



JPP 6/18/03 10:50

3:03-CV-01200 COLIDA V. SANYO NORTH AMERICA

1

CMP.

35

Mr. Tony Colida (Plaintiff, Pro Se)
18 Lakeshore Drive, Suite 813
Pointe Claire, Quebec H9S 5X9
Canada
Tel.: 514-423-3777
Fax: 514-695-2999

FILED
03 JUN 17 PM 3:04
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: *[Signature]* DEPUTY

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TONY COLIDA,
Plaintiff,

vs.

Case No.

'03 CV 1200 BTM AJB

SANYO NORTH AMERICA CORPORATION,
Defendant.

COMPLAINT

PLAINTIFF DECLARES AS FOLLOWS:

1. Plaintiff, **TONY COLIDA**, a citizen of Canada and residing at 18 Lakeshore Drive, Suite 813, in the city of Pointe Claire, Quebec, H9S5X9, CANADA, Tel.: 514-423-3777, Fax: 514-695-2999;

Defendant, **SANYO NORTH AMERICA CORPORATION**, a duly incorporated company having its principal head office at 2055 Sanyo Avenue, San Diego, California,

[Handwritten mark]

|

92154, U.S.A. Tel.: 619-661-4134, Fax: 619-661-4107;

3. At all relevant time Defendant transact business by advertising, selling or offering for sale and repairing and supporting, directly or indirectly themselves or through their distributors, within the United States and elsewhere in the world including portable cellular handset telephones and has committed acts of infringement on the U.S. Patents sued upon herein this district.

CAUSE OF THE DISPUTE:

4. This is an action for infringement of United States Patent No. Des. 321,347 and Des. 321,349;

HISTORY:

5. Plaintiff is the inventor, designer and the United States Patents owner of a product entitled a "Cellular Portable Handheld Telephone" as will be evidenced more fully hereinbelow;

6. On November 5, 1991 the United States Patent bearing the number Des. 321,347 and Des. 321,349 were granted to Plaintiff by the United States Patent Commission for the "Cellular Portable Handheld Telephone", the whole as appears more fully from the United States Patent produced herewith as Plaintiff's **Exhibit P-1 and Exhibit P-2;**

7. The said invention consists of a new, original and ornamental design for a Cellular Portable Handheld Telephone.

8. On or about October of 2002, it came to Plaintiff's attention that the Defendant had already begun manufacturing and selling in the United States and elsewhere in the world a

Cellular Portable Handheld Telephone known as the "SCP - 5300" the whole as appears more fully from a copy of a promotional advertising from the Defendant produce herewith as Plaintiff's **Exhibit P- 3**;

9. Defendant's "SCP-5300" Cellular Handheld Phones conforms to the distinctive design incorporated into Plaintiff's cellular telephone patented designs and in so doing constituted an infringement and appropriation of Plaintiff's rights in such designs;

10. Defendant's "SCP-5300" cellular portable handheld telephone have met with wide commercial acceptance and are being sold throughout the United States and world-wide without the authorization and or compensation to the Plaintiff;

11. Plaintiff has invested considerable energy and money in the development and the promotion of his United States Design Patents;

12. Plaintiff in his capacity, has priority in connection to the distinctive designs incorporated into the Defendant's "SCP-5300"cellular handheld telephone model;

13. Notwithstanding Plaintiff's patents, Defendant, since a precise date unknown to Plaintiff but known to Defendant have been infringing upon Plaintiff's United States Patents by directly or under its control, authorization or instructions, manufacturing selling, distributing and advertising, illegally and without authority, the SCP - 5300 cellular telephones which infringe on Plaintiff's United States Design Patents bearing the numbers of Des. 321,347 and Des. 321,349;

14. More particularly, Defendant's "SCP - 5300" cellular handheld phones infringe on Plaintiff's patents in that: it reproduces the overall design, the arrangement of the keypad

and display screens, and the size and appearance of the cellular handheld telephone;

15. The sales of the "SCP - 5300" cellular handheld phones by Defendant is causing Plaintiff to suffer important losses as well as damages to his clear rights. Moreover, as a result of said infringing activities, Defendant is making unlawful profits from the illegally appropriated design incorporated into its cellular portable handheld telephone which it may prove impossible for Plaintiff to prove and to quantify without the assistance of this Court;

