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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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EMC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 10 4457
Case No.

ALIBABA.COM HONG KONG LIMITED, a
Hong Kong corporation, and ALIBABA.COM,
INC., a Delaware corporation,

Plaintiffs,

v.

P.S. PRODUCTS, INC., an Arkansas
corporation, and BILLY PENNINGTON, an
individual,

Defendants.

COMPLAINT FOR DECLARATORY
JUDGMENT OF PATENT
NONINFRINGEMENT

JURY TRIAL DEMANDED

Plaintiffs Alibaba.com Hong Kong Limited ("Alibaba Hong Kong") and Alibaba.com, Inc. ("Alibaba US") (collectively, "Plaintiffs"), for their Complaint for Declaratory Judgment against Defendants P.S. Products, Inc. and Billy Pennington (collectively, "P.S. Products" or "Defendants") aver the following:

NATURE OF THE ACTION

1. This action is based on the patent laws of the United States, Title 35 of the United States Code. Defendants have asserted rights under U.S. Patent Nos. D561,294 S ("the '294 patent), D576,246 S ("the '246 patent"), and D611,115 S ("the '115 patent") (collectively, "the Patents-in-Suit") based on certain ongoing activity by Alibaba Hong Kong and Alibaba US.

COMPLAINT FOR DECLARATORY
JUDGMENT

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

1 Alibaba Hong Kong and Alibaba US contend that they have the right to engage in the accused
2 activity without license to any of the Patents-in-Suit. True and correct copies of the Patents-in-
3 Suit are attached hereto as Exhibits A-C. Plaintiffs thus seek a declaration that they do not
4 infringe the Patents-in-Suit.

5 **THE PARTIES**

6 2. Alibaba Hong Kong is a Hong Kong corporation with its principal place of
7 business at 25/F Jubilee Centre, 18 Fenwick Street, Wanchai, Hong Kong.

8 3. Alibaba.com, Inc. is a Delaware corporation with its principal place of business at
9 3979 Freedom Circle, Suite 328, Santa Clara, CA 95054.

10 4. On information and belief, P.S. Products is an Arkansas company with its
11 principal place of business at 414 S. Pulaski Street, Little Rock, AR 72201.

12 5. On information and belief, Billy Pennington is an Arkansas resident and the
13 President of P.S. Products.

14 **JURISDICTION AND VENUE**

15 6. This is a civil action regarding allegations of patent infringement arising under the
16 patent laws of the United States, Title 35 of the United States Code, in which Alibaba Hong Kong
17 and Alibaba US seek declaratory relief under the Declaratory Judgment Act. Thus, the court has
18 subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

19 7. An actual controversy exists between Alibaba Hong Kong and Alibaba US on the
20 one hand and Defendants on the other by virtue of Defendants' assertion of rights under the
21 Patents-in-Suit based on certain ongoing activity by Alibaba Hong Kong and Alibaba US.

22 8. Alibaba Hong Kong contends that it has a right to operate its websites, including
23 but not limited to www.alibaba.com and www.aliexpress.com without license from Defendants.

24 9. Alibaba US does not operate the websites www.alibaba.com or
25 www.aliexpress.com, but has nonetheless been accused of infringing the Defendants' patents
26 based upon these websites.

27 10. The Court has personal jurisdiction over Defendants *inter alia* because Defendants
28 have purposely directed their activities relating to the Patents-in-Suit, which are the subject matter

1 of this action, into the Northern District of California. For example, and without limitation,
2 Defendants have directed enforcement activities relating to the Patents-in-Suit, including but not
3 necessarily limited to the assertion of rights against Alibaba US, in the Northern District of
4 California. Further, upon information and belief, Defendants solicit and conduct business in and
5 within this jurisdiction and sell their products here. Accordingly, Defendants have established the
6 requisite minimum contacts with this District, and exercise of jurisdiction here would comport
7 with traditional notions of substantial justice and fair play.

8 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391 because Defendants are
9 subject to personal jurisdiction in this district. Venue is also proper pursuant to 28 U.S.C.
10 § 1391(b) because the events which give rise to the remedy requested herein occurred in this
11 district.

12 INTRADISTRICT ASSIGNMENT

13 12. This is an Intellectual Property Action subject to district-wide assignment under
14 Local Rule 3-2(c).

15 FACTUAL BACKGROUND

16 13. Alibaba Hong Kong is a global leader in e-commerce for small businesses. It
17 provides web platforms through which buyers and suppliers around the world can do business
18 online. Alibaba Hong Kong does not, however, manufacture, own, control or take possession of
19 any of the products listed on its websites, www.alibaba.com and www.aliexpress.com.

20 14. Alibaba US provides marketing services for www.alibaba.com and
21 www.aliexpress.com. It does not operate either website and does not manufacture, own, control
22 or take possession of any of the products listed on either website.

23 15. On information and belief, P.S. Products is a manufacturer and distributor of stun
24 guns and other personal security devices.

25 16. The '294 patent is entitled Stun Gun. The '294 patents states on its face that its
26 inventor is Billy Pennington and that it was issued on February 5, 2008.

27 17. The '246 patent is entitled Stun Gun. The '246 patents states on its face that its
28 inventor is Billy Pennington and that it was issued on September 2, 2008.

1 18. The '115 patent is entitled Stun Gun. The '115 patent states on its face that its
2 inventor is Billy Pennington and that it was issued on March 2, 2010.

3 19. Defendants have asserted that they have right, title, and interest in the Patents-in-
4 Suit. On or about January 14, 2010, Defendants contacted Alibaba.com US accusing it of
5 infringing its patents.

