



USFC2004-1609-06

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JOINT APPENDIX

04-1609, 05-1141,-1202

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

GOLDEN BLOUNT, INC.

Plaintiff-Appellee,

v.

ROBERT H. PETERSON CO.,

Defendant-Appellant.

RECEIVED

JUN 28 2005

United States Court of Appeals
For The Federal Circuit

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS IN 3:01-CV-127-R

JUDGE JERRY BUCKMEYER

U.S. COURT

NON-CONFIDENTIAL JOINT APPENDIX

VOLUME IV, PAGES JT-APP 1490 – 2029

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179.	Brief of Plaintiff-Appellee Golden Blount, Inc. (Corrected)	
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Doc #827599

EXHIBIT 3b.

Plaintiff's Logs

(In a box separate from exhibits)

EXHIBIT 4a.

Defendant Peterson's Coals Burner Assembly and Grate

(In a box separate from exhibits)

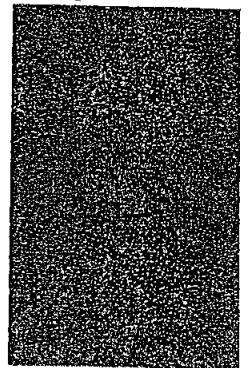
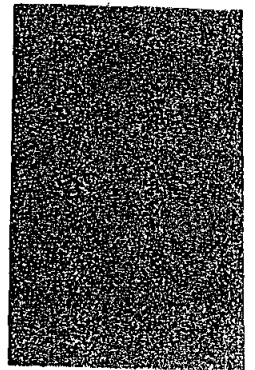


EXHIBIT 4b.

Defendant's Logs

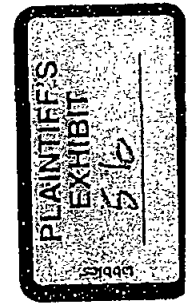
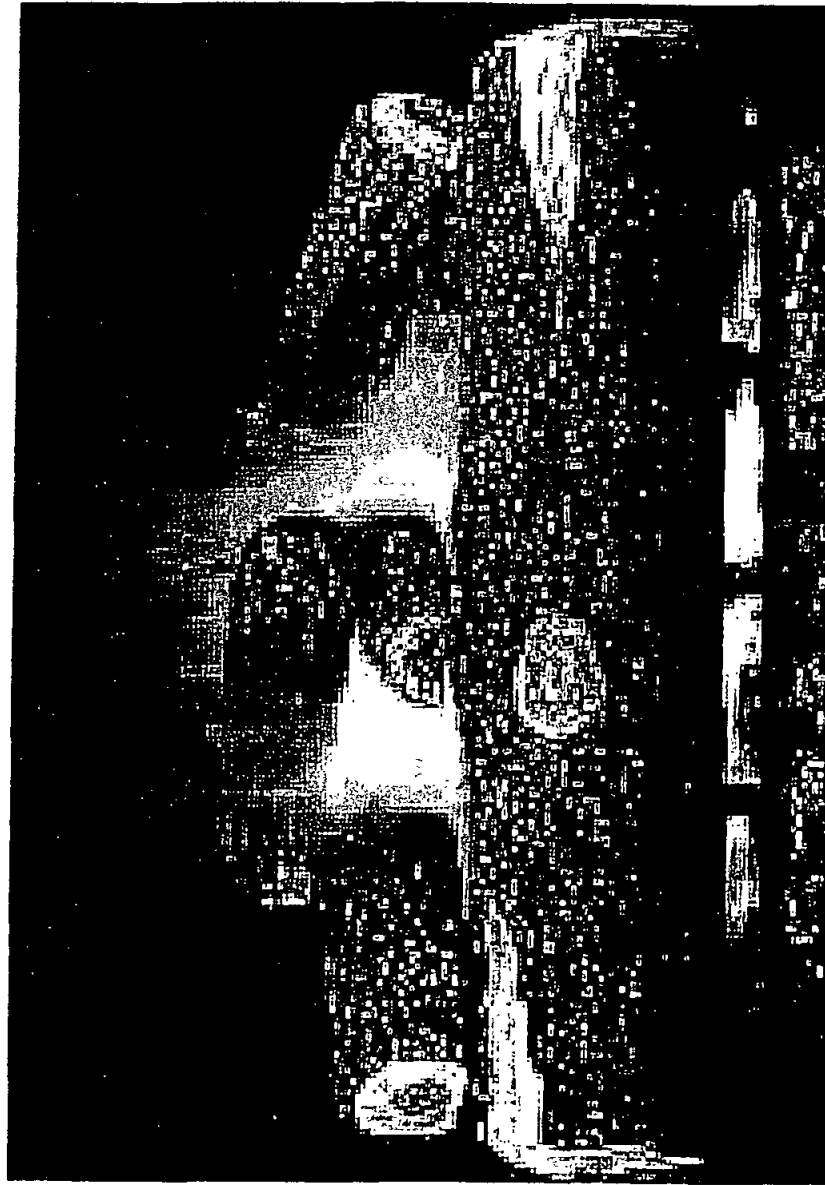
(In a box separate from exhibits)