16. That the full extent of Defendant's infringing activities is unknown to Plaintiff but is known to Defendant and therefore Plaintiff claims relief in respect of all acts of infringement by Defendant, past, present and future;

17. Plaintiff informed the Defendant of the infringement of his U.S. Patent protected designs through letters dated November 9, 2002 as referenced in letter from Defendant, the whole as appears more fully from a copy of the letter produced herewith as Plaintiff's **Exhibit P - 4**;

18. The Defendant has been notified in writing of Plaintiff's rights under at least U.S. Patent Des. 321,347 and Des. 321,349 and is believed to have actual knowledge of relevant patents prior to the manufacture of the "SCP - 5300" cellular portable handheld telephones - notwithstanding this, the Defendant, with full knowledge of the patents and without prior authorization of Plaintiff has willfully, wantonly and deliberately continued to infringe in flagrant disregard of Plaintiff's rights under those patents;

19. Damages caused to the Plaintiff through the infringement of his patent rights are

estimated at \$100, Million U.S. Dollars, but Plaintiff reserves his rights to amend the quantum of the damages suffered by him once the full extent of Defendant's infringement activities are made known by the accounting demanded below;

THEREFORE YOUR PLAINTIFF PRAYS FOR THE FOLLOWING;

GRANT the present action;

CONDEMN Defendant to pay the plaintiff the sum of \$ 100, Million U.S. Dollars as of the dated hereof, the whole with interest on a cumulative basis plus the legal indemnity in accordance with the laws of the United States of America;

ORDER Defendant to furnish an accounting of all sales of the "SCP - 5300" series model cellular portable handheld telephones world-wide resulting from Defendant's infringement of Plaintiff's United States Patents 321,347 and 321,349, including;

- a. a statement of sales directly, through subsidiaries, and through dealers and distributors;
- b. a statement of the retail sales price;
- c. a statement of gross revenues and profits;
- d. a statement of gross revenues and profit from maintenance and repairs;
- e. a statement of current inventory;
- f. a statement of units manufactured to date;
- g. a statement of units on order from the manufacturer;

RESERVE Plaintiff's right to amend the present proceedings, particularly with respect to the quantification of the damages once the full extent of distribution sales and revenues are

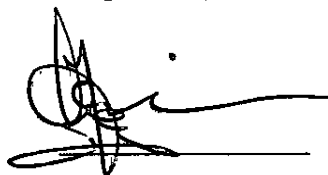
known;

THE WHOLE with interest and any legal indemnity on a cumulative basis in accordance with the laws of the United States of America;

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: June 11, 2003

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Tony Colida', written over a horizontal line. The signature is stylized and somewhat cursive.

**Mr. Tony Colida, (plaintiff, pro se)
18 Lakeshore Drive, Suite 813
Pointe Claire, Quebec H9S 5X9
Canada
Tel. 514-423-3777
Fax: 514-695-2999**

Exhibit P - 1

United States Patent [19]
Colida

[11] **Patent Number:** Des. 321,347
 [45] **Date of Patent:** ** Nov. 5, 1991

- [54] **PORTABLE CELLULAR HANDSET TELEPHONE**
 [76] **Inventor:** Tony Colida, 2672 Bedford Road, Montréal, Québec, Canada, H3S-1G1
 [**] **Term:** 14 Years
 [21] **Appl. No.:** 513,165
 [22] **Filed:** Apr. 23, 1990
 [52] **U.S. CL.** D14/138; D14/147; D14/248
 [58] **Field of Search** D14/147, 148, 138; 379/423, 68; 455/89, 90

FOREIGN PATENT DOCUMENTS

0164743	7/1988	Japan	379,434
0106658	4/1989	Japan	379/434
0212052	8/1989	Japan	379/434

OTHER PUBLICATIONS

Telephony, Jul. 16, 1979; GTE Flip-Phone.

Primary Examiner—Horace B. Fay, Jr.

[57] **CLAIM**

The ornamental design for a portable cellular handset telephone, as shown and described.

DESCRIPTION

FIG. 1 is a left side, top a front perspective view of a portable cellular handset telephone showing my new design in opened position;
 FIG. 2 is a front elevational view thereof;
 FIG. 3 is a rear elevational view thereof;
 FIG. 4 is a bottom plan view thereof in closed position;
 FIG. 5 is a top plan view thereof in closed position;
 FIG. 6 is a right side elevational view thereof;
 FIG. 7 is a bottom plan view thereof in closed position; and
 FIG. 8 is a front elevational view thereof in closed position.

