

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 0:10-CV-61074-ZLOCH/ROSENBAUM

ZENITH PRODUCTS CORP.,  
a Delaware corporation,

Plaintiff,

vs.

DESIGN HOME SOLUTIONS, LLC,  
a Florida limited liability company;  
COSTCO WHOLESALE CORP.,  
a Washington corporation;  
DESIGN SOLUTIONS  
INTERNATIONAL, INC.,  
a Florida corporation; and  
DESIGN SOLUTIONS  
INTERNATIONAL II, LLC,  
a Florida limited liability company,

Defendants.

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**FIRST AMENDED COMPLAINT**

Plaintiff, Zenith Products Corp., brings this First Amended Complaint for patent infringement against Defendants Design Home Solutions, LLC, Costco Wholesale Corp., Design Solutions International, Inc., and Design Solutions International II, LLC. In support thereof, Plaintiff states the following:

**PARTIES**

1. Zenith Products Corp. ("Zenith") is a Delaware corporation having a principal place of business located at 400 Lukens Drive, New Castle, Delaware 19720.
2. Upon information and belief, Design Home Solutions, LLC ("Design Home") is a Florida limited liability company having a principal place of business located at 7900 N. University Drive, Suite 202, Tamarac, Florida 33321.

3. Upon information and belief, Defendant Costco Wholesale Corp. (“Costco”) is a Washington corporation having a principal place of business located at 999 Lake Drive, Issaquah, Washington 98027.

4. Upon information and belief, Design Solutions International, Inc. (“Design Solutions”) is a Florida limited liability company having a principal place of business located at 7900 N. University Drive, Suite 202, Tamarac, Florida 33321.

5. Upon information and belief, Design Solutions International II, LLC (“Design Solutions II”) is a Florida limited liability company having a principal place of business located at 7900 N. University Drive, Suite 202, Tamarac, Florida 33321.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Design Home, Design Solutions, and Design Solutions II by virtue of their incorporation in Florida and each maintain their principal places of business within this judicial district.

8. This Court has personal jurisdiction over Costco because it has regularly engaged in substantial and continuing contacts with this State and judicial district and has purposefully availed itself of the privilege of conducting business in this State and judicial district.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and § 1400(b) in that, upon information and belief, infringing activities occurred in this district.

#### **FACTS**

10. Zenith is the owner of U.S. Patent No. D542,897, issued by the United States Patent and Trademark Office on May 15, 2007, entitled, “Curved Shower Rod” (hereinafter “the ‘897 patent”).

11. The '897 patent is valid and enforceable. The term of the '897 patent is set to expire on May 15, 2021. A true and correct copy of the '897 patent is attached to this First Amended Complaint as **Exhibit A**.

12. Plaintiff is the assignee of all right, title, and interest in and to the '897 patent and possesses all rights of recovery under the '897 patent, including the right to sue for infringement and recourse for damages.

13. Defendants have used, manufactured, sold, offered for sale, and/or imported at least a curved shower rod ("curved shower rod") in the U.S.

14. On January 6, 2010, Plaintiff's representative in the Commonwealth of Pennsylvania visited Costco's place of business located at 201 Allendale Road, King of Prussia, Pennsylvania 19406 and purchased a Design Home curved shower rod entitled "Stainless Steel Curved and Adjustable Shower Rod" (hereinafter "Infringing Product") being offered for sale. Upon information and belief, Defendant Design Home is aware that the Infringing Product is being and/or has been offered for sale at Costco Wholesale Corp. in at least the Eastern District of Pennsylvania.

15. Design Solutions and Design Solutions II have provided customers with sales invoices relating to their sales of the Infringing Product.

16. Defendants have not sought, nor obtained, a license under the '897 patent and are not authorized or permitted to market, manufacture, use, offer for sale, sell or import the invention claimed in the '897 patent.

**COUNT I:**  
**INFRINGEMENT OF THE '897 PATENT**

17. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 16 of this First Amended Complaint as though fully set forth herein.

18. The claim of the '897 patent is presumed valid pursuant to 35 U.S.C. § 282.

19. Defendants, in violation of 35 U.S.C. § 271, have been and are currently infringing, contributorily infringing and/or inducing others to infringe the claim of the '897 patent, either literally or under the doctrine of equivalents, by making, causing to be made, using, offering for sale, selling and/or importing into the United States, without license or authority, at least the Infringing Product, which is covered by the claim of the '897 patent.

20. Defendants have willfully infringed and, upon information and belief, will continue to willfully infringe upon the claim of the '897 patent by the use, manufacture, offer for sale, sale, and/or importation of the Infringing Product unless this Court enjoins Defendants' infringing activities.

