

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE McMAHON FILE COPY

CARTIER INTERNATIONAL N.V. and
CARTIER CREATION STUDIO, S.A.

Plaintiffs,

v.

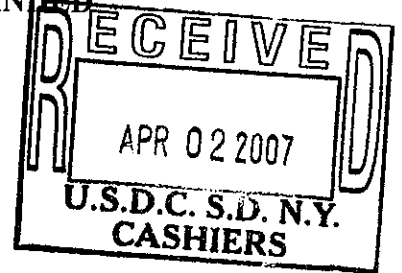
BEARE INTERNATIONAL LLC D/B/A
WWW.OSOTIME.COM AND VARIOUS
JOHN AND JANE DOES and XYZ
COMPANIES (UNIDENTIFIED)

Defendants.

07 CV 2665
Civil Action No.

COMPLAINT

JURY TRIAL DEMANDED



As and for their COMPLAINT herein, CARTIER INTERNATIONAL N.V. and
CARTIER CREATION STUDIO, S.A. allege:

JURISDICTION AND VENUE

1. This is a complaint for design patent infringement under 35 U.S.C. §§ 271, *et seq.*, and trade dress infringement and unfair competition under 15 U.S.C. §§ 1051, *et seq.*, as amended (the "Lanham Act"), and for unfair competition under the laws of the state of New York.
2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338, and 15 U.S.C. §§ 1116 and 1121. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.
3. This Court has personal jurisdiction over defendants in that they do business in the State of New York and in this District.

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(a) in that the defendants are individuals and entities subject to personal jurisdiction in this judicial district.

THE PARTIES

5. Plaintiff CARTIER INTERNATIONAL N.V. (“CNV”) is a corporation, organized and existing under the laws of the Netherlands, having its principal place of business at Scharlooweg, 33 Curacao, Netherland Antilles.
6. Plaintiff CARTIER CREATION STUDIO, S.A. (“CCS”) is a corporation, organized and existing under the laws of Switzerland, having its principal place of business at 8, Boulevard James-Fazy, Geneva, Switzerland (CNV and CCS are herein collectively “Cartier” or Plaintiff”).
7. Upon information and belief, defendant BEARE INTERNATIONAL LLC d/b/a WWW.OSOTIME.COM (“Beare”) is a limited liability company organized and existing under the laws of the New York, transacting business within the State of New York and throughout the United States, and having its place of business at 340 East 52nd St., Suite 7E, New York, New York, 10022. Upon information and belief, Beare is engaged in the unauthorized manufacture, distribution, offer for sale and/or sale of merchandise incorporating copies of Cartier’s patented design and trade dress.
8. Upon information and belief, defendants, including yet to be identified JOHN DOES and JANE DOES, are present and/or doing business in New York, and are subject to the jurisdiction of this Court. The identities of the various JOHN DOE and JANE DOE defendants are not presently known and the Complaint herein will be amended to include the name or names of these individuals when such information becomes available (each a “Doe” and collectively, “Does”).

9. Upon information and belief, defendants, the XYZ COMPANIES, through their agents, servants, and employees are present and/or doing business in New York and are, or shall be, subject to the jurisdiction of this Court. The identities of such defendants are not presently known and the Complaint herein will be amended to include the names of the actual defendants when such information becomes available (each a “Defendant Company” and collectively, “Defendant Companies”).
10. The parties identified in paragraph 7 above, as well as Does and Defendant Companies are hereinafter collectively referred to as “Defendants”.

CARTIER’S INTELLECTUAL PROPERTY

11. Cartier watches are some of the preeminent symbols of luxury in the world. Louis Francois Cartier, master jeweler to Europe’s crowned heads, founded the House of Cartier in 1847. Cartier created the first women’s wristwatch in 1888 and in 1904 created the first wristwatch to utilize a leather strap.
12. Since as early as 1898, Cartier and its predecessors-in-interest and associated companies have been using Cartier’s trademarks, trade names, trade dress and patented designs, as more particularly defined and described below, in connection with the advertising and sale of fine timepieces and wrist watches and other products in foreign commerce. Since 1909, Cartier’s trademarks and trade dress have been used in connection with the advertising and sale of watches and other products in interstate commerce, including in the State of New York and in this judicial district.
13. Cartier products, namely timepieces of distinctive design and other trade features, are closely associated with Cartier in the eyes of the public, customers, and the luxury goods industry. Specifically, Cartier has used its inventive and original designs and features

(the “Cartier Trade Dress”) on the, among many other watches, the Cartier SANTOS 100 (the “Cartier Watches”).

