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UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

CV12-2639

DDP  
(JPR)

MOPHIE, INC., a California corporation,

Plaintiff,

vs.

KDLINKS INCORPORATED, a Georgia  
 corporation; NBOX, an entity of unknown  
 form; and DOES 1 THROUGH 10,  
 inclusive,

Defendants.

CASE NO.

COMPLAINT FOR:

1. PATENT INFRINGEMENT [35 U.S.C. § 271];
2. COPYRIGHT INFRINGEMENT [17 U.S.C. § 501];
3. CONTRIBUTORY COPYRIGHT INFRINGEMENT [17 U.S.C. § 501];
4. TRADE DRESS INFRINGEMENT [15 U.S.C. § 1114(a)];
5. TRADE DRESS DILUTION [15 U.S.C. § 1125(c)];
6. FALSE DESIGNATION OF ORIGIN [15 U.S.C. § 1125(a)]; AND
7. UNFAIR COMPETITION UNDER CALIFORNIA B&P CODE § 17200, *et seq.*

JURY TRIAL DEMANDED

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1 Plaintiff mophie, Inc. ("Plaintiff" or "Mophie") complains and alleges against  
 2 Defendants kdlinks, Incorporated ("kdlinks") and NBOX (collectively "Defendants"),  
 3 as follows:

#### 4 INTRODUCTION

5 1. This is an action for patent, trade dress and copyright infringement,  
 6 dilution of trade dress, unfair business practices and unfair competition. The action  
 7 arises out of Defendant kdlinks' wholesale duplication of Mophie's patented design  
 8 for an integrated portable battery case for use with the Apple iPhone, its intentional  
 9 replication of Mophie's distinctive trade dress, and its distribution and sale of a  
 10 competing product, that is so strikingly similar to Mophie's product and trade dress  
 11 that the mimicry could not have happened by chance. Additionally, Mophie brings a  
 12 separate claim against, NBOX, kdlinks' distributor for contributory copyright  
 13 infringement.

14 2. Mophie is an award-winning designer and manufacturer of mobile  
 15 intelligent devices and accessories with global brand recognition. Mophie is highly  
 16 acclaimed in the United States and internationally for its creative designs and  
 17 innovative solutions, including the "Mophie Juice Pack" portable battery case  
 18 certified by Apple, Inc. for use with iPhones. In fact, when Mophie launched its first  
 19 generation "Mophie Juice Pack" product, it was the first company to explore the  
 20 novel concept of implanting batteries into cases for portable electronic devices.  
 21 Today, Mophie designs and manufactures a range of cases and accessories for the  
 22 Apple iPhone, iPod and iPad products and has become one of the most successful  
 23 manufacturers of portable battery cases in the industry. The success of the "Mophie  
 24 Juice Pack" product was hard-earned through Mophie's substantial investment in  
 25 product development, design innovation and global marketing and advertising.

26 3. Seeking to prey on the success of the "Mophie Juice Pack," and the  
 27 goodwill generated by Mophie over the years, kdlinks has blatantly copied Mophie's  
 28 innovative technology and product design, as well as its distinctive packaging, in

1 violation of Mophie's valuable intellectual property rights. As alleged below, kdlinks  
 2 has made its "Power Pack" portable battery case, including its packaging, look  
 3 shockingly like Mophie's product (but with inferior quality) through pervasive patent,  
 4 copyright, and trade dress infringement.

5 4. By this action, Mophie seeks compensation for the blatant and  
 6 intentional violations of its intellectual property rights and injunctive relief  
 7 prohibiting Defendants from further engaging in this unlawful conduct.

#### 8 JURISDICTION AND VENUE

9 5. This Court has subject matter jurisdiction under 15 U.S.C. § 1121  
 10 (action arising under the Lanham Act); 28 U.S.C. § 1331 (federal question); 28  
 11 U.S.C. § 1338(a) (any Act of Congress relating to patents or trademarks); 28 U.S.C. §  
 12 1338(b) (action asserting claim of unfair competition joined with a substantial and  
 13 related claim under the trademark laws); and 28 U.S.C. § 1367 (supplemental  
 14 jurisdiction).

15 6. This Court has personal jurisdiction over Defendants because, upon  
 16 information and belief, Defendants transact substantial and continuing business  
 17 within this district and in California generally. Among other things, Defendants have  
 18 directed advertising and solicitation of purchases in this district and in California  
 19 generally and have sold, through purchases made on Defendants' website, and  
 20 delivered to purchasers within this district and elsewhere in California, goods and  
 21 services, including goods that infringe Mophie's patent, trade dress and copyright,  
 22 causing harm to Mophie in this district and in California

23 7. Venue is proper within this district under 28 U.S.C. §§ 1391(b),(c)  
 24 because Defendants transact business within this district and offer for sale in this  
 25 district products that infringe Mophie's intellectual property rights. In addition,  
 26 venue is proper because Mophie's principal place of business is in this district and  
 27 Mophie suffered harm in this district. Moreover, a substantial part of the events  
 28 giving rise to the claims alleged herein occurred in this district.

**PARTIES**

8. Plaintiff Mophie is, and at all times mentioned herein was, a corporation duly incorporated under the laws of the State of California, with its principal place of business at 2850 Red Hill Avenue, Suite 128, Santa Ana, California.

9. Mophie is informed and believes and thereon alleges that Defendant kdlinks, Incorporated (“kdlinks”) is, and at all times mentioned herein was, a corporation duly incorporated under the laws of the State of Georgia, with its principal place of business at 210 Cotton Field Court, Alpharetta, Georgia, 30022. Upon information and belief, kdlinks designs, manufactures, and provides to the U.S. and world markets a variety of consumer electronic products including the kdlinks “Power Pack” rechargeable external battery case for the Apple iphone 4/4S (hereinafter the “Power Pack”).

10. Mophie is informed and believes and thereon alleges that Defendant NBOX (“NBOX”) is, and at all times mentioned herein was, an entity of unknown form, with its principal place of business at 210 Cotton Field Court, Alpharetta, Georgia, 30022.

11. Mophie is informed and believes and thereon alleges that NBOX is, and at all times mentioned herein was, the U.S. distributor for kdlinks and marketed, sold, or offered for sale a variety of kdlinks products including the Power Pack.

12. Kdlinks and NBOX are hereinafter referred to collectively as “Defendants.”

13. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants sued herein as DOES 1 through 10, inclusive, are unknown to Mophie at this time (“Doe Defendants”), who therefore sues said Doe Defendants by such fictitious names. When the true names and capacities of said Doe Defendants have been ascertained, Mophie will seek leave to amend this Complaint accordingly. Mophie is informed and believes and thereupon alleges that each defendant designated herein as a Doe Defendant is liable and/or responsible in

1 some manner for the events and happenings herein complained of and has caused  
2 injuries and damages thereby to Mophie, as hereinafter alleged.

3 14. Mophie is informed and believes and thereon alleges that at all times  
4 herein mentioned, each of the Defendants sued herein was the agent and/or employee  
5 of each of the remaining Defendants and at all times were acting within the purpose  
6 and scope of such agency and employment, with the permission and consent of their  
7 Co-Defendants and with the knowledge, authorization, permission and consent and/or  
8 subsequent ratification and approval of each Co-Defendant.

### 9 FACTS

#### 10 A. The "Mophie Juice Pack" Brand

11 15. Mophie was founded in 2005 as mStation Corporation, which  
12 specialized in designing and manufacturing speakers and ports for Apple's iPod line.  
13 In 2007, mStation purchased the assets of Mophie, Inc., a Vermont corporation  
14 specializing in accessories for the Apple iPod. The company took the "mophie"  
15 name for its products and launched its first generation "Juice Pack" portable  
16 integrated battery case. In 2010, mStation Corporation changed its name to Mophie,  
17 Inc., the Plaintiff herein.

18 16. Mophie designs and manufactures a range of cases, battery packs,  
19 holsters, and processing and interface platforms for use with mobile devices, which  
20 are distributed through multiple channels worldwide, including Apple stores, Best  
21 Buy, Staples, Sprint, Verizon and AT&T stores, domestic retail stores and global  
22 retail distributors and through online sales.

23 17. Mophie is particularly noted for its strong partnership with Apple. The  
24 "Mophie Juice Pack" line of products was the first line of rechargeable external  
25 battery cases certified by Apple. Mophie's product development team collaborates  
26 closely with Apple to enable compelling solutions and quick entry time to market  
27 and, today, Mophie makes the best-selling external battery case for several of Apple's  
28 products including the iPhone, iPod and iPad. Currently, "Mophie Juice Pack"



1 products are the only integrated-battery cases carried in Apple stores and available  
2 through Apple online stores.

3 **B. Mophie's Patented Designs for its "Mophie Juice Pack" Products**

4 18. Mophie has been a pioneer in developing new and original portable  
5 battery devices, including advancing the functionality and design of integrated battery  
6 cases for mobile electronic devices. Mophie has thirty patents and patents pending  
7 related to the design and functionality of its products.

8 19. Mophie owns, through assignment, United States Design Patent No. US  
9 D653,202 S, issued January 31, 2012, based upon an application No. 29/369,362,  
10 filed September 7, 2010 (the "'202 Patent"). A true and correct copy of the '202  
11 Patent is attached hereto as Exhibit A.

12 20. The '202 Patent was invented by William Hasbrook, Sean Stuck,  
13 Matthew Brand and Daniel Huang, all of whom were employees or contractors of  
14 Mophie, who invented the novel and original battery-enabled case design in the scope  
15 of their employment by Mophie and specifically for the "Mophie Juice Pack" line of  
16 accessories for the iPhone 4/4G models. The '202 Patent is related to another Mophie  
17 patent, Patent #D616361, issued May 25, 2010 (the "'361 Patent"), which claims the  
18 horseshoe case design for Mophie accessories to the iPhone 3/3G models.

19 21. The claim of the '202 Patent (as with those of the '361 Patent) is an  
20 "ornamental design for a battery case" for a mobile phone, as shown in the twenty  
21 nine drawings supporting the patent. The drawings indicate a unique and ornamental  
22 two-part case that fits onto the backside of the mobile electronic device from both the  
23 top and bottom ends and "clicks" together in the middle. The top portion of the case  
24 has a distinctive and unique "horseshoe" shape, that cradles the top of the device and  
25 fits into the bottom portion's tabbed shape, the two parts clicking together to form a  
26 complete back cover of the device.  
27  
28

22. Between the '202 Patent and '361 Patents, Mophie has the exclusive rights to use the unique horseshoe design in connection with battery-integrated mobile phone cases for the iPhone 3/3G and iPhone 4/4S models.

**C. Mophie's Copyright for the "Mophie Juice Pack"**

23. Mophie obtained and registered a United States Copyright, registration VA 1-758-285, effective December 13, 2010, for the "Mophie JPA iPhone 4 Package and Insert." (the "'285 Copyright"). The '285 Copyright covered all text, photographs and 2-D artwork found on the package and insert for the "Mophie Juice Pack Air" for the iPhone 4/4S models. A true and correct copy of the certificate of registration for the '285 Copyright is attached hereto as Exhibit B.

**D. The "Mophie Juice Pack" Trade Dress**

24. The "Mophie Juice Pack" trade dress is comprised of its distinctive packaging, which is consistently used across Mophie's product line and contributes to the recognition and identification of Mophie's products as such. Mophie has used the Mophie Trade Dress in interstate commerce continuously and uninterrupted since at least 2009.

25. The Mophie Trade Dress consists of a rectangular box with eye-catching bright white lettering on a matte black surface and a simple, glossy, high-resolution color image of the iphone (displaying its battery indicator and nestled inside the "Mophie Juice Pack" product) featured prominently on the center of the box. The image is displayed vertically with the right side of the phone angled toward the foreground to show the cut-out window on the side of the case for access to the phone's volume buttons.

26. The box also features a vertical flip-open front cover with a clear plastic "peek through" window through which the product, and nothing else, is immediately visible. The accessories and instruction materials are hidden from view. Further, on the inside of the flip-open cover are detailed black and white graphic diagrams of the case with instructions describing the product's functions and use.

1           27. In addition, underneath the “peek through” plastic window is the tagline  
2 “more time to rock, talk, surf and send!” On the back of the box there are five black  
3 and white graphics, each containing a stylized symbol illustrating the product’s  
4 functions and which are displayed in the following order: “protective case,” “charge  
5 and sync,” “stand-by switch,” “LED power indicator” and “lightweight soft-touch.”

6           28. The component elements of the trade dress, and their combination, as  
7 described above, are non-functional and inherently distinctive and used on all of  
8 Mophie’s products to identify Mophie as the source of the product (the “Mophie  
9 Trade Dress”). The Mophie Trade Dress has become universally associated in the  
10 public mind with Mophie’s products and services, and with their high quality and  
11 reputation.

12 **E. “Mophie Juice Pack’s” National and Worldwide Recognition**

13           29. Mophie is well-recognized as a leader in the mobile electronic device  
14 batteries and battery-related accessories market, and has received significant media  
15 and industry recognition, press coverage and awards for the superior quality of its  
16 “Mophie Juice Pack” product line.

17           30. The “Mophie Juice Pack” is the best-selling iPhone battery-related  
18 accessory, and is sold in over 10,000 retail outlets in the United States.

19           31. Mophie has strategic partnerships with leading cellular phone service  
20 providers, such as AT&T, Sprint, Verizon and Rogers. Mophie has collaborative  
21 relationships with prominent electronics retailers, including Apple, inMotion and O2.  
22 Mophie also has distribution relationships with major retailers, including  
23 Amazon.com, Best Buy, Staples, Buy.com and Macy’s.

24           32. Mophie has steadily grown its international distribution network, and  
25 today its “Mophie Juice Pack” products are distributed in fifty eight countries  
26 worldwide, including the majority of the developed countries of North America,  
27 Europe and Asia.  
28



33. Mophie has expended significant time and resources to advertise, market, promote and support its products bearing the Mophie Trade Dress, and to develop consumer recognition and awareness of its marks and trade dress. Mophie and its “Mophie Juice Pack” products are routinely referenced by third-parties in various forms of media, both within the hi-tech industry and in the general market press.