[56] **References Cited**
U.S. PATENT DOCUMENTS

D. 254,435	3/1980	Ferron	D14/147
D. 276,520	11/1984	Breslow et al.	D14/143
D. 281,686	12/1985	Rivette et al.	D14/143
D. 291,991	9/1987	Lee	D14/147
D. 298,621	11/1988	Willis	D14/147
D. 302,689	8/1989	Murakami et al.	D14/138
D. 306,294	2/1990	Watanabe	D14/148
D. 306,298	2/1990	Sawada et al.	D14/148 X
4,481,382	11/1984	Villo-Real	379/68 X
4,845,772	7/1989	Metrooka et al.	379/433 X

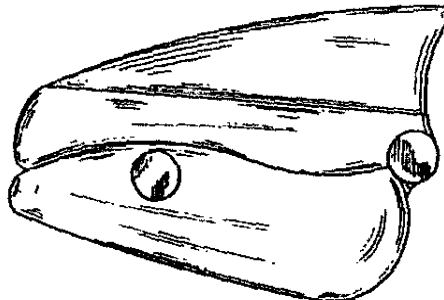
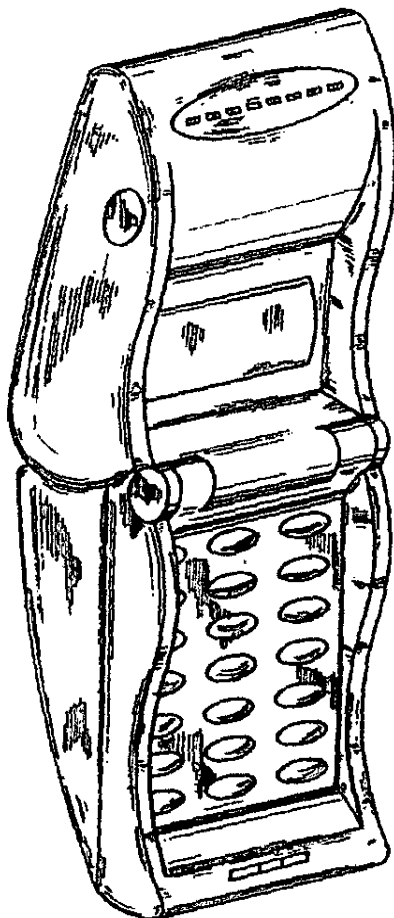