6 20. On or about August 13, 2010, Defendants filed suit in the Eastern District of
7 Arkansas against Alibaba.com US and a nonexistent entity, Aliexpress.com, asserting that the
8 Patents-in-Suit are being directly and indirectly infringed by operation of www.alibaba.com and
9 www.aliexpress.com. That case is pending as Eastern District of Arkansas Case No. 10-cv-
10 01149-JMM and does not name Alibaba Hong Kong as a party. The complaint filed in that suit is
11 fundamentally flawed for several reasons including: (1) AliExpress.com is a website and not a
12 legal entity; and (2) Alibaba US does not operate the implicated websites and is not subject to
13 personal jurisdiction in Arkansas. Defendants in that case intend to move to dismiss the Arkansas
14 action.

15 21. Neither Alibaba Hong Kong nor Alibaba US infringe the Patents-in-Suit.
16 Accordingly, an actual controversy exists between Alibaba Hong Kong and Alibaba US and
17 Defendants as to whether Alibaba Hong Kong and Alibaba US infringe any valid and enforceable
18 claim of the Patents-in-Suit. Absent a declaration of non-infringement, Defendants will continue
19 to wrongly assert the Patents-in-Suit against Alibaba Hong Kong and Alibaba US, and thereby
20 cause Alibaba Hong Kong and Alibaba US irreparable harm.

21 **FIRST CAUSE OF ACTION**

22 **(Declaratory Judgment of Non-Infringement of the '294 Patent)**

23 22. Alibaba Hong Kong and Alibaba US hereby incorporate by reference their
24 allegations contained in paragraphs 1 through 21 of this Complaint as though fully set forth
25 herein.

26 23. Defendants contend that products and/or services imported, made, used, sold or
27 offered for sale by Alibaba Hong Kong and Alibaba US infringe the '294 patent.

1 34. Alibaba Hong Kong and Alibaba US deny Defendants' contentions and allege that
2 Plaintiffs do not directly or indirectly infringe the '115 patent.

3 35. An actual controversy thus exists between Alibaba Hong Kong and Alibaba US on
4 the one hand, and Defendants on the other, as to whether Plaintiffs infringe the '115 patent.

5 36. Accordingly, Alibaba Hong Kong and Alibaba US seek and are entitled to a
6 judgment against Defendants that Alibaba Hong Kong and/or Alibaba US do not infringe and
7 have not infringed, directly or indirectly, contributorily or by inducement, the '115 patent.

8 **DEMAND FOR JURY TRIAL**

9 Pursuant to Fed. R. Civ. P. 38, Plaintiffs Alibaba Hong Kong and Alibaba US demand a
10 jury trial as to all matters triable of right by a jury.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs pray for a declaratory judgment against Defendants as follows:

13 A. Judgment against Defendants declaring that the '294, '246, and '115 patents are
14 not infringed by Alibaba Hong Kong and/or Alibaba US;

15 B. A declaration that Plaintiffs' case against Defendants is an exceptional case within
16 the meaning of 35 U.S.C. § 285;

17 C. An award of costs and attorneys' fees to Alibaba Hong Kong and Alibaba US; and

18 D. Such other and further relief as the Court deems just and reasonable.

19
20 Dated: October 1, 2010

FENWICK & WEST LLP

21
22 By: 

Darryl M. Woo

23
24 Attorneys for Plaintiffs
25 Alibaba.com Hong Kong Limited and
26 Alibaba.com, Inc.

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

Exhibit A



US00D576246S

(12) **United States Design Patent**
Pennington

(10) **Patent No.:** **US D576,246 S**
(45) **Date of Patent:** **** Sep. 2, 2008**

(54) **STUN GUN**

(76) **Inventor:** **Billy Pennington, 414 S. Pulaski St.,
Suite 1, Little Rock, AR (US) 72201**

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

(21) **Appl. No.:** **29/282,235**

(22) **Filed:** **Jul. 14, 2007**

Related U.S. Application Data

(63) **Continuation-in-part of application No. 29/247,836,
filed on Jul. 14, 2006, now Pat. No. Des. 561,294.**

(51) **LOC (8) Cl.** **22-02**

(52) **U.S. Cl.** **D22/117**

(58) **Field of Classification Search** **D22/117,
D22/118, 199, 105; 42/1.08; 222/175, 183;
361/232**

See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

- D351,639 S 10/1994 Su
- 6,256,916 B1 7/2001 McNulty
- 6,636,412 B2 10/2003 Smith
- 6,807,762 B1 10/2004 Edwards

- D530,777 S * 10/2006 Rhee D22/117
- D539,376 S * 3/2007 Rhee D22/117
- D539,866 S * 4/2007 Rhee D22/117
- D552,207 S * 10/2007 Rhee D22/117

* cited by examiner

Primary Examiner—Catherine R Oliver

(57) **CLAIM**

The ornamental design for a stun gun, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective of a stun gun showing my new design;

FIG. 2 is a bottom plan view;

FIG. 3 is a front elevation view;

FIG. 4 is a top plan view;

