

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

O'SULLIVAN INDUSTRIES, INC.,)	
)	
Plaintiff,)	
)	
v.	)	CIVIL ACTION NO.
)	
STUDIO RTA)	_____
)	
Defendant.)	

ORIGINAL COMPLAINT AND APPLICATION FOR DECLARATORY JUDGMENT

O'Sullivan Industries, Inc. files this its Original Complaint and Application for Declaratory Judgment against Studio RTA and would respectfully show the Court the following:

Parties

1. Plaintiff O'Sullivan is a corporation organized under the laws of the State of Delaware and maintains its principal place of business at 1900 Gulf Street, Lamar, Missouri 64759.
2. On information and belief, Defendant Studio RTA is a corporation organized and existing under the laws of the State of California, with its principal place of business at 8700 Rex Road, Pico Rivera, California 90660.

Jurisdiction and Venue

3. Jurisdiction is proper in this Court under 28 U.S.C. §§ 2201 and 2202 because a claim is presented for declaratory judgment and under 28 U.S.C. § 1338(a) because this claim

arises under the laws of the United States relating to patents. Venue is proper in this judicial district under 28 U.S.C. § 1391.

The Controversy Between the Parties

4. Studio RTA asserts that it is the exclusive licensee of U.S. Patent No. D433,846 entitled “Display Shelving” (the “‘846 Patent”), issued to Chien-Kuo Chang on November 21, 2000. A copy of the ‘846 Patent is attached hereto as Exhibit “A.”

5. O’Sullivan has imported and/or offered for sale since the issuance of the ‘846 Patent a certain audio cabinet referred to as “Item No. 20622” or “Model 20622” (the “apparatus”).

6. Studio RTA has charged O’Sullivan with infringement of the ‘846 Patent by reason of its manufacture, importation and/or sale of the apparatus, by letters dated February 5, March 3, and April 1, 2003. Copies of these letters are attached as Exhibits “B,” “C,” and “D,” respectively.

7. There exists a substantial and continuing justiciable controversy between O’Sullivan and Studio RTA as to Studio RTA’s right to threaten or maintain suit for infringement of the ‘846 Patent, and as to Studio RTA’s legal right to demand that O’Sullivan cease and desist its importation and/or offer for sale and/or sale of the apparatus.

Declaration of Non-Infringement

8. O’Sullivan repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

9. O'Sullivan does not infringe any valid claim of the '846 Patent. There exist multiple substantial differences in appearance between the claimed design of the '846 Patent and the apparatus.

Prayer

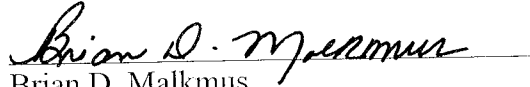
WHEREFORE, plaintiff O'Sullivan respectfully requests entry of judgment and an order as follows:

- a. Declaring and adjudging that the '846 Patent is not infringed;
- b. Enjoining Studio RTA, its officers, agents, representatives, employees, and attorneys, and those in active concert or participation with them, from asserting or attempting to enforce the '846 Patent against O'Sullivan or its customers;
- c. Finding that this is an exceptional case and awarding O'Sullivan its reasonable attorney fees pursuant to 35 U.S.C. § 285;
- d. Awarding O'Sullivan its costs and expenses in bringing and prosecuting this action; and
- e. Awarding O'Sullivan such other and further relief that this Court may deem just and proper.

Demand for Jury Trial

O'Sullivan hereby demands a trial by jury on all issues in this matter.

Respectfully submitted,



Brian D. Malkmus

Missouri State Bar No. 43952

Blackwell Sanders Peper Martin LLP

The Hammons Tower, 901 St. Louis Street, Suite
1900

Springfield, Missouri 65806

Telephone: (417) 268-4000

Telecopier: (417) 268-4040

and

Donald C. Templin

Texas State Bar No. 19771500

John R. Emerson

Texas State Bar No. 24002053

Haynes and Boone, L.L.P.