FIG. 3

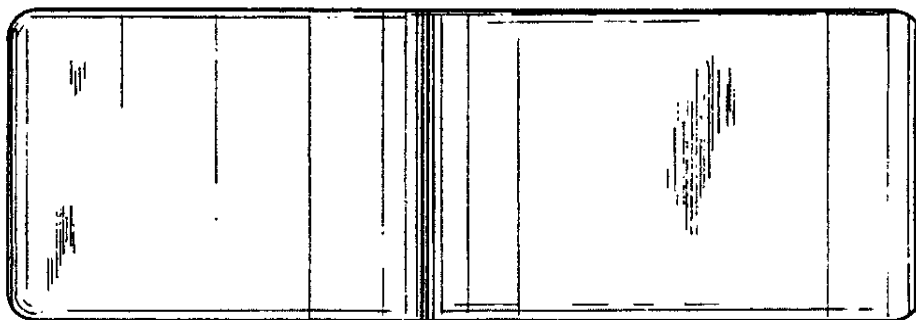


FIG. 2

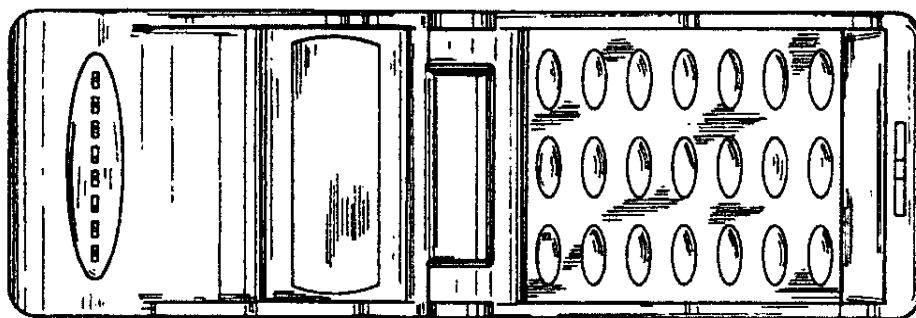
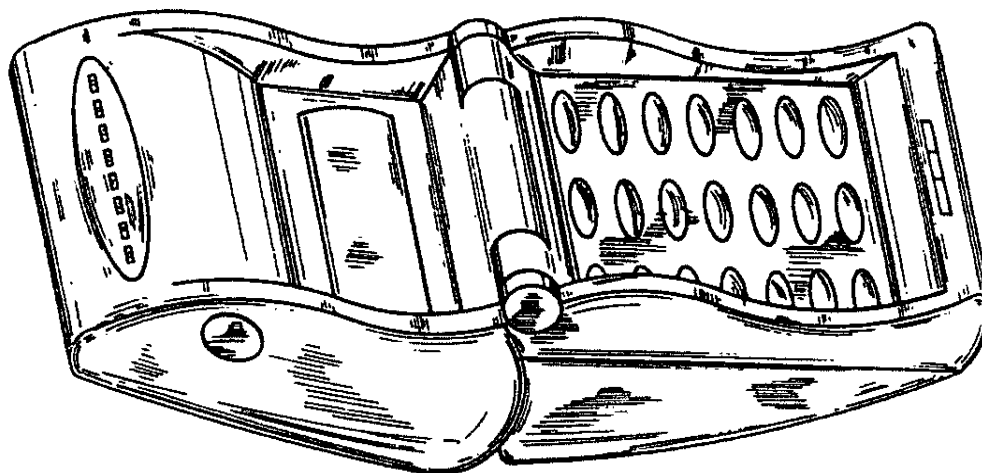


FIG. 1



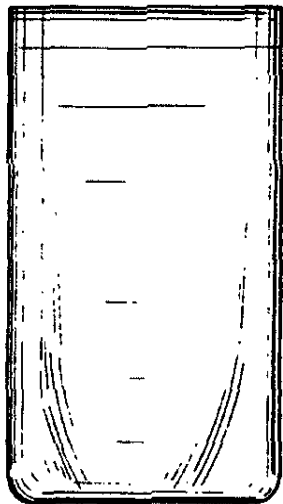


FIG. 5

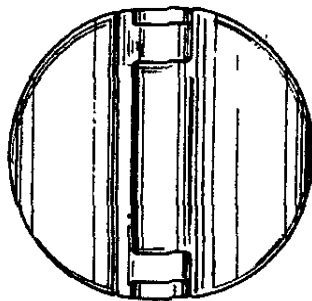


FIG. 4

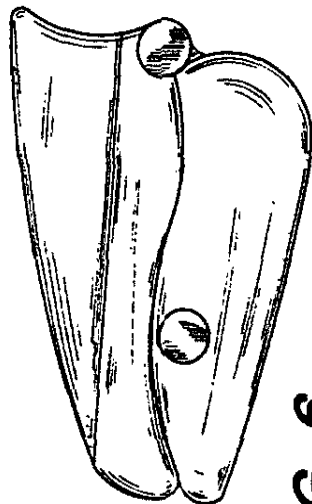


FIG. 6

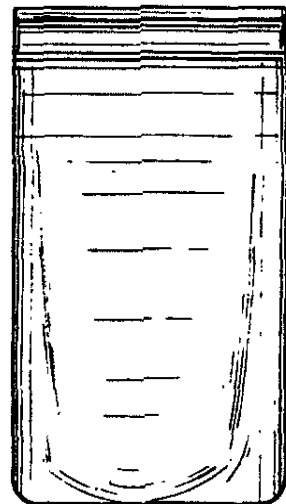


FIG. 7

FIG. 8

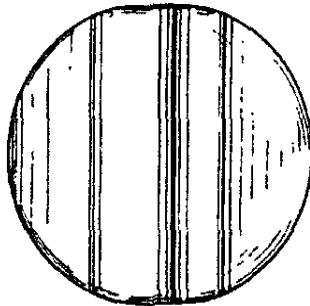


Exhibit P - 2

United States Patent [19]

