

FM 10-ED-1
2005 JAN -5 PM 4:30
U.S. Dist. Ct.

DOCKETED

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

JAN 07 2005

RE.SOURCE, INC.)	
a Rhode Island Corporation,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
TV PRODUCTS (USA) INC., a New York)	
corporation; and)	
MENARD, INC., a Wisconsin corporation,)	
)	
Defendants.)	

**COMPLAINT FOR PATENT INFRINGEMENT, TRADE DRESS INFRINGEMENT, and
RELATED CAUSES**

Plaintiff Re.Source, Inc. ("ReSource"), by its undersigned attorneys, complains against defendants as follows:

PARTIES

1. Plaintiff ReSource, Inc. is a Rhode Island corporation with its principal place of business in Providence, Rhode Island.
2. Defendant TV Products (USA) Inc. ("TVP") is a corporation organized according to the laws of the State of New York and, on information and belief, maintains its principal place of business at 230 Fifth Avenue, New York, New York 10001.
3. Defendant Menard, Inc. ("Menard") is a corporation organized according to the laws of the state of Wisconsin and is registered to do business in Illinois. Its principal place of business, on information and belief, is at 4777 Menard Drive, Eau Claire, Wisconsin 54703. Defendant Menard owns, controls, and/or manages retail stores known as "MENARDS" having retail locations in Illinois and other parts of the Midwest.

14

4. ReSource is a United States designer, marketer and distributor of various consumer products which it sells in interstate commerce.

5. In approximately 1995, ReSource began marketing and distributing battery organizers. One of its battery organizers is the BATTERY RACK 40 organizer, which includes a tray having multiple compartments for holding dry cells and an integrated battery tester. Attached as Exhibit A are copies of the packaging and advertisements displaying plaintiff's BATTERY RACK 40 organizer.

6. Plaintiff's BATTERY RACK 40 organizer is a uniquely-shaped product.

- a. In terms of its side profile (i.e., when viewed from either the left or right side), the overall shape is generally wedge-shaped, being deeper at the upper portion than at the lower portion. Its front slopes downward from top to bottom. Further, both the topmost wall and the bottommost wall are generally inclined inward.
- b. In terms of its front view, the uppermost part of the organizer has a flat front face. A battery tester is located beneath the flat front face. The battery tester has a black, articulating ("flip-top") cover which is flush with the front face of the tray. The front of the battery tester cover is rectangular. Three round indicator lights are set in a vertical line located immediately to the left of the rectangular black cover.
- c. An array of walls and back plates forms multiple compartments within the tray, each compartment having left and right walls and top and bottom walls extending upward from a back plate. The top and bottom walls are angled; they are not perpendicular to the back plates. These compartments

have different depths. Most of the compartments combine (a) one or two lateral tabs located at the front of the compartment extending partially across the compartment, and (b) rectangular recesses in the top and/or bottom vertical walls.

7. ReSource continues to market and distribute this popular product in the United States. The BATTERY RACK 40 organizer is sold through such retailers as Home Depot; Bed, Bath & Beyond; Linens 'n Things; and other retailers. In addition, ReSource markets the BATTERY RACK 40 organizer directly, including via the Internet. The BATTERY RACK 40 organizer is featured on ReSource's web site www.batteryrack.com.

8. The BATTERY RACK 40 is covered by the claim of United States Design Patent No. D391,078, a copy of which is attached as Exhibit B.

9. Since approximately 1996, ReSource has spent substantial time, money and effort in advertising, promoting and marketing its BATTERY RACK 40 organizer and the distinctive trade dress thereof. As a result of such expenditures of time, money and effort, ReSource has achieved substantial sales in its BATTERY RACK 40 product and has acquired valuable good will in the trade dress of the BATTERY RACK 40 product. ReSource has sold over 2,000,000 of these products. Its trade dress has acquired secondary meaning in the minds of consumers. Thus, the public recognizes the BATTERY RACK 40 product and distinguishes it from the products of others based on the distinctive product configuration and color scheme of the BATTERY RACK 40 product.

10. On information and belief, in 2004, defendant TVP began selling a battery organizer under the trademark HANDY TRENDS. Attached as Exhibit C are copies of the packaging or advertisements for the TVP battery organizer.

11. Defendant Menard offers for sale and sells the HANDY TRENDS battery organizer in this judicial district and elsewhere in the United States.

12. Despite the fact that battery organizers can be manufactured employing an almost unlimited number of distinct design configurations and colors, TVP adopted the same general design and color scheme as ReSource for its HANDY TRENDS battery organizer, giving the HANDY TRENDS product the same "look and feel" as BATTERY RACK 40 product. TVP has purposely adopted a trade dress which features the same eye-catching design elements to create the same visual impression, look and feel as the BATTERY RACK 40 product trade dress, knowing that the public would mistake the HANDY TRENDS products for those of ReSource, thereby unfairly diverting sales from ReSource.

13. Like plaintiff's BATTERY RACK 40 organizer, defendants' HANDY TRENDS battery organizer has a tray with multiple compartments and a battery tester with a rectangular black cover. It includes the same features as plaintiff's uniquely-shaped product.

- a. In terms of its side profile (i.e., when viewed from either the left or right side), like plaintiff's BATTERY RACK 40 organizer, the overall shape of defendants' HANDY TRENDS battery organizer is generally wedge-shaped, being deeper at the upper portion than at the lower portion. Its front slopes downward from top to bottom. Further, both the topmost wall and the bottommost wall are generally inclined inward.
- b. In terms of its front view, like plaintiff's BATTERY RACK 40 organizer, the defendants' HANDY TRENDS battery organizer has a flat front surface at the uppermost part of the organizer. A battery tester is located beneath the flat front face. The battery tester has a black, articulating

("flip-top") cover which is flush with the front face of the tray. The front of the battery tester cover is rectangular. Three round indicator lights are set in a vertical line located immediately to the left of the rectangular black cover.

- c. Like plaintiff's BATTERY RACK 40 organizer, the defendants' HANDY TRENDS battery organizer features an array of walls and back plates forming multiple compartments within the tray, each compartment having left and right walls and top and bottom walls extending upward from a back plate. Just like plaintiff's BATTERY RACK 40 organizer, the top and bottom walls are angled; they are not perpendicular to the back plates. Just like plaintiff's BATTERY RACK 40 organizer, these compartments have different depths. Just like plaintiff's BATTERY RACK 40 organizer, most of the compartments combine (a) one or two lateral tabs located at the front of the compartment extending partially across the compartment, and (b) rectangular recesses in the top and/or bottom vertical walls.
- d. Defendants' HANDY TRENDS battery organizer includes several other features of plaintiff's BATTERY RACK 40 organizer.

JURISDICTION AND VENUE

14. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code ("U.S.C."), §1 *et seq.*, trade dress infringement arising under the trademark laws of the United States, Title 15 of the U.S.C., §1 *et seq.*, and

related state causes of action. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331, 1338, and 1367(a); 15 USC §1121; and 35 USC §281.

15. This Court has personal jurisdiction over Defendants by virtue of one or more section of the Illinois Code of Civil Procedure §§ 5/2-209(a)(1), (a)(2), (b)(4) and (c), in that each of the Defendants, with respect to the present Complaint, has transacted business in the State of Illinois, has engaged in tortious acts within this State, and/or has had contacts with this State commensurate with United States and/or Illinois Constitutions as to submit itself to its jurisdiction and accordingly may be served with process pursuant to Rule 4(h)(1) Fed. R. Civ. P.

16. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b). Defendants have transacted business and committed acts of patent and trade dress infringement in this district, and this action arises from such business and infringement. Defendant Menard owns or operates MENARDS stores in this judicial district from which the accused HANDY TRENDS battery organizer is sold. Defendant TVP regularly sends its HANDY TRENDS battery organizer and other TVP products into this judicial district.

**FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS
INFRINGEMENT OF U.S. PATENT NO. D391,078**

17. ReSource realleges and incorporates by reference the allegations in the preceding paragraphs of this Complaint, as though fully set forth herein.

18. U.S. Patent No. D391,078 (“the ‘078 Patent”), entitled “STORAGE CONTAINER FOR BATTERIES,” was granted by the United States Patent and Trademark Office on February 24, 1998 with a term of 14 years. A true and correct copy of the ‘078 Patent is attached hereto as Exhibit B.

19. ReSource has complied with the patent marking statute by (a) marking the packaging of its BATTERY RACK 40 product with the legend, “US DES PAT. 391,078” and

(b) by giving actual written notice to TVP dated December 13, 2004. Copies of plaintiff's letter of December 13 and further correspondence between ReSource and TVP are attached hereto as Exhibit D.