Defendant's Log Set With Ember Flame Booster



Defendant's Log Set Without Ember Flame Booster



EMBER FLAME BOOSTER

Enhance the glow and warmth of your hearth

The realism and excitement of your Real-Fyre Gas Log set is amplified by the Ember Flame Booster (EMB Series). This easy-to-install accessory adds dramatic front flames to your gas log set and magnifies its beauty. The Ember Flame Booster is available in sizes 18", 24", or 30" for Natural Gas only. Plus, the Ember Flame Booster has an independent control allowing for adjustable front flame and glowing ember settings.

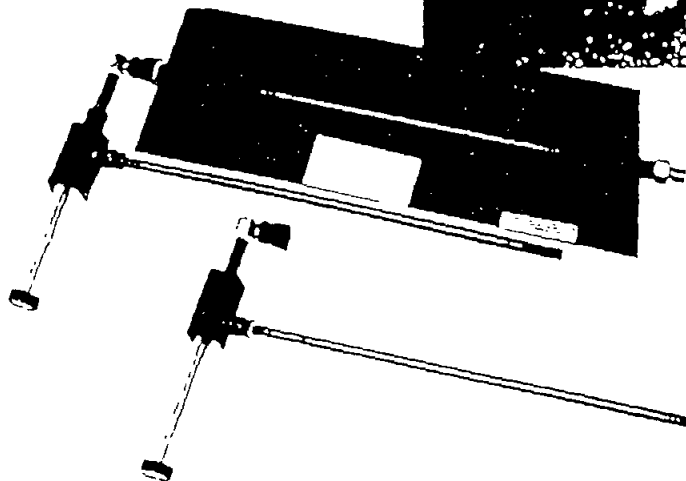


Before
without Ember Flame Booster



After
with Ember Flame Booster

Available for 18", 24", and 30" Gas Logs Sets.



As an accessory for your G4 Series Burner System, Model #s EMB-18, EMB-24, EMB-30.

or

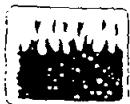
Order pre-assembled on your G5 Series (AGA Design Certified) Log Set (eg G5-24-14M-EMB).

000015



Real-Fyre Gas Logs

a Beautiful Tradition for 10 years.



ROBERT H. PETERSON CO.

14724 EAST PROCTOR AVE. CITY OF INDUSTRY, CA 91746 • LOG ON! www.rhpeterson.com

PLAINTIFF'S
EXHIBIT

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JT-APP 1495

Installer: please leave these instructions with consumer.

Consumer: please retain for future reference.

TO BE USED WITH THE REAL-FYRE G4 SERIES BURNER SYSTEMS.

AVAILABLE FOR USE ON THE FOLLOWING LOG SETS:

18"

24"

30"

FOR NATURAL GAS ONLY.

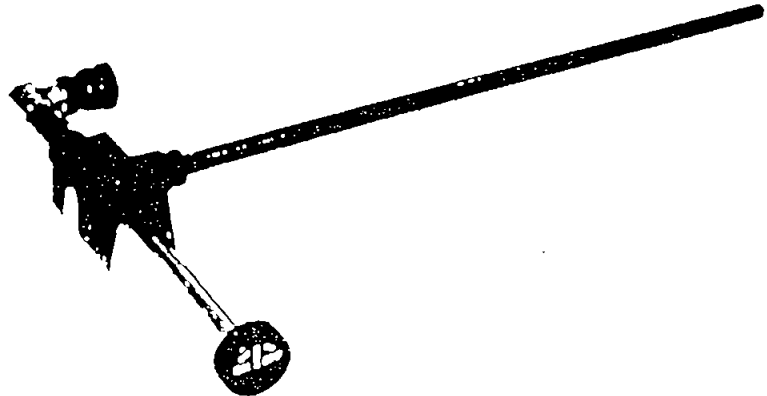
ROBERT H. PETERSON CO.

