COUNT II**

#### **Declaration of Invalidity of U.S. Patent No. D570,727 S**

15. AV repeats and realleges the allegations in paragraphs 1 - 14 as though fully set forth herein.

16. The '727 Patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C §§ 100 et seq., 101, 102,103, 112 and 132.

17. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

18. A judicial declaration is necessary and appropriate so that AV may ascertain its rights regarding the '727 Patent.

### COUNT III

#### **Declaration of Inequitable Conduct in the Prosecution of U.S. Patent No. D570,727 S**

19. AV repeats and realleges the allegations in paragraphs 1 – 18 as though fully set forth herein.

20. On information and belief, individuals subject to the duty of candor under 37 C.F.R. § 1.56 ("Applicants") engaged in inequitable conduct by withholding or misstating material information with intent to deceive the United States Patent and Trademark Office ("USPTO") in connection with prosecuting the '727 Patent, rendering the '727 Patent unenforceable.

21. On information and belief, during prosecution of the '727 Patent, Applicants were aware of prior art that they knew was material to patentability, including prior public disclosures material to patentability that they deliberately failed to properly disclose to the USPTO with intent to deceive.

22. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. A judicial declaration is necessary and appropriate so that Plaintiffs may ascertain their rights regarding the '727 Patent.

**COUNT IV**

**Declaration that AV has not Violated Section 43(a) of the Lanham Act**

**Nor the Statutory or Common Law of Any State**

23. AV repeats and realleges the allegations in paragraphs 1 – 22 as though fully set forth herein.

24. AV has not violated Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a) or any statutory or common law of any state in the United States of America and has not damaged Goldstar in any way.

25. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

26. A judicial declaration is necessary and appropriate so that AV may ascertain its rights based on the allegations made by Goldstar that AV's purported "knocking off" of Goldstar's Aleena Ring Design constitutes unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a) and further constitutes unfair competition under statutory or common law of the "numerous states" vaguely alluded to in the letter of Exhibit "B".

**JURY DEMAND**

Declaratory Judgment Plaintiff, A.V. Diamonds, Inc. hereby demands a trial by jury on all issues and claims so triable.

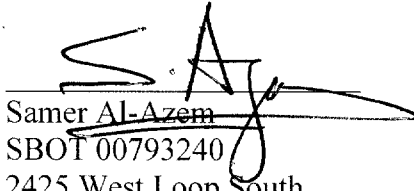
**PRAYER FOR RELIEF**

WHEREFORE, plaintiff A.V. Diamonds, Inc. respectfully requests that judgment be entered in its favor and prays that the Court grant the following relief:

1. A declaration that AV has not infringed, either directly or indirectly, any valid and enforceable claim of the '727 Patent;
2. A declaration that the claim of the '727 Patent is invalid;
3. A declaration that the '727 Patent is unenforceable;
4. A declaration that AV has not violated either Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a) or under any statutory or common law of any state in the United States of America;
5. An order declaring that AV is the prevailing party and that this is an exceptional case, awarding AV costs, expenses, disbursements and reasonable attorneys' fees under 35 U.S.C. § 285 and all other applicable statutes, rules and common law;
6. Attorneys fees, costs and interest according to applicable law; and
7. Such other and further relief as this Court may deem just and proper.

DATED: March 11, 2009

Respectfully submitted,  
The Azem Firm



Samer Al-Azem  
SBOT 00793240  
2425 West Loop South  
Suite 200  
Houston, Texas 77027  
(713) 355-5527 office  
(713) 528-7247 fax  
samer@theazemfirm.com



FRANKFURT KURNIT KLEIN & SELZ PC

488 Madison Avenue  
New York, New York 10022  
Tel: (212) 980-0120  
Fax: (212) 593-9175

Edward Rosenthal  
Direct: (212) 826-5524  
e-mail: erosenthal@fkks.com

March 5, 2009

**Via Federal Express**

Mr. Vinay Kotak  
A.V. Diamonds, Inc.  
7500 Bellaire Blvd.  
Suite 333  
Houston, TX 77036

Re: Infringement of Goldstar Jewellery LLC, Gold Star Jewellery Ltd. and Alkesh Shah's Patent and Other Intellectual Property Rights (Our Ref. No. 18713-200)

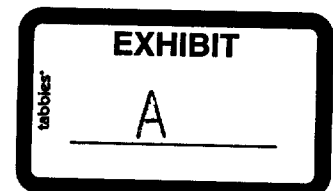
Dear Mr. Kotak:

We represent Gold Star Jewellery LLC, Gold Star Jewellery Ltd. and Alkesh Shah (collectively "Gold Star"). As you are aware, our clients are world-renowned purveyors of diamond jewelry, including the Aleena collection. Gold Star is the owner of all rights in and to the designs in Gold Star's Aleena jewelry collection, including U.S. Design Patent No. D570,727 (the "Aleena Ring Design").