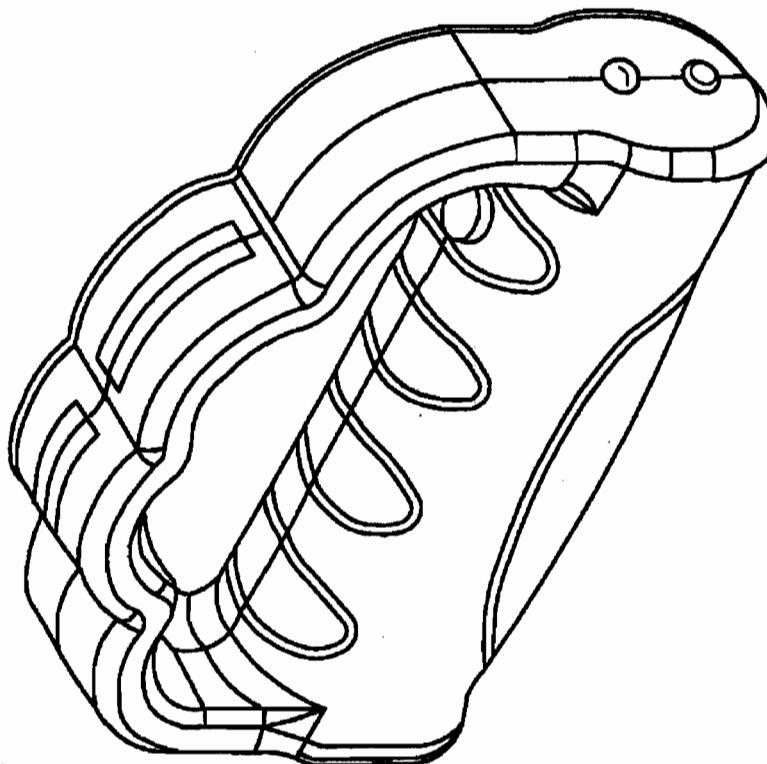
FIG. 5 is a right elevation view;

FIG. 6 is a left elevation view;

FIG. 7 is a bottom perspective view; and,

FIG. 8 is a perspective view of an alternative embodiment of a stun gun.

