

FILED by <u>VK</u> D.C. ELECTRONIC
FEB. 22, 2010
STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. · MIAMI

**IN THE UNITED STATES DISTRICT COURT
Southern District of Florida**

Case Number: **10-14056-CV-Graham/Lynch**

PRIME SOURCE ACCESSORIES, INC.)	
)	
Plaintiff,)	
)	
v.)	COMPLAINT FOR
)	PATENT INFRINGEMENT
BOOKS-A-MILLION, INC.,)	(JURY TRIAL DEMANDED)
)	
Defendant.)	
)	
_____)	

Plaintiff, Prime Source Accessories, Inc. (“PSA”) for its complaint against Defendant, Books-A-Million, Inc. (“BAM”), alleges as follows:

THE PARTIES

1. Plaintiff, PSA, is a business organized under the laws of the state of Florida, having a principal place of business at 1241 SE Indian Street, Suite 108, Stuart, Florida 34997.
2. Upon information and belief, Defendant, BAM, is a business organized under the laws of the state of Delaware having a principal place of business at 402 Industrial Lane, Birmingham, Alabama 35219.

JURISDICTION AND VENUE

3. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and particularly 35 U.S.C. § 271.
4. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).
5. This court has personal jurisdiction over Defendant, BAM, because BAM transacts business within Florida, and BAM has committed acts of infringement, inducement to infringe

and/or contributory infringement within Florida by promoting, offering for sale and selling lap desks that caused irreparable injury to PSA.

6. Venue in this district is proper pursuant to 28 U.S.C. §§ 1391(c) and 1400(b) because a substantial part of the events or omissions giving rise to Plaintiff, PSA's claims occurred in this District, including Defendant's promoting, offering for sale and selling lap desks in this District that infringe PSA's patented design.

FACTUAL BACKGROUND

7. On August 22, 2006, U.S. Patent Number Des. 526,810 entitled "Lap Desk" ("D810 patent") was duly and legally issued in the name of the inventors, Maureen Elizabeth Lorr and Jennifer Ann Rudmann. A copy of the D810 patent is attached as Exhibit A to the Complaint.

8. PSA is the owner by assignment of the entire right, title, and interest in and to the D810 patent.

9. PSA sells lap desks along with other items under the ROOM IT UP trademark.

10. PSA has marked its lap desks with the D810 patent since at least January 2007 to the present by stitching the D810 patent number into a tag sewn into a seam in the pad of the lap desk. A removable placard attached to the lap desk with a ribbon also marks the product with the D810 patent. Photographs of PSA's lap desk showing patent markings are attached hereto as Exhibit B.

11. PSA provides its customers such as BAM with displays for its lap desks where the displays are formed from wire and include several shelves that prominently display the top surface of the lap desks in a stacked configuration.

11. PSA has had a business relationship with BAM since on or about October 2006 and has been selling BAM lap desks under the ROOM IT UP trademark since on or about October 2006. PSA continues to sell BAM lap desks to the present. PSA's lap desks that were sold to BAM have

been and continue to be marked with the D810 patent.

12. Upon information and belief, BAM began importing, offering for sale and selling a lap desk at least as early as November 1, 2009 in BAM's retail outlets. Attached hereto as Exhibit C are photographs of BAM's lap desk.

13. Upon information and belief, BAM copied PSA's display as evidenced by a photograph taken in one of BAM's retail outlets where BAM's lap desks and PSA's lap desks are displayed back to back from each other as evidenced by photographs attached hereto as Exhibit D.

14. Upon information and belief, BAM copied PSA's placard and ribbon display for BAM's lap desks as evidenced by the photographs attached hereto as Exhibit C.

15. PSA has notified BAM that BAM's lap desk infringes the D810 patent and requested that BAM cease distributing and selling lap desks utilizing the infringing design.

16. As of the date of this complaint, BAM has failed to comply with the aforementioned demands and, upon information and belief, BAM continues to sell infringing lap desks.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. DES. 526,810

17. Plaintiff, PSA repeats and realleges the allegations contained in paragraphs 1-16 of this complaint as fully set forth herein.

18. BAM is copying the design patented in the D810 patent without PSA's consent or authorization and upon information and belief is importing, distributing, offering for sale and selling unauthorized copies of the patented lap desk design.

19. BAM's purpose for importing, distributing, offering for sale and selling the unauthorized copies of the patented lap desk design is to obtain commercial benefit from such unauthorized use.

20. At the time that BAM made the unauthorized copies of the design of the patented lap desk, and imported, distributed, offered for sale and sold the unauthorized copies, it knew, or had reason to know, that the design was protected by patent.

21. At the time that BAM made the unauthorized copies of the design of the patented lap desk, and imported, distributed, offered for sale and sold the unauthorized copies, it knew, or had reason to know, that it was not authorized to do so and its actions constituted patent infringement.