Our client sent a letter to you dated January 19, 2009, via its former counsel, regarding A.V. Diamonds, Inc.'s blatant and intentional copying and sale of Gold Star's Aleena Ring Design. A copy of that letter is attached for your reference. However, A.V. Diamonds has failed to cease and desist from its infringement of Gold Star's intellectual property rights or comply with any of the other demands in that letter.

There can be no question that one of the rings in A.V. Diamonds' "Exotica Collection" is an exact copy of the Aleena Ring Design. A copy of the flyer that features your company's essentially identical ring is attached hereto as Exhibit B. Your sale of a less expensive knock-off of our clients' Aleena Ring Design has caused, and continues to cause, significant confusion among customers, as well as economic and reputational harm to our clients and their affiliates.

Your blatant copying of the Aleena Ring Design constitutes patent infringement pursuant to 35 U.S.C. § 271. As such, A.V. Diamonds could be subject to both injunctive relief and monetary damages including disgorgement of profits, payment of up to three times our clients' damages, and/or payment of our clients' attorneys' fees.



## FRANKFURT KURNIT KLEIN &amp; SELZ PC

Mr. Vinay Kotak  
March 5, 2009  
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Additionally, your company's "knocking off" of our clients' Aleena Ring Design constitutes unfair competition under section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), as well as the statutory and common laws of numerous states. Courts have not hesitated to find that the sale of such knock-off products is actionable under Section 43(a) of the Lanham Act. For example, in *Hermes Int'l v. Lederer De Paris Fifth Avenue, Inc.* 219 F.3d 104 (2d Cir. 2000), the court found the defendant liable for its sale of knockoff Hermes bags, noting that the defendant, like your company, intentionally traded on and copied the plaintiff's designs and sought to sell the knockoffs of those designs. *See also Car-Freshner Corp. v. Big Lots Stores, Inc.*, 314 F. Supp. 2d 145 (N.D.N.Y. 2004 (post-sale confusion is a violation of federal law, where, once a consumer purchased the infringing product, the infringing product and the plaintiff's product are virtually indistinguishable).

On behalf of our client, we hereby demand that A.V. Diamonds, and each and every person, agent, and company associated or affiliated with it immediately and permanently:

- 1) cease and desist from manufacturing, shipping, selling, offering for sale, advertising, displaying, promoting or using in any other way whatsoever the Aleena Ring Design;
- 2) remove from A.V. Diamonds' website and any other website owned, operated or controlled by A.V. Diamonds all images of or references to the Infringing Products;
- 3) remove from A.V. Diamonds' advertising, marketing and /or other promotional materials all images of or references to the Infringing Products;
- 4) recall and stop distribution of any catalogs, flyers or other advertising, marketing and /or other promotional materials referencing or displaying the Infringing Products;
- 5) disclose the manufacturer or source of the Infringing Products;
- 6) recall all of the Infringing Products and any associated materials sent to any retailers, wholesalers or any other sellers of the Infringing Products;
- 7) provide us with an accounting setting forth the number of Infringing Products manufactured, sold and still in inventory, and A.V. Diamonds' profit from the sale of the Infringing Products; and

FRANKFURT KURNIT KLEIN & SELZ PC


Mr. Vinay Kotak  
March 5, 2009  
Page 3 of 3

- 8) remit to our client payment of A.V. Diamonds' total profits from the Infringing Products together with our clients' attorneys' fees incurred in connection with this matter.

Please be advised that if we have not received confirmation of your willingness to comply with the foregoing demands **by Friday, March 13, 2009**, we will take all appropriate steps to protect and enforce our clients' rights, including, if necessary, commencing legal action and pursuing all appropriate remedies, which may include injunctive relief, claims for compensatory and exemplary damages, attorneys' fees and all other costs associated with our clients' claims.

This letter is not an exhaustive statement of our clients' legal position and is without prejudice to our clients' rights in this matter, both legal and equitable, all of which are specifically and expressly reserved.

Very truly yours,



Edward H. Rosenthal

Enclosures

cc: Marc Moskoviz, Gold Star Jewellery LLC  
Michael Lerche, Gold Star Jewellery LLC  
Alkesh Shah, Gold Star Jewellery Ltd.

**CLIFFORD H. KRAFT**  
**ATTORNEY OF LAW**  
320 Robin Hill Dr.  
Naperville, IL 60540  
Tel. 708 528-9092  
Fax. 630 393-9114

Jan. 19, 2009

AV Diamond  
Mr. Vinay Kotak  
7500 Bellaire Blvd.  
Suite 333  
Houston, TX 77036

Dear Sirs:

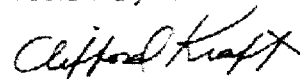
I represent the owners of United States Design Patent number D 570,727. A copy of this patent is enclosed with this letter.

At least some of the products in the "Exotica Collection" and possibly other collections you are offering in the US infringe the claims of United States design patent number D 570,727 because the patented design and your design would be substantially the same in the eyes of an ordinary observer, and your designs appropriate the novelty in my client's patented design. I have enclosed a photograph of one of your advertisements.