[11] **Patent Number: Des. 321,349**

Colida

[45] **Date of Patent: ** Nov. 5, 1991**

[54] **CELLULAR PORTABLE HANDSET TELEPHONE**

[76] **Inventor: Tony Colida, 2672 Bedford Rd., Montreal, Quebec, Canada, H3S-1G1**

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

[21] **Appl. No.: 521,660**

[22] **Filed: May 10, 1990**

[52] **U.S. Cl. D14/138; D14/147; D14/248**

[58] **Field of Search D14/147, 138, 148, 151; 379/368, 433; 455/89, 90, 80**

[56] **References Cited**

U.S. PATENT DOCUMENTS

D. 244,849	6/1977	Todeschini	.....	D14/147
D. 254,195	2/1980	Genaro et al.	.....	D14/151 X
D. 284,468	7/1986	Matras	.....	D14/63 X
D. 302,689	8/1989	Murakami	.....	D14/148 X
D. 304,189	10/1989	Nagele et al.	.....	379/433 X
D. 315,731	3/1991	Watanabe	.....	D14/148
4,736,411	4/1988	Chan	.....	379/368
4,845,772	7/1989	Metroka	.....	379/433 X

OTHER PUBLICATIONS

Telephony Magazine, Jul. 16, 1979; GTE F11P-Phone. Radio Shack ET-416; Ad; Handset 43-556; Price \$119.95.

"Electronics", Jun. 1990; Motorola Folding Handset, Radio Digital Telephone.

Electronic Edge, American Express Brochure; at p. 20, Panasonic Folding Cordless Phone #23127-12.

Primary Examiner—Horace B. Fay, Jr.

[57] **CLAIM**

The ornamental design of a cellular portable handset telephone, as shown and described.

DESCRIPTION

FIGS. 1 and 2 are respectively front and rear elevational views of a cellular portable handset telephone showing my new design in opened posture;

FIG. 3 is a left side elevational view thereof in closed position, the side opposite being a mirror image;

FIGS. 4 and 5 are respectively rear and front end elevational view thereof; and

FIG. 6 is a left side, top and front perspective view thereof in opened position.

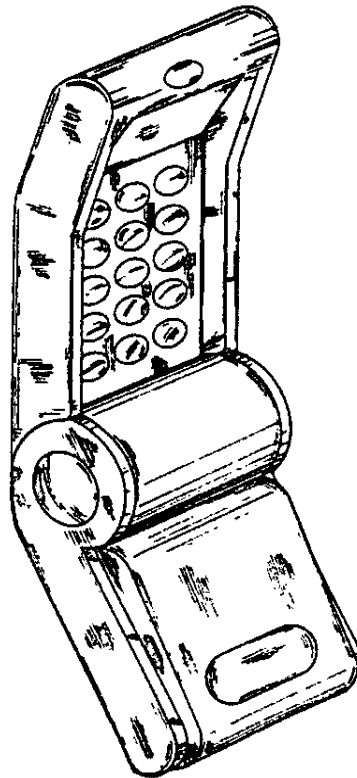
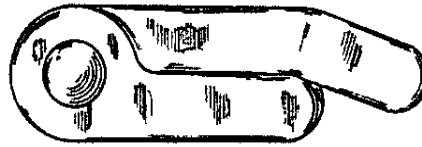