Real-Fyre®

EMB SERIES

"EMBER FLAME BOOSTER"

INSTALLATION AND
OPERATING INSTRUCTIONS



EMB-24 Ember Flame Booster for 24" Log Set shown

WARNING: If the information in this manual is not followed exactly, a fire or explosion may result causing property damage, personal injury or loss of life.

Do not store or use gasoline or other flammable vapors and liquids in the vicinity of this or any other appliance.

WHAT TO DO IF YOU SMELL GAS

- Open a window.
- Do not try to light any appliance.
- Do not touch any electrical switch; do not use any phone in your building.
- Immediately call your gas supplier from a neighbor's phone and follow the gas supplier's instructions.
- If you cannot reach your gas supplier, call the fire department.

Installation and service must be performed by a qualified installer, service agency or the gas supplier.

IMPORTANT: READ THESE INSTRUCTIONS CAREFULLY BEFORE STARTING INSTALLATION OF YOUR LOG SET

Your Peterson Real-Fyre Ember Flame Booster is to be installed only with a Peterson Real-Fyre G4 Series Log Set in a solid-fuel burning fireplace with a working flue constructed of noncombustible material. Solid fuels shall not be burned in a fireplace where a gas log set is installed. The minimum permanent vent opening provided by the fireplace chimney or chimney damper to vent the flue products is listed in your G4 Series Owner's Manual. The chimney damper must be fixed in a manner to maintain the minimum permanent vent opening. A Damper Stop Clamp is provided as a means to maintain the minimum permanent vent opening and to prevent full closure of the damper blade (See Damper Stop Clamp Instructions in your G4 Series Owner's Manual). The installation, including provisions for combustion and ventilation air, must conform with the American National Standard Fuel Gas Code Z223.1 and applicable local building codes.

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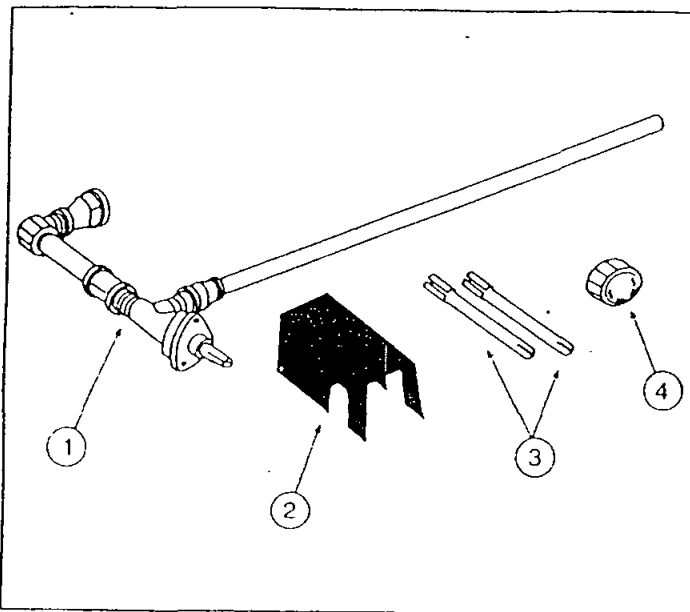
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ROBERT H. PETERSON CO. 14724 East Pro

y, CA 91746

PARTS LIST FOR PETERSON REAL-FYRE EMBER FLAME BOOSTER (EMB SERIES)

NOTE: The parts for the EMB-24 Ember Flame Booster 24" Accessory Set are illustrated and listed. Part numbers and sizes will vary depending upon the size of the EMB ordered. When ordering replacement parts, be sure to indicate your EMB size.



Item No.	Part No.	Description
1.	EMB-24-01	Ember Flame Booster Assembly
2.	HS-29-00	Heatshield
3.	EH-1	Handle Extension (2)
4.	Knobs	EMB Control Knob

IMPORTANT INFORMATION

Do not use this accessory if any part has been under water. Immediately call a qualified service technician to inspect the appliance and to replace any part of the control system and any gas control which has been under water.

The appliance and its individual shutoff valve must be disconnected from the gas supply piping system when testing the system at test pressures in excess of ½" psig. This is accomplished by closing the gas supply line valve, which is required by NFPA54, section 5.54.

The minimum inlet gas supply pressure for the purpose of input adjustment is 5" for Natural Gas.

The maximum inlet gas supply pressure for this burner is 14" for Natural Gas.

A fireplace screen must be in place when the log set is burning. Provisions for adequate combustion air must be maintained. Combustion air is adequate when all flames curl into the fireplace and away from the screen.

When glass fireplace doors are used, operate the gas log set with the doors open.