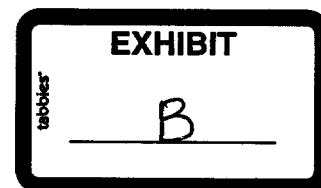
Therefore, you will immediately stop advertising, importing or exporting into the US, selling or offering for sale this product or any other product that contains the design shown. Within 25 days, you will send me a complete accounting of the total number of all products of any type or size containing this design sold in the US, and the price received for each. You will also notify all of your sales representatives and agents to immediately stop advertising, importing, selling or offering for sale these products in the US.

Please respond to this letter within 15 days at either the above-listed mailing address or by telephone or fax.

Yours Truly



Clifford H. Kraft,  
Attorney at Law





US00D570727S

(12) **United States Design Patent** (10) **Patent No.:** **US D570,727 S**  
**Shah** (45) **Date of Patent:** **\*\* Jun. 10, 2008**

(54) **GEMSTONE ARRANGEMENT (ANORA)**  
 (76) Inventor: **Alkesh Shah**, 13, Aryavarta Narayan Dabholkar Road, Mumbai (IN) 400 004  
 (\*\*) Term: **14 Years**  
 (21) Appl. No.: **29/253,563**  
 (22) Filed: **Feb. 8, 2006**  
 (51) **LOC (8) Cl.** ..... **11-01**  
 (52) **U.S. Cl.** ..... **D11/91**  
 (58) **Field of Classification Search** ..... D11/89-93,  
 D11/1, 2, 6-12, 16, 24-28, 34-43, 70, 79,  
 D11/30, 222, 47, 75, 81, 56; 63/1.11-14.1,  
 63/15-15.4, 20, 22, 23, 26-33  
 See application file for complete search history.

Diamonds (second edition) (p. 224) Eric Bruton FGA , copyright 1970, 1978 Chilton Book Company, Radnor, PA.\*  
 \* cited by examiner  
*Primary Examiner*—Louis S Zarfes  
*Assistant Examiner*—David G Muller  
 (74) *Attorney, Agent, or Firm*—Honigman Miller Schwartz and Cohn LLP

(57) **CLAIM**

The ornamental design for gemstone arrangement (anora), as shown and described.

**DESCRIPTION**

FIG. 1 is a front isometric view of a first embodiment of the gemstone arrangement of the present invention;  
 FIG. 2 is a front elevational view of the arrangement of FIG. 1;  
 FIG. 3 is a rear elevational view of the arrangement of FIG. 1;  
 FIG. 4 is a right side elevational view of the arrangement of FIG. 1, the left side, top, and bottom elevational views being identical thereto;  
 FIG. 5 is a perspective view of a second embodiment of the gemstone arrangement of the present invention;  
 FIG. 6 is a front elevational view of the arrangement of FIG. 5;  
 FIG. 7 is a rear elevational view of the arrangement of FIG. 5; and,  
 FIG. 8 is a right side elevational view of the arrangement of FIG. 5, the left side, top, and bottom view being identical thereto.

(56) **References Cited**

U.S. PATENT DOCUMENTS

2,141,363	A	*	12/1938	Rigollet	.....	63/29.1
D382,507	S	*	8/1997	Yosef	.....	D11/90
D410,407	S	*	6/1999	Tirakian	.....	D11/92
D421,930	S	*	3/2000	Wolf	.....	D11/90
D427,933	S	*	7/2000	Tirakian	.....	D11/92
D434,693	S	*	12/2000	Kaplan	.....	D11/91
D440,522	S	*	4/2001	Swarovski	.....	D11/90
D445,058	S	*	7/2001	Kaplan	.....	D11/91
D453,908	S	*	2/2002	Kaplan	.....	D11/91
D454,090	S	*	3/2002	Kaplan	.....	D11/91
D455,369	S	*	4/2002	Shah	.....	D11/90
D457,093	S	*	5/2002	Itzkowitz	.....	D11/91
D460,015	S	*	7/2002	Namdar	.....	D11/90
D466,046	S	*	11/2002	Wolf	.....	D11/90
D508,867	S	*	8/2005	Shum	.....	D11/91
D529,837	S	*	10/2006	Shum	.....	D11/91

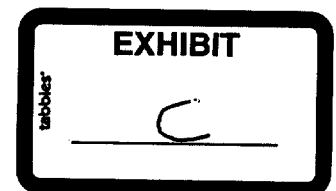
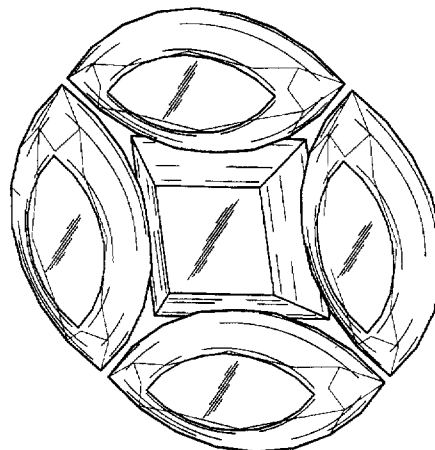
FOREIGN PATENT DOCUMENTS