22. BAM's unauthorized copying of the design of the patented lap desk, and the importation, distribution, offering for sale and selling lap desks utilizing the patented design was, and continues to be, committed intentionally, knowingly and willfully with the intent to wrongfully benefit from the labor and intellectual capital that was invested in the creation of the patented lap desk design by PSA.

23. PSA has been and, to the extent that infringement continues, will continue to be, irreparably harmed in an amount to be determined.

24. BAM has unjustly profited from its infringement of PSA's patented lap desk design.

25. PSA has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, PSA, prays for the following relief:

a. That BAM, its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them be enjoined, preliminarily and permanently, from making, using, selling, offering for sale or importing into the United States products which infringe U.S. Patent No. Des. 526,810 either by direct infringement, contributory infringement or inducement to infringe;

- b. That PSA be compensated for the damages caused by BAM's infringement under 35 U.S.C. § 284, in an amount to be determined by an accounting, but not less than a reasonable royalty, (plus interest);
- c. That the award of damages be trebled as provided for by 35 U.S.C. § 284 for willful infringement;
- d. That PSA be awarded its costs and attorneys' fees incurred in prosecuting this action, as provided for by 35 U.S.C. § 285, plus interest;
- e. That PSA be awarded BAM's total profit obtained through its infringing activity under 35 U.S.C. § 289; and
- f. That PSA be awarded such other relief as the Court deems just and proper.

JURY DEMAND

PSA demands a jury trial on all issues so triable.

Dated: February 22, 2010

s/ David B. Earle †
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**ATTORNEY FOR PLAINTIFF
PRIME SOURCE ACCESSORIES, INC.**

† Pursuant to Rule 4(B) of the Special Rules concerning the Admission and Practice of Attorneys in the United States District Court for the Southern District of Florida, Peter J. Ims, Esquire (Minnesota Bar No.: 294,834) intends to appear on behalf of Plaintiff in this action upon the Court granting his motion to appear pro hac vice, which shall be filed imminently.



(12) **United States Design Patent** (10) Patent No.: **US D526,810 S**
 Lorr et al. (45) Date of Patent: **** Aug. 22, 2006**

(54) **LAP DESK** D467,933 S * 12/2002 Hovsepian D14/458
 D475,550 S * 6/2003 Cote et al. D6/406.3

(75) Inventors: **Maureen Elizabeth Lorr**, Columbus, OH (US); **Jennifer Ann Rudmann**, Columbus, OH (US)

(73) Assignee: **Prime Source Accessories, Ltd.**, Stuart, FL (US)

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

(21) Appl. No.: **29/213,058**

(22) Filed: **Sep. 13, 2004**

(51) **LOC (8) Cl.** **06-06**

(52) **U.S. Cl.** **D6/406.5**

(58) **Field of Classification Search** D6/406.1-406.6, D6/339, 419, 429, 430; D12/133, 416, 419, D12/426.1; D14/447, 457; D7/550.1-550.2, D7/552.2-552.5, 554.3-554.4; 108/25, 42-43, 108/150; 220/575, 679, 632, 670, 339, 574, 220/17.1; 211/11, 126

See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

D305,015 S * 12/1989 Roche D6/406.3
 D308,450 S * 6/1990 Harris et al. D6/406.6
 5,081,936 A * 1/1992 Drieling 108/43
 5,090,334 A * 2/1992 Sutton 108/43
 D331,330 S * 12/1992 Bennett et al. D6/406.3
 D338,574 S * 8/1993 Schroeder et al. D6/406.2
 D380,727 S * 7/1997 Gilstrap D12/425
 5,692,815 A * 12/1997 Murphy 108/43
 D411,388 S * 6/1999 Sacco et al. D6/406.6

OTHER PUBLICATIONS

Two (2) photographs of a lap desk that was on sale in the United States Prior to Sep. 13, 2003 (one sheet). Declaration of Maureen Elizabeth Lorr with two (2) attached photographs of a lap desk that was on sale in the United States Prior to Sep. 13, 2003.