14. The Cartier SANTOS 100 was launched by Cartier in 2004 inspired by the original Santos de Cartier watch created by Louis Cartier in 1904 for his friend Alberto Santos-Dumont.

15. Cartier is the owner of the entire right, title and interest in and to the Cartier Trade Dress for the Cartier Watches. The Cartier Trade Dress for the watch face of the Cartier Watches, for example, is shown on the Cartier SANTOS 100:



16. The Cartier Trade Dress includes the Cartier Watches’ watch faces, watch cases and watch crowns. The Cartier Trade Dress includes, but is not limited to, the following elements of the watch face of a Cartier Watch:

- The watch face has a chapter ring or minute guide located between the center of the dial and numerals.

- The watch face features Art-Deco-Style Roman Numerals. Each numeral inclines to conform to the angle/direction of the watch hands at such time as the hands are juxtaposed to that numeral.
17. Cartier maintains strict quality control standards for all Cartier Watches. All Cartier Watches are inspected and approved by Cartier prior to distribution and sale. Cartier Watches are sold with a warranty, and backed up by a full-service staff of full-time employees.
 18. Cartier has manufactured, marketed and advertised Cartier Watches so that the public associates them with the idea of extraordinary design, materials, workmanship and reliability. Cartier displays Cartier Watches and the associated Cartier Trade Dress in their advertising and promotional materials. To date, Cartier has spent millions of dollars in advertising and promoting their goods, including Cartier Watches.
 19. The Cartier Trade Dress has been widely promoted, both in the United States and throughout the world. The public, customers, and the luxury goods industry have come to recognize that products bearing the Cartier Trade Dress originate with Cartier. Furthermore, customers, potential customers, and other members of the public associate the Cartier Trade Dress with products of exceptional materials, style and precision workmanship.
 20. Cartier Watches, so marked, have been and are now recognized by the trade and public as those of Cartier exclusively. The Cartier Trade Dress has come to be known to the trade and the public as a symbol of quality and status.
 21. Customers, potential customers, and other members of the public associate the Cartier Trade Dress on the Cartier Watches with exceptional materials, style and precision workmanship.

22. Cartier is also the owner of the entire right, title and interest in and to numerous United States Patents including but not limited to U.S. Design Patent Number D508,421 for the design of the Cartier Watches (the “Cartier Patent”). A copy of the Cartier Patent is annexed hereto as Exhibit A.
23. The Cartier Trade Dress and the Cartier Patent, and rights protected thereby, are collectively referred to as the “Cartier Intellectual Property.”

DEFENDANTS’ ILLEGAL CONDUCT

24. Defendants, without authorization or license from Cartier, have knowingly and willfully used, reproduced, and/or infringed the Cartier Intellectual Property in connection with their manufacturing, distributing, exporting, importing, offering to sell and selling infringing copies of the Cartier Watches (the “Infringing Products”) in New York and in interstate commerce. Defendants have been offering for sale and/or selling Infringing Products on their website WWW.OSOTIME.COM under the watch name “Chic”. Defendants additionally have been selling the same Infringing Products to others, including but not limited to Vivre, Inc., in New York, who was offering for sale, and selling the Infringing Products on their website www.vivre.com under the name “the Roman Numeral” watch, Model Item No. 38117.