20. Defendant TVP has infringed and continues to infringe the '078 Patent by applying the patented design or a colorable imitation thereof to battery organizers for purposes of sale, by selling or exposing for sale such battery organizers, and by making, using, selling, offering for sale, and/or importing into the United States products covered by the '078 Patent, by otherwise contributing to such infringement, or by actively inducing and encouraging others to infringe the '078 Patent. Such infringement has been willful.

21. Defendant Menard has infringed and continues to infringe the '078 Patent by using, selling, offering for sale, exposing for sale, and/or importing into the United States battery organizers according to the '078 Patent. Such infringement has been willful.

22. ReSource has no adequate remedy at law. Defendants will continue to infringe the '078 Patent unless enjoined by this Court. Defendants have caused, and are causing and, unless enjoined and restrained by this Court, will continue to cause, ReSource irreparable loss and injury which cannot be adequately measured or compensated.

23. As a result of Defendants' infringement of the '078 Patent, ReSource has been and continues to be damaged in an amount not yet determined but to be proven at trial.

**SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS
TRADE DRESS INFRINGEMENT UNDER 15 U.S.C. §§ 1051-1127**

24. ReSource realleges and incorporates by reference the allegations in the preceding paragraphs of this Complaint, as though fully set forth herein.

25. Defendants' aforesaid actions constitute trade dress infringement in that they are likely to cause confusion, mistake and deception as to an affiliation, connection, or association of

TVP with ReSource, and as to the origin, sponsorship, or approval of TVP's infringing battery organizer product by ReSource, all in violation of 15 U.S.C. § 1125(a).

26. Defendants have engaged in the aforesaid unlawful acts with full knowledge of ReSource's superior trade dress rights and with the deliberate and express intent of trading off the good will and reputation that ReSource has developed in the BATTERY RACK 40 product.

27. Defendants' unlawful actions have caused ReSource to suffer irreparable damage, have resulted in unjust enrichment to Defendants, and have caused and will continue to cause, unless enjoined by this Court, substantial and irreparable harm to ReSource for which it has no adequate remedy at law.

**THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS
UNFAIR COMPETITION UNDER 815 ILCS 505/1 *ET SEQ.*,
815 ILCS 510/1 *ET SEQ.*, AND THE COMMON LAW OF ILLINOIS**

28. ReSource realleges and incorporates by reference the allegations in the preceding paragraphs of this Complaint, as though fully set forth herein.

29. TVP and Menard have appropriated the general appearance of the BATTERY RACK 40 product and numerous specific features thereof to pass off the HANDY TRENDS product as that of plaintiff, or to indicate or suggest an affiliation or approval by plaintiff of such product, and to divert sales from plaintiff to defendants.

30. Defendants' aforesaid actions constitute unfair methods of competition and unfair or deceptive acts or practices and create a likelihood of confusion or misunderstanding in the public's mind as to the parties' goods, all in violation of 815 ILCS 505/1 *et seq.*, 815 ILCS 510/1 *et seq.*, and the common law of Illinois.

31. Defendants have engaged in the aforesaid unlawful acts with full knowledge of ReSource's superior rights and with the deliberate and express intent of trading off the good will and reputation that ReSource has developed in the BATTERY RACK 40 organizer.

32. Defendants' unlawful actions have caused ReSource to suffer irreparable damage, have resulted in unjust enrichment to Defendants, and have caused and will continue to cause, unless enjoined by this Court, substantial and irreparable harm to ReSource for which it has no adequate remedy at law.

WHEREFORE, plaintiff ReSource prays that the Court enter an Order:

- a. Declaring that defendants have infringed U.S. Design Patent D391,078;
- b. Declaring that said patent infringement has been willful;
- c. Preliminarily and permanently enjoining defendants from any further sale, offer for sale, importation, and other acts of infringement, pursuant to 35 USC §283;
- d. Awarding damages to ReSource from Defendants for their patent infringement, pursuant to 35 USC §§ 284 and 289, including the total profits gained by defendants and the damages sustained by plaintiff;
- e. Awarding treble damages pursuant to 35 USC §284, 2nd paragraph;
- f. Declaring the case exceptional under 35 USC §285 and awarding ReSource its reasonable attorneys' fees and the costs of this action;
- g. Declaring that defendants have infringed the trade dress belonging to ReSource for its BATTERY RACK 40 organizer;
- h. Awarding damages pursuant to 15 USC §1117 including defendants' profits, damages sustained by the plaintiff, and the costs of the action;

- i. Ordering the delivery and destruction of all reproductions, counterfeits, copies, and colorable imitations of the BATTERY RACK 40 organizer, including all plates, molds, matrices, and other means of making the same, pursuant to 15 USC §1118;
- j. Awarding judgment in favor of ReSource on all counts of the Complaint; and
- k. Awarding to ReSource such other and further relief as the interests of justice may require.

Jury Demand

ReSource demands a trial by jury.

Dated: January 6, 2005

Respectfully submitted,

RESOURCE, INC.

By:


One of Its Attorneys

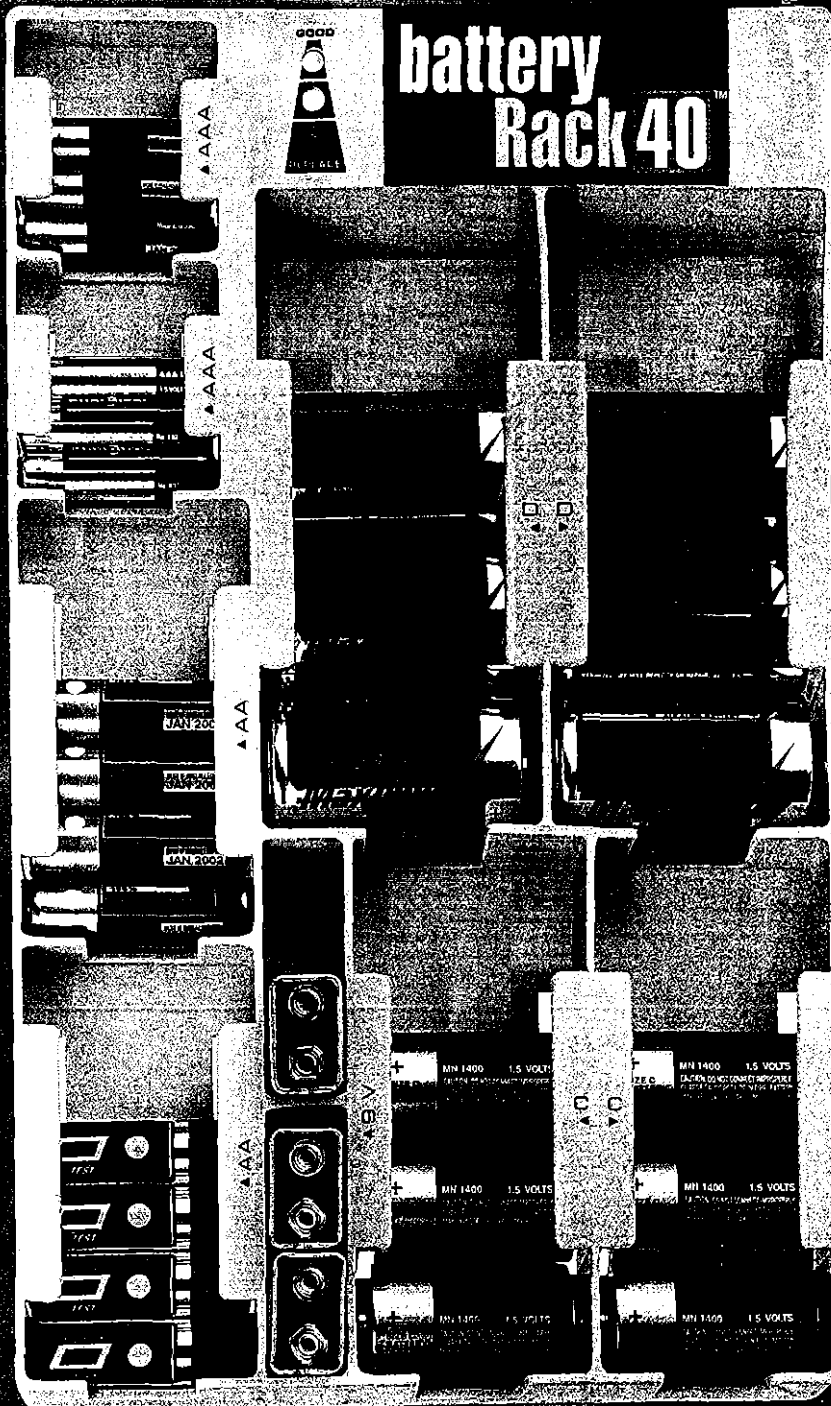
Edward D. Manzo
Raymond M. Mehler
Louis J. Alex
COOK, ALEX, MCFARRON, MANZO, CUMMINGS & MEHLER, LTD.
200 West Adams Street, Suite 2850
Chicago, IL 60606
(312) 236-8500 (phone)
(312) 236-8176 (fax)

A

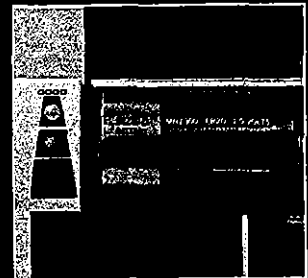
battery Rack40™

with built-in
Battery Tester!