21. As a result of the Defendants' willful infringement of the '897 patent, Plaintiff has been damaged to an extent not yet determined.

22. Plaintiff is entitled to monetary damages adequate to compensate Plaintiff for the infringement of the Defendants, increased damages under 35 U.S.C. § 284, together with interest, costs, and attorneys fees, and is entitled to enjoin Defendants from further infringement of the '897 patent.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests all legal and equitable relief as may be recoverable for the foregoing offenses, including:

- (a) a judgment that Defendants infringe the claim of the '897 patent;
- (b) a permanent injunction enjoining Defendants, and those in active concert or participation with them, from infringing the '897 patent;
- (c) an accounting for damages arising from the infringement of the '897 patent by the Defendants and those in privity with them;



And

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#320091

# EXHIBIT A



(12) **United States Design Patent** (10) Patent No.: **US D542,897 S**  
**Harwanko** (45) Date of Patent: **\*\* May 15, 2007**

(54) **CURVED SHOWER ROD**  
 (75) Inventor: **Jeffrey Harwanko, Wilmington, DE (US)**  
 (73) Assignee: **Zenith Products Corp., New Castle, DE (US)**  
 (\*\*) Term: **14 Years**

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 6,263,523 B1 7/2001 Moore  
 D483,251 S 12/2003 Suero, Jr.  
 6,694,543 B2 2/2004 Moore  
 D498,663 S 11/2004 Moore

(21) Appl. No.: **29/255,971**

(22) Filed: **Mar. 14, 2006**

(51) LOC (8) Cl. .... **23-02**

(52) U.S. Cl. .... **D23/304**

(58) Field of Classification Search: **D23/283, D23/303-34; 4/552; 596-597; 610, 615, 4/900, DIG. 15; D8/376**

See application file for complete search history.

(56) **References Cited**

**U.S. PATENT DOCUMENTS**

1,675,111 A 1/1928 Kenney  
 D119,576 S 3/1940 Kirsch  
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 3,107,361 A 10/1963 Gliding, Sr.  
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 4,461,056 A \* 7/1984 Solinski ..... 4/610

\* cited by examiner

Primary Examiner—Robert A. Delehauty

(74) Attorney, Agent, or Firm—Akin Gump Strauss Hauer & Feld, LLP

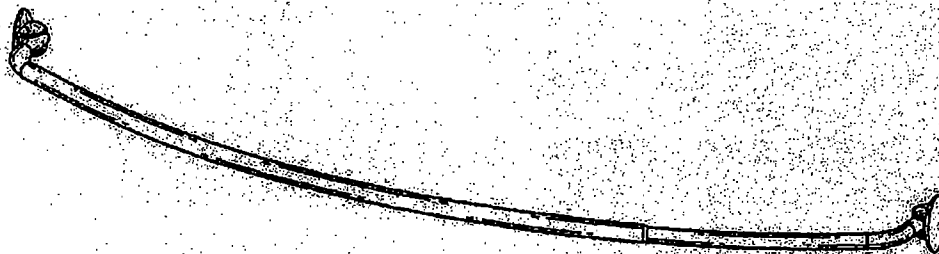
(57) **CLAIM**

The ornamental design for a curved shower rod, as shown and described.

**DESCRIPTION**

FIG. 1 is a top perspective view of a curved shower rod in accordance with my new design;  
 FIG. 2 is a top plan view thereof;  
 FIG. 3 is a front elevational view thereof;  
 FIG. 4 is a bottom plan view thereof;  
 FIG. 5 is a rear elevational view thereof;  
 FIG. 6 is a left-side elevational view thereof; and  
 FIG. 7 is a right-side elevational view thereof.

**1 Claim, 3 Drawing Sheets**





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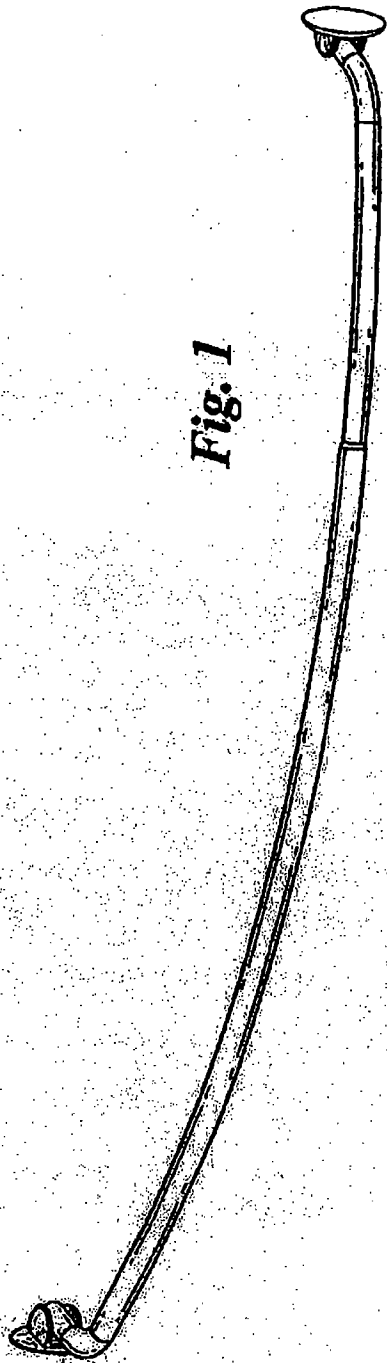