FIG. 1

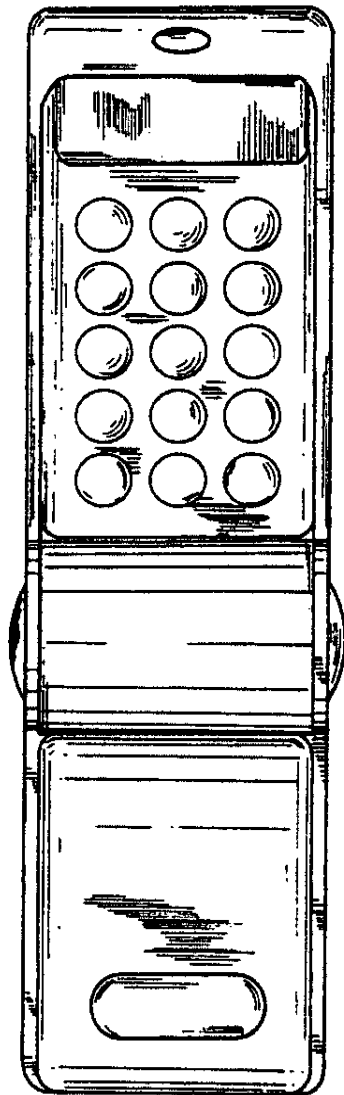


FIG. 2

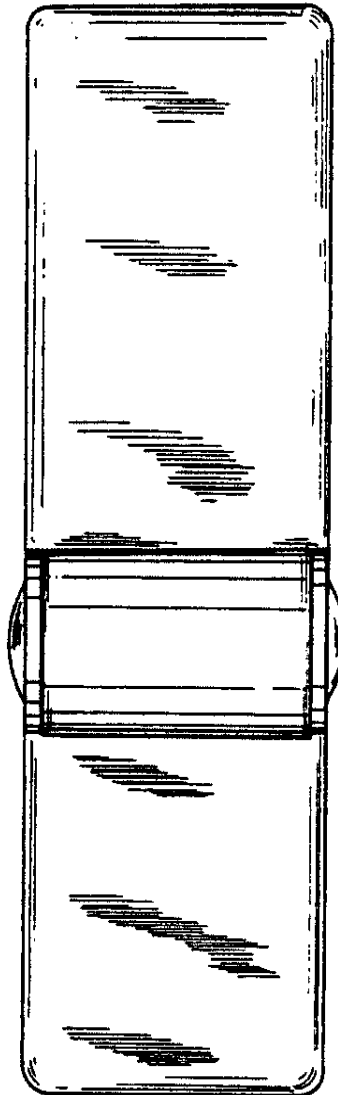


FIG. 3



FIG. 4

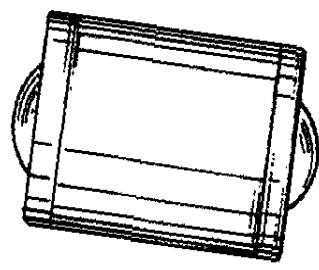


FIG. 5

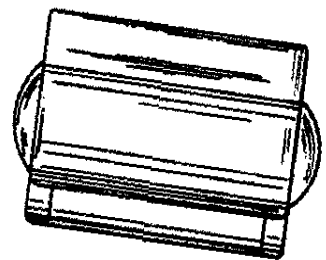


FIG. 6

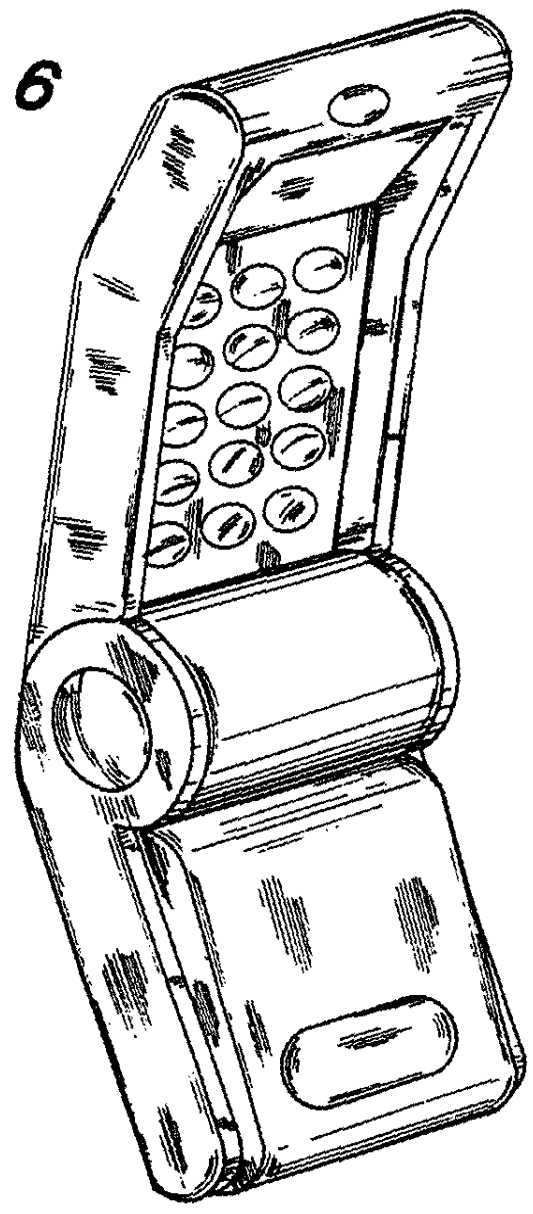


Exhibit P - 3

EXHIBIT P-5



Home > Wireless > Handsets > SCP-5300

BROWSE PRODUCTS

- ENTERTAINMENT
- HOME APPLIANCES
- BUSINESS
- > WIRELESS
- BATTERIES
- SEMICONDUCTORS
- INDUSTRIAL



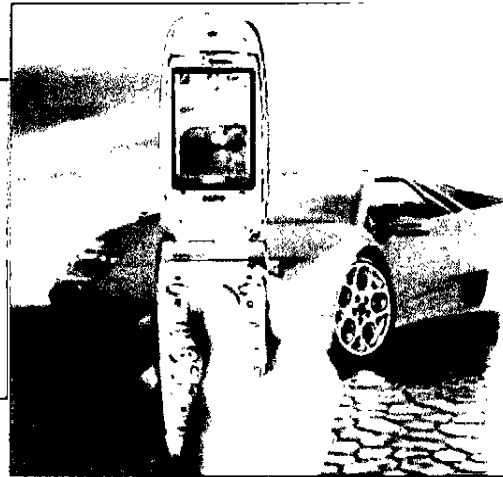
SERVICE & SUPPORT
ABOUT SANYO

SEARCH
CONTACT
SITE MAP

SANYO STORE

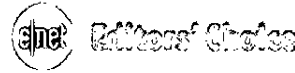


INTERACTIVE DEMO



Accessories For This Item

- Owners Manual
- Specifications
- Guia Del Usuarios
- Dealer Images



Hand
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Acce:
F.A.C
Sprin
Wallp
Tech:
Testi
J.D. F

Choo
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SCP
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Previ
Inter
Deale

Dual Band Tri-Mode Sprint Phone™

Picture this! No attachment needed.
The SCP-5300 has a built-in digital camera complete with flash for low light situations and up to 16x zoom, and much, much more...

SCP-5300

Picture Mail

- Share Pictures instantly
- (Works for all Sprint PCS Vision(TM) compatible phones, Personal Computers, and select PDA Devices.)
- Store and Organize Pictures in Online Album
- Turn good pictures into great Pictures with Online Enhancement tools

New Technology

- SANYO's first Tri-Mode Phone
- Built-In VGA Quality Digital Camera
- Flash - High Luminance LED
- WAP 2.0
- Java Fully Supports Sprint PCS Vision™(J2ME MIDlet)
- Enhanced 2.1 inch 65 thousand-color TFT LCD display
- Quality 640x480 VGA photographs