1 Claim, 4 Drawing Sheets



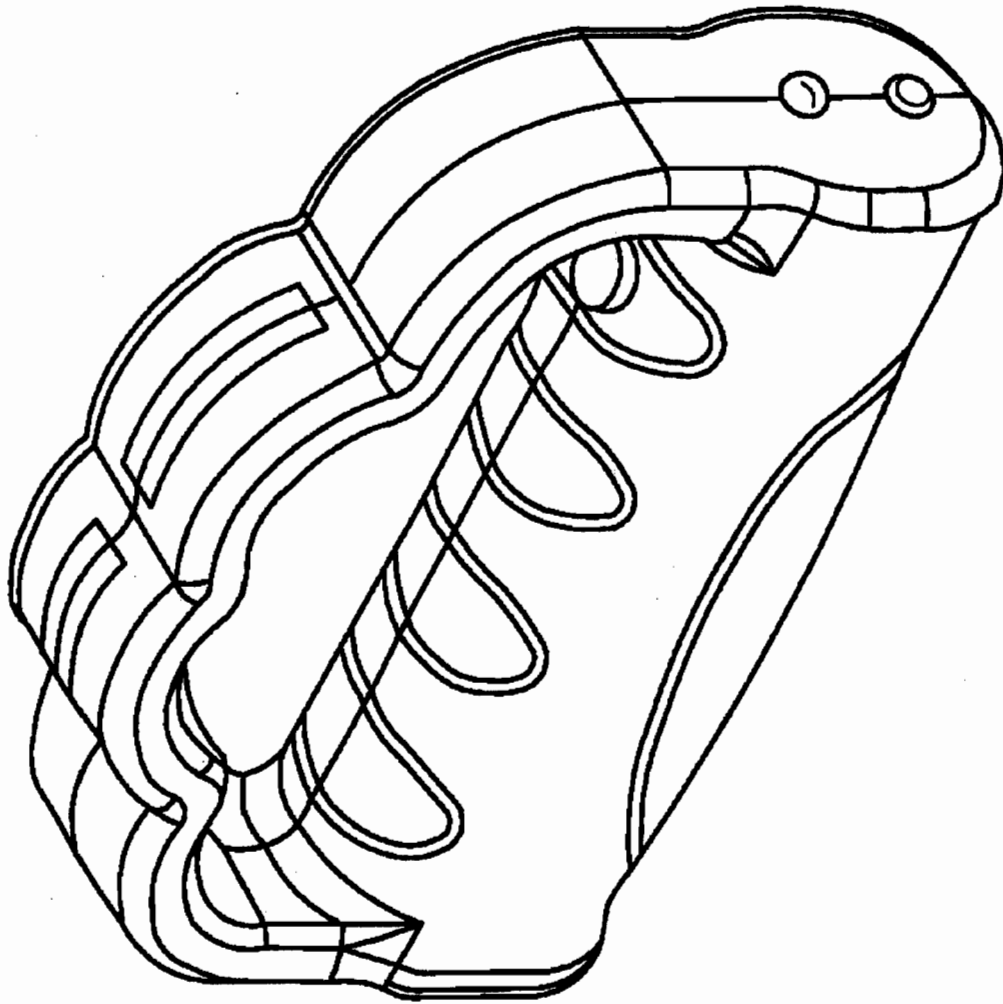


FIG. 1



FIG. 2

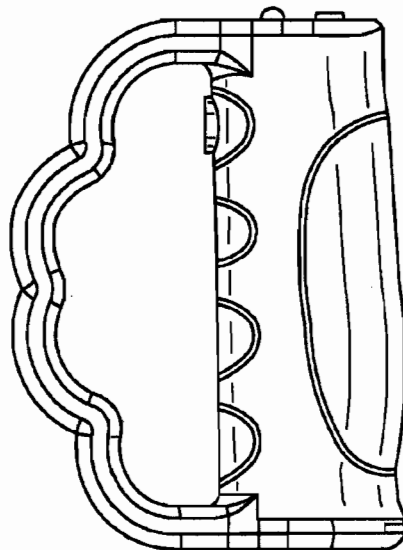


FIG. 3

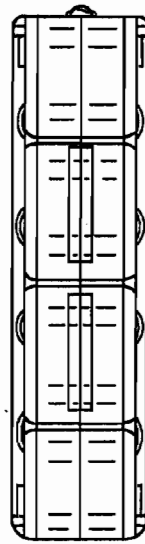


FIG. 4

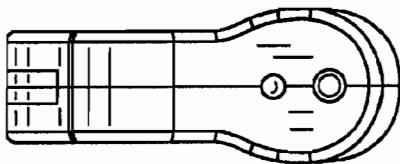


FIG. 5

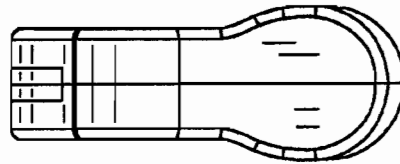


FIG. 6

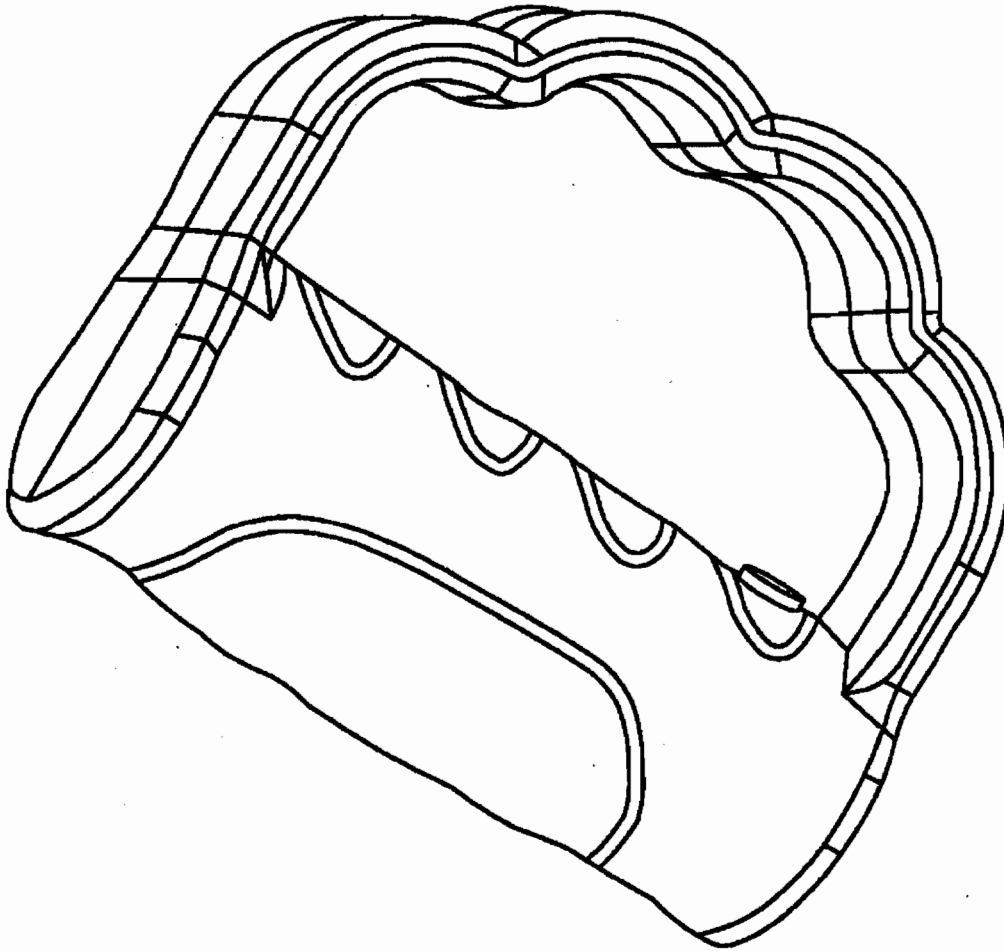


FIG. 7

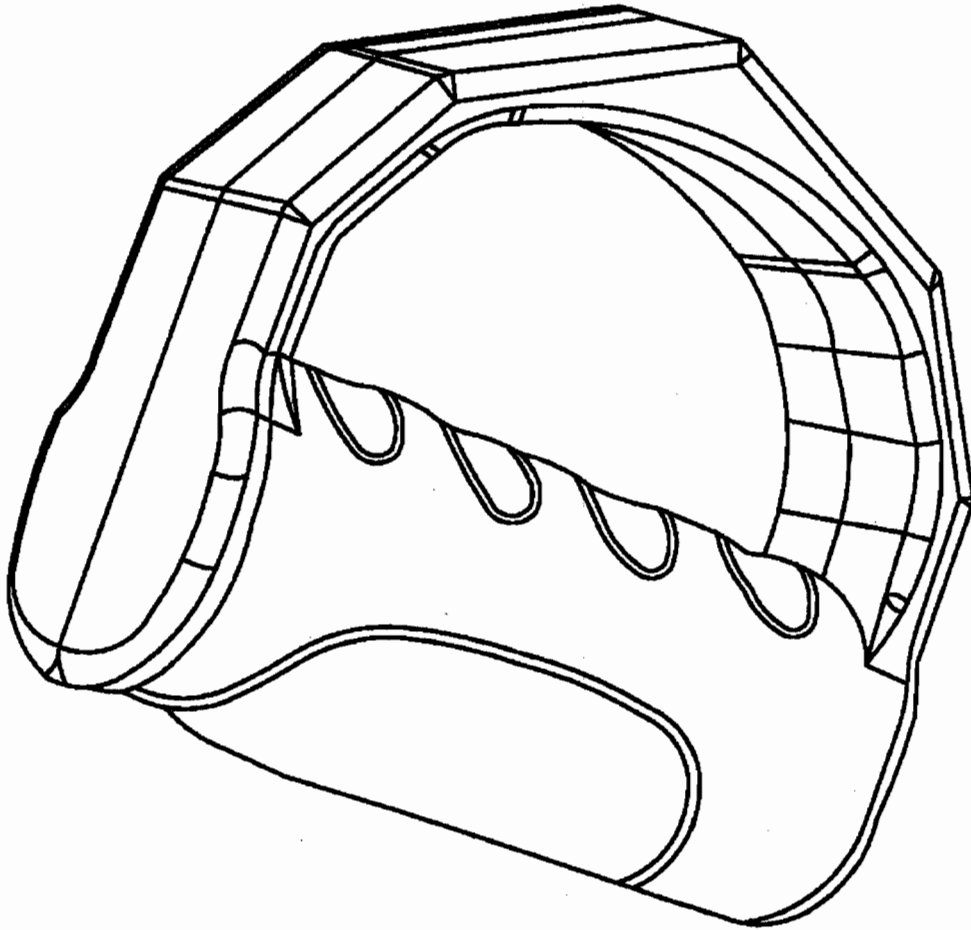


FIG. 8

Exhibit B



US00D561294S

(12) **United States Design Patent** (10) Patent No.: **US D561,294 S**
Pennington (45) Date of Patent: **** Feb. 5, 2008**

(54) **STUN GUN**

D503,451 S * 3/2005 Tal D22/117
 D530,777 S * 10/2006 Rhee D22/117

(76) Inventor: **Billy Pennington**, 414 S. Pulaski St.,
 Suite 1, Little Rock, AR (US) 72201

* cited by examiner

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

Primary Examiner—Catherine R. Oliver