* cited by examiner

Primary Examiner—Charles A. Rademaker

(74) *Attorney, Agent, or Firm*—Westman, Champlin & Kelly, P.A.; James L. Young

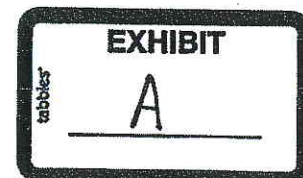
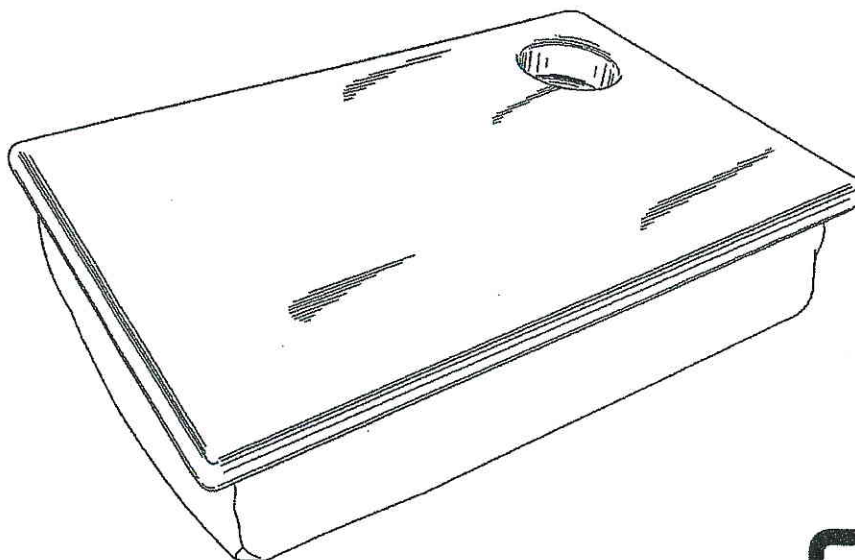
(57) **CLAIM**

The ornamental design for a lap desk, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view of a lap desk showing our new design; FIG. 2 is a top plan view thereof; FIG. 3 is a front elevational view thereof; FIG. 4 is a right side view thereof; FIG. 5 is a left side view thereof; FIG. 6 is a rear elevational view thereof; and FIG. 7 is a bottom plan view thereof; and, FIG. 8 is a perspective view of a second embodiment of a lap desk showing our new design (the front, right side, left side, read and bottom views are the same as the embodiment illustrated in FIGS. 1-7).