Real-Fyre EMB Series Technical Data Table				
Log Set Size	* Log Set Dimensions w/ EMB			BTU Rating Nat.
	Front	Depth	Back	
18"	19.5"	14"	15"	Refer to the Owner's Manual of your Real-Fyre G4 Series Burner System. The EMB Series Accessory does not effect BTU rating.
24"	25.5"	14"	20"	
30"	31.5"	14"	24"	

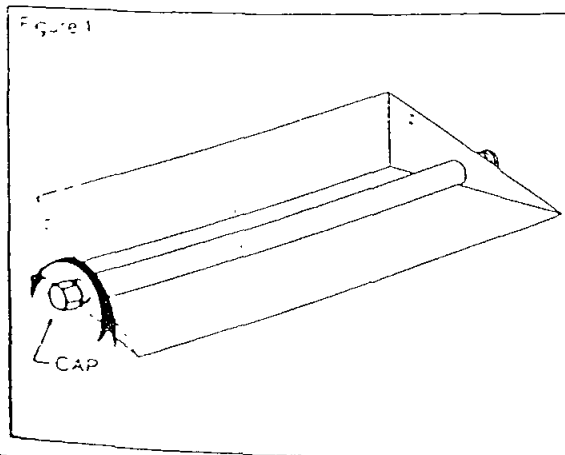
* Dimensions of G4 Series Log Sets with EMB accessory installed. If the log set is centered properly, your G4 Series log set with EMB can be installed in accordance with the Front Width of Fire Box Opening as listed in your G4 Series Owner's Manual.

INSTALLING THE PETERSON REAL-FYRE EMBER FLAME BOOSTER (EMB SERIES)

INSTALLING THE EMB SERIES TO YOUR G4 SERIES BURNER

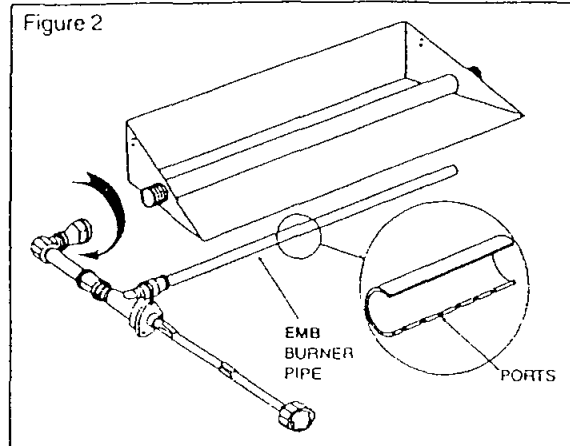
Refer to the Parts List on page 2 when installing your Real-Fyre Ember Flame Booster

1. Carefully unpack your Burner System and Ember Flame Booster. Check the parts list of both instruction manuals to be sure all parts are included.
2. Be sure the gas supply to the fireplace is turned off.
3. When installing your Ember Flame Booster and Log Set, use Teflon Tape or pipe compound, resistant to the action of Propane Gas, on all threaded male connections except brass to brass connections. The Burner Fuel Injector, although brass in color is not brass and Teflon Tape or pipe compound must be used.
4. If installing to an existing G4 Series Burner System, continue with step 5. If installing to a new G4 Series Burner System, continue with step 9.
5. Remove the logs and grate from the fireplace.
6. Disconnect your burner system from the main gas supply.
7. Remove any sand, embers and/or lava granules from the burner and floor of the fireplace.
8. Clean the floor of the fireplace of any dirt or ashes.
9. Remove the cap from the left side of the burner system, turning counterclockwise (Figure 1)



10. Attach the 1/2" female pipe fitting of the Ember Flame Booster to the left stub of your burner system. Rotate the Ember Flame Booster around your burner system clockwise. Use Teflon Tape or pipe compound. Tighten securely so the Ember Flame Booster valve faces forward and flush with the burner pan. The Ember Flame Booster burner ports should face downward (Figure 2).

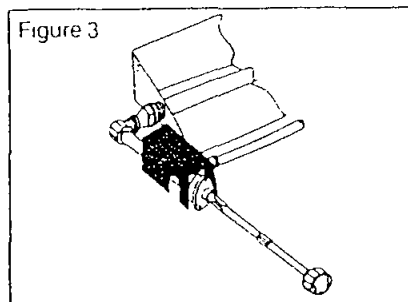
Figure 2



Note: For right sided installation mirror the installation instructions and, with a pipe wrench, rotate the EMB burner so the ports face downwards.

11. Attach the handle extensions and knob to the control valve.
12. Place the heat shield over the control valve as shown (Figure 3).