34. Through these efforts, and through Mophie's production and sale of the highest quality products, the Mophie Trade Dress has become well-known in the marketplace, has developed the goodwill of Mophie, and has developed consumer identification of the “Mophie Juice Pack” and its trade dress with Mophie's products.

#### **F. The Infringing “Power Pack” Product and Trade Dress**

35. Upon information and belief, Defendants were fully aware of the huge success of Mophie’s Juice Pack products and use of Mophie’s Trade Dress to market and sell such products, by virtue of the fact that Mophie is the leading manufacturer and distributor in the iPhone accessory market. Notwithstanding such knowledge, however, kdlinks and its distributor, NBOX, knowingly and willfully embarked on a course of outrageous commercial and intellectual piracy by importing, marketing and selling to consumers in California and elsewhere, a rechargeable external battery case for the iPhone 4/4S in packaging that is confusingly similar to and which infringes Mophie’s intellectual property rights, including its copyright and trade dress. Upon information and belief, the kdlinks’ battery pack is sold under the trade name “Power Pack.”

36. The “Power Pack” packaging design, which includes the very same images, artwork and text found in the Mophie Trade Dress, is confusingly similar to the Mophie Trade Dress and creates the same commercial impression (the “Power Pack Trade Dress”).

37. In addition, the “Power Pack” product imitates the unique horseshoe shape that is covered by Mophie's '202 Patent – indeed it adopts the unique aspects of

1 the design wholesale. Upon information and belief, the "Power Pack" includes all of  
2 the ornamental designs of the '202 Patent drawings.

3 38. Upon information and belief, the infringing "Power Pack" product is  
4 marketed and sold to the same end-user customers as Mophie.

5 39. The "Power Pack" product is listed on kdlinks' website under the  
6 category "iPhone/iPod Case" where it is described as "the kdLinks iPhone 4 Supreme  
7 SlimFit Battery Case."

8 40. In addition, upon information and belief, kdlinks and its distributor,  
9 NBOX, have also advertised the "Power Pack" on third-party websites, including  
10 amazon.com and ebay.com, where the "Power Pack" is listed as the "kdLinks iPhone  
11 4 & 4S Juice Pack Power Backup Boost Air Charger Battery Case." In such  
12 advertisements, Defendants described the product as follows: "The case quality is  
13 supreme, made by the same OEM manufacture [sic] of M-Juice. The only  
14 differences are: our price is cheaper, and our customer service is better." In addition,  
15 the "Power Pack" is claimed to be "Made by Apple Certified manufacture [sic] for  
16 iPhone product and OTA certified. *Dare to compare it with any overpriced famous*  
17 *brands.*" (Emphasis added).

18 41. Upon information and belief, this statement is false and/or deceptive  
19 inasmuch as there are significant differences between the quality, functioning and  
20 merchantability of the two products. Moreover, this statement falsely implies to the  
21 consumer that Mophie's products are of the same poor quality and workmanship as  
22 the "Power Pack."

23 42. Further, on the bottom right hand corner of the "Power Pack" packaging,  
24 kdlinks has placed a small white rectangular logo indicating that the "Power Pack"  
25 has been "made for iPhone" ("Mfi").<sup>1</sup> Upon information and belief, kdlinks'

26  
27 <sup>1</sup> It should be noted that a "made for iPhone" or "Mfi" certification allows the  
28 manufacturer of a product to use the Mfi logo on its packaging based on a license  
from Apple.

1 placement of an Mfi certification on the "Power Pack" is false and/or deceptive  
2 inasmuch as kdlinks has not received any license from Apple to place an Mfi  
3 certification on its product.

4 43. Upon information and belief, the "Power Pack" is being marketed at a  
5 lower recommended retail price (\$39.99) than comparable "Mophie Juice Pack"  
6 products (\$79.99-\$99.99). Furthermore, upon information and belief, the "Power  
7 Pack" is made of inferior materials and workmanship as compared to similar  
8 "Mophie Juice Pack" products. For example, the "Power Pack" uses a non-standard  
9 Apple dock connector which lacks the structural support found on a standard Apple  
10 dock connector. In addition, the "Power Pack" battery lacks any form of labeling and  
11 uses a non-USB proprietary connector and cable. Further, the LED flood lamps in  
12 the "Power Pack" are less luminescent than the LEDs found in the Mophie Juice Pack.  
13 The push button on the "Power Pack" is made of a cheaper plastic, and uses a very  
14 cheap plastic band that is wrapped around the edge of the device and adheres to the  
15 shell of the battery case by double sided tape. Finally, the circuit design for the  
16 "Power Pack" has less circuitry than the "Mophie Juice Pack" and uses a simple  
17 diode (possibly for reverse voltage and current) rather than a series of integrated  
18 circuits that are used to protect against overvoltage and overcurrent conditions as  
19 used by Mophie. Using such a diode reduces the overall efficiency of voltage being  
20 supplied at the output.

21 44. Upon information and belief, the "Power Pack" packaging was designed  
22 to be confusingly similar to the Mophie Trade Dress in an effort to willfully and  
23 unfairly trade upon Mophie's goodwill.

24 45. The "Power Pack" directly competes with Mophie's established product  
25 in that the products serve identical functions, and are being sold into the same  
26 geographical areas, in the same market space and to the same customers. Consumers  
27 are likely to become confused that, among other things, the "Power Pack" is produced  
28

1 by Mophie and that Mophie endorses or sponsors or otherwise authorized or is  
2 connected with kdlinks and/or NBOX.

3 **G. The Infringing "Power Pack" Product and Trade Dress Has Harmed and**  
4 **Will Harm Mophie**

5 46. The use of the Mophie Trade Dress to market and sell the competing  
6 "Power Pack" battery is likely to cause confusion, mistake or deception as to the  
7 source of origin, sponsorship or approval of the "Power Pack" in that customers and  
8 potential customers are likely to believe that Mophie authorizes and controls the sale  
9 of the "Power Pack" or that kdlinks and/or NBOX are associated with or related to  
10 Mophie.

11 47. Mophie is informed and believes that Defendants have injured or are  
12 likely to injure Mophie's image and reputation with consumers by creating confusion  
13 and dissatisfaction with "Mophie Juice Pack" products, a diminution of the value of  
14 goodwill associated with the "Mophie Juice Pack," and a loss of sales and market  
15 share.

16 48. Mophie has contacted Defendants regarding their infringement of  
17 Mophie's intellectual property rights. Defendants, however, have refused to cease  
18 and desist from using their infringing product and trade dress, from marketing and  
19 selling their infringing product, or from otherwise producing, selling or distributing  
20 products that use the infringing trade dress. Upon information and belief, Defendants  
21 continue to advertise, sell and distribute the "Power Pack" using the infringing trade  
22 dress.

23 49. Mophie will suffer irreparable injury if Defendants are not preliminarily  
24 and permanently enjoined from continuing their willful infringement of Mophie's  
25 rights in and to the '202 Patent, the '285 Copyright and Mophie Trade Dress.

26 ///

27 ///

**FIRST CAUSE OF ACTION****(Federal Patent Infringement)****(35 U.S.C. § 271)****(Against Defendant kdlinks and Does 1-10)**

50. Mophie re-alleges and incorporates by references the allegations set forth in paragraphs 1 through 49 above.

51. Mophie is the owner of the '202 Patent.

52. Upon information and belief, kdlinks has infringed and continues to infringe the '202 Patent by using, selling and/or offering to sell, in the United States and/or importing into the United States, the "Power Pack" which embodies the design covered by the '202 Patent. Upon information and belief, the "Power Pack" includes all of the ornamental designs of the '202 Patent drawings. By its conduct, kdlinks has violated 35. U.S.C. § 271 by direct infringement of the '202 Patent and by inducing others to infringe the design covered by the '202 Patent.

53. Mophie is informed and believes, and on that basis alleges, that kdlinks has gained profits by virtue of its infringement of the '202 Patent.

54. As a direct and legal result of kdlinks' wrongful conduct, Mophie has been and will be irreparably and permanently harmed; wherefore Mophie is without an adequate remedy at law. Accordingly, Mophie is entitled to, among other things, an order enjoining and restraining kdlinks from further engaging in the infringement of the '202 Patent.

55. Kdlinks' infringement of the '202 Patent is and has been willful. Accordingly, Mophie is entitled to its monetary damages, in an amount to be proven at trial, an award of treble damages, and its reasonable attorney's fees and costs.

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**SECOND CAUSE OF ACTION**

**(Copyright Infringement)**

**(17 U.S.C. § 501)**

**(Against Defendant kdlinks and Does 1-10)**

56. Mophie re-alleges and incorporates by references the allegations set forth in paragraphs 1 through 55 above.

57. Mophie is, and at all times mentioned herein has been, the sole entity authorized to control and administer in the United States the '285 Copyright and is the exclusive owner of the Mophie Trade Dress.

58. Kdlinks has never sought, and Mophie has never granted to kdlinks, any license to use the '285 Copyright.

59. Upon information and belief, kdlinks has infringed and continues to infringe the '285 Copyright by using, selling and/or offering to sell, in the United States and/or importing into the United States, its "Power Pack" product which embodies the text, photographs and 2-D artwork covered by the '285 Copyright.

60. Mophie is informed and believes, and on that basis alleges, that kdlinks has gained profits by virtue of its infringement of the '285 Copyright.

61. As a direct and legal result of kdlinks' acts of copyright infringement, Mophie is entitled to damages and kdlinks profits pursuant to 17 U.S.C. § 504(b), or alternatively, to the maximum statutory damages in the amount of \$150,000 with respect to each infringed copyright pursuant to 17 U.S.C. § 504(c).

62. Mophie is additionally entitled to its attorney's fees pursuant to 17 U.S.C. § 505.

63. As a direct and legal result of kdlinks' wrongful conduct, Mophie has been and will be irreparably and permanently harmed; wherefore Mophie is without an adequate remedy at law. Accordingly, Mophie is entitled to, among other things, an order enjoining and restraining kdlinks from further engaging in the infringement of the '285 Copyright, as well as an order pursuant to 17 U.S.C. § 503 for

1 impoundment and destruction of all products, instruction manuals, packaging,  
 2 images, and promotional materials infringing on Mophie's copyright or any  
 3 simulation, reproduction, counterfeit, copy, confusingly similar variation or colorable  
 4 imitation thereof, and all plates, molds, matrices, and other means of making the  
 5 same.

6 **THIRD CAUSE OF ACTION**  
 7 **(Contributory Copyright Infringement)**  
 8 **(17 U.S.C. § 501)**  
 9 **(Against All Defendants)**

10 64. Mophie re-alleges and incorporates by references the allegations set  
 11 forth in paragraphs 1 through 63 above.

12 65. Defendants, and each of them, have engaged and continue to engage in  
 13 the business of knowingly and willfully importing, offering for sale and distributing  
 14 the infringing "Power Pack" by each of the other Defendants, as well as by the  
 15 wholesale purchasers of the "Power Pack" from Defendants, who thereafter  
 16 themselves distributed the infringing goods in commerce by, among other things,  
 17 sales to ultimate consumers. Each of the Defendants has acted in concert with those  
 18 who have directly infringed Mophie's copyright. Defendants each have known that  
 19 this infringing conduct occurs because they know that the "Power Pack" infringes  
 20 upon Mophie's copyright because, among other reasons, Defendants were aware of  
 21 the commercial success of the "Mophie Juice Pack" products. Defendants' conduct  
 22 constitutes contributory infringement of Mophie's copyright.

23 66. The foregoing acts of contributory infringement by Defendants have  
 24 been willful, intentional and purposeful, in disregard of and indifference to the rights  
 25 of Mophie.

26 67. As a direct and legal result of Defendants' acts of contributory  
 27 infringement, Mophie is entitled to damages and Defendants' and others' profits  
 28 pursuant to 17 U.S.C. § 504(b), or alternatively, to the maximum statutory damages

1 in the amount of \$150,000 with respect to each infringed copyright pursuant to 17  
2 U.S.C. § 504(c).

3 68. Mophie is additionally entitled to its attorney's fees pursuant to 17  
4 U.S.C. § 505.

5 69. As a direct and legal result of Defendants' wrongful conduct, Mophie  
6 has been and will be irreparably and permanently harmed; wherefore Mophie is  
7 without an adequate remedy at law. Accordingly, Mophie is entitled to, among other  
8 things, an order enjoining and restraining Defendants from further engaging in the  
9 contributory infringement of the '285 Copyright, as well as an order pursuant to 17  
10 U.S.C. § 503 for impoundment and destruction of all products, instruction manuals,  
11 packaging, images, and promotional materials infringing on Mophie's copyright or  
12 any simulation, reproduction, counterfeit, copy, confusingly similar variation or  
13 colorable imitation thereof, and all plates, molds, matrices, and other means of  
14 making the same.

#### 15 **FOURTH CAUSE OF ACTION**

#### 16 **(Federal Trade Dress Infringement)**

#### 17 **(15 U.S.C. § 1114)**

#### 18 **(Against Defendant kdlinks and Does 1-10)**

19 70. Mophie re-alleges and incorporates by reference the allegations set forth  
20 in paragraphs 1 through 69 above.

21 71. Mophie has used the Mophie Trade Dress in interstate commerce since  
22 at least 2009. Such use has been continuous, uninterrupted and precedes kdlinks' use  
23 of the infringing trade dress described above.

24 72. The Mophie Trade Dress is non-functional and inherently distinctive  
25 and/or has acquired secondary meaning. Further, the Mophie Trade Dress has  
26 become universally associated in the public mind with the products and services of  
27 the very highest quality and reputation finding their source in Mophie.  
28

1           73. Upon information and belief, without Mophie's authorization or consent,  
2 and having knowledge of Mophie's well-known and prior rights in the Mophie Trade  
3 Dress, kdlinks has imported, distributed, offered for sale, and/or sold the "Power  
4 Pack" using packaging incorporating a majority of the artistic elements found in  
5 Mophie's inherently distinctive trade dress and which is confusingly similar to the  
6 Mophie Trade Dress.

7           74. kdlinks' use of infringing trade dress is likely to cause and is causing  
8 confusion, and a mistaken perception among the general purchasing public as to the  
9 origin of the "Power Pack." It is likely to deceive the public into believing that the  
10 "Power Pack" originated from, or is associated with, or otherwise authorized by  
11 Mophie, all to the damage and detriment of sales.