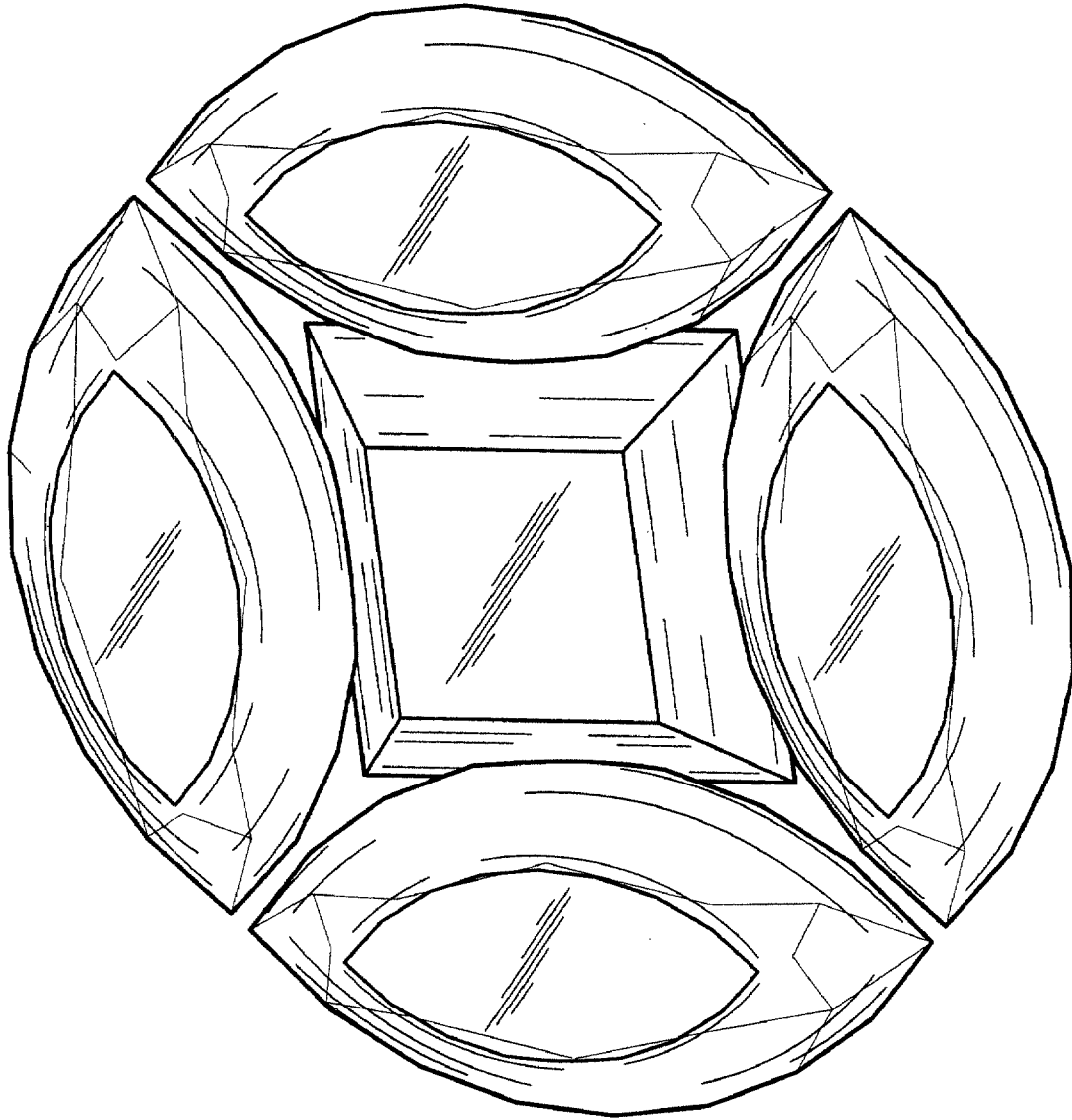
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OTHER PUBLICATIONS