25. Illustrations of the Infringing Products are depicted below:

Infringing Product: "Chic Watch"



Infringing Product: "Roman Numeral Watch"



26. Defendants' Infringing Products incorporate most of the distinct and non-functional design elements associated with the Cartier Watches, including but not limited to the following similarities between the Infringing Products and genuine Cartier Watches:
- The watch face of the Infringing Products incorporate a chapter ring or minute guide located between the center of the dial and the numerals as do the watch faces of genuine Cartier Watches.
 - The watch faces of the Infringing Watches incorporate Art-Deco style Roman numerals with each numeral inclined to conform to the angle/direction of the watch hands at such time as the hands are juxtaposed to that numeral, as on the watch faces of genuine Cartier Watches.
 - The watch cases and watch crowns of the Infringing Products are identical to the watch cases and watch crowns of genuine Cartier Watches. At all relevant times and in furtherance of their infringing activities, Defendants, without authorization or license from Cartier, have willfully and intentionally used and continue to use and/or infringe the Cartier Intellectual Property in connection with the Infringing Products.
27. Even though they are of significantly inferior quality, the Infringing Products appear superficially similar, and in some cases superficially identical, to genuine Cartier Watches.
28. The use by Defendants of the Cartier Trade Dress on or in connection with the offering for sale, selling, and distributing of the Infringing Products is likely to cause confusion, or to cause mistake, or to deceive consumers.
29. The Infringing Products are not genuine Cartier Watches bearing the Cartier Intellectual Property. Cartier did not manufacture, inspect or package the Infringing Products, and did not approve the Infringing Products for sale and/or distribution. Cartier has inspected samples of the Infringing Products and deemed them to be infringing.

COUNT ONE

DESIGN PATENT INFRINGEMENT

(35 U.S.C. §§ 271, *et seq.*)

30. Cartier repeats and realleges paragraphs 1 through 29 of this Complaint as if fully set forth herein.
31. Defendants are manufacturing, advertising, distributing, offering to sell and/or selling watches that infringe the Cartier Patent. Such sales have taken place in this District and elsewhere in the United States.
32. Defendants have no license to conduct the activities specified in Paragraphs 30 and 31.
33. Defendants have willfully infringed the Cartier Patent by in violation of 35 U.S.C. § 271 *et seq.*
34. The infringement of the Cartier Patent by Defendants has and will irreparably damage Cartier and deprive Cartier of sales, profits and royalties that Cartier would have made or could enjoy in the future, and has in other respects injured Cartier and will continue to injure and damage Cartier, including by loss of future profits and royalties, unless Defendants are enjoined from infringing the Cartier Patent.
35. Defendants' infringement will continue unless enjoined by this Court, as Cartier lacks an adequate remedy at law.

COUNT TWO

TRADE DRESS INFRINGEMENT AND FALSE DESIGNATION OF ORIGIN

(15 U.S.C. § 1125(a))

36. Cartier repeats and realleges paragraphs 1 through 35 of this Complaint as if fully set forth herein.
37. The Cartier Trade Dress is inherently distinctive.

38. As a result of the experience, care, and service of Cartier in producing and providing the Cartier Watches, the Cartier Watches have become widely known and have acquired a worldwide reputation for excellence. Moreover, the Cartier Trade Dress has become associated with the Cartier Watches, and has come to symbolize the reputation for quality and excellence of the Cartier Watches. As such, and because consumers identify the Cartier Watches with products having their source in Cartier, the Cartier Trade Dress has attained secondary meaning.
39. The Cartier Trade Dress is non-functional.
40. Defendants' use of trade dress which infringes upon the Cartier Trade Dress is likely to cause and is causing confusion, mistake and deception among the general purchasing public as to the origin of the Infringing Products, and is likely to deceive the public into believing the Infringing Products originate from, are associated with, or are otherwise authorized by Cartier, all to the damage and detriment of Cartier's reputation, goodwill and sales.
41. Defendants' aforesaid acts are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), in that Defendants' use of the Cartier Trade Dress in connection with their goods and services in interstate commerce constitutes trade dress infringement and false designation of origin.
42. As a direct and proximate result of Defendants' conduct, Cartier has suffered damages to its valuable Cartier Trade Dress, and other damages in an amount to be proved at trial.
43. Cartier has no adequate remedy at law. If the Defendants' activities are not enjoined, Cartier will continue to suffer irreparable harm and injury to Cartier's goodwill and reputation.