12           75. kdlinks' use of infringing trade dress enables kdlinks to benefit unfairly  
13 from Mophie's reputation and success, thereby giving the "Power Pack" sales and  
14 commercial value it would not otherwise have.

15           76. The foregoing acts of trade dress infringement by kdlinks have been  
16 willful, intentional and purposeful, in disregard of and indifference to the rights of  
17 Mophie.

18           77. Mophie is informed and believes, and on that basis alleges, that kdlinks  
19 has gained profits by virtue of its infringement of the Mophie Trade Dress.

20           78. Mophie also has sustained damages as a direct and proximate result of  
21 kdlinks' infringement of the Mophie Trade Dress in an amount to be proven at trial.

22           79. Mophie will suffer and is suffering irreparable harm from kdlinks' trade  
23 dress infringement insofar as Mophie's invaluable goodwill is being eroded by  
24 kdlinks' continuing infringement. Mophie has no adequate remedy at law to

25 compensate it for the loss of business reputation, customers, market  
26 position, and goodwill and confusion of potential customers flowing from kdlinks'  
27 infringing activities. Mophie is therefore entitled to an injunction against kdlinks'  
28

1 continuing infringement of Mophie's trade dress. Unless enjoined, kdlinks will  
2 continue its infringing conduct.

3 80. Because kdlinks' actions have been committed with intent to damage  
4 Mophie and to confuse and deceive the public, Mophie is entitled to kdlinks' profits,  
5 treble Mophie's actual damages, an award of costs, and, this being an exceptional  
6 case, reasonable attorney's fees pursuant to 15 U.S.C. § 1117(a).

7 **FIFTH CAUSE OF ACTION**

8 **(Federal Trade Dress Dilution)**

9 **(15 U.S.C. § 1125(c))**

10 **(Against Defendant kdlinks and Does 1-10)**

11 81. Mophie re-alleges and incorporates by references the allegations set  
12 forth in paragraphs 1 through 80 above.

13 82. Mophie has used the Mophie Trade Dress in interstate commerce since  
14 at least 2009. Such use has been continuous, uninterrupted and precedes kdlinks' use  
15 of the infringing trade dress.

16 83. The Mophie Trade Dress is non-functional and inherently distinctive  
17 and/or has acquired secondary meaning.

18 84. kdlinks' use of its infringing trade dress in commerce has caused and  
19 will continue to cause dilution of the distinctive quality of the Mophie Trade Dress in  
20 violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

21 85. kdlink's acts have injured or are likely to injure Mophie's image and  
22 reputation with consumers in this Judicial District and elsewhere in the United States  
23 by creating confusion and dissatisfaction with "Mophie Juice Pack" products, a  
24 diminution of the value of goodwill associated with "Mophie Juice Pack" products  
25 and trade dress, and a loss of sales and market share.

26 86. The foregoing acts of trade dress dilution by kdlinks have been willful,  
27 intentional and purposeful, in disregard of and indifference to the rights of Mophie.  
28



1 87. Mophie is informed and believes, and on that basis alleges, that kdlinks  
2 has gained profits by virtue of its infringement of the Mophie Trade Dress.

3 88. Mophie also has sustained damages as a direct and proximate result of  
4 kdlinks' dilution of the Mophie Trade Dress in an amount to be proven at trial.

5 89. Mophie will suffer and is suffering irreparable harm from kdlinks' trade  
6 dress dilution insofar as Mophie's invaluable goodwill is being eroded by kdlinks'  
7 continuing dilution. Mophie has no adequate remedy at law to compensate it for the  
8 loss of business reputation, customers, market position, and goodwill and confusion  
9 of potential customers flowing from kdlinks' infringing activities. Mophie is  
10 therefore entitled to an injunction against kdlinks' continuing infringement of  
11 Mophie's trade dress. Unless enjoined, kdlinks will continue its infringing conduct.

12 90. Because kdlinks' actions have been willful, Mophie is entitled to  
13 kdlinks' profits, treble Mophie's actual damages, an award of costs, and, this being an  
14 exceptional case, reasonable attorney's fees pursuant to 15 U.S.C. § 1117(a).

#### 15 **SIXTH CAUSE OF ACTION**

16 **(Federal False Designation of Origin and Unfair Competition)**

17 **(15 U.S.C. § 1125(a))**

18 **(Against Defendant kdlinks and Does 1-10)**

19 91. Mophie re-alleges and incorporates by references the allegations set  
20 forth in paragraphs 1 through 90 above.

21 92. Mophie has used the Mophie Trade Dress in interstate commerce since  
22 at least 2009. Such use has been continuous, uninterrupted and precedes kdlinks' use  
23 of the infringing trade dress.

24 93. The Mophie Trade Dress is non-functional and inherently distinctive  
25 and/or has acquired secondary meaning. Further, the Mophie Trade Dress has  
26 become universally associated in the public mind with the products and services of  
27 the very highest quality and reputation.  
28

1           94. kdlinks has infringed the Mophie Trade Dress by, inter alia, using a  
2 confusingly similar trade dress in connection with the sale, offering for sale and  
3 advertising of its unauthorized competing product.

4           95. kdlinks acts have caused or are likely to cause confusion, mistake or  
5 deception as to the source of origin, sponsorship or approval of the "Power Pack" in  
6 that purchasers and others in this Judicial District and elsewhere in the United States  
7 are likely to believe that Mophie authorizes and controls the sale of the "Power Pack"  
8 or that kdlinks is associated with or related to Mophie.

9           96. kdlinks actions constitute unfair competition and false designation of  
10 origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

11           97. kdlinks' use of the "Power Pack" trade dress misappropriates the  
12 extensive and valuable goodwill built up by Mophie in the Mophie Trade Dress.

13           98. kdlinks' acts have injured or are likely to injure Mophie's image and  
14 reputation with consumers in this Judicial District and elsewhere in the United States  
15 by creating confusion and dissatisfaction with Mophie Juice Pack products, a  
16 diminution of the value of goodwill associated with the Mophie Trade Dress and a  
17 loss of sales and market share.

18           99. kdlinks' acts greatly and irreparably damage Mophie and will continue  
19 to so damage Mophie unless restrained by this Court; wherefore Mophie is without an  
20 adequate remedy at law. Accordingly, Mophie is entitled to, among other things, an  
21 order enjoining and restraining kdlinks from using the infringing trade dress in the  
22 marketing or sale of the "Power Pack" or any other battery-related accessories in the  
23 United States.

24           100. As a direct and legal result of kdlinks' conduct, Mophie has been  
25 damaged in an amount to be proven at trial.

26           101. Upon information and belief, kdlinks has unlawfully profited in an  
27 amount to be proven at trial.  
28

102. kdlinks' conduct was committed with the intent to cause confusion and mistake and to deceive, and was otherwise deliberate, knowing, willful and/or in bad faith. Mophie is therefore entitled to recovery of treble damages pursuant to 15 U.S.C. § 1117(a). Further, kdlinks' knowing, intentional and/or willful actions make this an exceptional case, entitling Mophie to an award of reasonable attorney's fees pursuant to § 1117(a).

## **SEVENTH CAUSE OF ACTION**

### **(Unfair Competition)**

**(Cal. Bus. & Prof. Code § 17200, *et seq.*)**

### **(Against All Defendants)**

103. Mophie re-alleges and incorporates by references the allegations set forth in paragraphs 1 through 102 above.

104. Defendants have committed and will continue to commit unlawful, unfair or fraudulent business acts and practices and unfair, deceptive, untrue or misleading advertising in violation of California Business & Professions Code, § 17200, *et seq.*

105. Among other things, Defendants have infringed and will continue to infringe upon Mophie's exclusive right to use the '202 Patent, '285 Copyright and Mophie Trade Dress with respect to mobile electronic device batteries and battery-related accessories, and have confused and will continue to confuse or mislead the public as to the source, origin or sponsorship of the "Power Pack."

106. Defendants' acts have caused, or are likely to cause, confusion as to the quality of Mophie's products, which confusion cannot be easily remedied.

107. Defendant's acts have injured or are likely to injure Mophie's image and reputation with consumers in this Judicial District and elsewhere in the United States by creating confusion and dissatisfaction with "Mophie Juice Pack" products, a diminution of the value of goodwill associated with "Mophie Juice Pack" products and trade dress and a loss of sales and market share.

1 108. Further, upon information and belief Defendants have falsely advertised  
 2 in both ads and on packaging for the "Power Pack" that their product is "Made for  
 3 iPhone" or "Made by Apple Certified manufacture [sic] for iPhone product and OTA  
 4 certified." Such statements are false and/or deceptive as the "Power Pack" has never  
 5 received any such certification from Apple.

6 109. Unless Defendants are restrained from continuing their unfair, unlawful  
 7 and misleading practices, Mophie will suffer irreparable injury; wherefore Mophie is  
 8 without an adequate remedy at law. Accordingly, Mophie is entitled to, among other  
 9 things, an order enjoining and restraining Defendants from further engaging in unfair  
 10 competition by using the '202 Patent, '285 Copyright and Mophie Trade Dress in  
 11 connection with the sale of the "Power Pack" product or any other mobile electronic  
 12 device battery and battery-related accessory in the United States.

13 110. As a further direct and legal result of Defendants' conduct, Mophie  
 14 seeks that the Court order Defendants to disgorge all profits wrongfully obtained as a  
 15 result of their unfair competition and that Defendants be ordered to pay restitution to  
 16 Mophie in an amount to be proven at trial. Further, Mophie is entitled to its  
 17 reasonable attorney's fees and costs.

### 18 **PRAYER FOR RELIEF**

19 WHEREFORE, Mophie prays for relief, as follows:

- 20 1. A judgment that kdlinks has infringed the '202 Patent;
- 21 2. An order and judgment preliminarily and permanently enjoining kdlinks  
 22 and its officers, directors, agents, servants, employees, affiliates, attorneys, and all  
 23 others acting in privity or in concert with them, and their parents, subsidiaries,  
 24 divisions, successors and assigns from further acts of infringement of Mophie's  
 25 asserted patent;
- 26 3. A judgment awarding Mophie all damages adequate to compensate for  
 27 kdlinks infringement of Mophie's asserted patent, and in no event less than a  
 28

1 reasonable royalty for kdlinks' acts of infringement, including all pre-judgment and  
2 post-judgment interest at the maximum rate permitted by law;

3 4. A judgment awarding Mophie all damages, including treble damages,  
4 based on any infringement found to be willful, pursuant to 35 U.S.C. § 284, together  
5 with prejudgment interest.

6 5. A judgment awarding Mophie all of kdlinks' profits, pursuant to 35  
7 U.S.C. § 289 together with prejudgment interest.

8 6. A judgment that Defendants have infringed the '285 Copyright;

9 7. An order and judgment preliminarily and permanently enjoining  
10 Defendants and their officers, directors, agents, servants, employees, affiliates,  
11 attorneys, and all others acting in privity or in concert with them, and their parents,  
12 subsidiaries, divisions, successors and assigns from further acts of infringement of  
13 Mophie's asserted copyright;

14 8. A judgment awarding Mophie, at its election, either (i) actual damages  
15 and the profits derived by Defendants as a result of their infringement of Mophie's  
16 asserted copyright or (ii) statutory damages in the maximum amount permitted under  
17 applicable law with respect Mophie's infringed copyright.

18 9. An order, pursuant to 17 U.S.C. § 503, and other applicable law,  
19 directing Defendants to deliver for impoundment and destruction of all products,  
20 instruction manuals, packaging, images, and promotional materials infringing on  
21 Mophie's copyright or any simulation, reproduction, counterfeit, copy, confusingly  
22 similar variation or colorable imitation thereof, and all plates, molds, matrices, and  
23 other means of making the same.

24 10. A judgment that kdlinks has infringed the Mophie Trade Dress;

25 11. An order preliminarily and permanently enjoining kdlinks and its  
26 officers, directors, agents, servants, employees, affiliates, attorneys, and all others  
27 acting in privity or in concert with them, and their parents, subsidiaries, divisions,  
28 successors and assigns, from directly or indirectly infringing or diluting the Mophie



1 Trade Dress, or using any other product or packaging design or designations similar  
 2 to or likely to cause confusion with or to dilute the Mophie Trade Dress; from  
 3 committing any other unfair business practices directed toward obtaining for  
 4 themselves the business and customers of Mophie; and from committing any other  
 5 unfair business practices directed toward devaluing or diminishing the brand or  
 6 business of Mophie.

7 12. A judgment awarding Mophie, at its election, either (i) actual damages  
 8 and the profits derived by kdlinks as a result of its infringement of the Mophie Trade  
 9 Dress or (ii) statutory damages in the maximum amount permitted under applicable  
 10 law with respect Mophie's infringed trade dress.

11 13. A judgment awarding Mophie damages suffered as a result of  
 12 Defendants' unlawful conduct, in an amount to be proven at trial, as well as  
 13 prejudgment interest as authorized by law;

14 14. An accounting of Defendants' profits pursuant to 15 U.S.C. § 1117;

15 15. A judgment trebling any damages award pursuant to 15 U.S.C. § 1117,  
 16 as a result of Defendants' wanton, deliberate, malicious and willful conduct;

17 16. Punitive damages pursuant to California Civil Code § 3294;

18 17. Restitutionary relief against Defendants and in favor of Mophie,  
 19 including disgorgement of wrongfully obtained profits and any other appropriate  
 20 relief;

21 18. Costs of suit and reasonable attorney's fees; and

22 19. Any other remedy to which Mophie may be entitled, including all  
 23 remedies provided for in 15 U.S.C. §§ 1116, 1117, 35 U.S.C. §§ 284, 285, and 289,  
 24 and Cal. Bus. & Prof. Code § 17200, et seq., and under any other law.

25 20. That the Court grant such other and further relief as the Court may deem  
 26 proper.

**DEMAND FOR JURY TRIAL**

Mophie hereby demands a trial by jury herein.

Respectfully submitted,

Dated: March 23, 2012

SCHWARZ, RIMBERG, BOYD & RADER, LLP

By: 

Kathryn Lee Boyd

Jeff D. Neiderman

Attorneys for Plaintiff MOPHIE, INC.