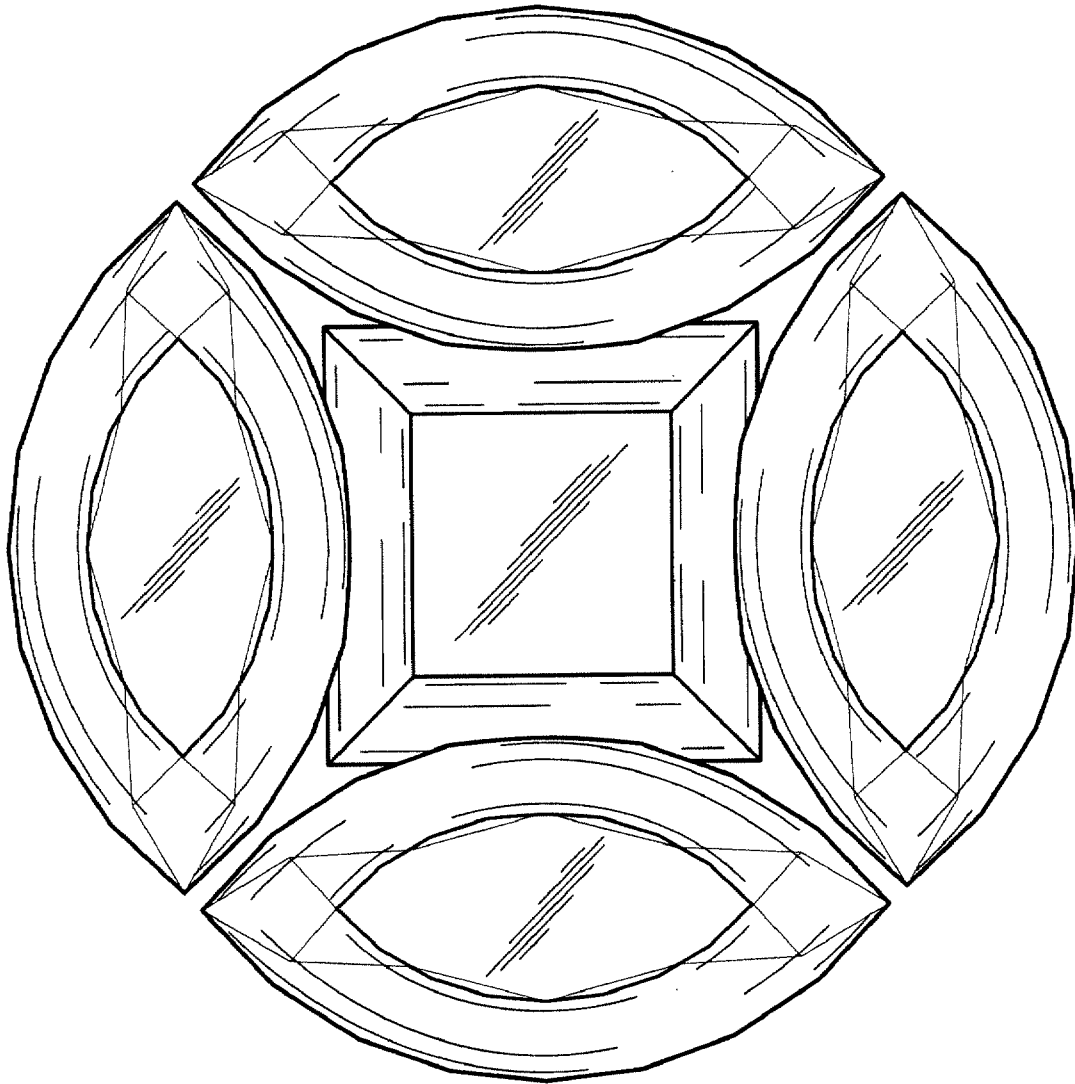
[http://web.archive.org/web/20041211061806/www.usfacetersguild.org/gem\\_designs/simple\\_jack.\\*](http://web.archive.org/web/20041211061806/www.usfacetersguild.org/gem_designs/simple_jack.*)