1 Claim, 7 Drawing Sheets

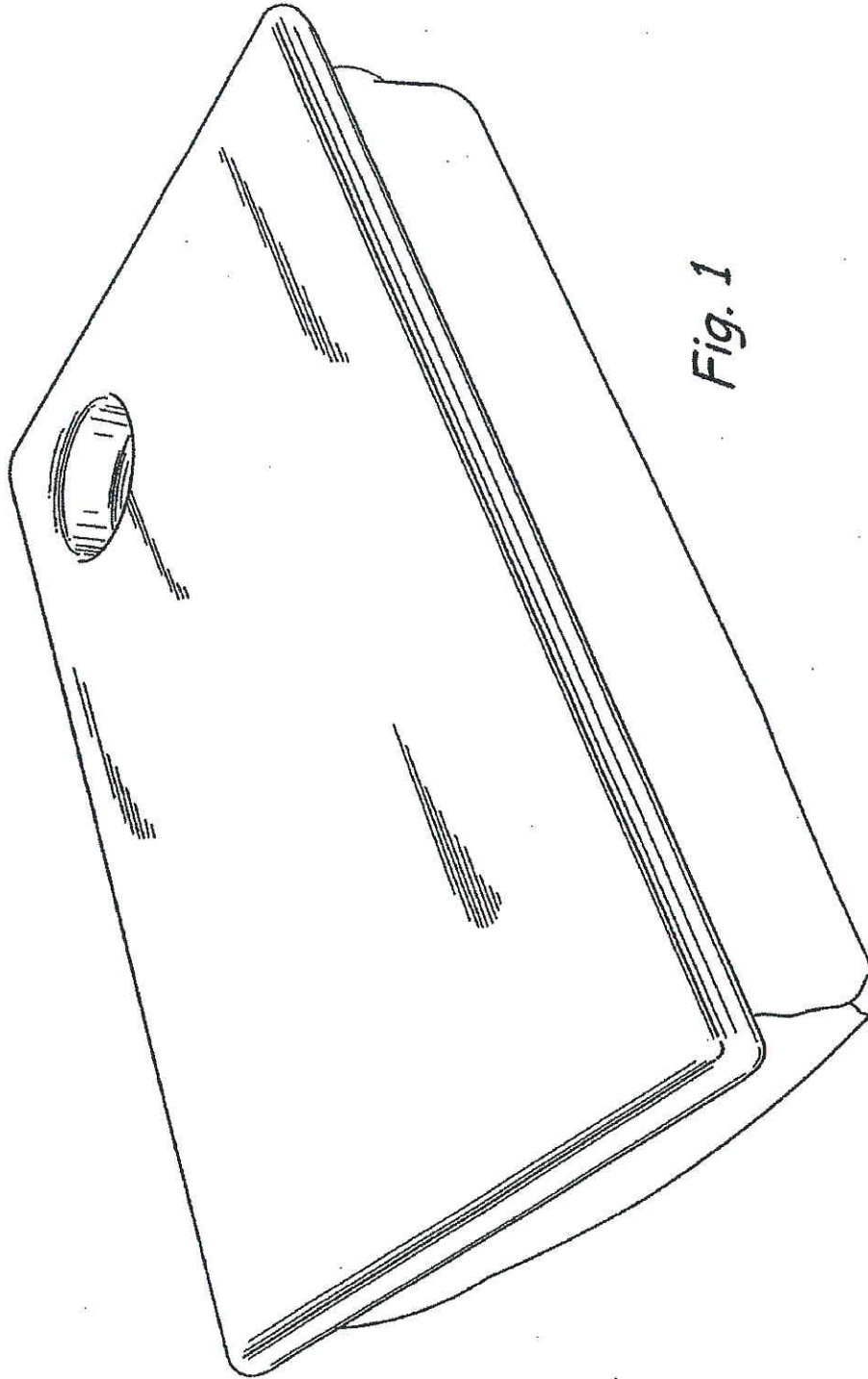


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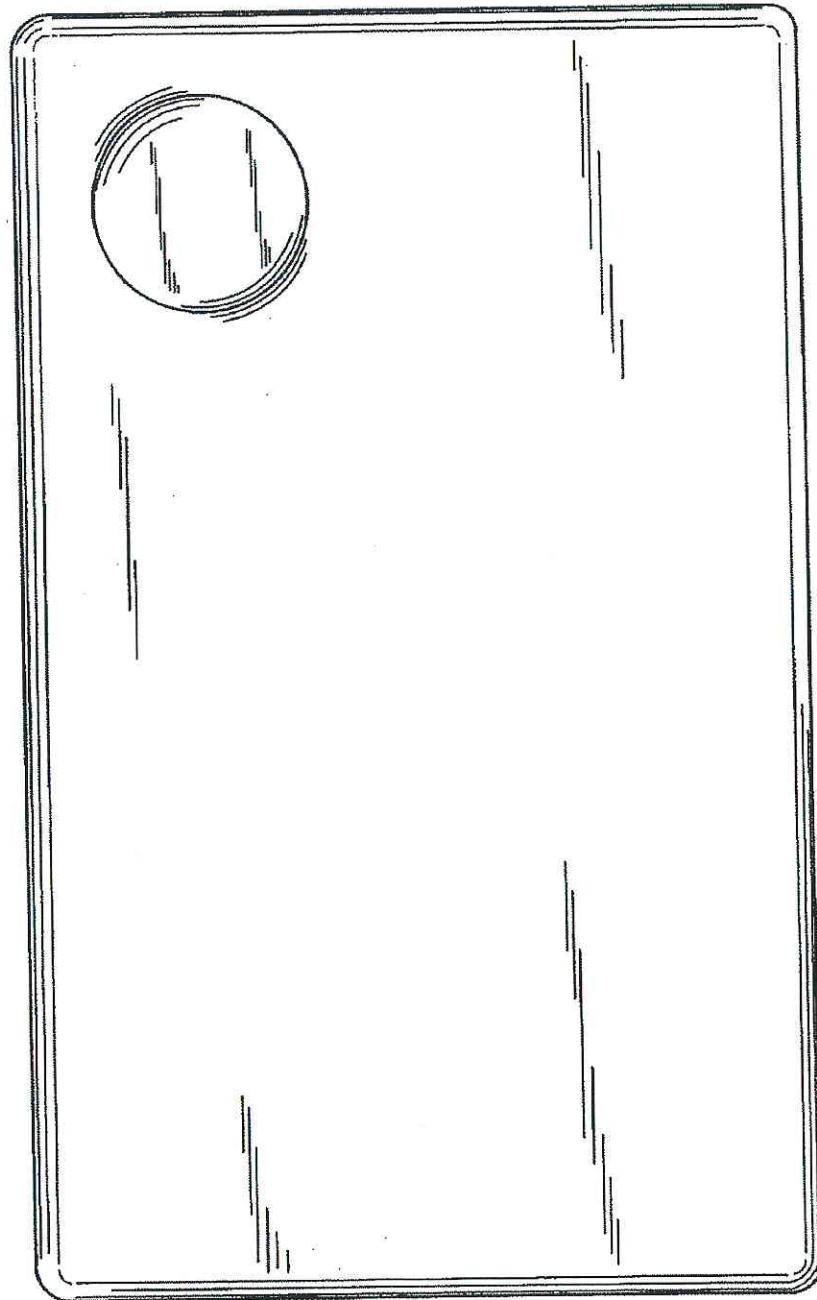