# EXHIBIT A



US00D653202S

(12) **United States Design Patent**  
**Hasbrook et al.**

(10) Patent No.: **US D653,202 S**  
 (45) Date of Patent: **\*\* Jan. 31, 2012**

(54) **BATTERY CASE**

(75) Inventors: **William Benjamin Hasbrook**, Tualatin, OR (US); **Sean Michael Stuck**, Portland, OR (US); **Matthew Brand**, Brooklyn, NY (US); **Daniel Huang**, Irvine, CA (US)

(73) Assignee: **Mophie, Inc.**, Santa Ana, CA (US)

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

(21) Appl. No.: **29/369,362**

(22) Filed: **Sep. 7, 2010**

(51) LOC (9) Cl. .... **13-02**

(52) U.S. Cl. .... **D13/103**

(58) Field of Classification Search ..... **D13/102-110, D13/118-119, 184, 199; D14/250, 251, D14/253, 432, 434; 320/101-102, 107-115; D3/201, 215, 218, 226, 230, 299; 429/96-100, 429/163, 176; 206/320, 701**  
 See application file for complete search history.

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(Continued)

*Primary Examiner* — **Rosemary K Tarcza**

(74) *Attorney, Agent, or Firm* — **Duane Morris LLP**

(57) **CLAIM**

The ornamental design for a battery case, as shown and described.

**DESCRIPTION**

FIG. 1 is an exploded view of the battery case, showing the two halves of the battery case detached;

FIG. 2 is an exploded front view thereof;

FIG. 3 is an exploded rear view thereof;

FIG. 4 is an exploded left-hand side view thereof;

FIG. 5 is an exploded right-hand side view thereof;

FIG. 6 is a perspective view of a mobile phone enclosed within the battery case in broken lines;

FIG. 7 is a front view of a mobile phone enclosed within the battery case;

FIG. 8 is a perspective view of the battery case, with the bottom half removed for ease of illustration;

FIG. 9 is a front view thereof;

FIG. 10 is a rear view thereof;

FIG. 11 is a left-hand side view thereof;

FIG. 12 is a right-hand side view thereof;

FIG. 13 is a perspective view of the battery case, with the bottom half removed for ease of illustration;

FIG. 14 is a front view thereof;

FIG. 15 is a rear view thereof;

FIG. 16 is a left-hand side view thereof;

FIG. 17 is a right-hand side view thereof;

FIG. 18 is a perspective view of the battery case, with the top half removed for ease of illustration, showing a mobile phone enclosed within the battery case in broken lines;

FIG. 19 is a front view thereof;

FIG. 20 is a rear view thereof;

FIG. 21 is a left-hand side view thereof;

FIG. 22 is a right-hand side view thereof;

FIG. 23 is a perspective view of the battery case, showing the two halves of the battery case joined together;

FIG. 24 is a front view thereof;

FIG. 25 is a rear view thereof;

FIG. 26 is a top view thereof;

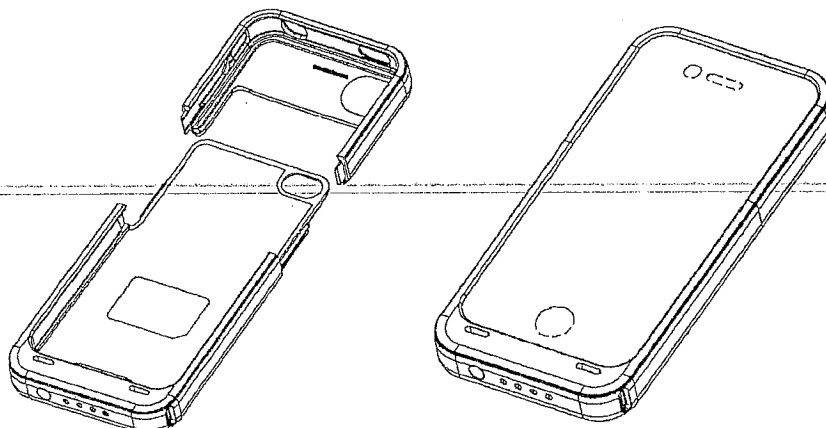
FIG. 27 is a bottom view thereof;

FIG. 28 is a left-hand side view thereof; and,

FIG. 29 is a right-hand side view thereof.

The broken lines showing the mobile phone are for the purpose of illustrating environmental structure, and forms no part of the claimed design.

**1 Claim, 29 Drawing Sheets**



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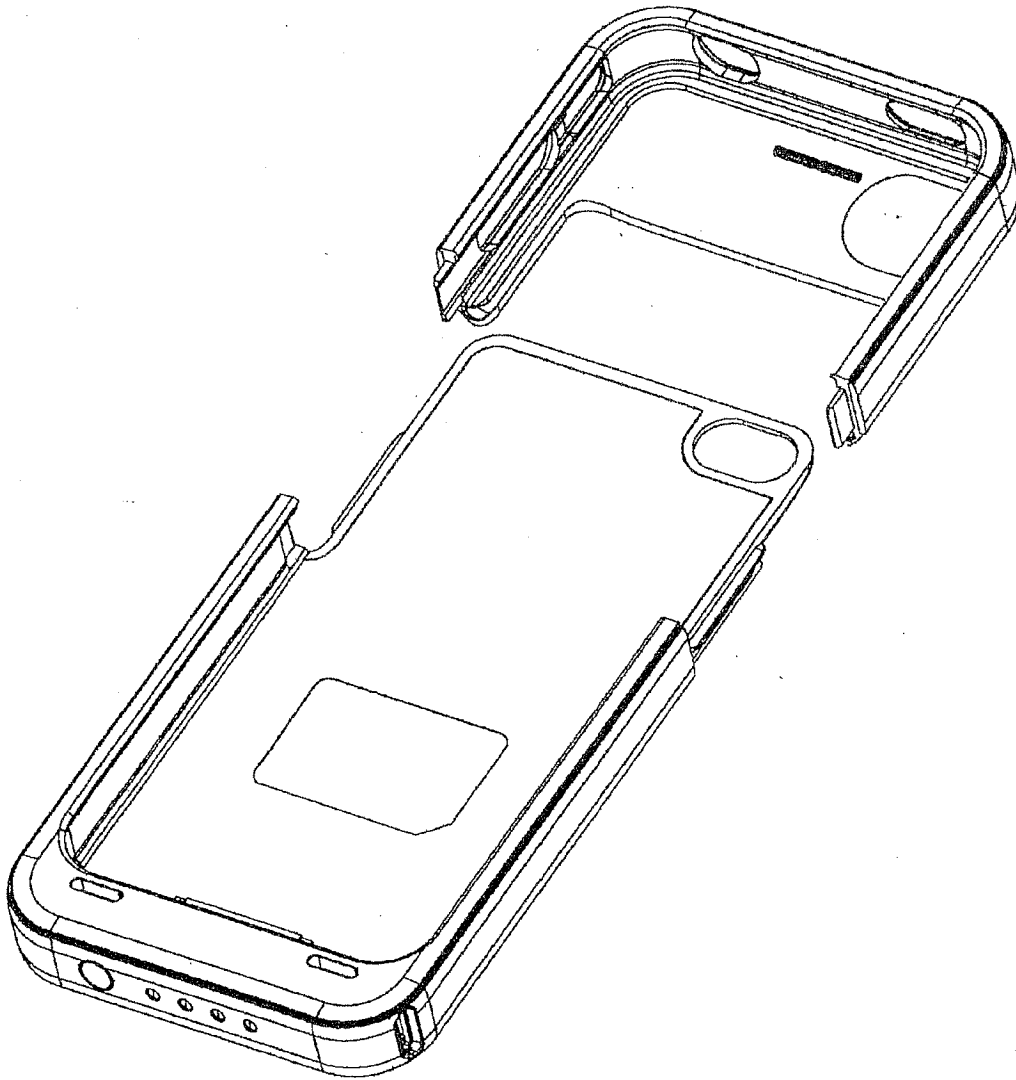


FIGURE 1

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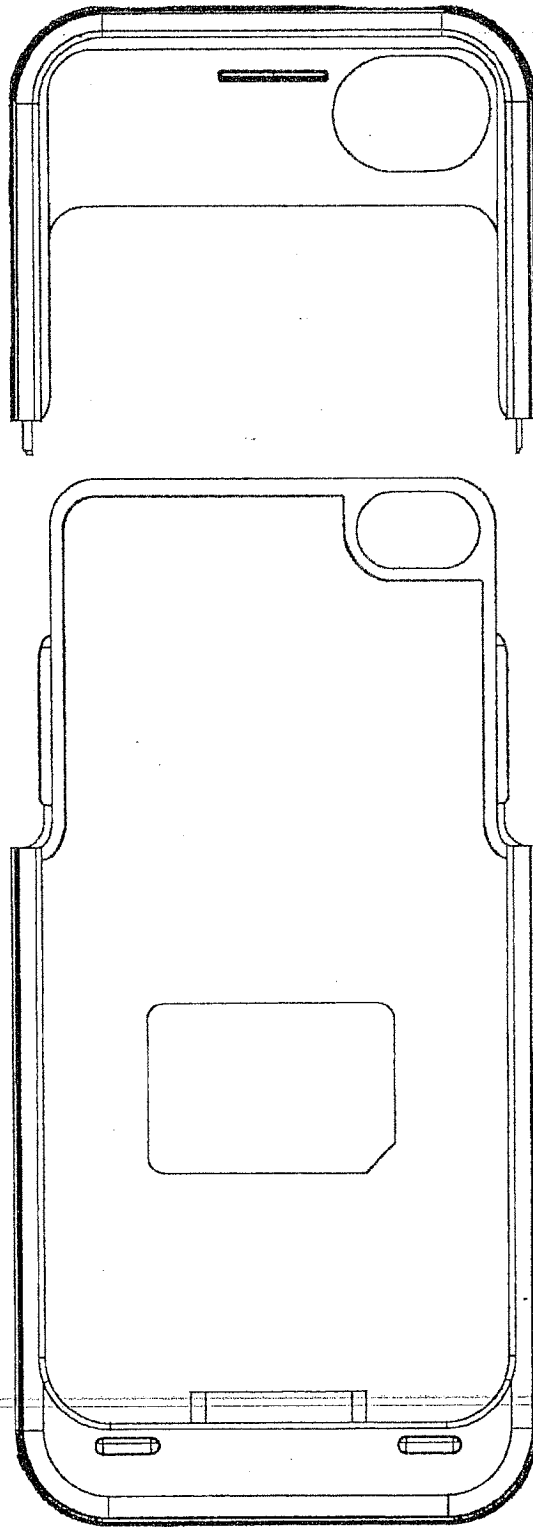


FIGURE 2

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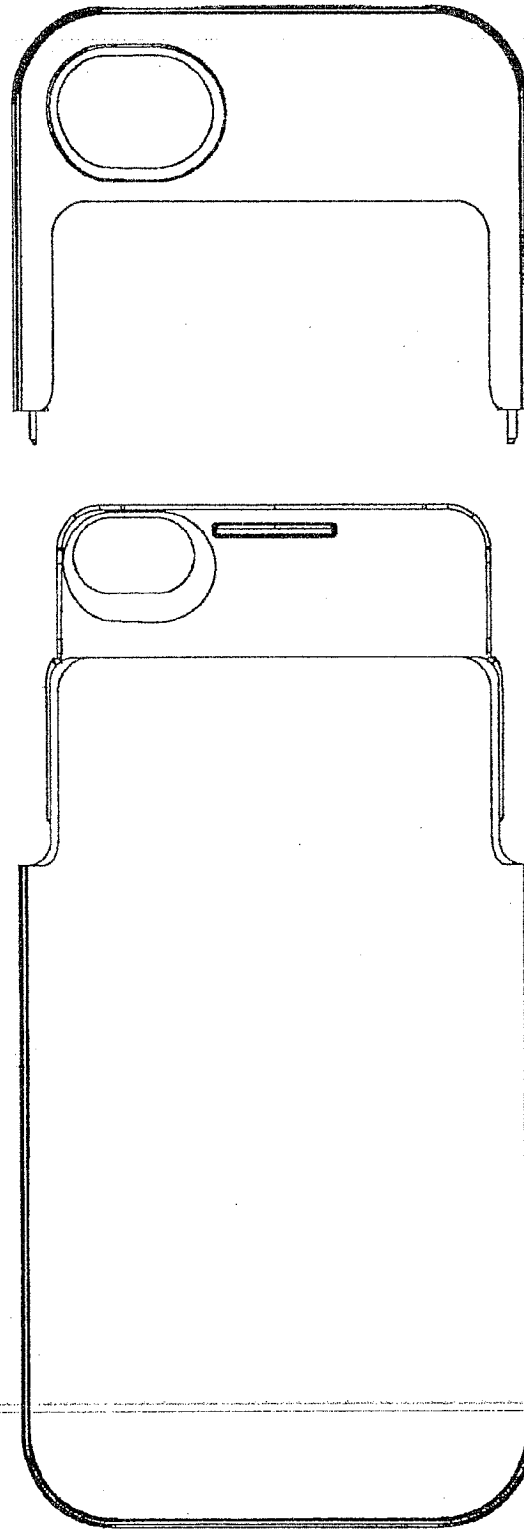


FIGURE 3

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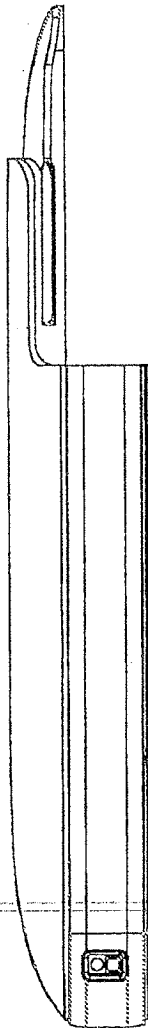
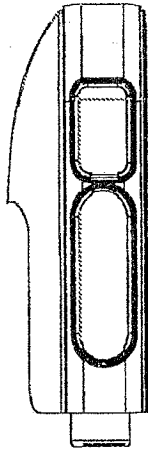