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Dallas, Texas 75202-3789

Telephone: (214) 651-5000

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**ATTORNEYS FOR PLAINTIFF
O'SULLIVAN, INC.**



US00D433846S

United States Patent [19]
Chang

[11] **Patent Number:** Des. 433,846
[45] **Date of Patent:** ** Nov. 21, 2000

[54] **DISPLAY SHELVING**

[76] **Inventor:** Chien-Kuo Chang, Fl. 10-2, No. 447,
Sec. 3, Wen-Hsin Rd., Taichung, Taiwan

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

[21] **Appl. No.:** 29/115,595

[22] **Filed:** Dec. 20, 1999

[51] **LOC (7) Cl.** 06-04

[52] **U.S. Cl.** D6/474; D6/477

[58] **Field of Search** D6/396, 449, 464,
D6/468, 474, 477; 108/59, 92, 93; 211/13.1,
128.1, 134

[56] **References Cited**

U.S. PATENT DOCUMENTS

D. 200,562	3/1965	Gudez et al.	.....	D6/468
D. 332,018	12/1992	De Pas et al.	.....	D6/464
D. 360,779	8/1995	Allekotte et al.	.....	D6/449
D. 364,763	12/1995	Sielaff	.....	D6/474 X
D. 401,084	11/1998	Martin	.....	D6/474

FOREIGN PATENT DOCUMENTS

M 9205055 4/1993 Germany
M 9405041 12/1994 Germany

Primary Examiner—Cathron B. Matta
Attorney, Agent, or Firm—Rosenberg, Klein & Lee

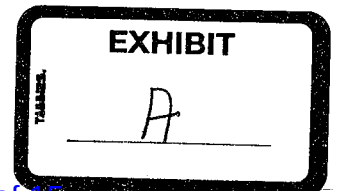
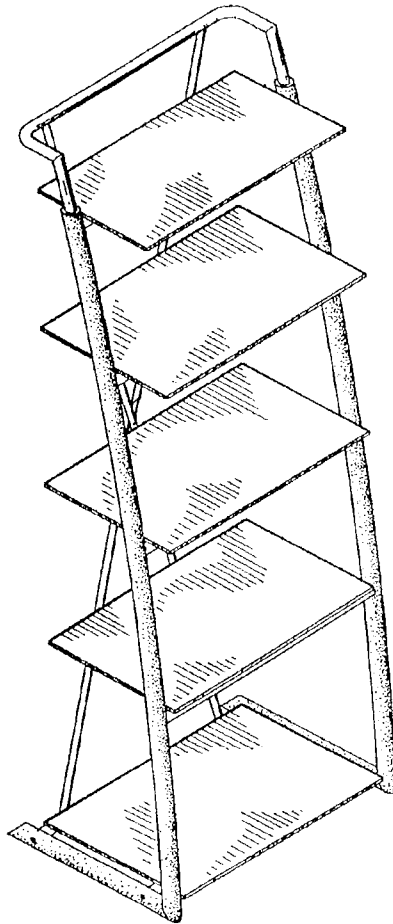
[57] **CLAIM**

The ornamental design for display shelving, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view of display shelving showing my new design;
FIG. 2 is a front elevational view thereof;
FIG. 3 is a rear elevational view thereof;
FIG. 4 is a left side elevational view thereof;
FIG. 5 is a right side elevational view thereof;
FIG. 6 is a top side elevational view thereof; and,
FIG. 7 is a bottom side elevational view thereof.