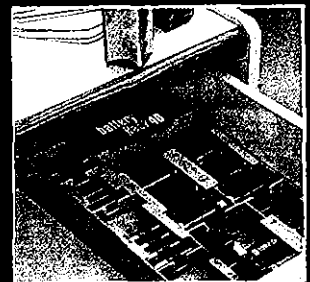
Organize & Store
Your Batteries!



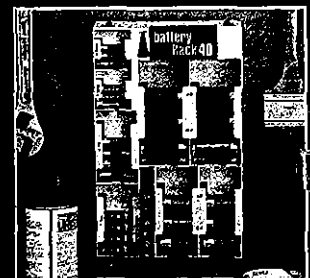
Convenient
Battery Tester



Fits or Mounts
almost anywhere
in your home
or garage



In a drawer



On the wall

Good Batteries When You Need Them!

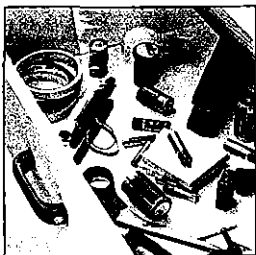
Battery Savers
by ReSource

battery Rack40™

**with built-in
Battery Tester!**

**Organize & Store
Your Batteries!**

Are you tired of looking through cluttered drawers to find batteries in an emergency? Wondering if those loose batteries are still good? Stop running out to buy expensive new batteries – when you actually had the size you were looking for all along.

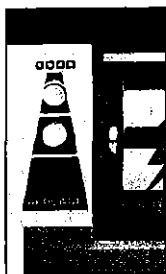


The Battery Rack 40 with Tester is the solution.

The Battery Rack is the perfect way to store all the batteries you need for smoke detectors, radios, toys and other small appliances.

Built-In Battery Tester

Just place the battery into the tester and the colored lights let you know whether a battery is new, slightly used, or ready for replacement. You'll never have to wonder whether those batteries are fresh...or resort to the annoying "try -and-switch" method of battery testing. When you suddenly need to find new batteries right away, you'll know where to find them.



See three lights-the battery is good... red light only, throw it out.

Battery Rack 40 includes:

- Battery Rack
- Battery Tester
- Mounting Hardware
- Batteries for Tester
- Instruction Sheet

US DES PAT. 391,078

Foreign Patents Pending.

Made in China Exclusively for ReSource, Inc.

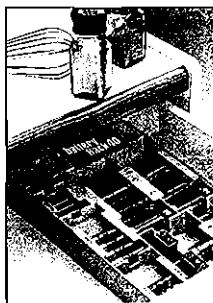
Model: #20010



7 94802 20010 1

A Place For Every Battery In The House.

With the Battery Rack 40, everyone in the family will always know where to find the fresh batteries when they need them. And since every different size of battery has its own place in the rack, you can tell with a quick glance whether or not you've got enough of the right kind.



- Perfect For Kitchen, Closet, and Workshop...Any Place You Store Batteries!
- The Battery Rack 40 was designed to be placed in drawers, cupboards, closets and shelves. All mounting hardware is included for fast, easy hanging on any wall.
- Made of durable polystyrene, The Battery Rack 40 is the one home organizer you'll be glad to own every time you use it!

Got batteries left over from an expensive multi-pack? Put em' in the Rack!

An organized place for every C, D, AA, AAA and 9-volt battery.

Battery Savers
by ReSource

ReSource, Inc.
23 Acorn Street, Providence, RI 02903
Questions? Call 1-877-273-7225

Visit us at: www.batteryrack.com

LIMITED WARRANTY: ReSource, Inc. warrants this product, excluding the battery, from defects in material and workmanship during normal use for six months from the date of purchase to the original consumer purchaser only. Products should be returned to ReSource, Inc., postage prepaid, with proof-of-purchase date and an explanation of the nature of the problem and at its option. ReSource, Inc. will repair or replace the product. Any attempt to tamper with or repair the product will void this warranty. TO THE EXTENT ALLOWED BY LAW, ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLICABLE TO THIS PRODUCT IS LIMITED IN DURATION OR THIS WRITTEN WARRANTY. RESOURCE INC. SHALL NOT BE LIABLE FOR ANY PROPERTY DAMAGE OR ANY SPECIAL, CONTINGENT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND. Some states do not allow limitations on how long an implied warranty will last or the exclusion or limitation of incidental or consequential damages; so, the above limitations may not apply to you. This warranty gives you the specific legal rights and you may also have other rights, which vary from state to state.



Products

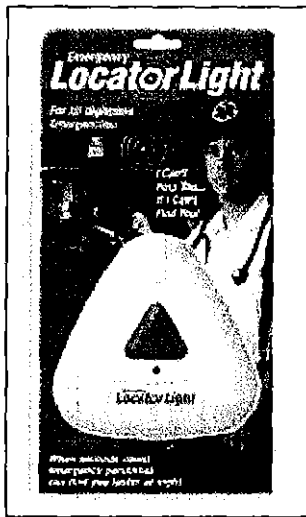
View Cart

Ordering Info

Products Listing

There are 7 products available.
This page contains items **1** through **7**.

Emergency Locator Light



Emergency personnel responding to calls for help often have problems locating the right address, particularly at night or in inclement weather. The Emergency Locator Light helps solve that problem by showing police, fire and rescue squads where to go. The Emergency Locator Light adheres to a flat window using a small suction cup on the back of the device. All the user needs to do is press a button on the back of the device and the Emergency Locator Light sends out 60 powerful strobe lights per minute, visible from hundreds of yards away.

Measures 5 in. x 5 in. x 2 in.

This item comes in White.

Unit Price: **\$14.99** Qty: 0

Battery Rack 40 with Tester



Organizes and stores up to 40 batteries in all common sizes. Allows for easy and quick battery dispensing. The Battery Rack™ 40 stores regular or rechargeable power cells, and includes a built-in battery tester. It can be mounted in any convenient area and all mounting hardware is included. Molded from high-impact polystyrene. Batteries not included.

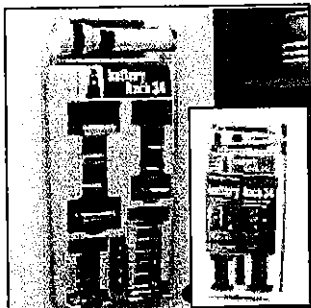
Measures 12 in. x 7 1/8 in. x 2 in.

This item comes in Gray.

Unit Price: **\$13.99** Qty: 0

Battery Rack 34 with Flashlight & Tester

Organizes and stores up to 34 batteries in all common sizes. Convenient removable flashlight



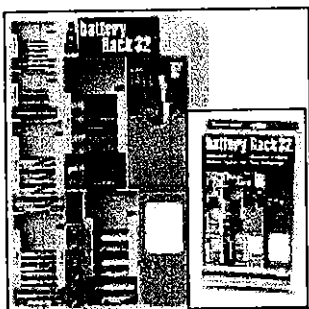
included so you always know where to find a flashlight in an emergency. Built-in battery tester ensures you always have fresh batteries. Hangs conveniently anywhere you need to keep batteries handy! All mounting hardware is included for fast & easy installation. Batteries not included.

Measures 13 in. x 6 in. x 2 in.

This item comes in Gray.

Unit Price: **\$14.99** Qty: 0

Battery Rack 32 with Storage Bin & Removable Tap Light



Organizes and stores up to 32 batteries in all common sizes. Keep track of small, easy-to-lose items in the multipurpose tilt-out storage bin. Convenient tap light works in the rack or can be removed and used as a portable task light. Built-in battery tester ensures you always have fresh batteries. All mounting hardware is included for fast & easy installation. Batteries not included.

Measures 12 in. x 7.125 x 2 in.

This item comes in Gray.

Unit Price: **\$14.99** Qty: 0

Battery Xtender



Safely extends the life of all alkaline batteries. The Battery Xtender uses patented Smart Charge System microprocessor technology to safely recharge all AAA, AA, C and D common throw away batteries. Save money by recharging batteries and extending their useful life. Also reduces the number of batteries entering landfills and its impact on our environment. Batteries not included.