COUNT THREE

DECEPTIVE ACTS AND PRACTICES UNDER NEW YORK STATE LAW
(New York General Business Law § 349)

44. Cartier repeats and realleges paragraphs 1 through 43 of this Complaint as if fully set forth herein.
45. Defendants, without Cartier's authorization or consent, and having knowledge of Cartier's well-known and prior rights in the Cartier Intellectual Property, have distributed, advertised, offered for sale and/or sold Infringing Products employing copies of the Cartier Intellectual Property to the consuming public in violation of New York General Business Law § 349.
46. Defendants' use of copies or simulations of the Cartier Intellectual Property is likely to cause and is causing confusion, mistake and deception among the general purchasing public as to the origin of Defendants' Infringing Products, and is likely to deceive the public into believing that Defendants' Infringing Products originate from, are associated with, or are otherwise authorized by Cartier.
47. Defendants' deceptive acts and practices involve public sales activities of a recurring nature.
48. Defendants' acts have caused and will continue to cause Cartier irreparable harm unless enjoined by this Court. Cartier has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Cartier respectfully requests the following relief as to each of the above causes of action:

- i. For a declaration that Defendants have infringed the Cartier Intellectual Property;

ii. That Defendants, their officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through or under them be preliminarily enjoined and restrained, at first during the pendency of this action and, thereafter, permanently:

- a. from using in any manner the Cartier Trade Dress as to be likely to cause confusion, deception, or mistake on or in connection with the manufacturing, advertising, distributing, offering for sale, or selling of any product not Cartier's, or not authorized by Cartier to be sold in connection with the Cartier Trade Dress;
- b. from passing off, inducing, or enabling others to sell or pass off any product as and for products produced by Cartier, not Cartier's, or not produced under the control and supervision of Cartier and approved by Cartier for sale under the Cartier Trade Dress;
- c. from committing any acts calculated to cause purchasers to believe that the Infringing Products are those sold under the control and supervision of Cartier, or sponsored or approved by, or connected with, or guaranteed by, or produced under the control and supervision of Cartier;
- d. from further infringing the Cartier Trade Dress and damaging Cartier's goodwill;

- e. from otherwise competing unfairly with Cartier or any of its authorized licensees in any manner;
 - f. from shipping, delivering, distributing, returning or otherwise disposing of, in any manner, products or inventory not manufactured by or for Cartier, not authorized by Cartier to be sold or offered for sale, and which bear any of the Cartier Trade Dress;
 - g. from making any unauthorized advertisement, marketing, distribution, use, sale, or importation into the United States and from offering for sale products that infringe the Cartier Patent;
 - h. from assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in the above subparagraphs (a) through (g).
- iii. That Defendants be required to forthwith deliver up for destruction their entire inventory of said products bearing any of the aforesaid Cartier Trade Dress or a confusingly similar copy thereof;
- iv. That Defendants, within thirty (30) days after service of judgment with notice of entry thereof upon it, be required to file with the Court and serve upon Cartier a written report under oath setting forth in detail the manner in which Defendants have complied with paragraphs (ii) through (iii), *supra*;

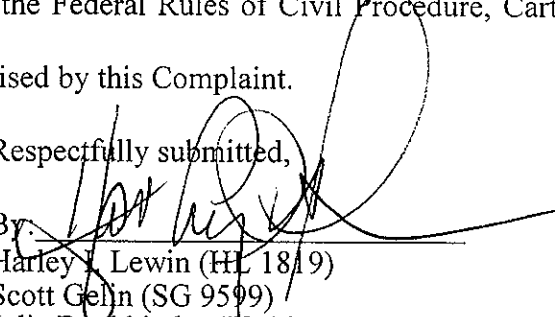
- v. That Defendants account for and pay over to Cartier profits realized by Defendants by reason of Defendants' unlawful acts herein alleged, and that the Court impose whatever temporary, preliminary, and final equitable relief is necessary to achieve the foregoing, including but not limited to, the imposition of a constructive trust;
- vi. That Cartier be awarded actual damages for Defendants' infringement of the Cartier Trade Dress in an amount to be determined at trial;
- vii. That Cartier be awarded damages in the form of lost profits or in the alternative, not less than a reasonable royalty, together with costs and interest, and that such award be increased up to three times pursuant to 35 U.S.C. § 284;
- viii. That Cartier be awarded be reasonable attorneys' fees; and
- ix. That Cartier be awarded such other and further relief as the Court may deem equitable, including, but not limited to, any relief set forth under Sections 34-36 of the 1946 Trademark Act and/or under 35 U.S.C. §§ 281 *et seq.*

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Cartier demands a jury trial on all triable issues that are raised by this Complaint.