1 Claim, 6 Drawing Sheets



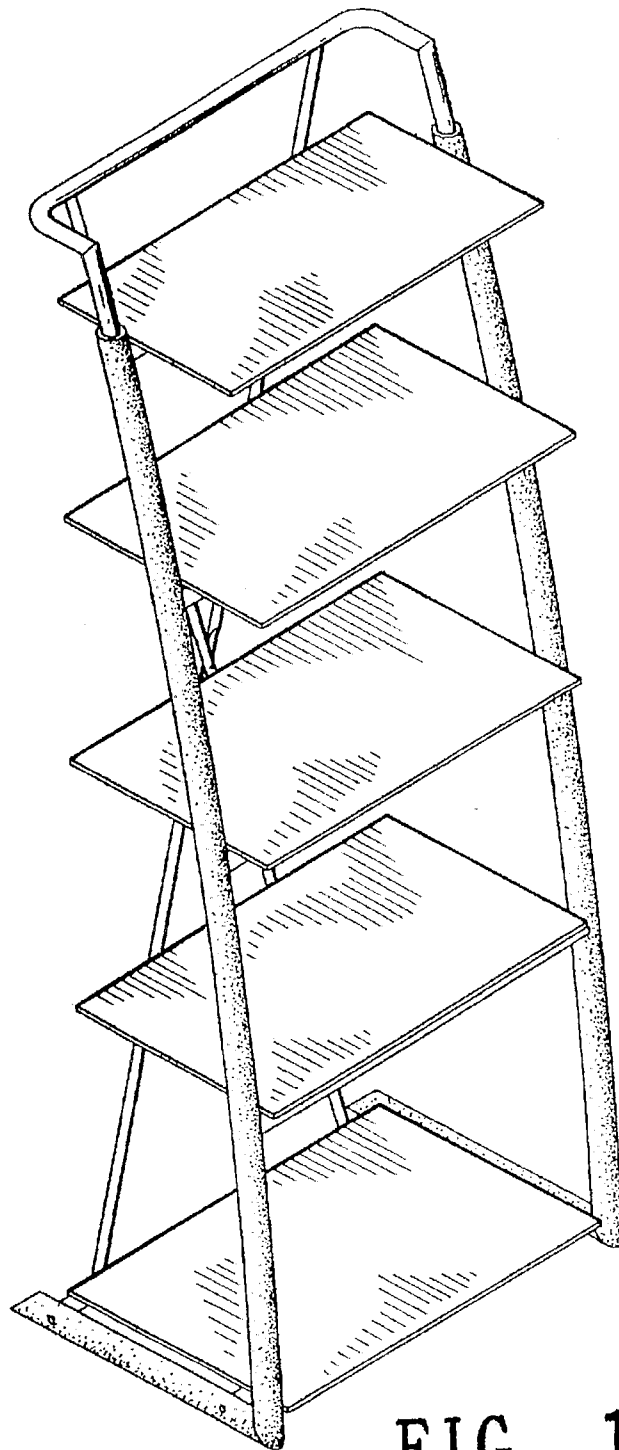


FIG. 1

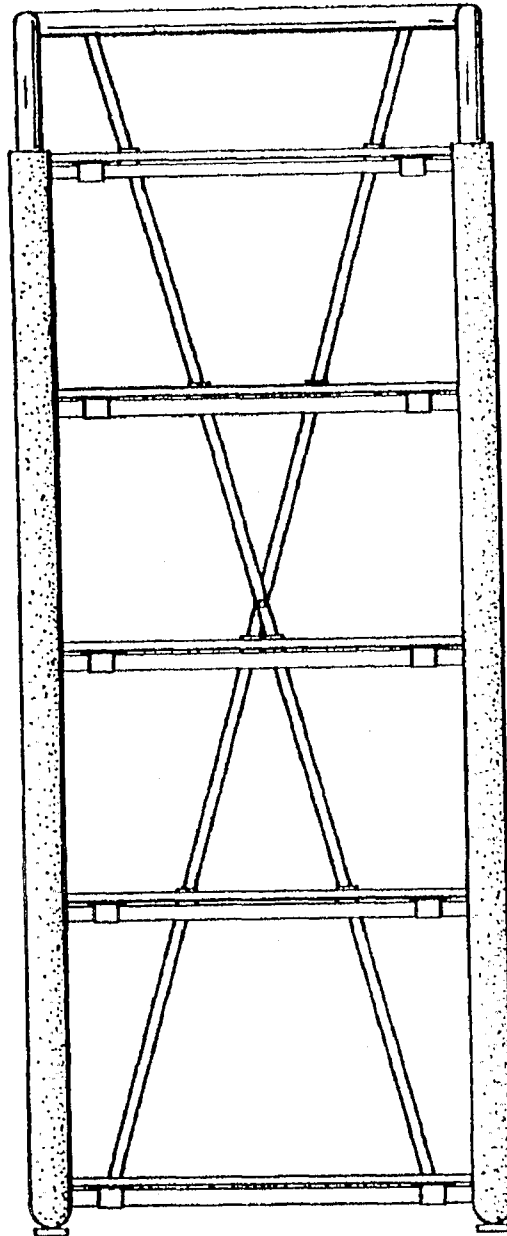


FIG. 2

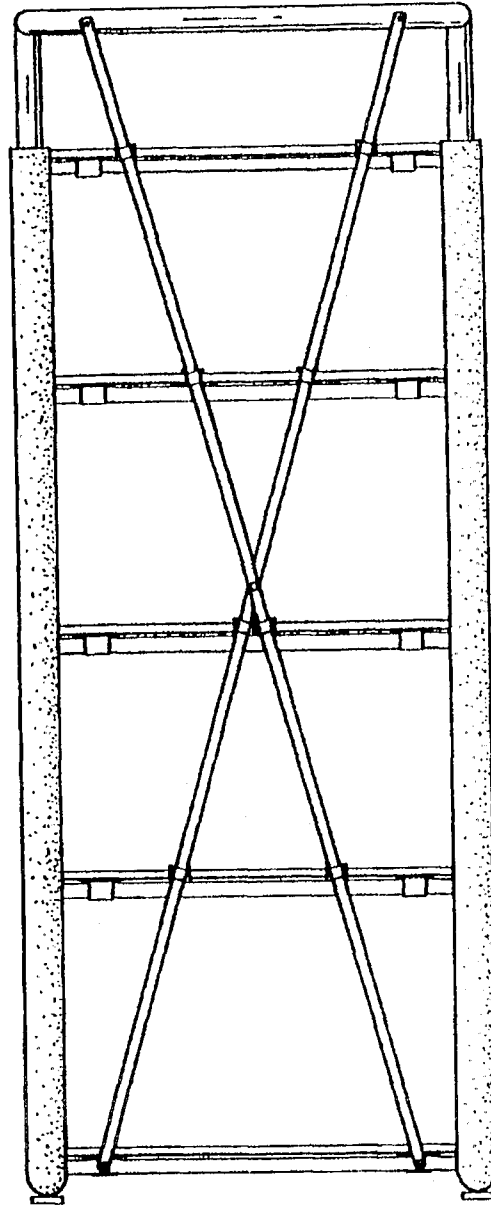


FIG. 3

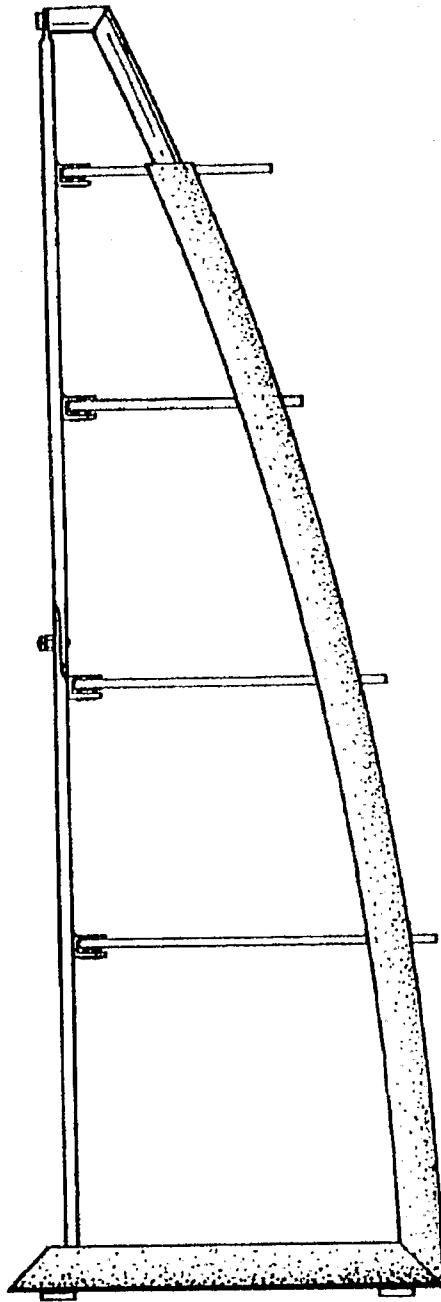


FIG. 4

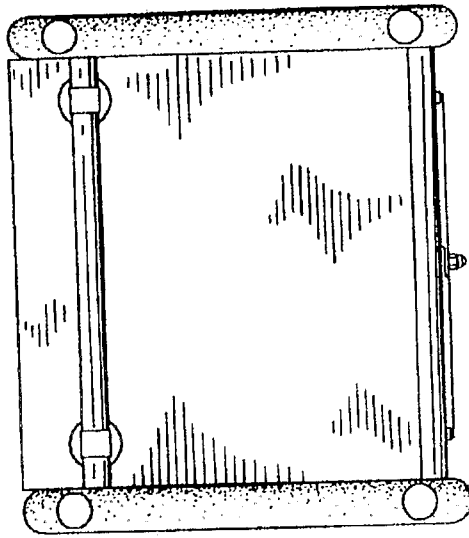


FIG. 7

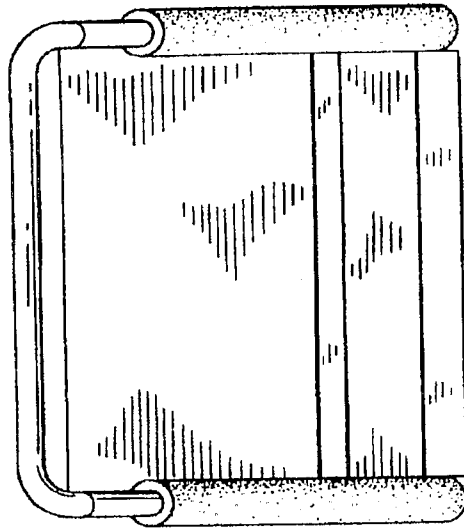
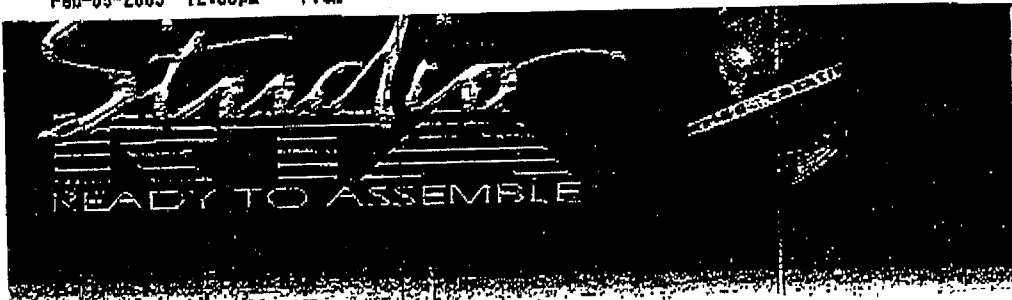


FIG. 6

Feb-05-2003 12:55pm From:

T-730 P.002/004 F-671



8700 KEX ROAD
 Pico Rivera, CA 90660
 Tel: 562.443.2255
 Toll Free: 800.445.1527
 Fax: 562.443.2277
 www.studiorta.com

Rick Davidson
 President & CEO
 O'Sullivan Industries Inc.
 1900 Gulf Street
 Lamar, MO 64759

Sent via Facsimile (417) 682-8120

Sent via U.S. Mail: 2/5/03

Dear Rick:

As per my telephone message to you, O'Sullivan Furniture has recently introduced a home entertainment design which conflicts with a patent and design that we currently have on the market.