 (74) *Attorney, Agent, or Firm*—Crossley Patent Law; Mark
 A. Crossley

(21) Appl. No.: **29/247,836**

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

(57) **CLAIM**

(51) **LOC (8) Cl.** **22-02**
 (52) **U.S. Cl.** **D22/117**
 (58) **Field of Classification Search** **D22/117,**
D22/118, 199, 105; 42/1.08; 222/175, 183
 See application file for complete search history.

The ornamental design for a stun gun, as shown and
 described.

DESCRIPTION

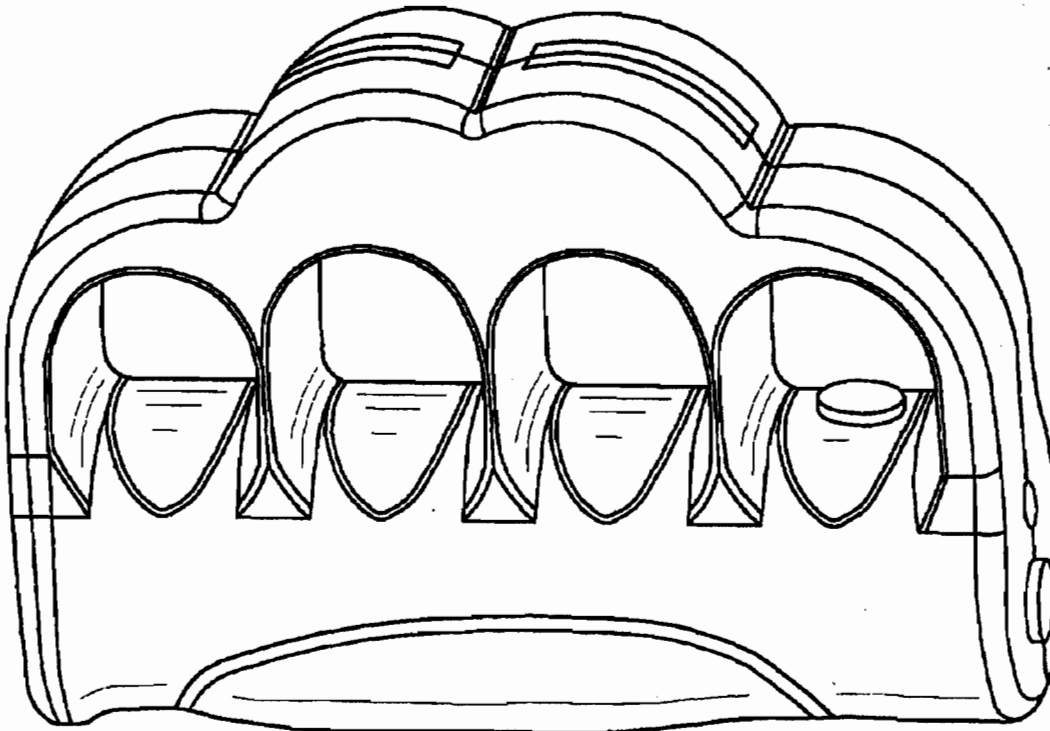
(56) **References Cited**

FIG. 1 is a front elevation view of a stun gun showing my
 new design;
 FIG. 2 is a top plan view;
 FIG. 3 is a bottom plan view;
 FIG. 4 is a right side elevation view;
 FIG. 5 is a left side elevation view; and,
 FIG. 6 is a left side isometric view of a stun gun showing my
 new design.