Dated: April 2, 2007
New York, New York

Respectfully submitted,

By: 
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Pro Hac Vice Pending

***Attorneys for Plaintiffs Cartier International N.V. and Cartier
Creation Studio, S.A.***

EXHIBIT A



US906508421S

(12) **United States Design Patent** (10) Patent No.: **US D508,421 S**
Diltoer (45) Date of Patent: **Aug. 16, 2005**

(54) **WATCH**
(75) Inventor: Jacques Diltoer, La Garene (FR)
(73) Assignee: Cartier International B.V., Amsterdam (NL)
(**) Term: 14 Years

D278,130 S * 3/1985 Houlliam et al. D10/38
D422,514 S * 4/2000 Diltoer et al. D10/39

* cited by examiner

Primary Examiner—Nelson C. Holtje
(74) Attorney, Agent, or Firm—Kilow & Springut LLP

(57) **CLAIM**

The ornamental design for a watch, as shown and described.

(21) Appl. No.: 29/211,185
(22) Filed: Aug. 12, 2004
(30) Foreign Application Priority Data
Feb. 13, 2004 (EP) 000134531-0005
(51) LOC. (8) Cl. 10-02
(52) U.S. Cl. D10/39
(58) Field of Search D10/30-39; 368/280-282,
368/276-277, 285, 293-294

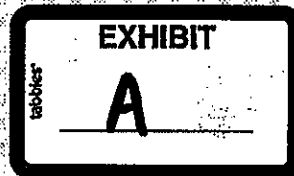
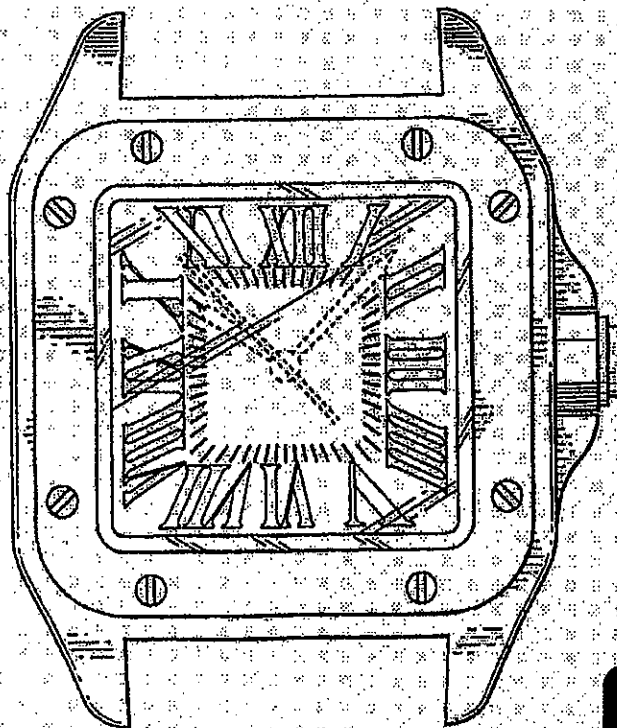
DESCRIPTION

FIG. 1 is a perspective view of a watch;
FIG. 2 is a front view thereof;
FIG. 3 is a rear view thereof;
FIG. 4 is a right-side view thereof;
FIG. 5 is a left-side view thereof;
FIG. 6 is a top view;
FIG. 7 is a bottom view thereof;
FIG. 8 is a perspective view of another embodiment of a watch; and,
FIG. 9 is a front view thereof, the rear, right-side, left-side, top and bottom views thereof being the same as FIGS. 3-7.
The broken lines are for illustrative purposes only and form no part of the claimed design.