**1 Claim, 6 Drawing Sheets**





**FIG. 1**



**FIG. 2**

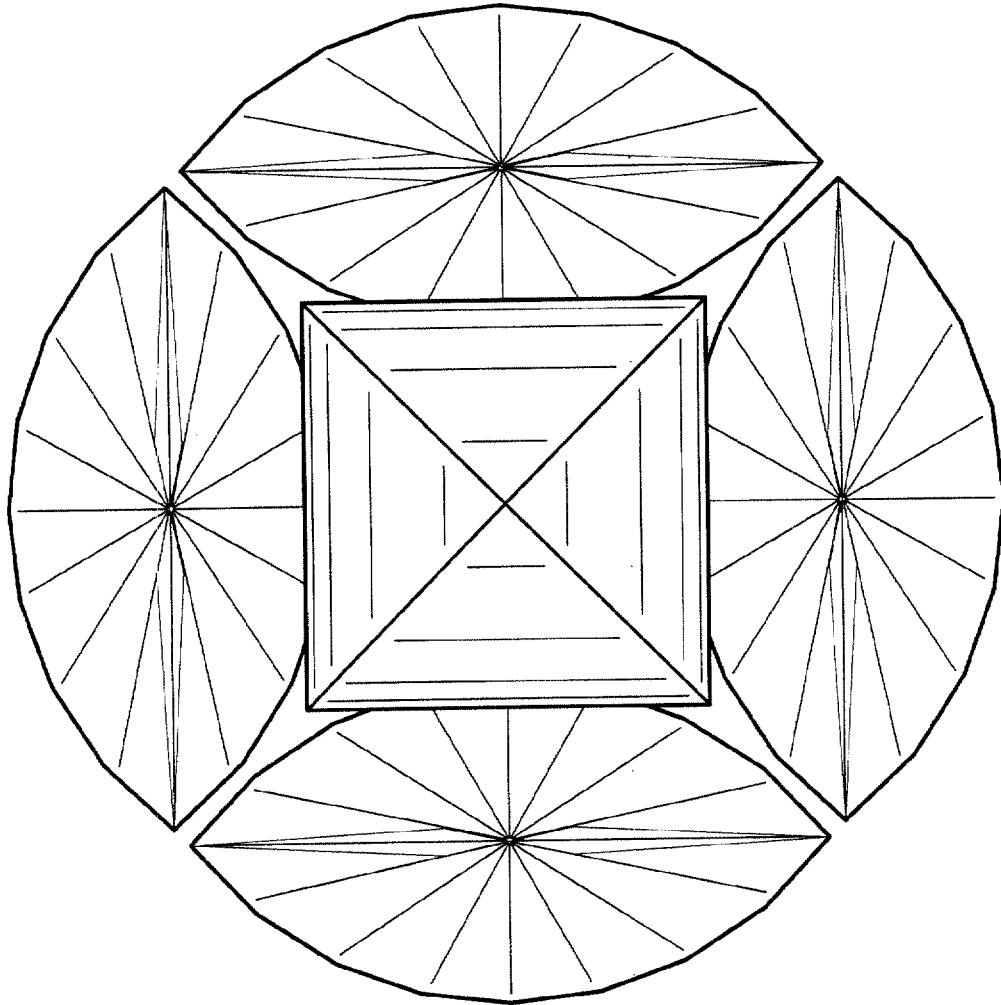


FIG. 3