Fig. 1

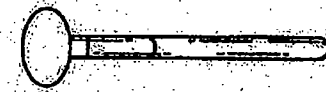


Fig. 7

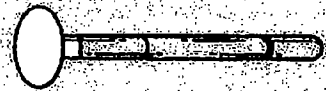


Fig. 6

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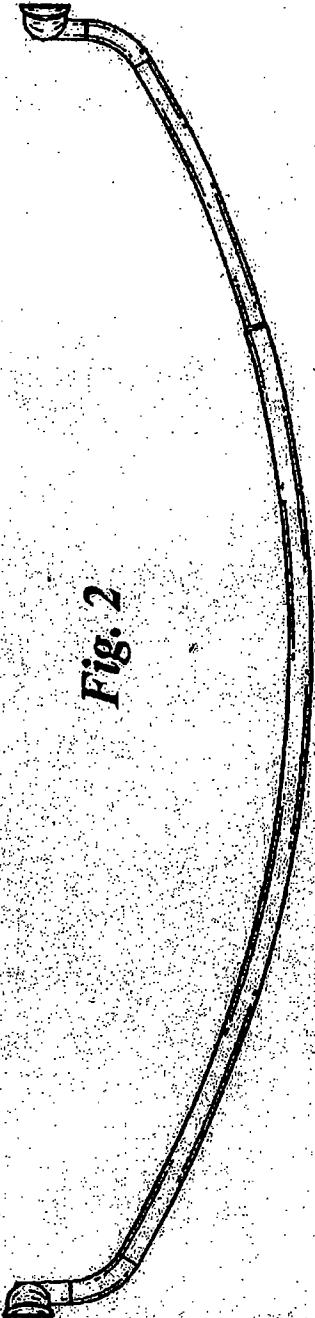


Fig. 2

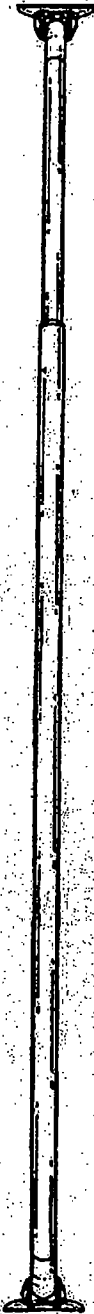


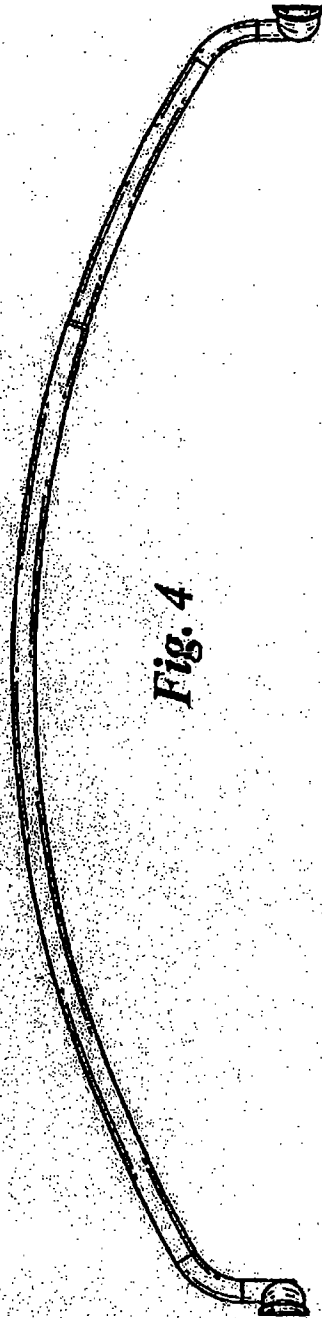
Fig. 3

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**Fig. 4**



**Fig. 5**