U.S. PATENT DOCUMENTS

| | | | | |
|--------------|---------|----------------|-------|---------|
| D351,639 S | 10/1994 | Su | | D22/117 |
| D365,622 S * | 12/1995 | Edwards | | D22/117 |
| D375,994 S * | 11/1996 | Collins et al. | | D22/117 |
| 6,256,916 B1 | 7/2001 | McNulty | | 42/1.08 |
| D469,498 S * | 1/2003 | Oscarsson | | D22/117 |
| 6,636,412 B2 | 10/2003 | Smith | | 361/232 |
| 6,807,762 B1 | 10/2004 | Edwards | | 42/1.08 |

1 Claim, 4 Drawing Sheets



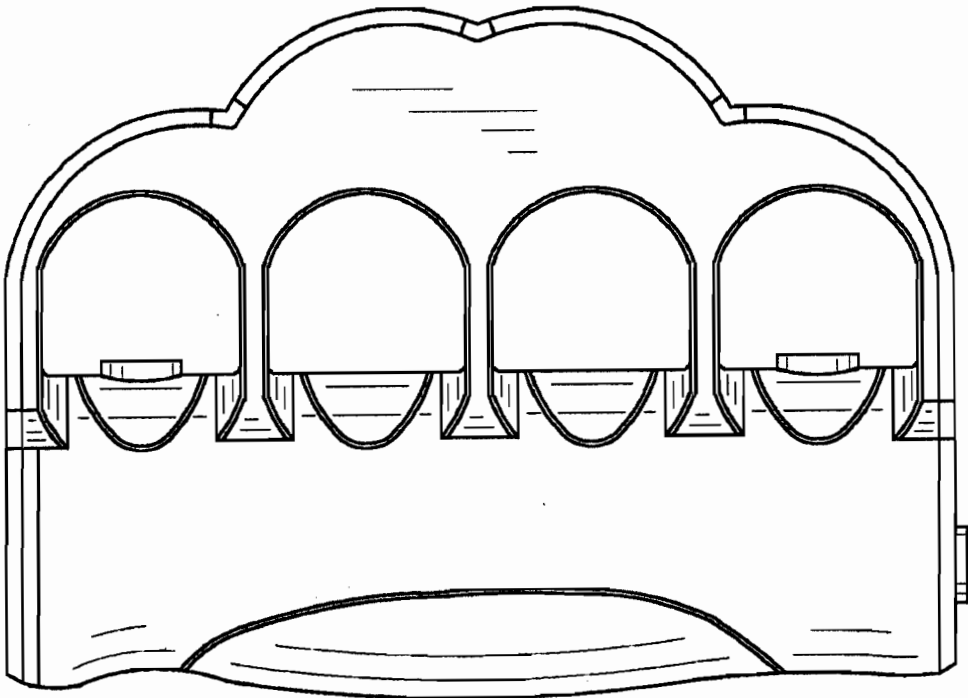


FIG. 1

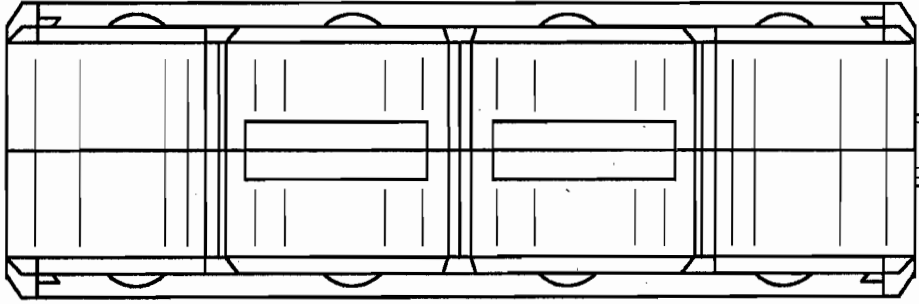


FIG. 2

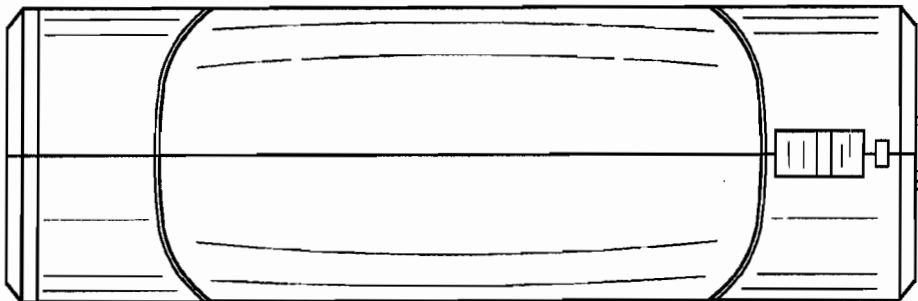


FIG. 3

U.S. Patent

Feb. 5, 2008

Sheet 3 of 4

US D561,294 S

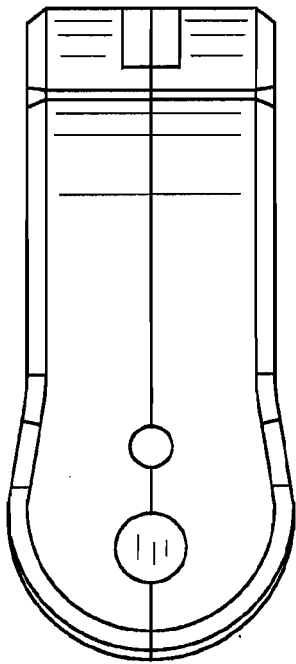


FIG. 4

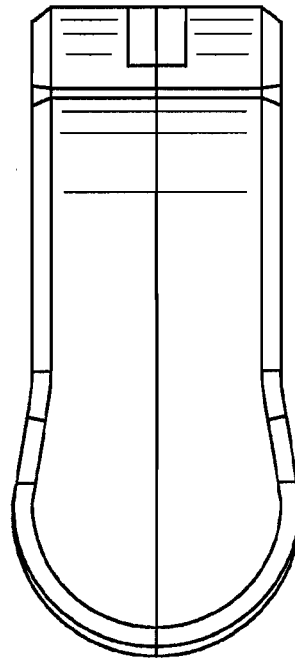


FIG. 5

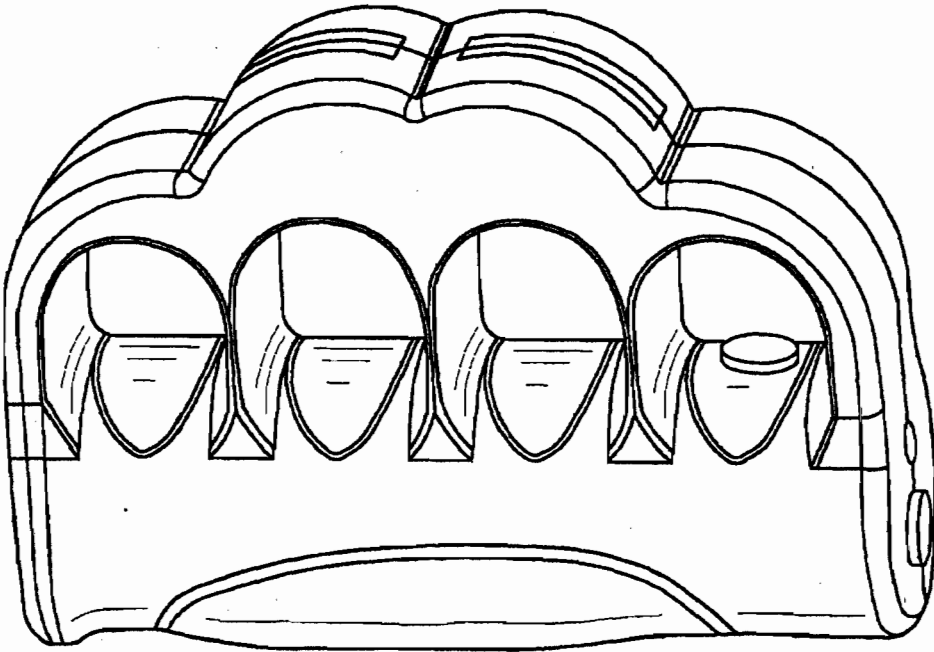


FIG. 6

Exhibit C



US00D611115S

(12) **United States Design Patent**
Pennington

(10) **Patent No.:** US D611,115 S
(45) **Date of Patent:** ** Mar. 2, 2010

(54) **STUN GUN**

(76) **Inventor:** Billy Pennington, 414 S. Pulaski St., Suite 1, Little Rock, AR (US) 72201

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

(21) **Appl. No.:** 29/340,602