- Zoom capability up to 4X and 16X
- User Controlled Color Tone (Antique, Black & White, Negative)
- User Controlled Brightness (Auto, or 9 Step Manual)
- User Controlled White Balance

(Auto, Sunny, Cloudy, Tungsten, Fluorescent, or 9 Step Manual)

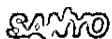
- PictureWallet Stores Favorite Pictures on phone for offline viewing and slideshows
- Enhanced 2.1 inch 65 thousand-color TFT LCD display
- Snap pictures and instantly assign photos as caller id, or screensaver

Personalization

- Photo/Ringer caller ID, Wallpaper, and Game Content
- Quality Polyphonic Ringtones
- Built-in Answering Machine for Call Screening
- Three CMX Animated Ringers to choose from

More Outstanding Features

- Fully Supports Sprint PCS Vision™
- Large 1 inch 65 thousand-color external LCD
- Extended Battery Included
- Voice-activated dialing—up to 30 persons
- USB Interface for rapid data transfers
- Super fast mobile modem dial-up speeds (results may vary)
- PC Synchronization (software sold separately)
- Electronic Organizer with Scheduler/Calendar and To-Do List
- Phone Book Holds up to 300 entries, up to 500 phone numbers, 300 e-mail addresses, and 300 Web Address entries
- Vibrating Ringer Mode
- Auto Answer



[Terms and Conditions](#) | [Privacy Statement](#)

Exhibit P - 4

SANYO

EXHIBIT - P-4

SANYO North America Corporation

2055 Sanyo Avenue
San Diego, California 92154, USA
Phone: (619) 661-4134 Fax: (619) 661-4107

Via Facsimile

November 25, 2002

Tony Colida
750 Montpelier Boulevard, Suite 905
St. Laurent, Quebec
Canada H4L 5A7

Re: U.S. Patent No. Des. 321,347

Dear Mr. Colida:

Thank you for your letters of November 9, 14 and 16, 2002; and call on November 18, 2002.