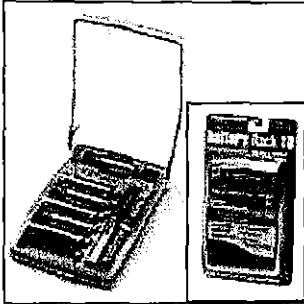
Measures 5.5 in. x 6.5 in. x 2.25 in.

This item comes in Gray.

Unit Price: **\$39.99** Qty: 0

Battery Rack 10 with Tester

The Battery Rack 10 with Tester is the ideal way to keep you fully charged. The sleek case slides easily



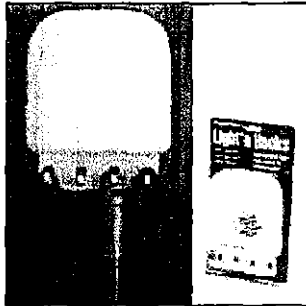
into your briefcase or bag and holds extra batteries ready to go whenever you need them. Holds 6 AA and 4 AAA batteries. Transparent lid to see your battery supply. Batteries not included.

Measures 5.5 in. x 3.75 in. x 1 in.

Color Blue

Unit Price: **\$6.99** Qty: 0

Light'n Hooks



Auto Shut-off Tap Light with Utility Hooks! Never worry about wasting batteries again. Just tap the light on, find what you need, and the light will automatically shut off in 60 seconds. Perfect for utility closets, bedroom closets, hallways, stairways, basements and garages. Great for use on boats and RVs too! Convenient & durable utility hooks store frequently used items. Just attach the mounting plate to any wall or door and slide light onto plate. All mounting hardware is included for fast & easy installation. Batteries not included.

Measures 7 in. x 5.5 in. x 1.5 in.

This item comes in White.

Unit Price: **\$4.99** Qty: 0

This button will add all items on this page with a quantity greater than "0" to your shopping cart.

[Add To My Cart](#)

[My Cart Contents](#)

Get at least \$5 off a future Amazon.com purchase when you subscribe to one of our select magazines [Shop now](#)

SEARCH

Kitchen 

ITEM INFORMATION

Explore this item
buying info
See more of the brand

[ReSource](#)



Share your thoughts

- [write a review](#)
- [write a So You'd Like to... guide](#)
- [e-mail a friend about this item](#)

Help us help others

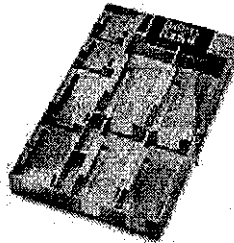
[submit a manual](#)

RECENTLY VIEWED

-  [The Battery Rack - Battery Storage Organize-Eve...](#) (Rate It)
-  [Battery Rack - 40 - \(Grey\) Stacks and Stacks](#) (Rate It)

ReSource 40 Battery Rack with Tester

Other products by ReSource



Share your own customer images

[See a larger picture](#)

Features:

- 12" x 7 1/8" x 2", gray polystyrene.
- Organizes, stores and tests batteries.
- Holds up to 40 batteries.

Manufacturers, merchants, and enthusiasts: [Submit a product manual for this item.](#)

Amazon.com Sales Rank in **Kitchen & Housewares:**
#32,082
ASIN: B0000CFP6J
Date first available at Amazon: March 10, 2004

E-MAIL ME WHEN AVAILABLE

This item is not in stock, but we'd be glad to notify you by e-mail when ReSource 40 Battery Rack with Tester is available for purchase. Simply enter your e-mail address, and click Go.



MORE BUYING CHOICES

1 used & new from \$16.79

Get it for less! [Order it used](#)

Have one to sell? [Sell yours here](#)

[Add to Wish List](#)

[Add to Wedding Registry](#)

Instant Giving
It's never too late to send a Gift Certificate. Always perfect, always on time.

[Send a Gift Certificate](#)

► See more in the Page You Made

Featured Item:

Product Description

Product Description Easy storage and accessibility for all sizes of batteries.

Be the first person to review this item!



**Battery Rack - 34 -
(Gray) Stacks and
Stacks**

RATE THIS ITEM

(Sign In to rate this item.)

Suggestion Box

Your comments can help make our site better for everyone. If you've found something incorrect, broken, or frustrating on this page, let us know so that we can improve it. Please note that we are unable to respond directly to suggestions made via this form.

If you need help with an order, please contact Customer Service.

Please mark as many of the following boxes that apply:

- Product information is missing important details.
- Product information is incorrect.
- The page contains typographical errors.
- The page takes too long to load.
- The page has a software bug in it.
- Content violates Amazon.com's policy on offensive language.
- Product offered violates Amazon.com's policy on items that can be listed for sale.

Comments or Examples:

Examples: Missing information such as dimensions and model number, typos, inaccuracies, etc.

[Empty text input box for user comments]

Submit

Where's My Stuff?

Shipping & Returns

Need Help?



- Track your recent orders.
- View or change your orders in [Your Account](#).
- See our [animated demo!](#)
- See our [shipping rates & policies](#).
- [Return](#) an item (here's our [Returns Policy](#)).
- New customer? [Click here](#) to learn about searching, browsing, and shopping at Amazon.com.
- [Forgot your password?](#) [Click here](#).
- [Redeem](#) or buy a gift certificate.
- [Visit our Help department](#).

Search for

Your Recent History

[Learn More](#)

Recently Viewed Products


-  [The Battery Rack - Battery Storage Organizer-Everything.com](#) ([Rate it](#))
-  [Battery Rack - 40 - \(Grey\) Stacks and Stacks](#) ([Rate it](#))

Recent Searches

- In All Products: [battery organizer](#)

Customers who bought items in your Recent History also bought:



-  [Battery Case - Tester - \(Gray\) Stacks and Stacks](#) ([Rate it](#))

▶ [Visit the Page You Made](#)

**Turn your past kitchen & housewares purchases into \$\$\$
Learn more about selling at Amazon.com today!**

[Top of Page](#)

[Browse Brands & Products](#) | [Top Sellers](#) | [Target](#) | [Housewares](#) | [Small Appliances](#) | [Gift Ideas & Wedding Registry](#) | [Today's Deals](#) | [Outlet & Reconditioned](#)

[Amazon.com Home](#) | [Directory of All Stores](#)

Our International Sites: [Canada](#) | [United Kingdom](#) | [Germany](#) | [Japan](#) | [France](#) | [China](#)

[Contact Us](#) | [Help](#) | [Shopping Cart](#) | [Your Account](#) | [Sell Items](#) | [1-Click Settings](#)

[Investor Relations](#) | [Press Releases](#) | [Join Our Staff](#)

[Conditions of Use](#) | [Privacy Notice](#) © 1996-2005, Amazon.com, Inc. or its affiliates

B



US00D391078S

United States Patent [19]
Jacober et al.

[11] **Patent Number: Des. 391,078**
 [45] **Date of Patent: **Feb. 24, 1998**

- [54] **STORAGE CONTAINER FOR BATTERIES**
- [75] **Inventors: Jeffrey M. Jacober, Providence; Dixon Newbold, Gloucester, both of R.I.**
- [73] **Assignee: Re-Source Inc., Providence, R.I.**
- [**] **Term: 14 Years**
- [21] **Appl. No.: 49,061**
- [22] **Filed: Jan. 16, 1996**
- [51] **LOC (6) Cl. 03-01**
- [52] **U.S. Cl. D3/313; D3/304**
- [58] **Field of Search D3/304, 305, 307, D3/310, 313, 315, 901, 905; D7/550, 553; 206/378, 373; D19/75; D9/432, 425, 341**

- D. 330,219 10/1992 Carlson et al. D19/75 X
- D. 360,529 7/1995 Balzen D3/313
- D. 380,299 7/1997 Schlaeger et al. D3/310
- 3,326,119 6/1967 Smith D19/75 X
- 5,050,733 9/1991 Brennan 206/373

Primary Examiner—M. N. Pandozzi
Attorney, Agent, or Firm—Lockwood, Alex, FitzGibbon & Cummings

[56] **References Cited**

U.S. PATENT DOCUMENTS

- D. 159,130 6/1950 Auger D3/901 X
- D. 167,732 9/1952 Alba D3/310
- D. 190,130 4/1961 Tramm D3/310
- D. 268,130 3/1983 Easton D3/313 X
- D. 278,253 4/1985 Eveson D19/75
- D. 280,741 9/1985 Chatham D3/313 X
- D. 303,447 9/1989 Ayres D3/313
- D. 330,045 10/1992 Dieterich et al. D19/75 X

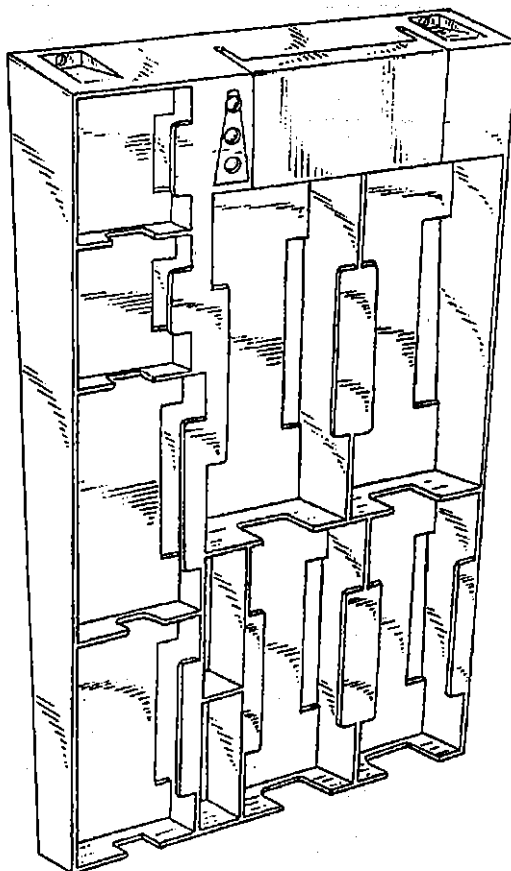
[57] **CLAIM**

The ornamental design for a storage container for batteries, as shown and described.