Through our Taiwan office, Studio RTA is the exclusive license holder to patent number D433,846. We are asking that you immediately, cease any offering, importing, stocking showing, selling of this product to any customers in the United States, China, Germany and the United Kingdom.

If we do not hear from you immediately in regard to this matter, we will have to proceed with legal action.

I can be reached at (562) 446-2255 ext. 100 to discuss in further detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Reitzin". The signature is written over a horizontal line.

Paul Reitzin
 President

Encls.

Cc: *Jim Bruuggerman - Sheppard, Mulin, Richter & Hampton LLC*

EXHIBIT
 B



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March 3, 2003

Our File Number: OSDL-060983

VIA FACSIMILE

Rowland H. Geddie, III, Esq.
O'SULLIVAN INDUSTRIES, INC.
1900 Gulf Street
Lamar, Missouri 64759-1899

Re: Studio RTA adv. O'Sullivan Industries, Inc.
Infringement of U.S. Patent No. D433,846
Inventor: Chien-Kuo Chang
Issued: November 21, 2000

Dear Mr. Geddie:

We represent Studio RTA in intellectual property matters, including patent litigation. We are writing to you regarding O'Sullivan's audio cabinet, Item No. 20622, and its infringement of the U.S. design patent identified above. This patent has been exclusively licensed to Studio RTA.

In your letter to Paul Reitzin, dated February 24, 2003, you identified two minor differences between O'Sullivan's audio cabinet and the patented design. First, you stated that the back supports in the patented design form a vertical plane, whereas the back of O'Sullivan's audio cabinet is "angled at approximately the same angle as the front supports." Second, you stated that the patented design has a rail extending rearwardly from the front supports around the back half of the top shelf where it is fastened to the back supports, whereas O'Sullivan's audio cabinet lacks any such rail around any of the shelves and its rear supports attach directly to the top shelf.