Fig. 2

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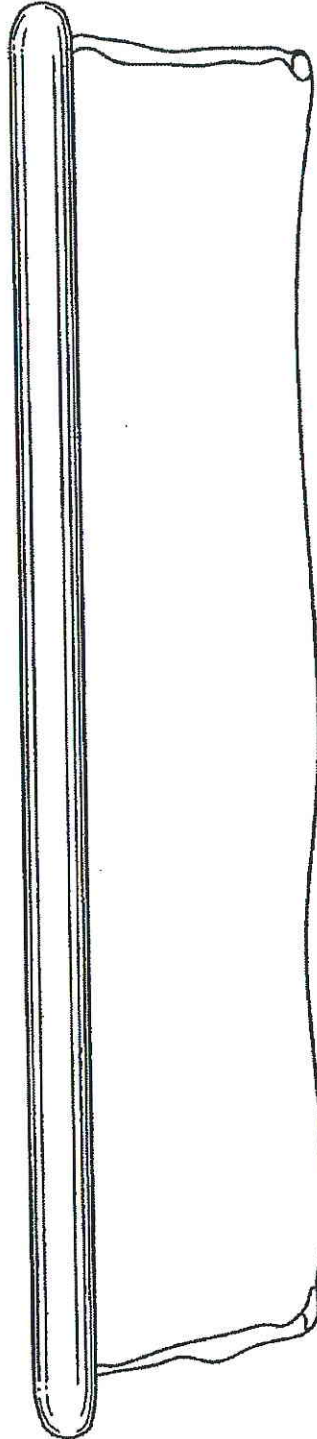


Fig. 3

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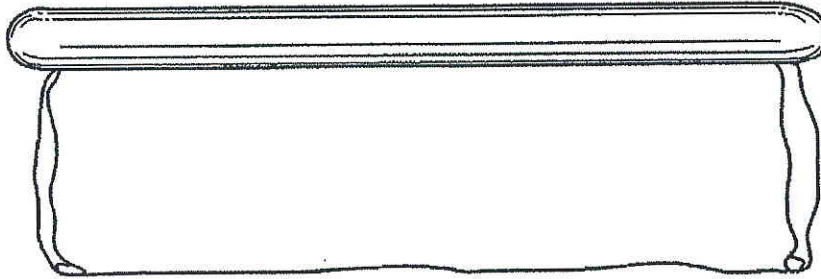


Fig. 4

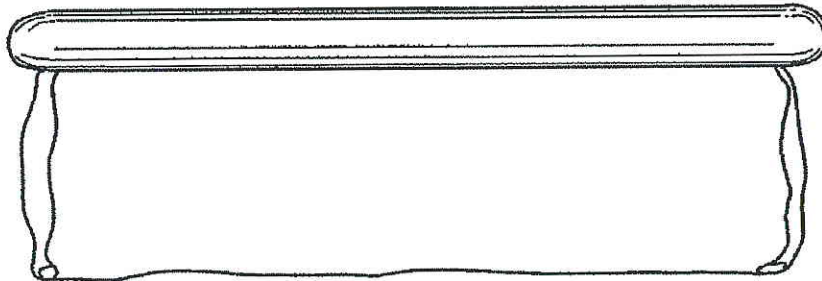


Fig. 5

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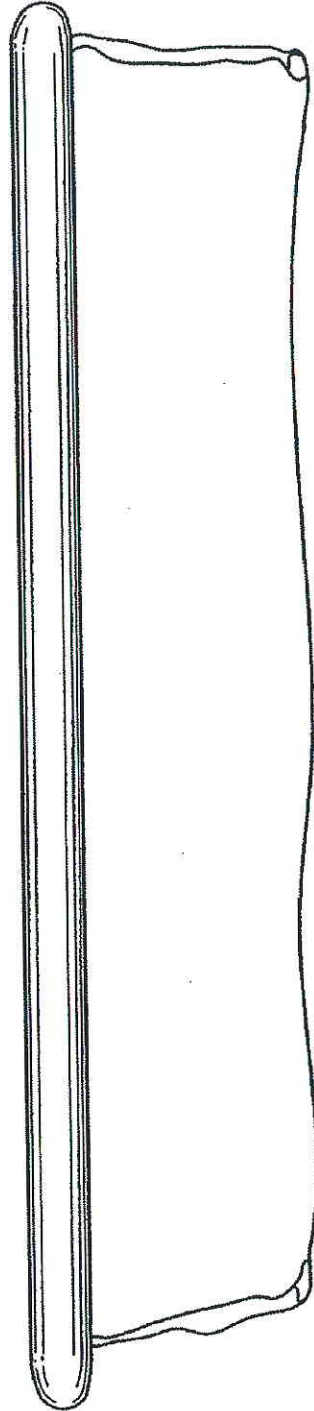