DESCRIPTION

The container is for storing batteries, typically dry cell batteries, in one convenient, attractive and organized location. The container can be stored within a drawer or mounted on a wall or pegboard, for example.
 FIG. 1 is a perspective view of a storage container for batteries showing our new design;
 FIG. 2 is a left side elevational view thereof;
 FIG. 3 is a front elevational view thereof;
 FIG. 4 is a right side elevational view thereof;
 FIG. 5 is a rear elevational view thereof;
 FIG. 6 is a top plan view thereof; and,
 FIG. 7 is a bottom plan view thereof.

1 Claim, 4 Drawing Sheets



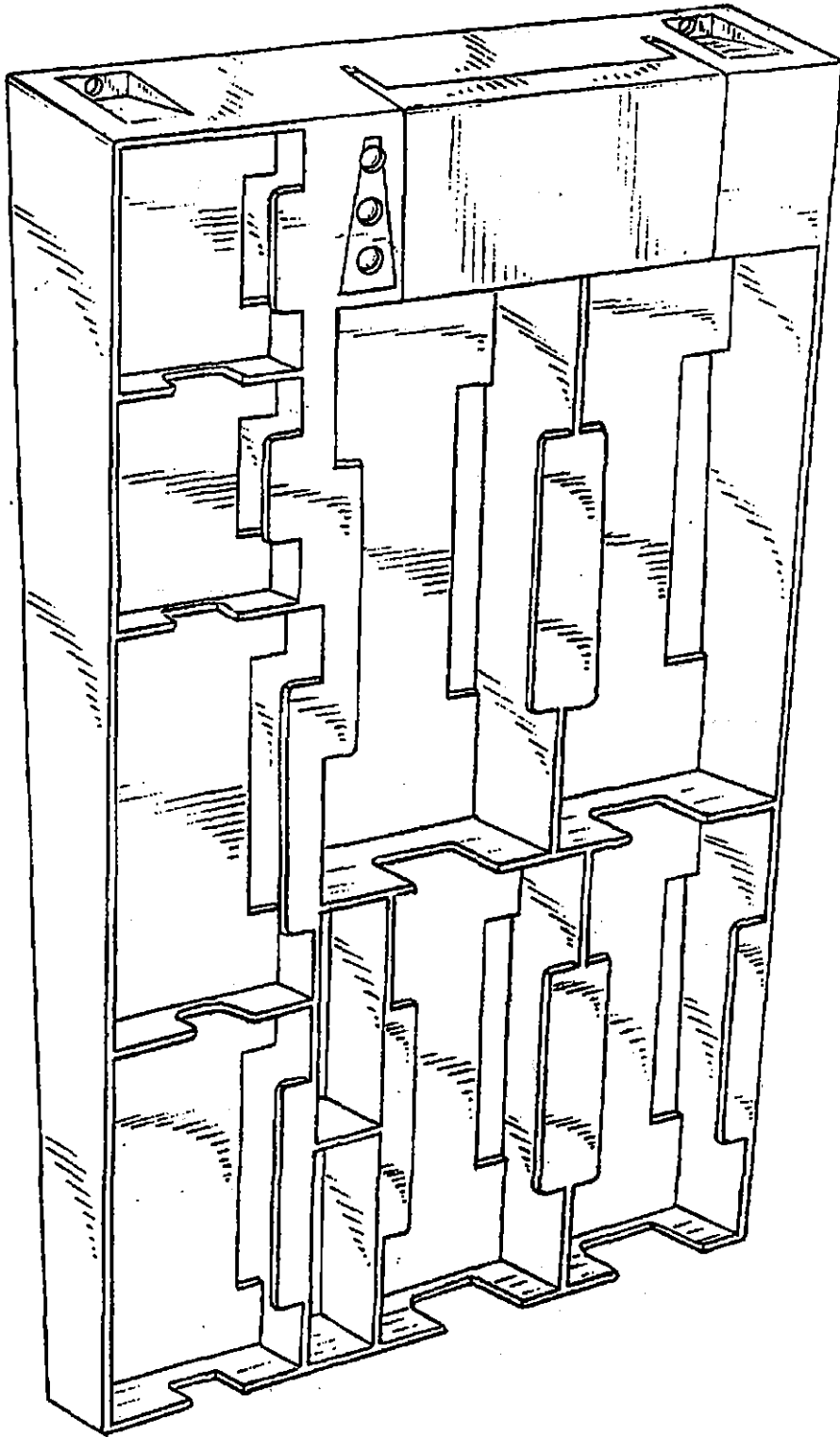
U.S. Patent

Feb. 24, 1998

Sheet 1 of 4

Des. 391,078

FIG. 1



U.S. Patent

Feb. 24, 1998

Sheet 2 of 4

Des. 391,078

FIG. 2

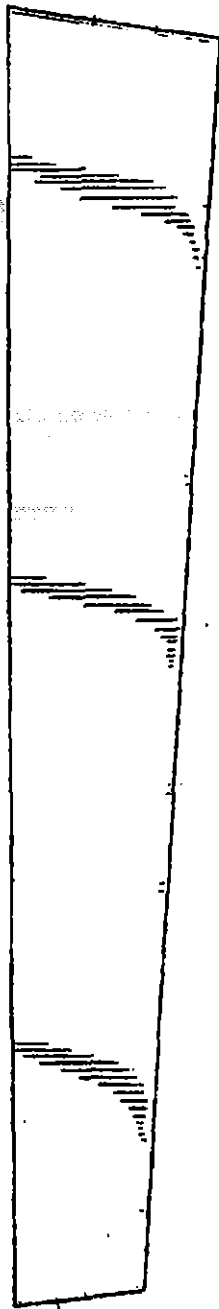
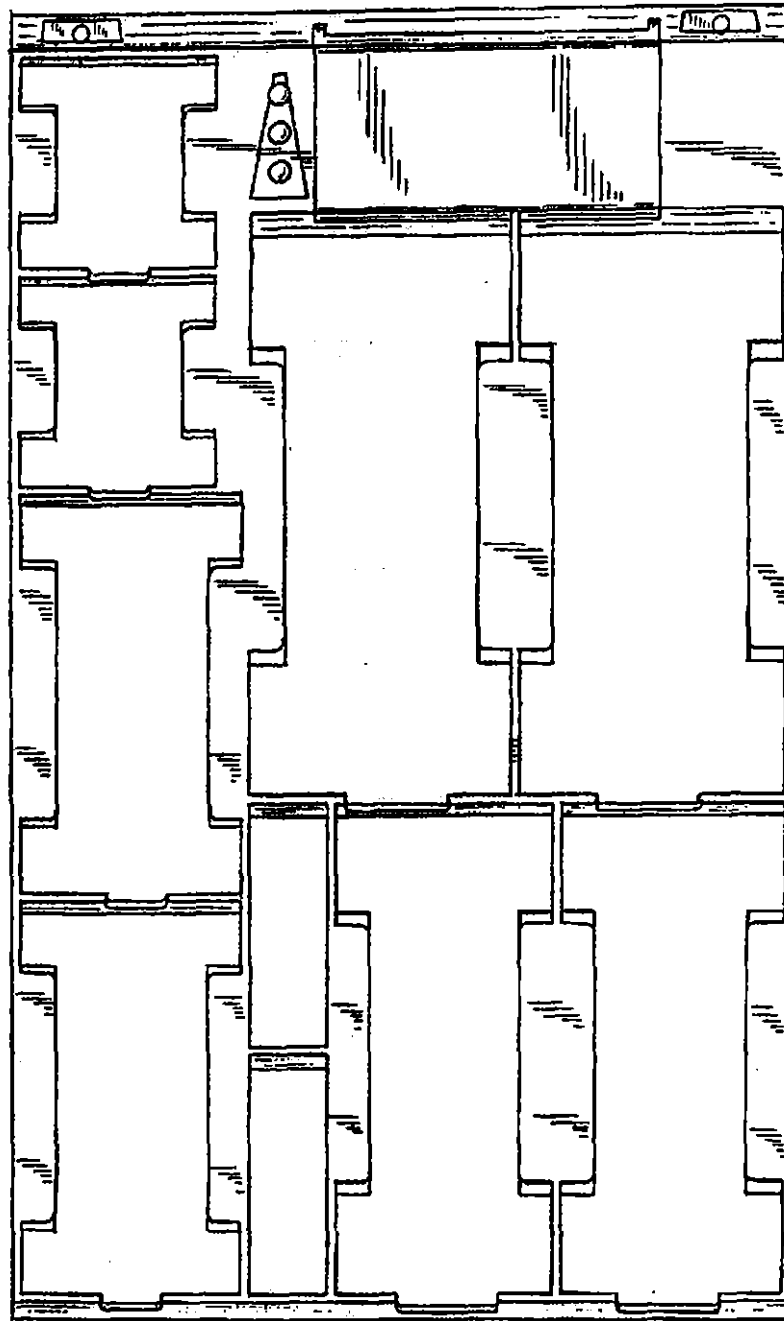