FIGURE 4

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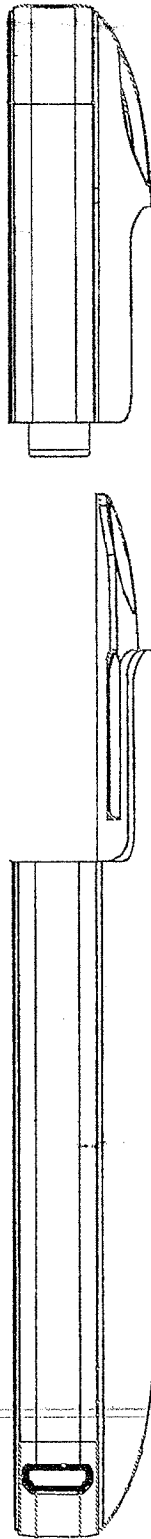


FIGURE 5

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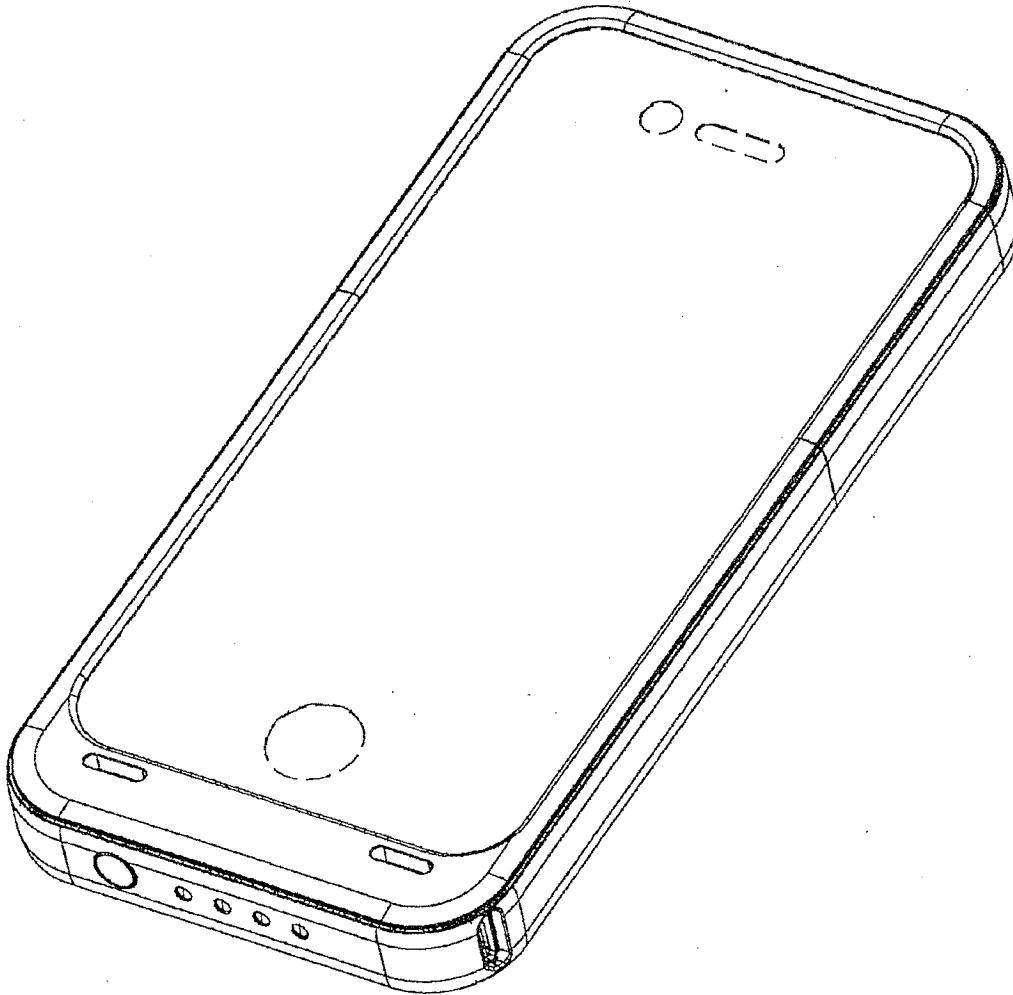


FIGURE 6



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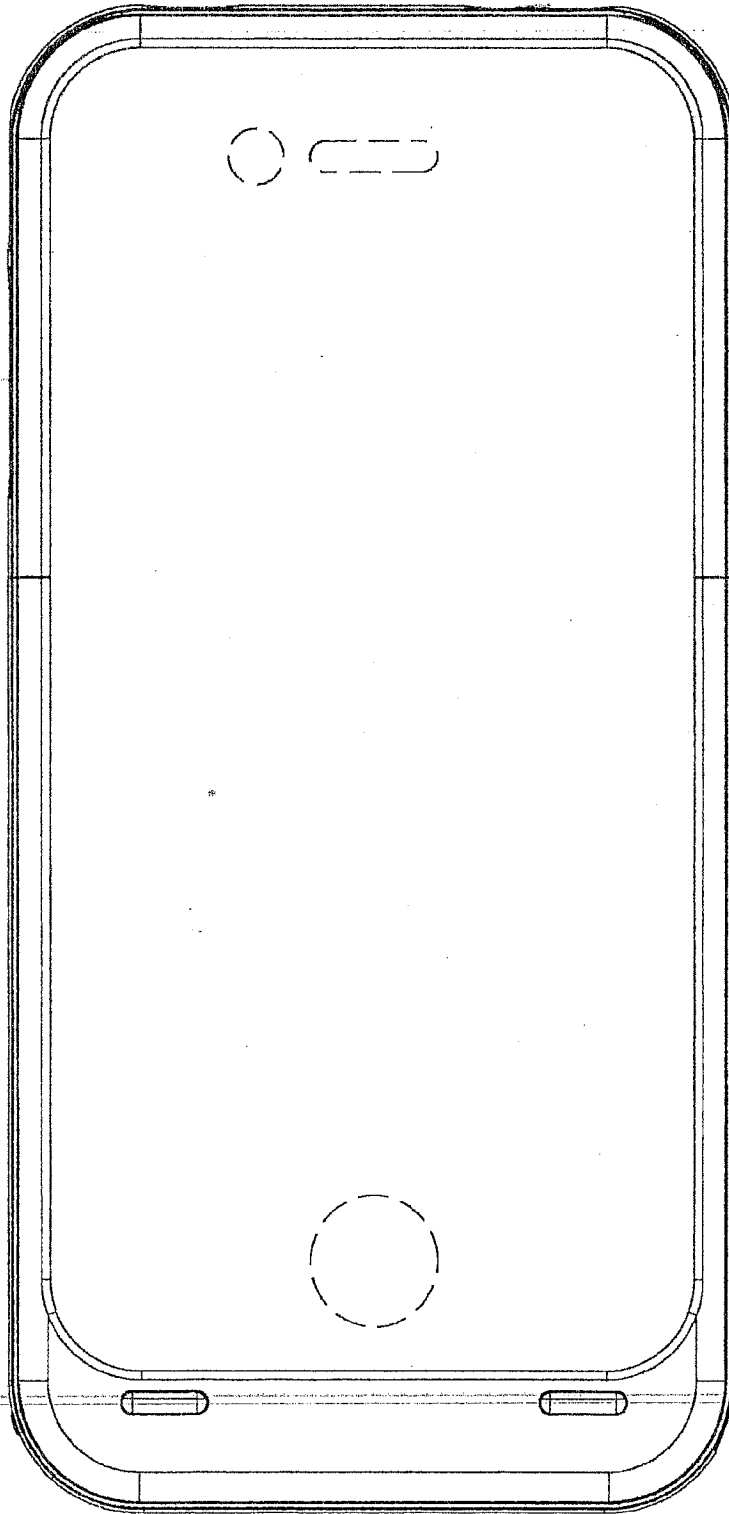
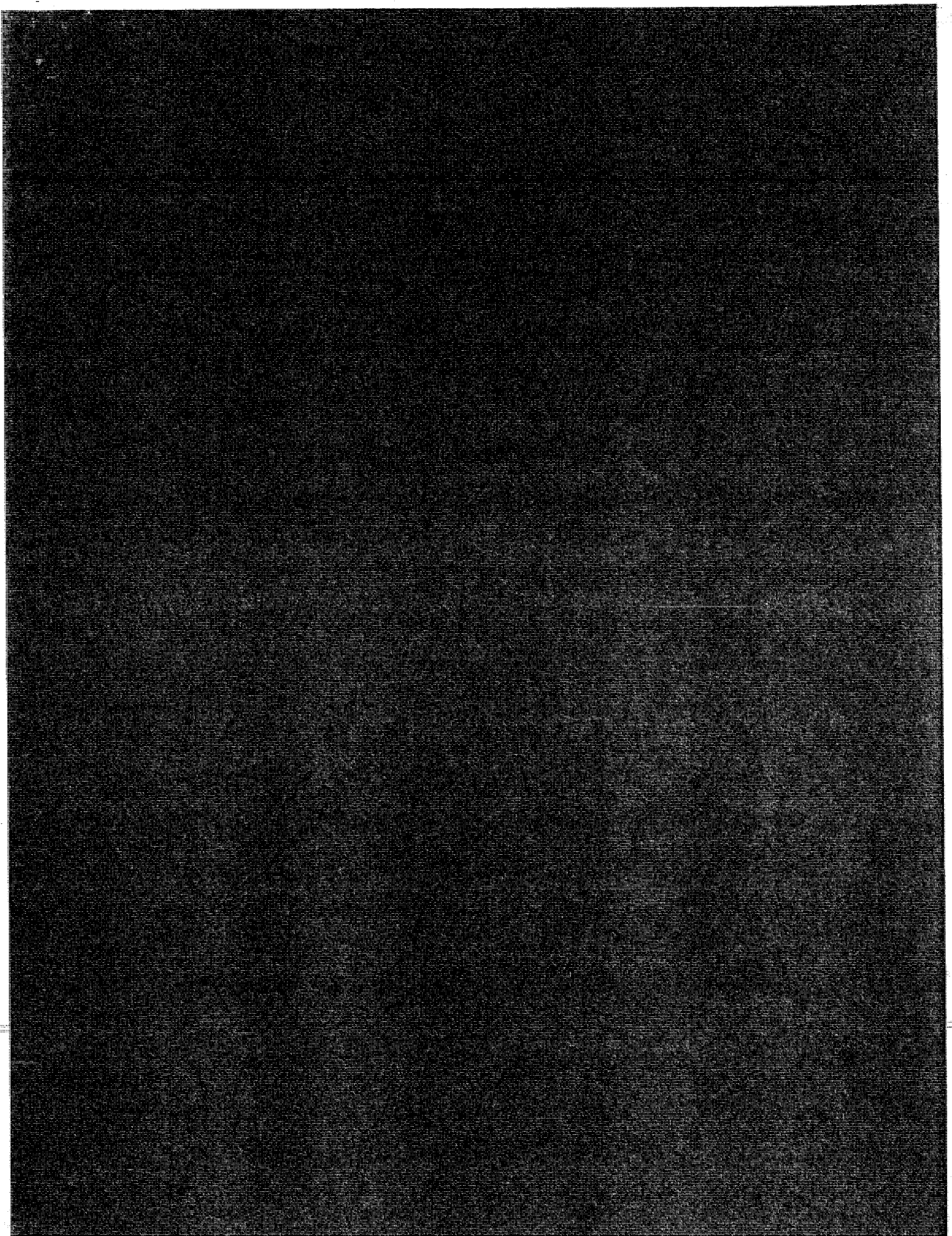


FIGURE 7

**Exhibit A**



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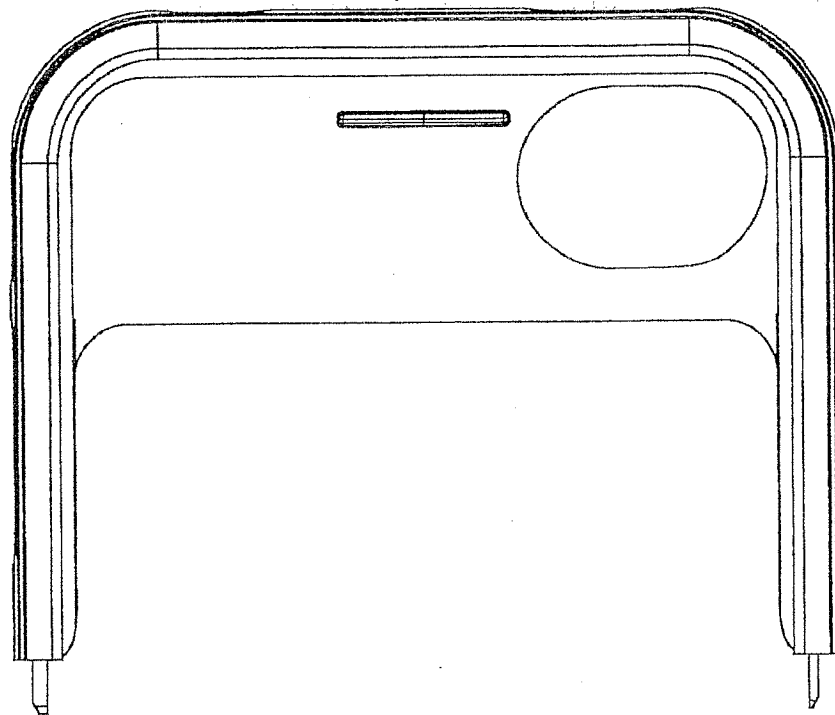