Fig. 6

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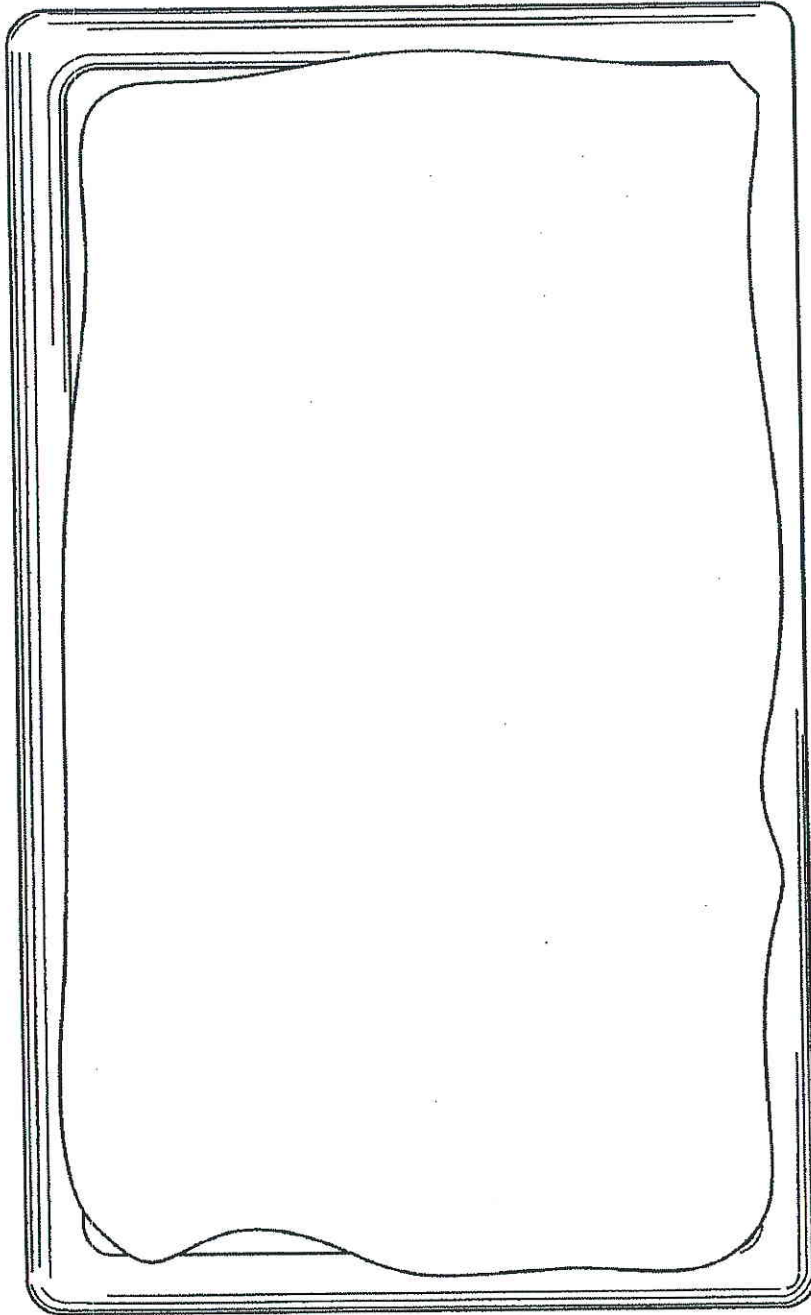