FIG. 3



U.S. Patent

Feb. 24, 1998

Sheet 3 of 4

Des. 391,078

FIG. 4

FIG. 5



U.S. Patent

Feb. 24, 1998

Sheet 4 of 4

Des. 391,078

FIG. 6

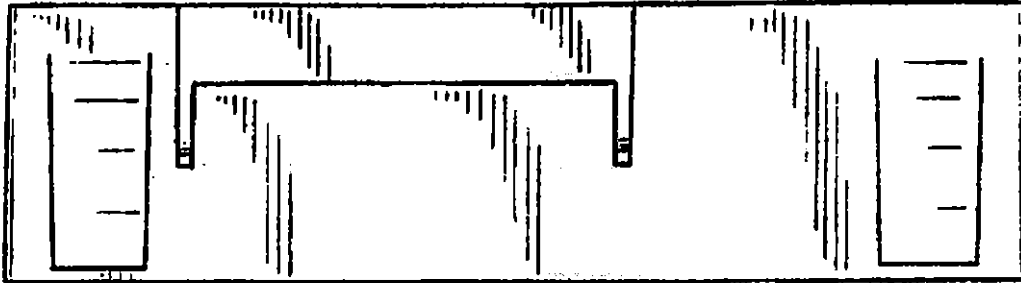
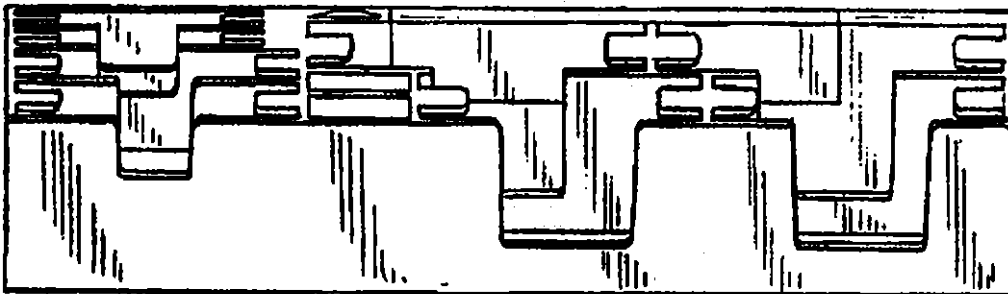


FIG. 7

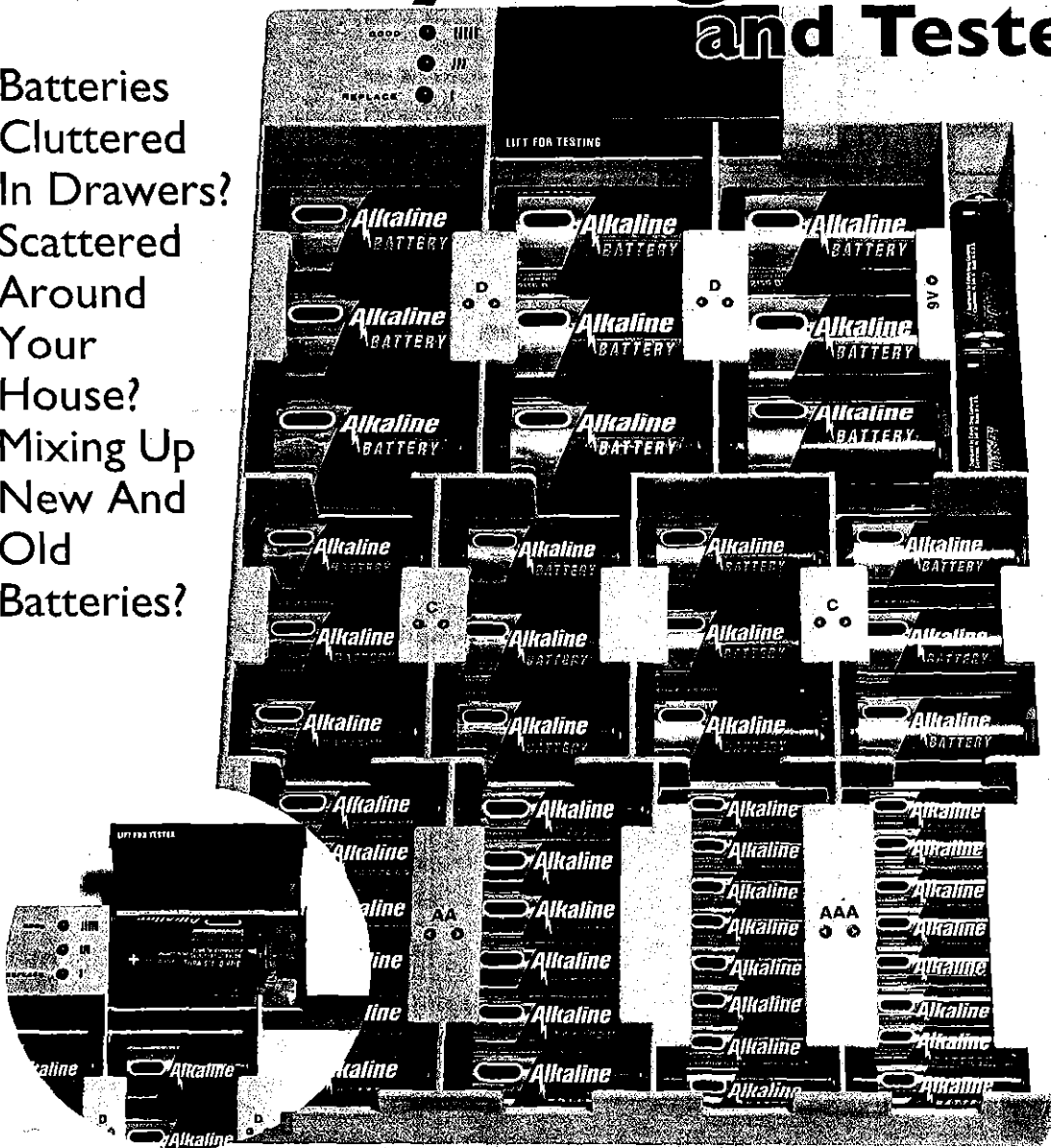


C



The Perfect Battery Organizer™ and Tester

Batteries Cluttered In Drawers? Scattered Around Your House? Mixing Up New And Old Batteries?

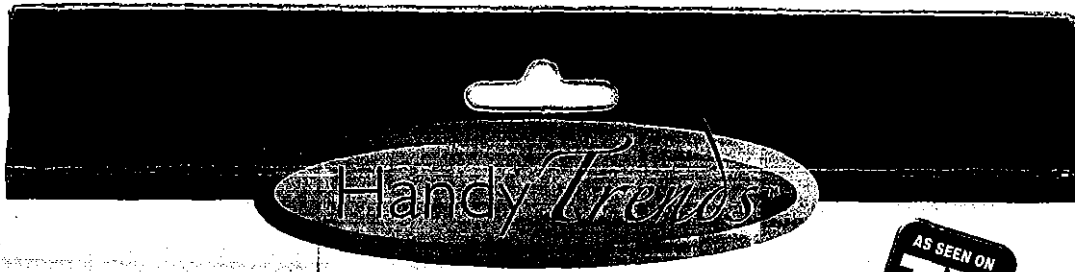


Battery Organizer With Level Light Indicator!