FIGURE 9

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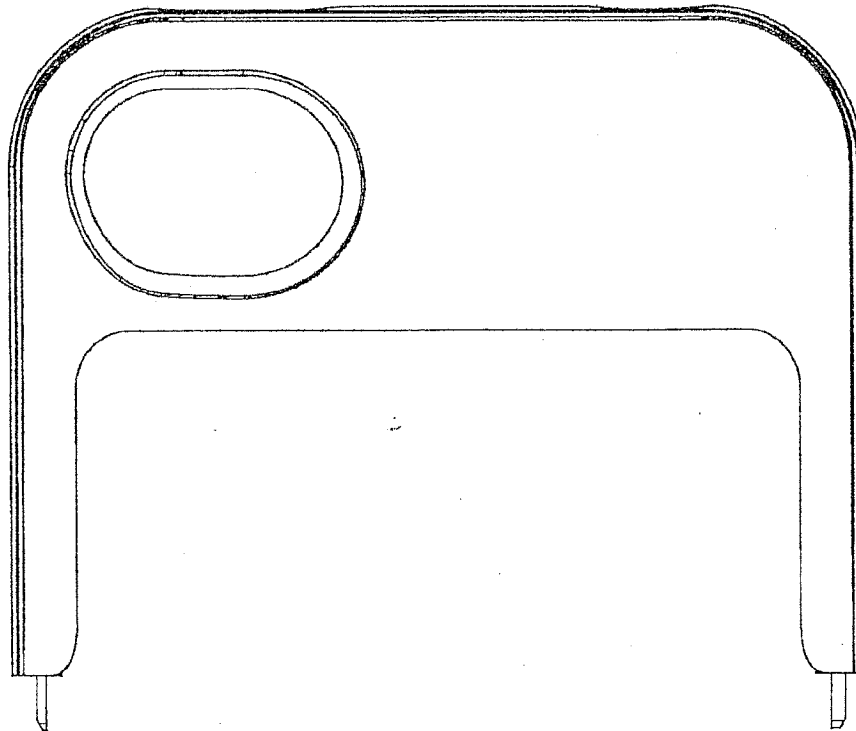


FIGURE 10

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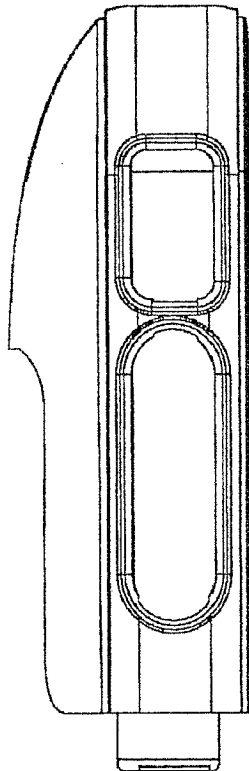


FIGURE 11

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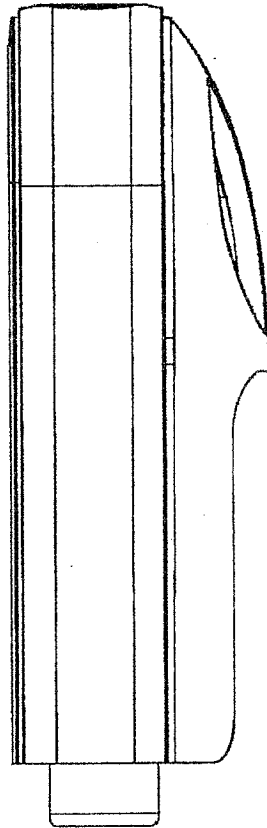


FIGURE 12



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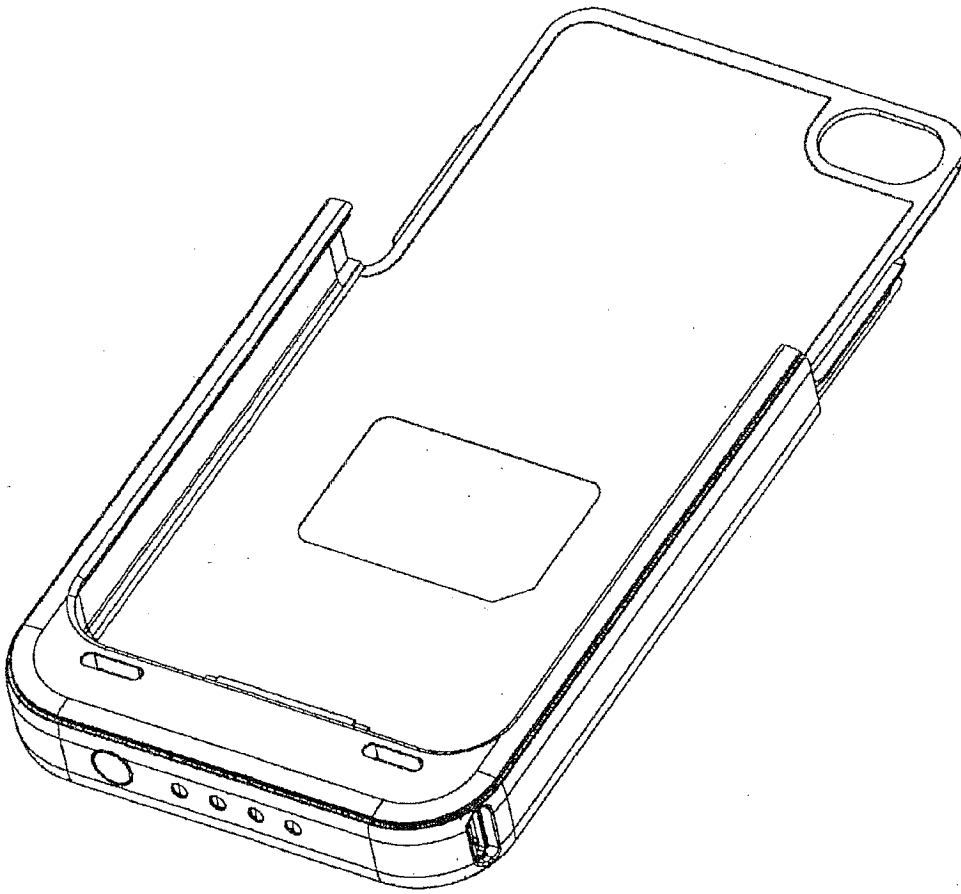


FIGURE 13

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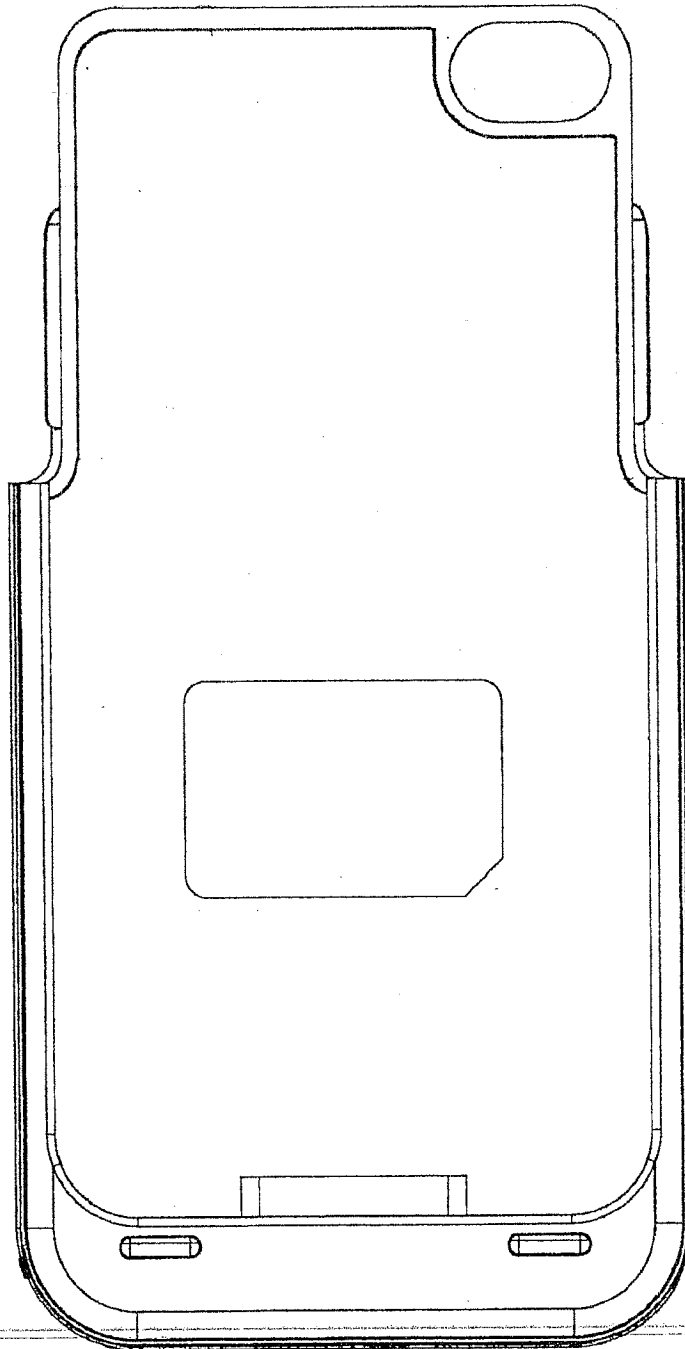


FIGURE 14

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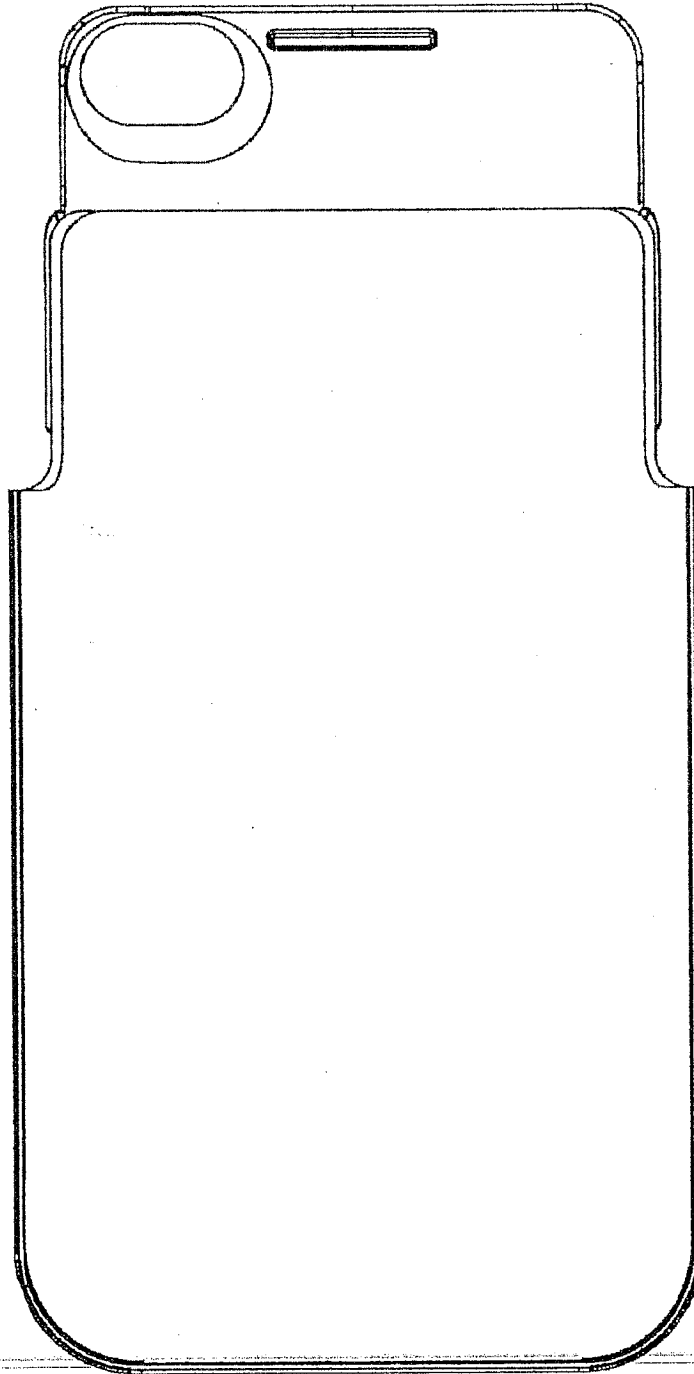


FIGURE 15

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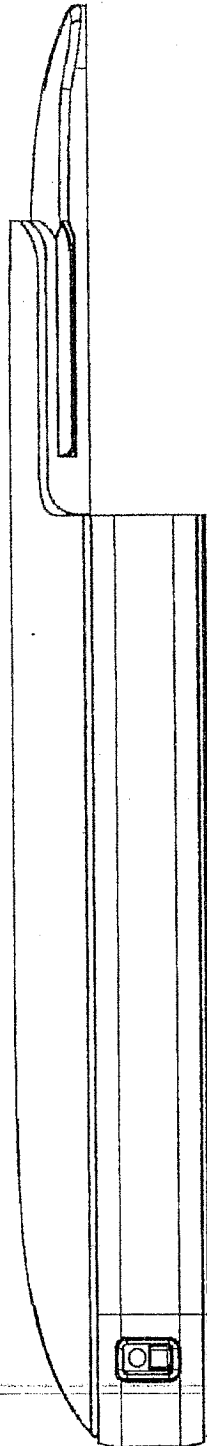


FIGURE 16

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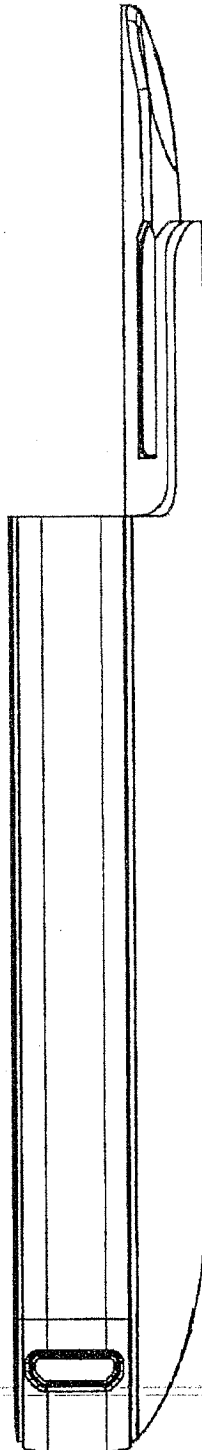