We consider these two differences to be relatively minor, considering the great similarity between the two designs taken as a whole. Moreover, we question even the existence of the first alleged difference. Based on our review of photographs of O'Sullivan's cabinet, the back edges of the individual shelves appear to define a plane that is substantially vertical, and certainly closer to vertical than to the angle of the front supports.

EXHIBIT

C

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Rowland H. Geddie, III, Esq.
March 3, 2003
Page 2

It is important to understand that, for infringement to occur, the two designs need not be identical. It is enough if an ordinary observer would consider the two designs to be substantially the same. In this case, we note numerous similarities between the two designs. For example, and most significantly, both designs incorporate L-shaped side supports, with horizontal base sections and rearwardly curved upright sections that support multiple rectangular shelves. The L-shaped side supports of both designs have circular cross-sections, and these circular cross-sections are similarly proportioned relative to the size of the shelving. An X-shaped back support extends across the back sides of both designs, spanning from the bottom to the top of the unit. Based on these similarities, we are confident that ordinary observers would consider the two designs to be substantially the same.

We, therefore, demand that O'Sullivan immediately cease all further manufacturing, distribution and sale of the infringing audio cabinet, Unit No. 20622, as well as any other units incorporating a similar design. Studio RTA will agree to allow O'Sullivan to sell off its remaining inventory of infringing cabinets, subject to an appropriate royalty payment.

We will expect to receive your prompt reply to this demand. If you fail to respond satisfactorily to us by Friday, March 14, 2003, Studio RTA is prepared to take appropriate legal action.

Sincerely,



James R. Brueggemann

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc: Mr. Paul Z. Reitzin

WPR-LA-LIM70534693.1



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April 1, 2003

Our File Number: OSDL-060983

VIA FACSIMILE

Rowland H. Geddie, III, Esq.
Vice President, General Counsel and Secretary
O'SULLIVAN INDUSTRIES, INC.
1900 Gulf Street
Lamar, Missouri 64759-1899

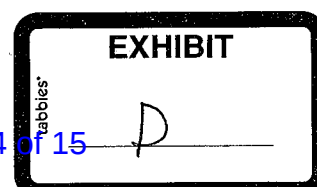
Re: Studio RTA adv. O'Sullivan Industries, Inc.
Infringement of U.S. Patent No. D433,846
Inventor: Chien-Kuo Chang
Issued: November 21, 2000

Dear Rowland:

This is in response to your faxed letter to me regarding O'Sullivan's audio cabinet, Model 20622, and our assertion that the cabinet infringes the above-identified patent, which has been exclusively licensed to Studio RTA.

Studio RTA appreciates O'Sullivan's willingness to discontinue further purchase and manufacture of the infringing audio cabinet. However, Studio RTA cannot accept O'Sullivan's reserving of a right to distribute and sell its remaining inventory of the cabinet without payment of appropriate royalties. O'Sullivan's cabinet so closely resembles the appearance of Studio RTA's patented design that it must be concluded that O'Sullivan intended to copy the design. As such, it is entirely unreasonable for O'Sullivan to expect not to have to pay for its infringement.

We need to know the number of units of the Model 20622 audio cabinet actually manufactured by or for O'Sullivan, including the number of such units previously sold as well as the number of units remaining in inventory. We then can decide on an appropriate royalty payment. O'Sullivan needs to understand that any on-going sales of the subject audio cabinets constitute willful and deliberate infringement, exposing the company to an award of treble damages and attorneys fees, under 35 U.S.C. §§ 284 and 285.



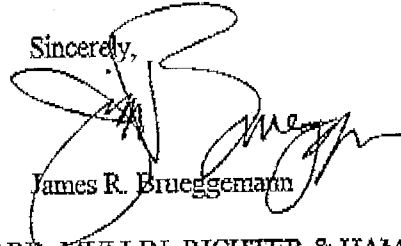
SHEPPARD MULLIN RICHTER & HAMPTON LLP

Rowland H. Geddie, III, Esq.
April 1, 2003
Page 2

We are aware that O'Sullivan has been distributing the infringing audio cabinets through Menard, Inc. As you might know, Studio RTA has corresponded with Menard, demanding that it cease all further sales of the cabinets. O'Sullivan needs to understand that if Studio RTA is forced to pursue its infringement claim in the federal courts, it will bring in major distributors such as Menard, as well.

We will expect to receive the requested information no later than Wednesday, April 9, 2003.

Sincerely,



James R. Brueggemann

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

WP8-LA-LJM70546202.1

cc: Mr. Paul Z. Reitzin