Batteries are not included.

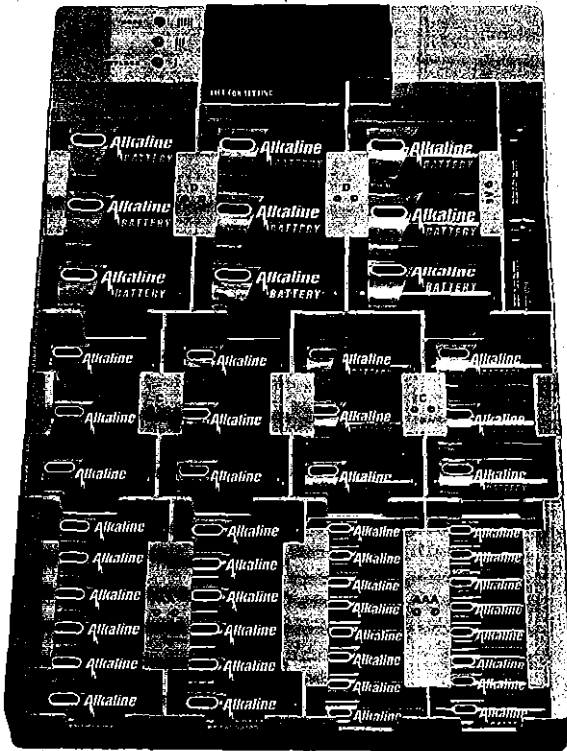


The Perfect Battery Organizer and Tester™



The Perfect Battery Organizer and Tester

Batteries Cluttered In Drawers? Scattered Around Your House? Mixing Up New And Old Batteries?



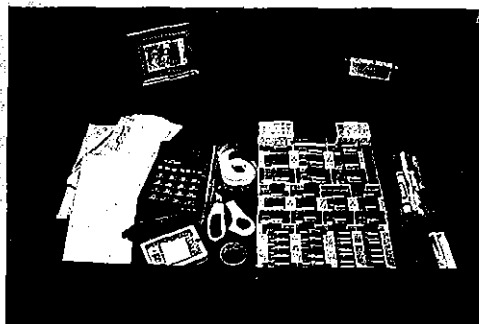
Stop looking into cluttered drawers for batteries in an emergency. The Perfect Battery Organizer and Tester™ is the perfect way to store all the batteries you need for your battery-operated toys, tools, appliances & portable electronics. The unit organizes and stores up to 51 batteries in all the popular sizes at their designated slots: AAA, AA, C, D and 9V sizes. Lets everyone know where to find fresh batteries when they need them. The built-in tester makes it simple to tell whether a battery is new, slightly used or needs to be replaced with the easy-to-read LED display. The durable polystyrene organizer can be placed in a drawer, mounted in a cabinet or on a wall.

Batteries are not included.

Mounting hardware included.



Before



After



©2004 All Rights Reserved. Made in China



D

GRANGER COOK, JR.
JOHN L. ALEX
DANIEL M. RIESS
EUGENE M. CUMMINGS
JAMES S. PRISTELSKI
GARY W. MCFARRON
RAYMOND M. MEHLER
EDWARD D. MANZO
JOEL H. BOCK
STEPHEN B. HELLER
DAVID LESHT
ANDREW G. KOLOMAYETS
MARK J. MURPHY
MICHAEL J. MCGEE
DAVID M. MUNDT
RENÉE C. BARTHEL
LOUIS J. ALEX
JEANA R. LERVICK
MICHAEL D. ZARONIAS

**COOK, ALEX, MCFARRON, MANZO,
CUMMINGS & MEHLER, LTD.**

ATTORNEYS AND COUNSELORS AT LAW
INTELLECTUAL PROPERTY MATTERS
200 WEST ADAMS STREET - SUITE 2850
CHICAGO, ILLINOIS 60606

TELEPHONE
(312) 236-8500

FACSIMILE
(312) 236-8176

EMAIL
FIRM@CAMMCM.COM

December 13, 2004

OF COUNSEL
FRED S. LOCKWOOD
WILLIAM H. MAGIDSON
DANIEL C. MCEACHRAN
EDWARD M. KEATING

Via Fax: (212) 683-1803

Confirmation by Federal Express

TV Products (USA)
230 Fifth Avenue
Suite 605
New York, NY 10001

Attention: Mr. Nick Kurani

RE: Handy Trends
Battery Organizer Infringement

Dear Mr. Kurani:

This firm represents ReSource Inc., which company is the owner of U.S. Patent No. D391,078, copy enclosed. This patent covers a product that ReSource has sold for many years, called the Battery Rack 40.

We have inspected your Handy Trends The Perfect Battery Organizer and Tester. Please take notice that you, your company, and persons acting with you or the company are infringing various intellectual property rights of ReSource, including the enclosed design patent owned by our client. Any continued domestic use, sale, or offer for sale, and any importation into the U.S. will be regarded as an act of willful infringement of several rights of ReSource.

The infringement is not confined to the design patent but includes trade dress rights also. Your product configuration has generally the same overall appearance as the Battery Rack 40. It uses at least the same general trapezoidal shape (side view), the same orientation of compartments, the same front tabs extending from the vertical walls of the compartments, the same color, the same black tester cover, the same articulation of the tester cover, and the same three test lights in the same relative location. It also uses the same type of packaging. The ReSource Battery Rack 40 has been a popular item on the market for several years and its appearance is recognized and distinctive. Your company is trading on the goodwill developed by ReSource by appropriating the trade dress of the product.

Further, your company unlawfully copied the textual sequence and various specific expressions used by ReSource. When your company copied various text from the back of the packaging for ReSource's Battery Rack 40, it should have noticed the patent marking. Please be

TV Products (USA)
Attention: Mr. Nick Kurani
December 13, 2004
Page 2

advised also that the product is the subject of federal copyright protection, as is clearly marked on the ReSource products.

ReSource demands that you immediately and totally cease and desist in your activities with respect to this Handy Trends "The Perfect Battery Organizer and Tester" product, and any possible similar product which you might be planning to traffic in. Unless you promptly so inform us in writing by **noon, Eastern Standard Time, on Friday, December 17, 2004**, we will initiate appropriate litigation against you and your company. Your infringement entitles ReSource to injunctive relief, damages, accounting for profits, increased damages and ReSource's attorneys' fees for willful infringement.

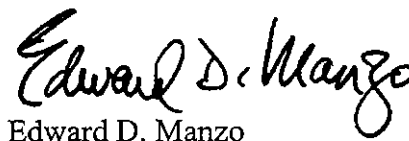
In addition to your written and unequivocal commitment to cease and desist, ReSource requires:

1. The immediate destruction of all stock on hand of the infringing products.
2. A full accounting of the amount of and revenues received for these products which already have been sold.
3. A full list of all customers to whom these products have been sold, including volume and dollar sales for each such customer.
4. The number and dollar value of any of these products in inventory in the US or currently being shipped to the US.
5. Full identification (including the address) of the manufacturer of these products so ReSource can take steps to see to it that the infringements do not continue through other channels.

We await your written reply by the deadline indicated, failing which we shall be forced to proceed to enforce ReSource's legal rights.

Sincerely,

COOK, ALEX, MCFARRON, MANZO,
CUMMINGS & MEHLER, LTD.


Edward D. Manzo

EDM/bss
enclosure

TV Products (USA)
Attention: Mr. Nick Kurani
December 13, 2004
Page 3

bcc:
Jeff Jacober
Raymond M. Mehler

MINTZ LEVIN
COHN FERRIS
GLOVSKY AND
POPEO PC

Boston
Washington
Reston
New York
New Haven
Los Angeles
London

Chrysler Center
666 Third Avenue
New York, New York 10017
212 935 3000
212 983 3115 fax
www.mintz.com

Dr. Daniel F. Coughlin, Esq.
Member, IP

Direct dial 212 692 6238
DCoughlin@mintz.com

December 16, 2004

VIA FACSIMILE AND FEDERAL EXPRESS

Edward D. Manzo, Esq.
Cook Alex, et al.
200 West Adams Street
Suite 2850
Chicago, Illinois 60606

RECEIVED
DEC 17 2004

COOK, ALEX, McFARRON,
MANZO, CUMMINGS & MEHLER

RE: Battery rack product from ReSource, Inc.

Dear Mr. Manzo:

As intellectual property counsel for TV Products (USA), Inc., your correspondence of December 13th to Mr. Nick Kurani has been forwarded to my attention for response.