FIGURE 17

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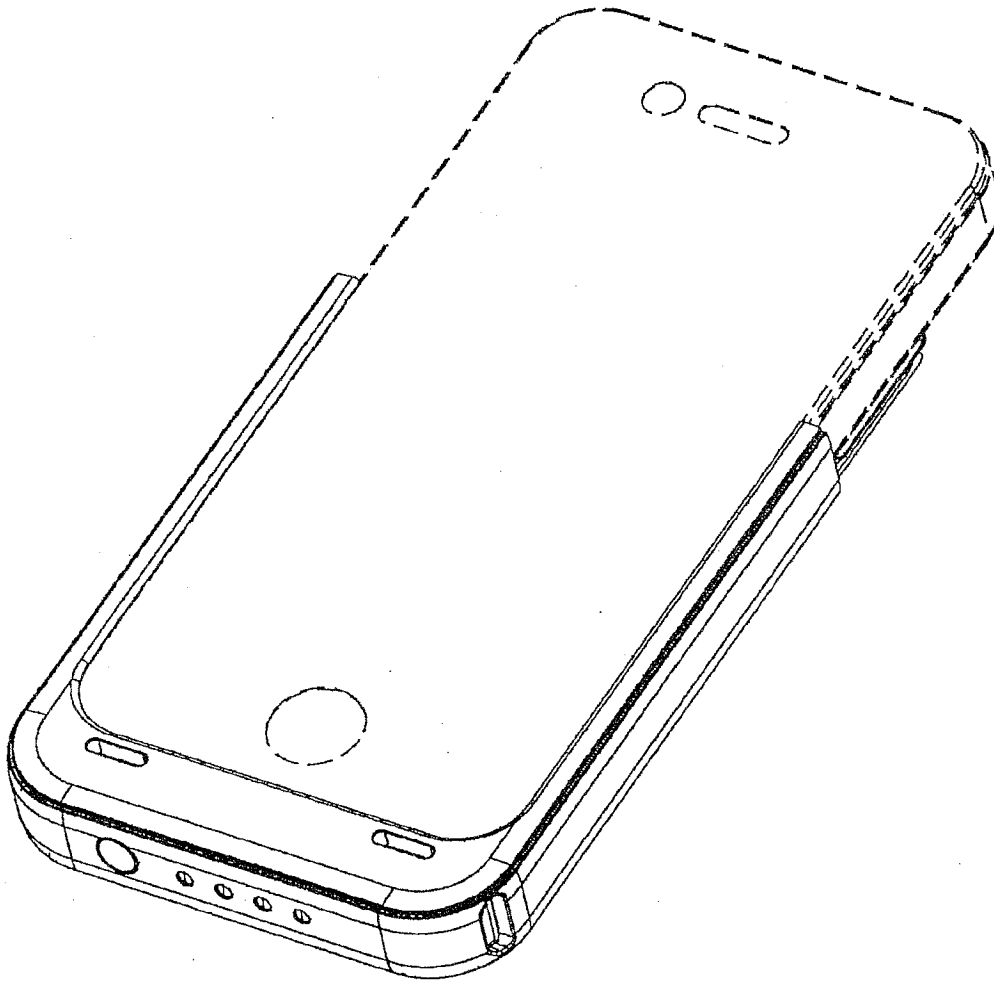


FIGURE 18



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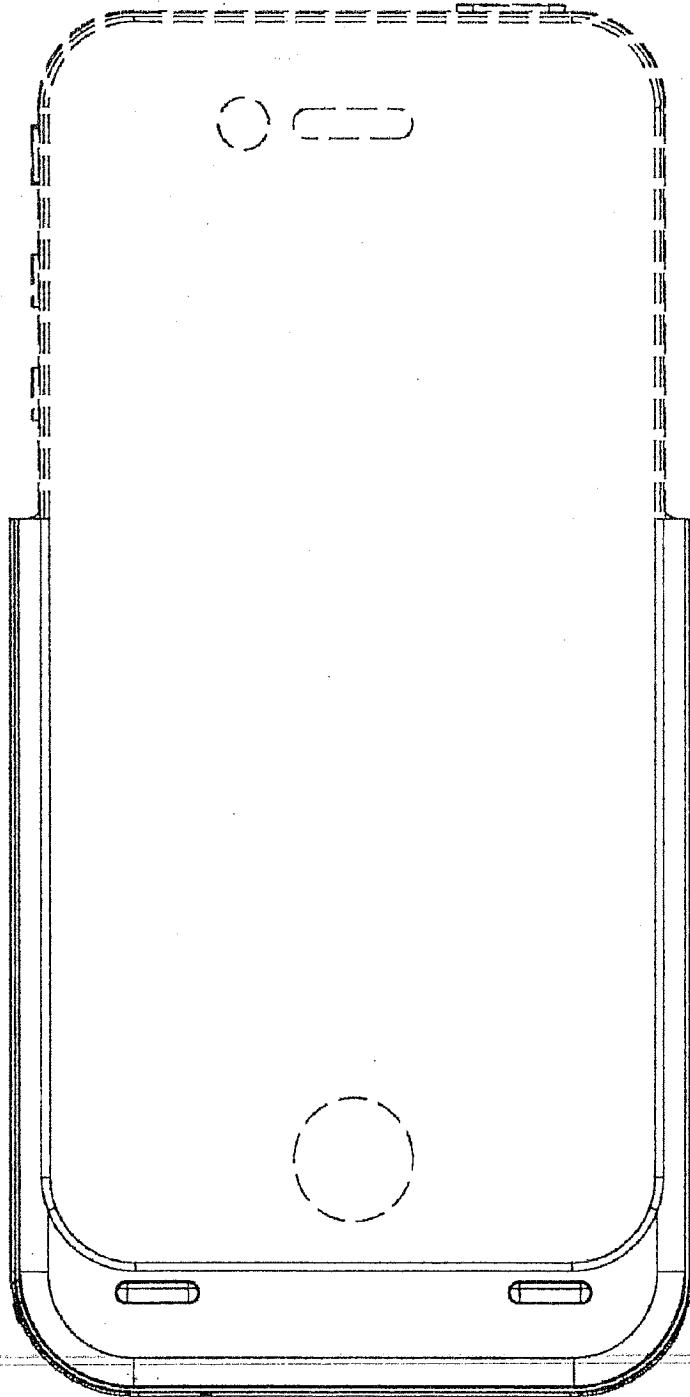


FIGURE 19

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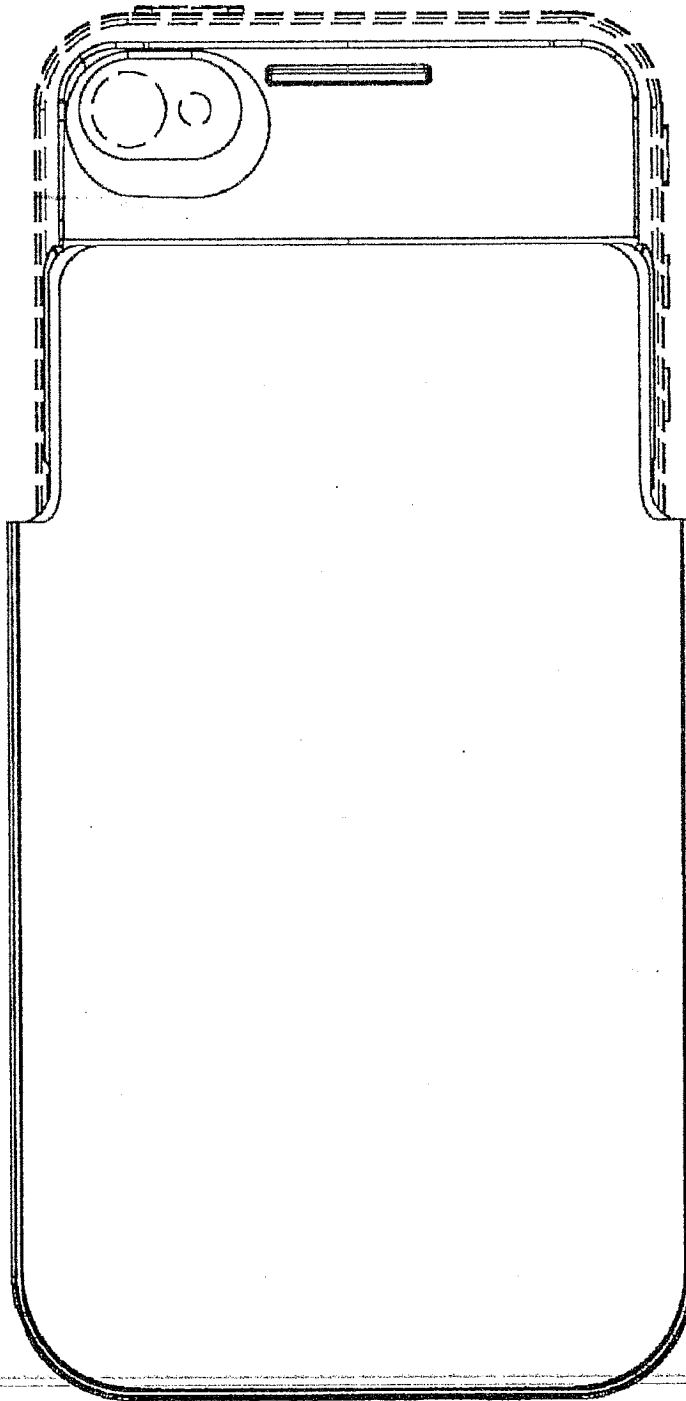


FIGURE 20

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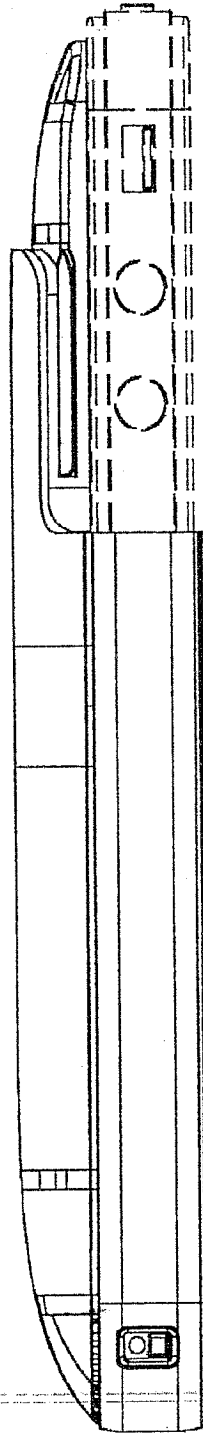


FIGURE 21

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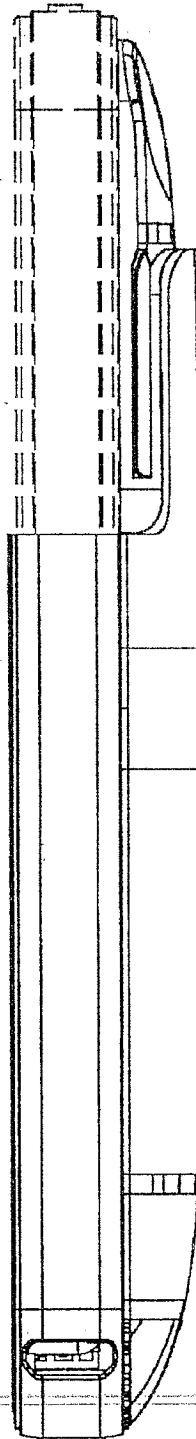


FIGURE 22

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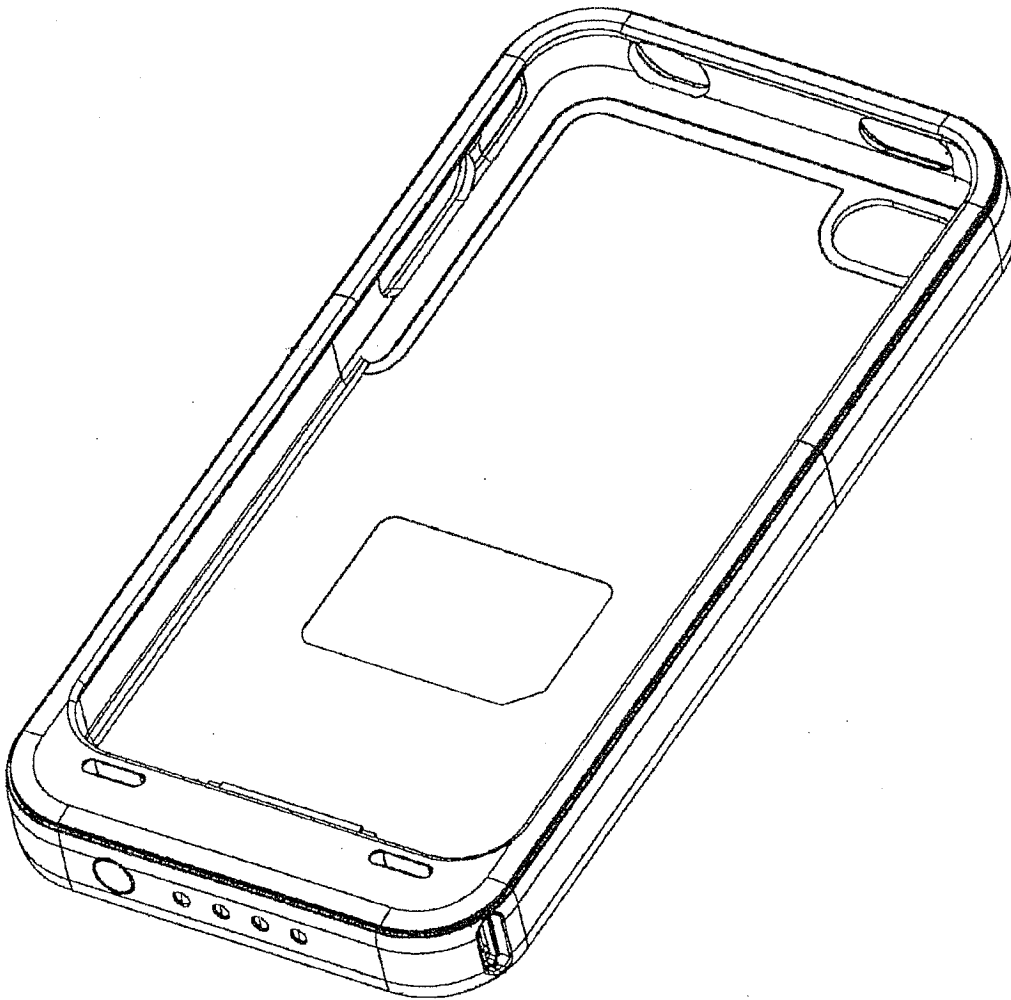