(22) **Filed:** Jul. 21, 2009

(51) **LOC (9) Cl.** 22-02

(52) **U.S. Cl.** D22/117

(58) **Field of Classification Search** D22/117-118;
222/78-79, 153.03, 153.11, 162, 175, 192,
222/402.1, 402.11, 504; 231/1, 3, 7; 361/232;
42/1.08, 1.09, 1.12

See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

- 4,092,695 A * 5/1978 Henderson et al. 361/232
- 4,533,140 A * 8/1985 Champion 231/3
- D351,639 S 10/1994 Su
- 5,842,602 A * 12/1998 Pierpoint 222/192
- 6,256,916 B1 7/2001 McNulty

- 6,636,412 B2 10/2003 Smith
- 6,807,762 B1 10/2004 Edwards
- D539,866 S * 4/2007 Rhee D22/117
- D585,519 S 1/2009 Pennington
- D585,955 S * 2/2009 Gamma D22/117

* cited by examiner

Primary Examiner—Catherine R Oliver
(74) *Attorney, Agent, or Firm*—Crossley Patent Law; Mark A. Crossley

(57) **CLAIM**

The ornamental design for a stun gun, as shown and described

DESCRIPTION

FIG. 1 is a top plan view of a stun gun showing my new design;

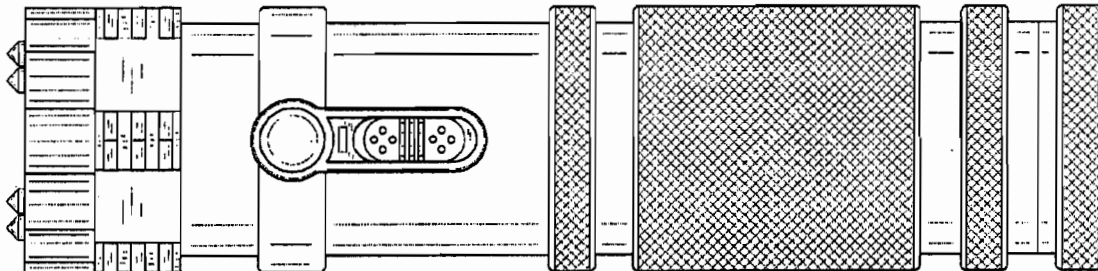
FIG. 2 is a bottom plan view thereof;

FIG. 3 is a front elevation view thereof;

FIG. 4 is a rear elevation view thereof; and,

FIG. 5 is a right elevation view thereof, the opposite side being a mirror image of the shown.