Fig. 7

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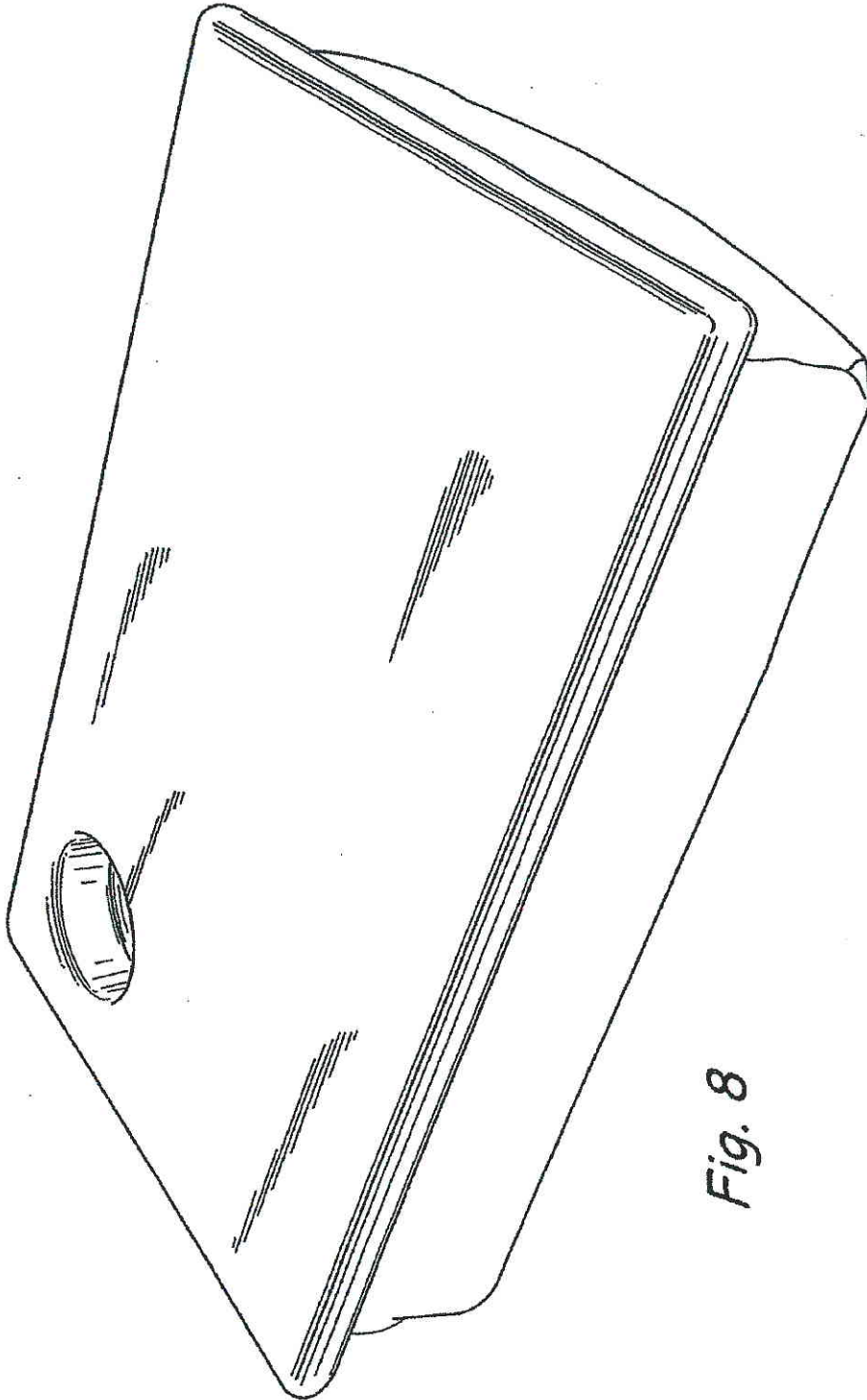