(56) **References Cited**
U.S. PATENT DOCUMENTS

D251,056 S * 2/1979 Perrin D10/39
D262,949 S * 2/1982 Perrin D10/32
D267,549 S * 1/1983 Kencol D10/39

1 Claim, 4 Drawing Sheets



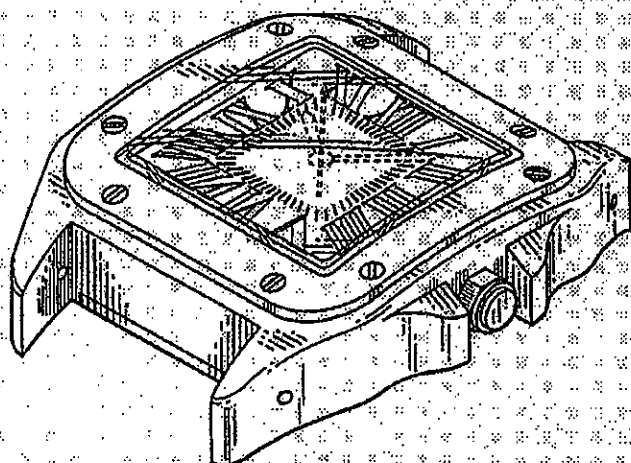


Fig. 1

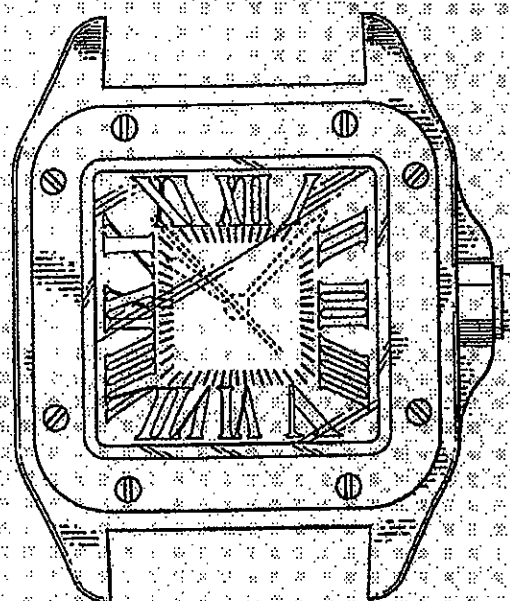


Fig. 2

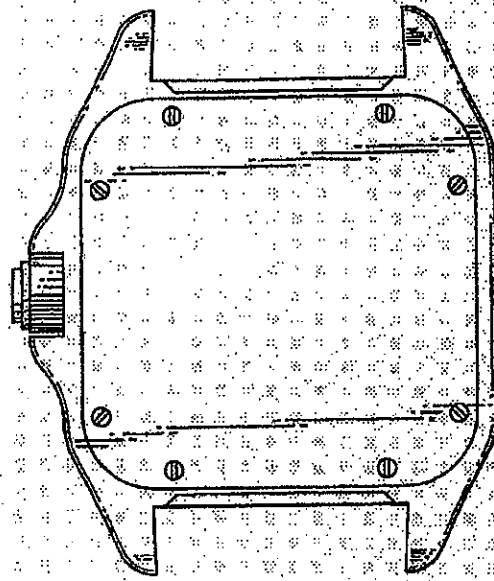


Fig. 3

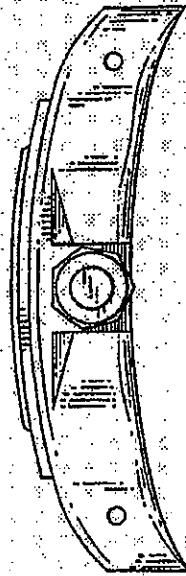


Fig. 4

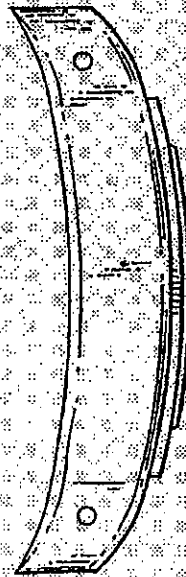


Fig. 5

The United States of America



The Director of the United States Patent and Trademark Office

Has received an application for a new, original, and ornamental design for an article of manufacture. The title and description of the design are enclosed. The requirements of law have been complied with, and it has been determined that a patent on the design shall be granted under the law.

Therefore, this

United States Patent

Grants to the person(s) having title to this patent the right to exclude others from making, using, offering for sale, or selling the design throughout the United States of America, or importing the design into the United States of America for the term of fourteen years from the date of grant of this patent.

A handwritten signature in cursive script, reading "Jon W. I. Dudas".

Director of the United States Patent and Trademark Office