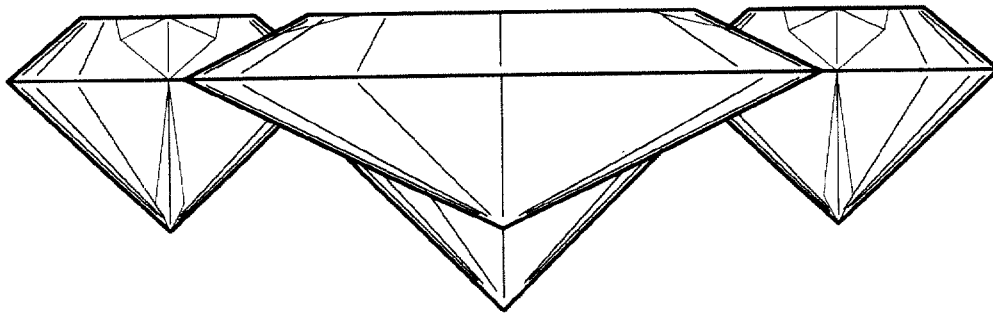
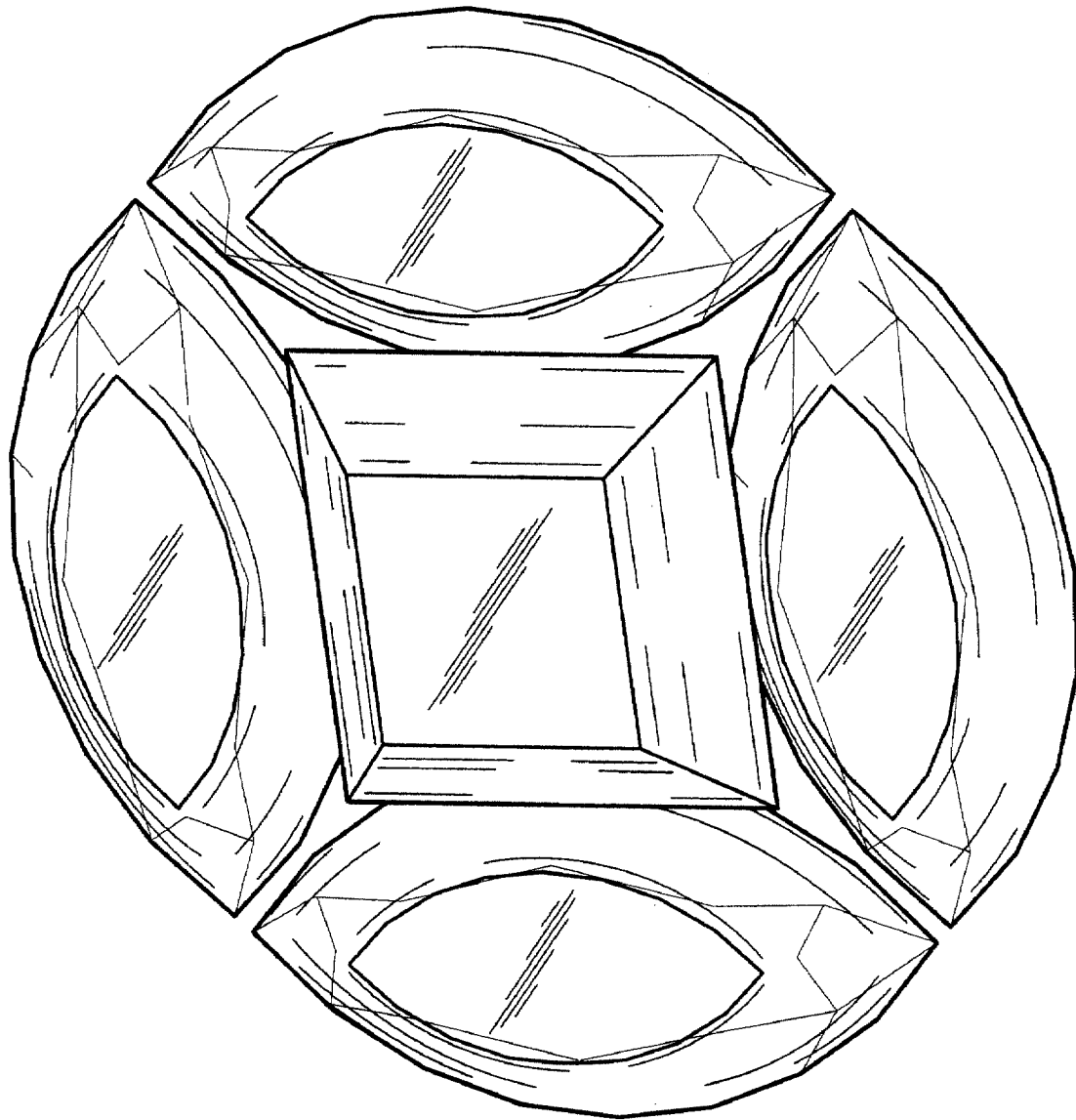
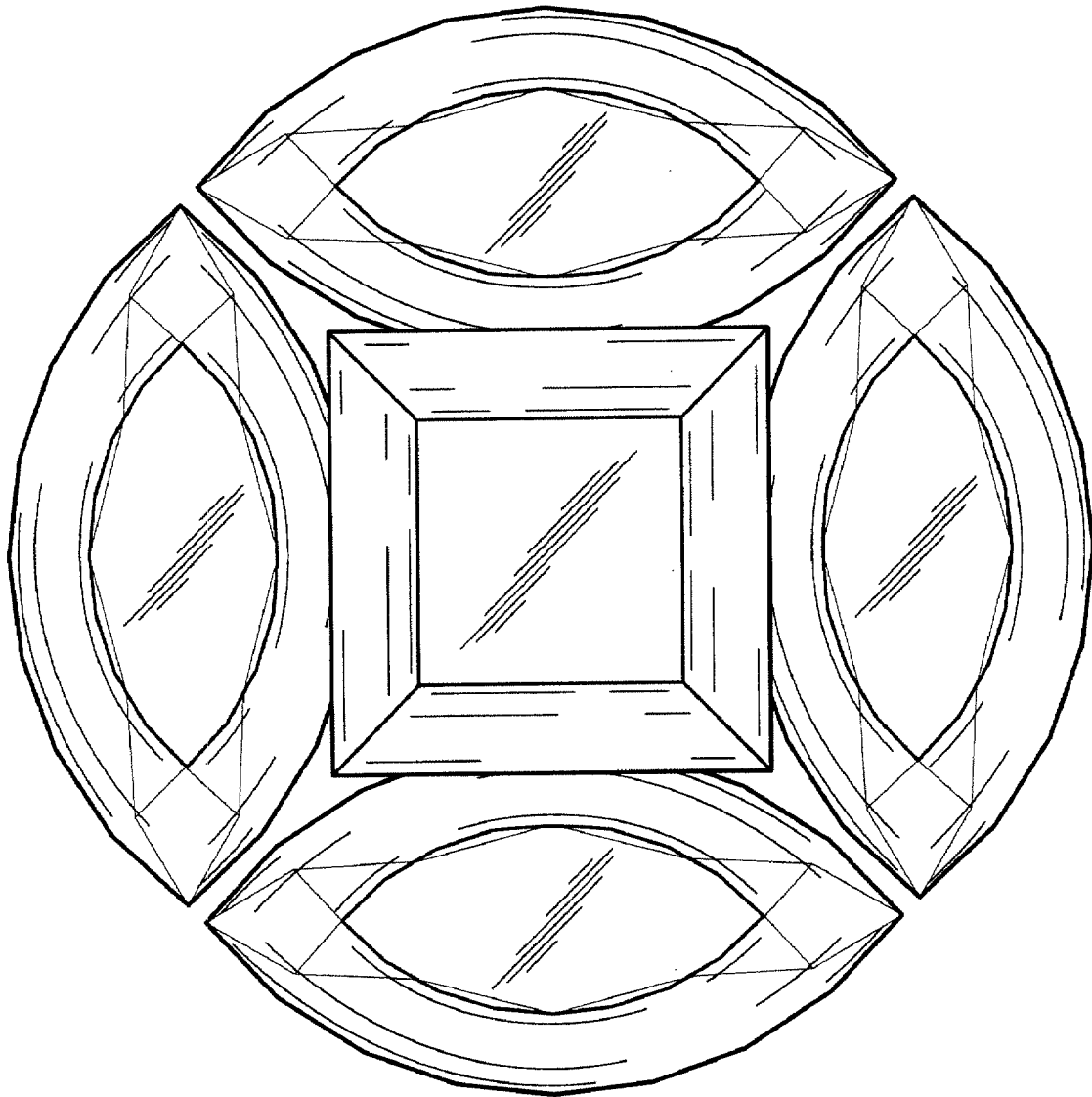