FIGURE 23

Exhibit A

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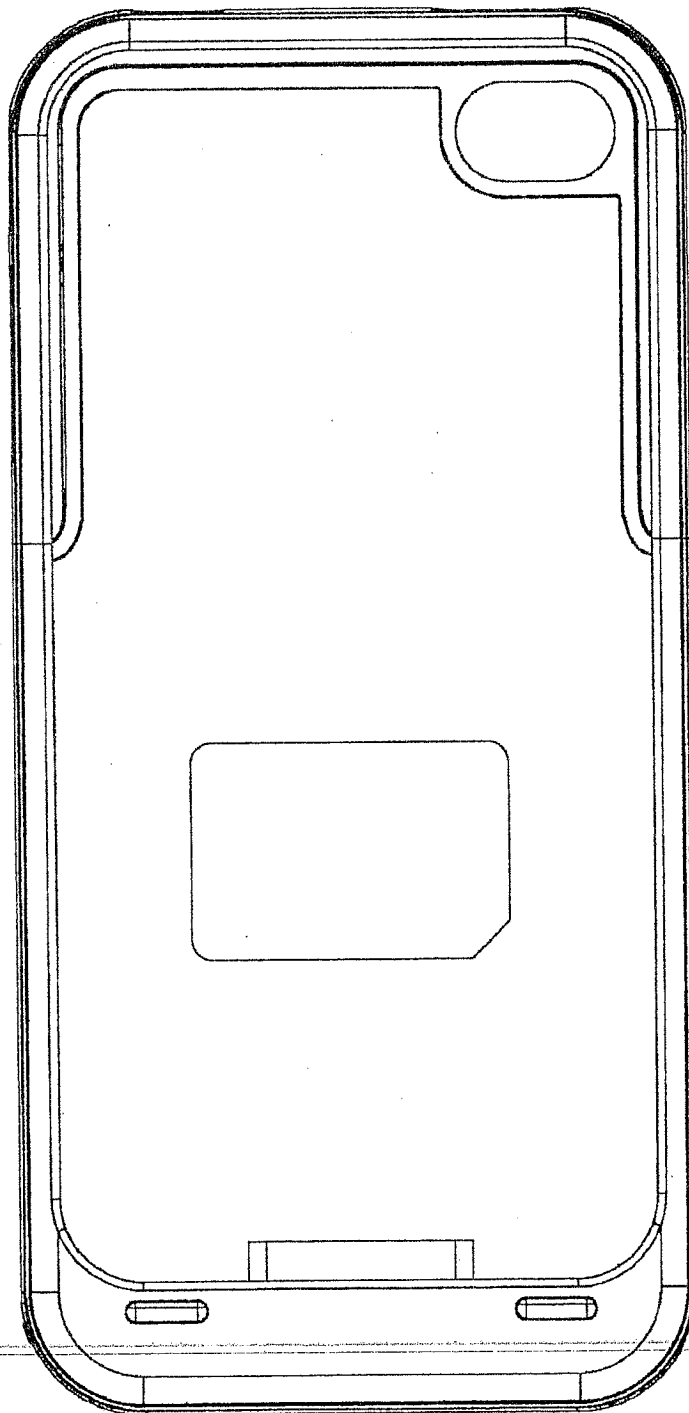


FIGURE 24

Exhibit A



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US D653,202 S

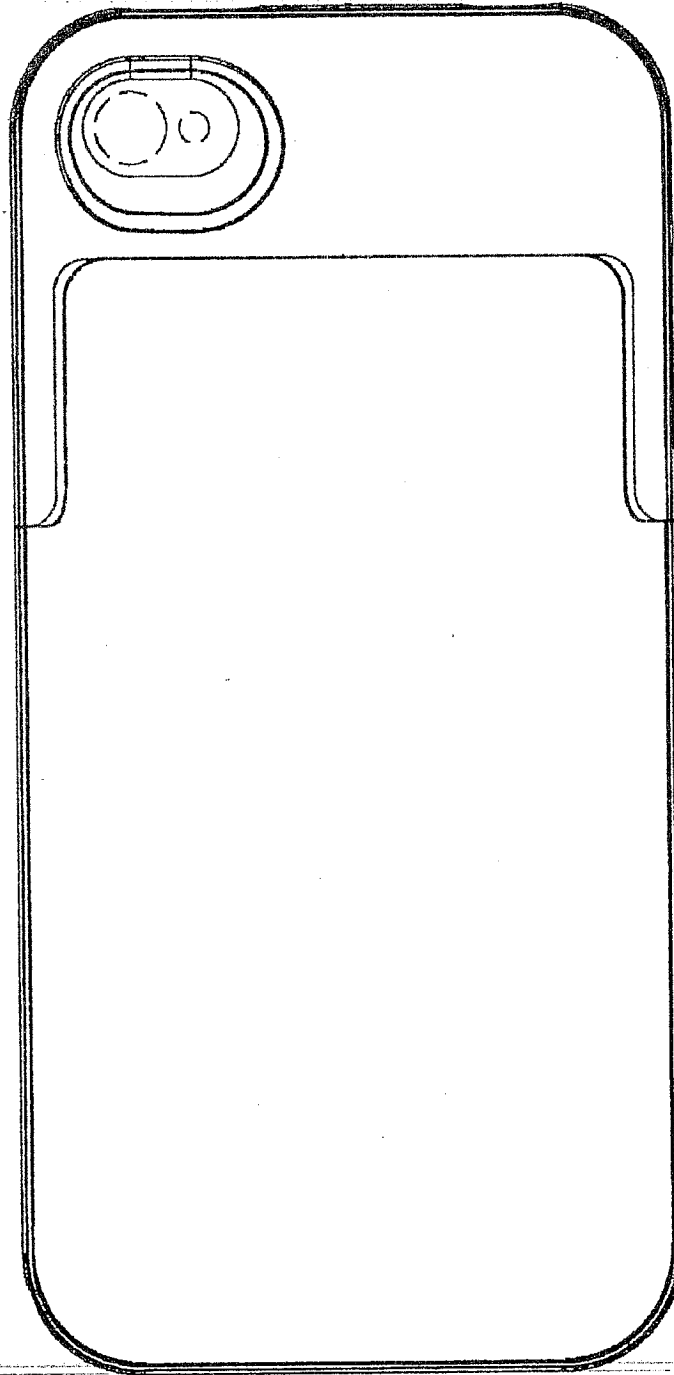


FIGURE 25

Exhibit A

U.S. Patent

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US D653,202 S

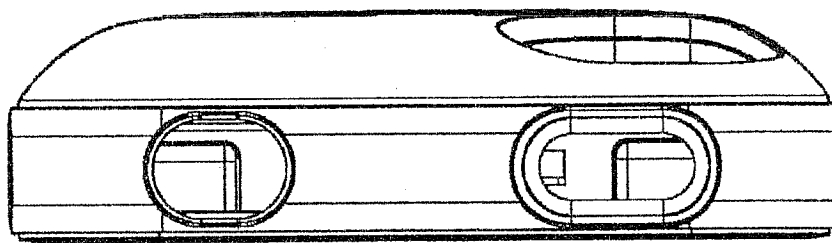


FIGURE 26

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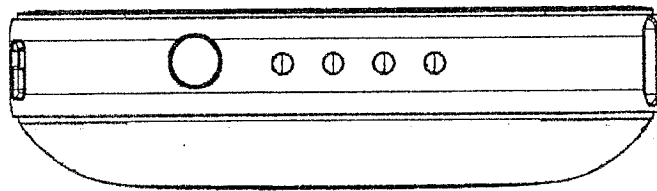


FIGURE 27

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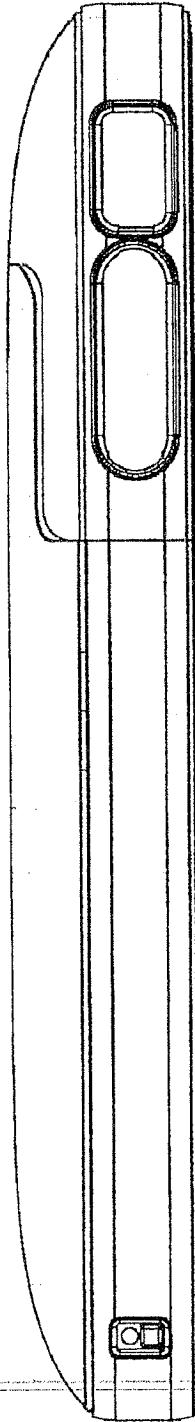


FIGURE 28

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**US D653,202 S**

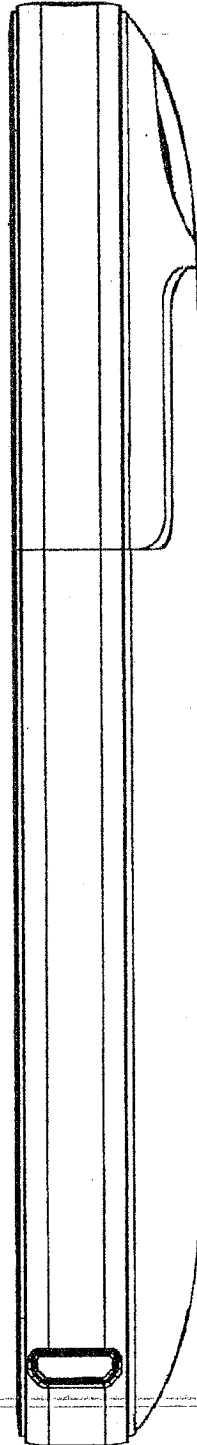
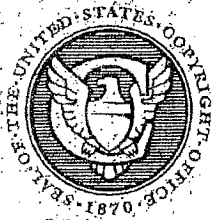


FIGURE 29

**Exhibit A**

# EXHIBIT B

## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*  
Acting Register of Copyrights, United States of America

Registration Number  
**VA 1-758-285**

Effective date of  
registration:  
December 13, 2010

### Title

Title of Work: Mophie JPA iPhone 4 Package and Insert

### Completion/Publication

Year of Completion: 2010

Date of 1st Publication: September 7, 2010

Nation of 1st Publication: United States

### Author

Author: Mophie, Inc.

Author Created: text, photograph(s), 2-D artwork

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

### Copyright claimant

Copyright Claimant: Mophie, Inc.

2850 Red Hill Ave. Suite 128, Santa Ana, CA, 92705, United States

### Rights and Permissions

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Name: Kathleen Walker

Date: December 7, 2010

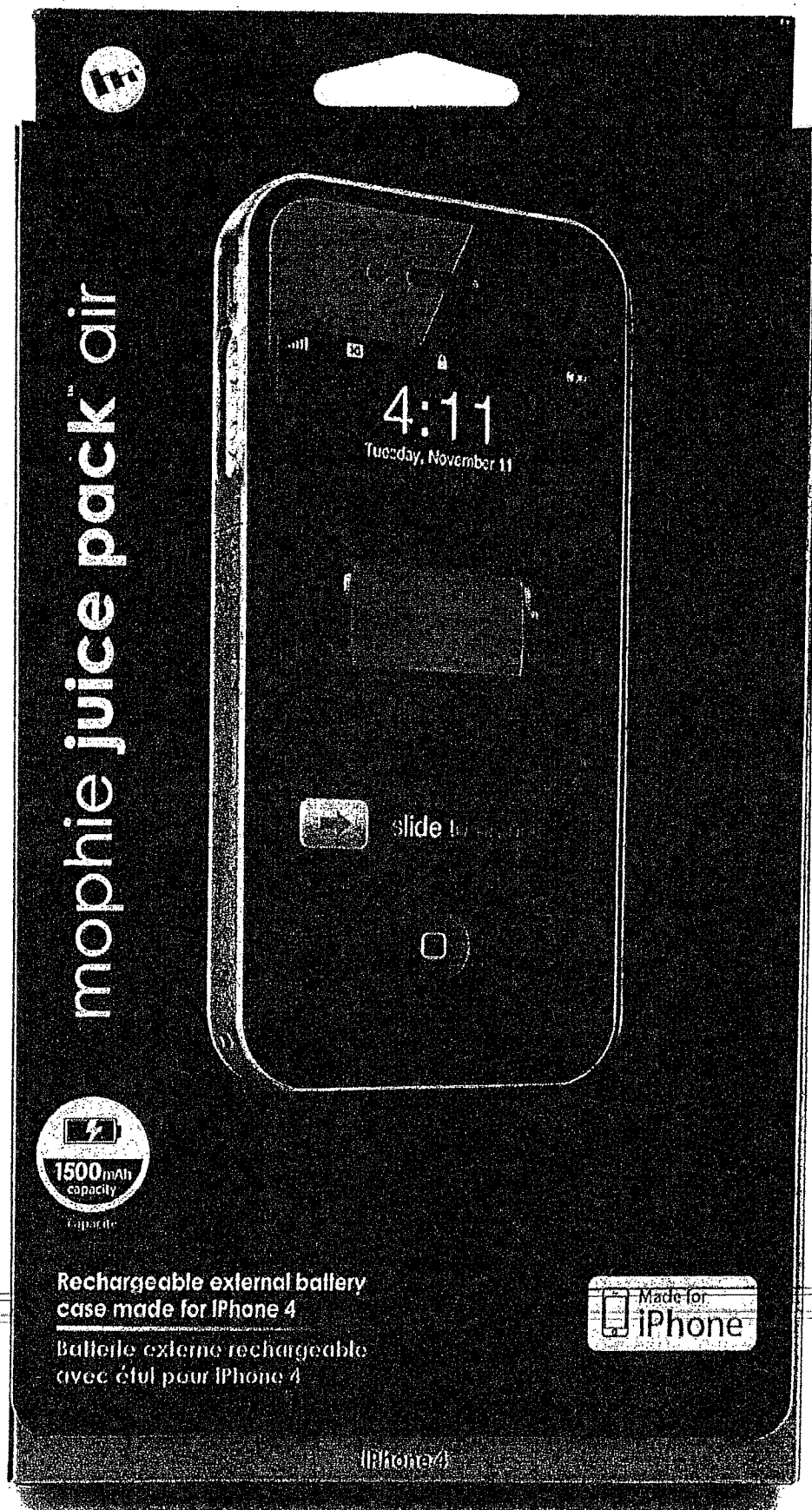


Exhibit B





Exhibit B