To begin with, please be assured that it is the established policy of TV Products to respect the valid intellectual property rights of others in the marketplace. Accordingly, we take allegations such as those presented in your correspondence quite seriously. Toward that end, we are undertaking our own investigations into the issues that your correspondence has raised. With respect to the issues raised concerning the alleged trade dress of the ReSource Battery Rack 40, we note, as I am sure you will agree, that an evaluation of your allegations requires at least a side-by-side comparison of that product and the battery organizer product marketed by TV Products. To assist in that comparison, we would ask that you forward directly to my attention a sample of your product and packaging. With that in hand, we will undertake the necessary comparison and advise you of our conclusions concerning your allegations. We would also ask that you provide us with evidence of any trademark registrations that you feel are infringed by our product.

On the issue of the design patent that you enclosed with your recent correspondence, we have undertaken an initial analysis of the claims of that patent with respect to our product and have reached conclusions at odds with your allegations of infringement. To our eye, the design of the product in question, although possessing some functional features in common with the

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

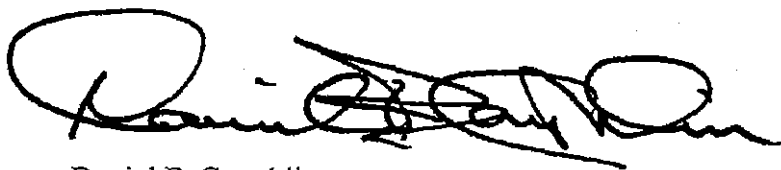
Edward D. Manzo, Esq.
December 16, 2004
Page 2

claimed design (as opposed to ornamental design features), is sufficiently different from the design claimed in the patent as to avoid infringement. Recognizing that it is possible for two conscientious minds to reach different legal conclusions from the same set of facts, we would be willing to consider any documents or formal opinions providing an analysis of our product under the asserted patent, should you be willing to provide those for our review.

I look forward to receiving the requested sample of your product, and any other materials you can provide, so that we may conclude our investigation and advise our client accordingly.

Sincerely,

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY and POPEO, P.C.

A handwritten signature in black ink, appearing to read "Daniel F. Coughlin". The signature is stylized with large loops and a long horizontal stroke at the end.

Daniel F. Coughlin

GRANGER COOK, JR.
JOHN L. ALEX
DANIEL M. RIESS
EUGENE M. CUMMINGS
JAMES S. PRISTELSKI
GARY W. MCFARRON
RAYMOND M. MEHLER
EDWARD D. MANZO
JOEL H. BOCK
STEPHEN B. HELLER
DAVID LESHT
ANDREW G. KOLOMAYETS
MARK J. MURPHY
MICHAEL J. MCGEE
DAVID M. MUNDT
RENÉE C. BARTHEL
LOUIS J. ALEX
JEANA R. LERVICK
MICHAEL D. ZARONIAS

**COOK, ALEX, MCFARRON, MANZO,
CUMMINGS & MEHLER, LTD.**

ATTORNEYS AND COUNSELORS AT LAW
INTELLECTUAL PROPERTY MATTERS
200 WEST ADAMS STREET - SUITE 2850
CHICAGO, ILLINOIS 60606

TELEPHONE
(312) 236-8500

FACSIMILE
(312) 236-8176

EMAIL
FIRM@CAMMCM.COM

OF COUNSEL
FRED S. LOCKWOOD
WILLIAM H. MAGIDSON
DANIEL C. MCEACHRAN
EDWARD M. KEATING

December 17, 2004

Via Facsimile: (212) 983-3115
Confirmation Via 1st Class Mail

Daniel F. Coughlin, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C.
Chrysler Center
666 Third Avenue
New York, NY 10017

Re: Handy Trends Battery Organizer Infringement

Dear Mr. Coughlin:

Thank you for your prompt response, although we were disappointed that you apparently have not advised TV Products to withdraw its infringing product from the marketplace. We are relatively confident that TV Products already has a specimen of the ReSource product, and they are plentiful in the marketplace. Notwithstanding that, we have asked ReSource to send you a specimen. You should receive it via Federal Express on Monday morning.

We do not agree with your conclusion that the claims [sic] of the design patent are not infringed. Your client clearly could have chosen other configurations and designs from what is shown in the patent. Instead of doing that, it deliberately chose to imitate the patented design (and product) from ReSource, Inc.

Frankly, we are at a loss to see how "conscientious minds [could] reach different legal conclusions from [these] facts." We note at least the following:

- The left side elevation (Fig. 2 of the patent) is identical to that view of your client's product.
- The right side elevation (Fig. 4 of the patent) is identical to that view of your client's product.
- The top view (Fig. 6 of the patent) is virtually identical to that view of your client's product.

Daniel F. Coughlin, Esq.
December 17, 2004
Page 2

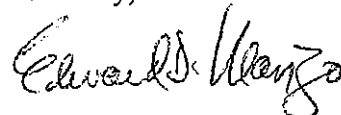
- The patented design has a rectangular area generally at the center of the top front, with a front surface aligned with that of adjacent surfaces. See Figs. 1-4, 7. The same is in your client's product.
- The patented design places three small round circles aligned vertically, just to the left of the rectangle. The same is in your client's product.
- The patented design has various sizes of rectangular compartments with open faces flanked by front tabs that extend left and/or right. Such compartments also have generally rectangular recesses in the upper and/or lower walls. Thus the compartments have inward recesses going "down" and laterally extending tabs. The ornamental impression of the arrangement is copied in your client's product.
- The patented design has an array of elongated, thin rectangles on the back surface, seen in Fig. 5, which your client's product also uses.
- The overall visual impression of the patented design is the same as that of your client's product.
- The design of your client's product appropriates the points of novelty which distinguish the patented design from the prior art.

Thus, as you should appreciate, we do not rely on any single figure alone, but the overall ornamental impression of the design shown in the several figures, and the confusing similarity of your client's product to that overall impression. We further rely on the fact that your client's product appropriates the points of novelty of the patented design.

As to functionality, the patented design of course resides in a utilitarian object, as it must. That is a condition for patentability, not a disqualification. Your client certainly could have used any of the numerous alternative designs, such as any of the expired patents cited by the PTO examiner. Instead, your client copied ReSource's patented design.

ReSource is not prepared to countenance the infringement by your client for an indefinite period. Our client has insisted that if this matter can be resolved amicably, it must be done without delay.

Sincerely,



Edward D. Manzo

FILED-ED
2005 JAN -6 PM 4:28
CLERK
DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

DOCKETED

JAN 07 2005

Civil Cover Sheet

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): **RE.SOURCE, INC.**

Defendant(s): **TV PRODUCTS (USA) INC.,
and MENARD, INC.**

County of Residence:

County of Residence:

Plaintiff's Atty: Edward D. Manzo
Cook, Alex, McFarron,
Manzo, Cummings &
Mehler, Ltd.
200 W. Adams, Suite 2850,
Chicago, IL 60606
312 236-8500

Defendant's Atty:

05C 0097

JUDGE PALLMEYER

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal Parties (Diversity Cases Only)

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

MAGISTRATE JUDGE DENLOW

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

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

VI. Cause of Action: **Patent infringement U.S.C. §271, trade dress infringement 15 U.S.C. §1125.**

VII. Requested in Complaint

Class Action: No
Dollar Demand:
Jury Demand: Yes

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

Signature: Edward D. Manzo

Date: January 6, 2005

1-2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

DOCKETED

In the Matter of

EASTERN DIVISION

JAN 07 2005

RE.SOURCE, INC. v. TV PRODUCTS (USA) INC. and
MENARD, INC.

CLERK
U.S. DISTRICT COURT

Case Number: **050 0097**

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

RE.SOURCE, INC., Plaintiff

JUDGE PALLMEYER

MAGISTRATE JUDGE DENLOW

(A)		(B)	
SIGNATURE <i>Edward D. Manzo</i>		SIGNATURE <i>Raymond M. Mehler</i>	
NAME Edward D. Manzo		NAME Raymond M. Mehler	
FIRM Cook Alex McFarron Manzo Cummings Mehler Ltd.		FIRM Same as (A)	
STREET ADDRESS 200 W. Adams, Suite 2850		STREET ADDRESS	
CITY/STATE/ZIP Chicago, IL 60606		CITY/STATE/ZIP	
TELEPHONE NUMBER 312 236-8500	FAX NUMBER 312 236-8176	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS emanzo@cammcm.com		E-MAIL ADDRESS rmehler@cammcm.com	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 3124728		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	
(C)		(D)	
SIGNATURE <i>Louis J. Alex</i>		SIGNATURE	
NAME Louis J. Alex		NAME	
FIRM Same as (A)		FIRM	
STREET ADDRESS		STREET ADDRESS	
CITY/STATE/ZIP		CITY/STATE/ZIP	
TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS lalex@cammcm.com		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 0508217		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	
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"/>	

1-3