FIG. 4





*FIG. 5*



*FIG. 6*

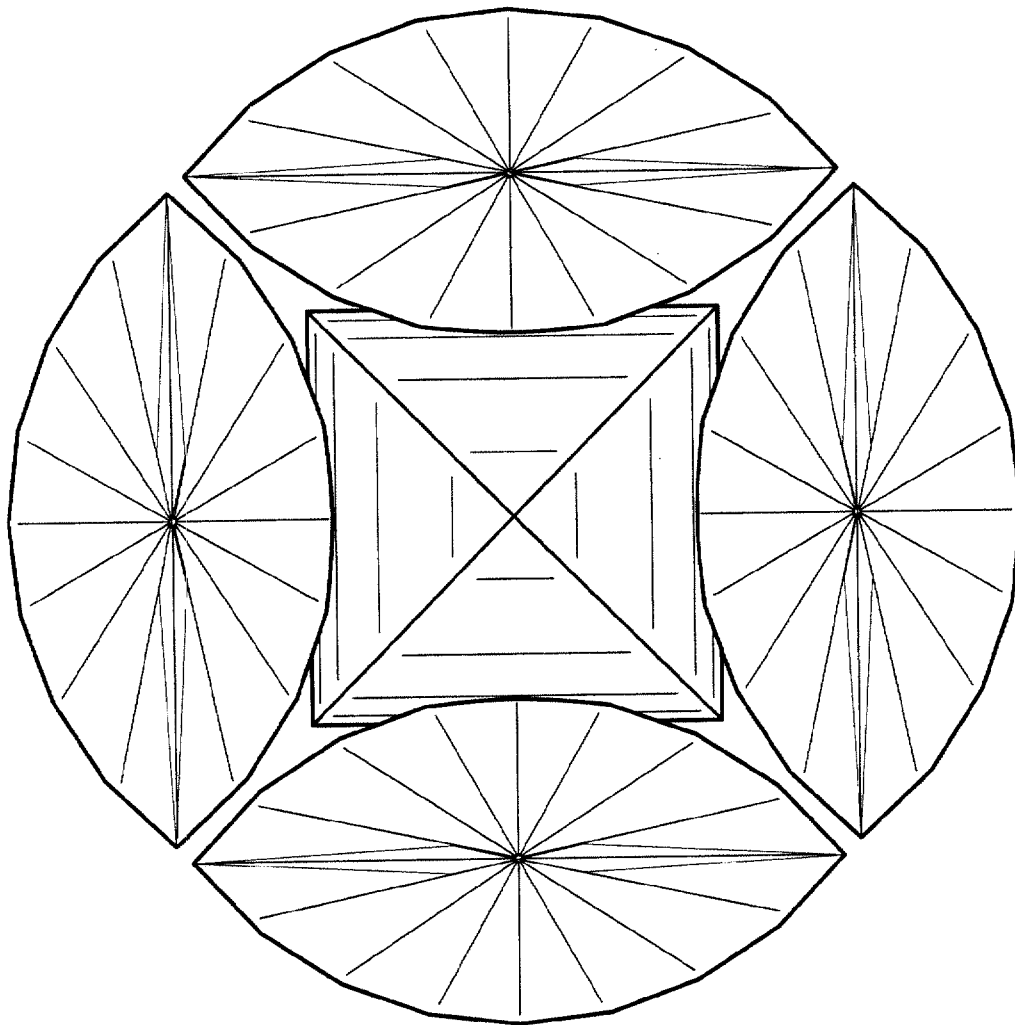


FIG. 7

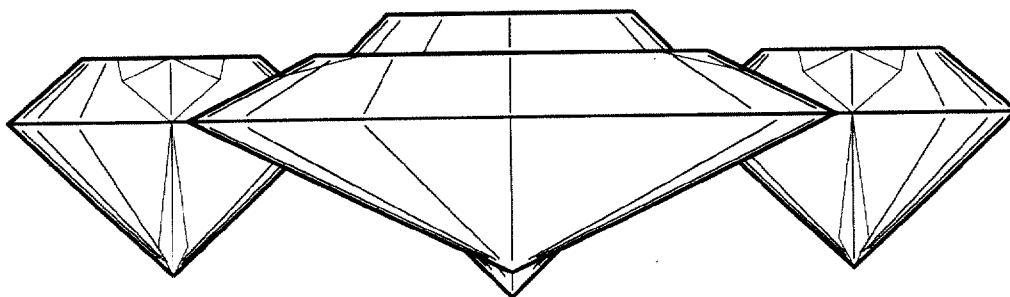


FIG. 8