1 Claim, 2 Drawing Sheets



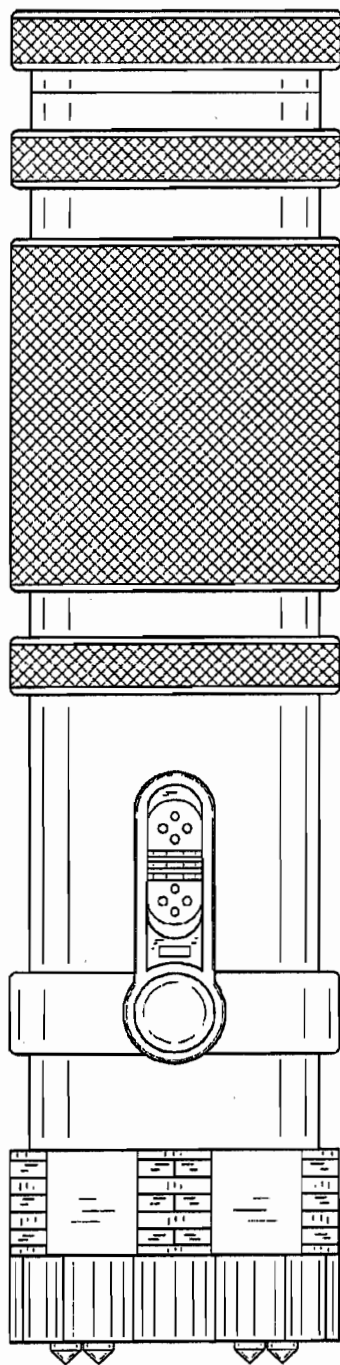


FIG. 1

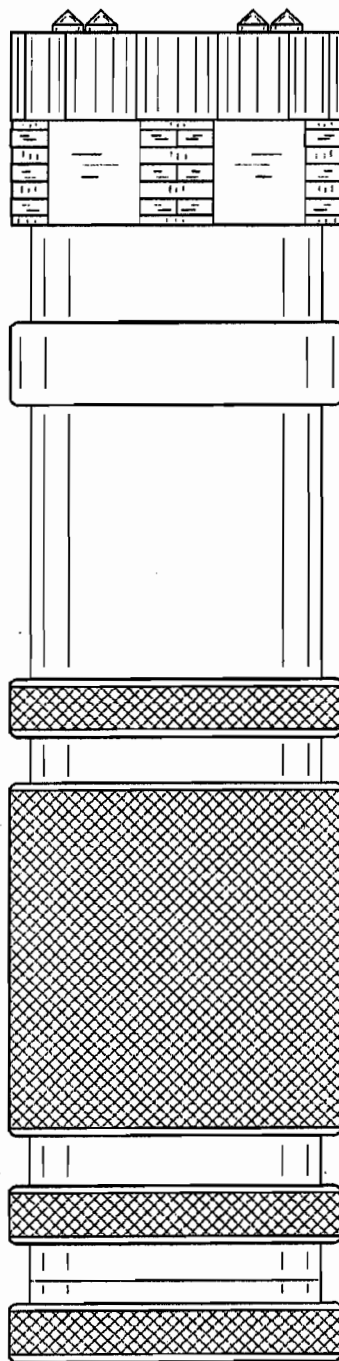


FIG. 2

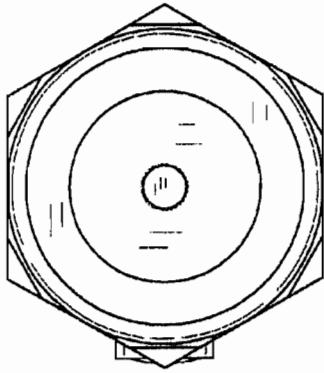


FIG. 4

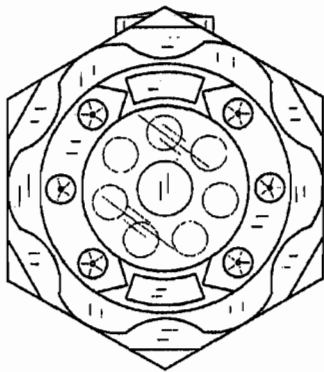


FIG. 3

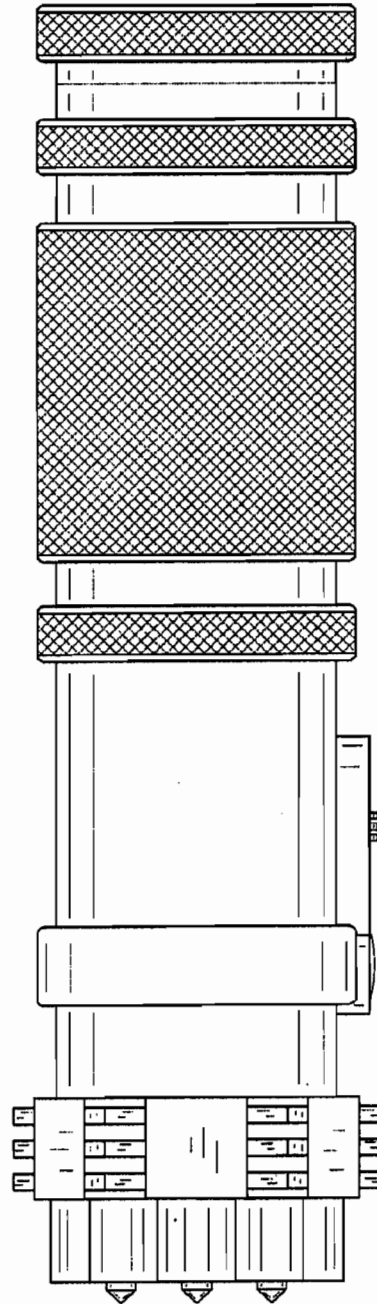


FIG. 5