Fig. 8

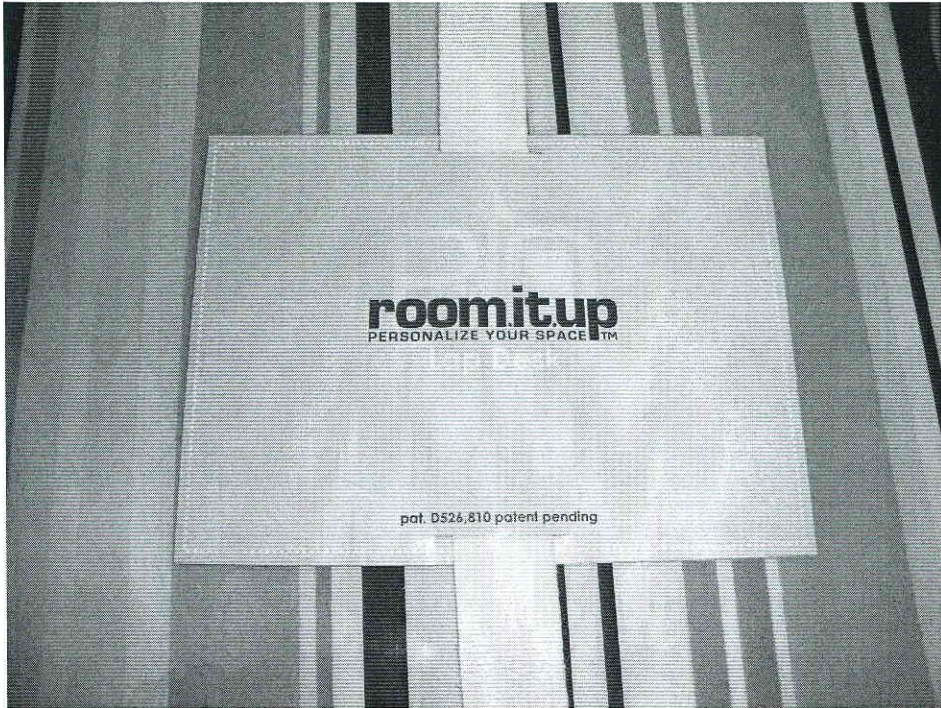


EXHIBIT B



EXHIBIT B

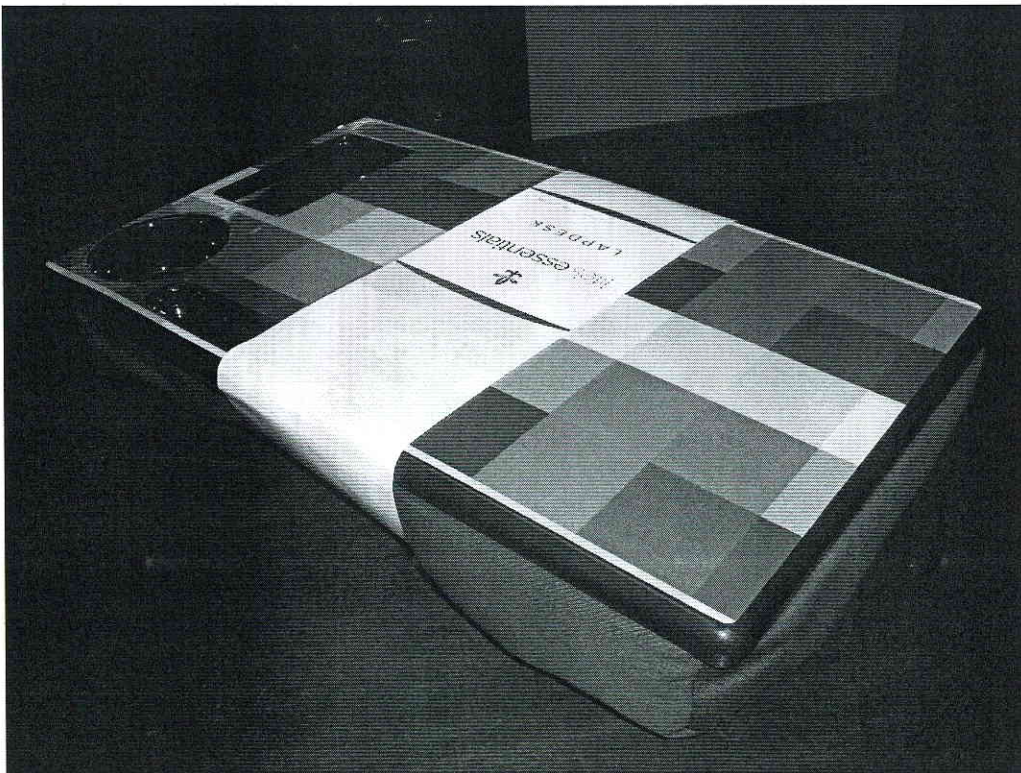
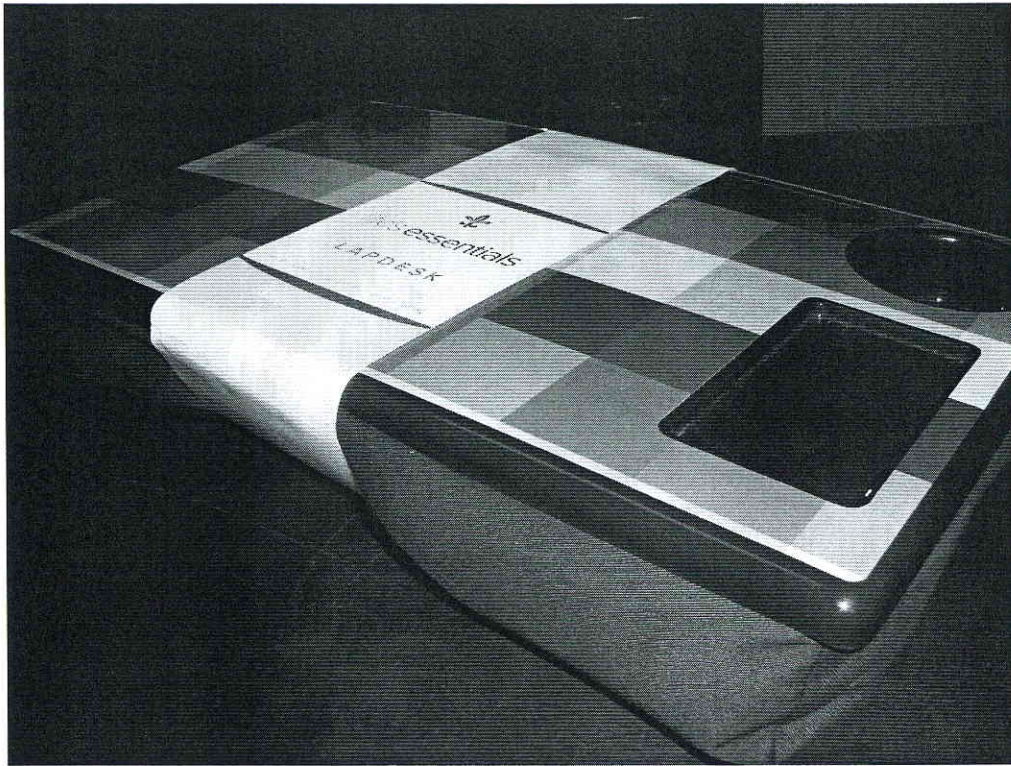


EXHIBIT C



EXHIBIT D