As we mentioned, in order for us to respond specifically to the offer to license your design patent 321,347 (the '347 patent), we will need to communicate with the manufacturer of Sanyo SCP-5300 phone. Also, your November 9th letter lists additional patents, namely U.S. Design Patent Nos. Des. 318,050; Des. 321,184; and Des. 321,349. We believe the addition is erroneous because these patents were not raised in your previous letters. If it's correct, the listing of such additional patents will require the manufacturer to perform another expanded study. Accordingly, please be advised that such consideration of the issue by the manufacturer will take several months.

We have set forth our good faith belief that the Sanyo SCP-5300 phone does not infringe the '347 patent. We would appreciate your comments on our November 8th letter and any points you believe that we may have overlooked.

Sincerely,



Koji Saito
Manager
Intellectual Property Department
SANYO North America Corporation

cc: D'Arcy/SFC
Koyama/MMC



2055 Sanyo Avenue
San Diego, California 92154, USA
Phone: (619) 661-4134 Fax: (619) 661-4107

FACSIMILE TRANSMISSION

DATE: November 25, 2002 **PAGE(S):** 2 (Including this page)

TO: Mr. Tony Colida
 PHONE: 514-423-3777
 FAX: 514-747-2814

FROM: Koji Saito Intellectual Property Department
 COMPANY: SANYO North America Corporation
 PHONE: (619) 661-4134 **FAX:** (619) 661-4107
 Ext.: 4517 **Direct:** (619) 671-5007
 E-MAIL: ksaito@sna.sanyo.com

SUBJECT: US Design Patent: Des.321,347
 Your File No.: Sanyo - 101 - 813033-01

Privacy Notice: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential or exempt from disclosure under applicable Federal or State law. If the reader of this message is not the intended recipient or the employee of agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this communication in error, please notify us immediately by telephone and return the original to us at the above address via regular mail.

If you do not receive all pages, please call us as soon as possible at (619) 661-4134 ext. 4517.

AO 120 (3/85)

TO: Commissioner of Patents and Trademarks Washington, D.C. 20231	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT
---	--

In compliance with the Act of July 19, 1952 (66 Stat. 814; 35 U.S.C. 290) you are hereby advised
 that a court action has been filed on the following patent(s) in the U.S. District Court:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
03-CV-1200 BTM(AJB)	6-17-03	United States District Court, Southern District of California
PLAINTIFF		DEFENDANT
Tony Calida		Sanyo North America Corp.
PATENT NO.	DATE OF PATENT	PATENTEE
1 321,347	11-05-91	Tony Colida
2 321,349	11-05-91	Tony Colida
3		
4		
5		

In the above-entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY			
	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT NO.	DATE OF PATENT	PATENTEE		
1				
2				
3				
4				
5				

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1 - Upon initiation of action, mail this copy to Commissioner Copy 3 - Upon termination of action, mail this copy to Commissioner
 Copy 2 - Upon filing document adding patent(s), mail this copy to Commissioner Copy 4 - Case file copy

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.)

I. (a) PLAINTIFFS

MR. TONY COLIDA, (PRO-SE)

DEFENDANTS

SANYO NORTH AMERICA CORP.

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence 03 JUN 17 SAN DIEGO, CA. (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED; DISTRICT OF CALIFORNIA

Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known) BY: 03 CV 1200 BTM DEPUTY AJB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes checkboxes for various legal categories like Insurance, Personal Injury, Real Estate, etc.

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 and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

830-PROPERTY RIGHTS (PATENT-INFRINGEMENT) 15:1126(a)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$100,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes X No

VIII. RELATED CASE(S) IF ANY

(See instructions): U.S. DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS JUDGE CHARLES R. NORGLE, SR. DOCKET NUMBER 1:02-CV-8611

DATE June 11, 2003

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT 6/17/03 AMOUNT 150000 APPLYING IFP JUDGE MAG. JUDGE