Figure 3



12. Follow the installation instructions supplied with your burner system to complete the installation of your gas log set. When placing the sand and Ember Glow in the burner pan, be sure to completely cover the Ember Flame Booster burner pipe.

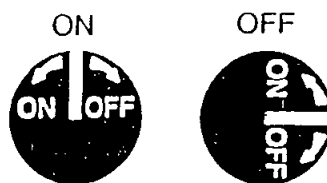
Test for leaks at all connections with a soapy water solution. Never use an open flame to check for leaks.

REAL-FYRE EMBER FLAME BOOSTER OPERATING INSTRUCTIONS

The Ember Flame Booster provides enhanced front flame and glowing embers with a boost of heat from an independent variable control valve. The EMB Series is easily operated with a turn of the EMB control knob for added front flame and heat to regular operation of your burner system.

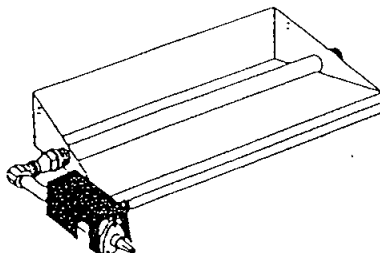
1. Follow the lighting instructions supplied with your G4 Series Burner System to light the log set.
2. For added Front Ember Flame and a Heat Boost, turn the EMB Control Knob counterclockwise to the desired setting.
3. To lower or extinguish the Ember Flame Booster, turn the EMB Control Knob clockwise (all the way clockwise to extinguish).
4. To extinguish your Log Set, follow the instructions supplied with your G4 Series Burner System.

Figure 4



Caution: The EMB Control Knob and the Handle Extensions may become 'HOT' by the radiant heat of your log set.

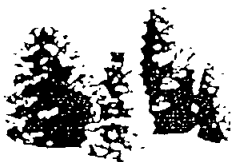
The Control Knob and Handle Extensions can be removed after the desired setting is achieved.



Note: The Ember Flame Booster can be left at the desired setting, when extinguishing your Log Set.

PETERSON REAL-FYRE GAS LOG SET ACCESSORIES

CERAMIC PINE CONES
Hand colored.
Model # PC-4,
PCD-4 or PCW-4



WOOD CHIPS
Realistic accents.
Model # WC-6.
Also available for
White Birch
Style WCB-6



DECORATIVE OAK BRANCHES
Ideal for
decorating fireplace.
BR Series, sizes 9", 17"
& 21".

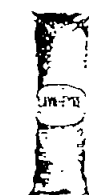


BONUS LOGS
Customize your
fireplace and
log set.
Models #
SD Bonus &
SS Bonus



SD BONUS

SS BONUS



LAVA-FYRE
GRANULES

or

LAVA-FYRE COALS
For covering bottom of
fireplace. LF 5, LF 10
or LFC 10.



GLOWING COALS
Creates appearance
of red hot coals.
Model # EM-1



SELECT SAND



VERMICULITE
GRANULES

EXHIBIT 8.

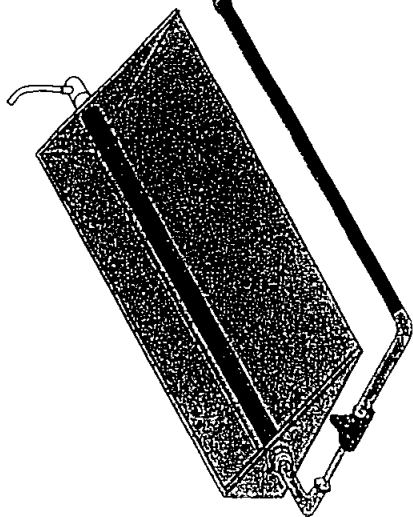
**Plaintiff's Video of Plaintiff's and Defendant's
Log Burning Set**

LITERAL INFRINGEMENT CHART

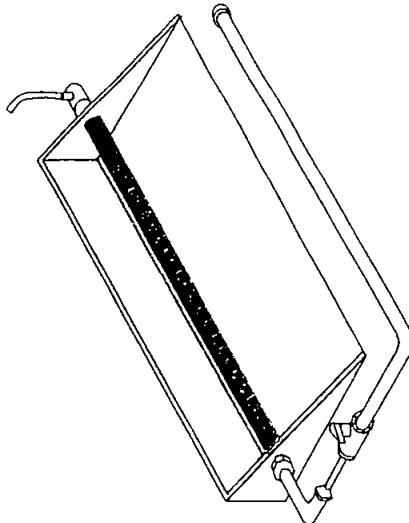
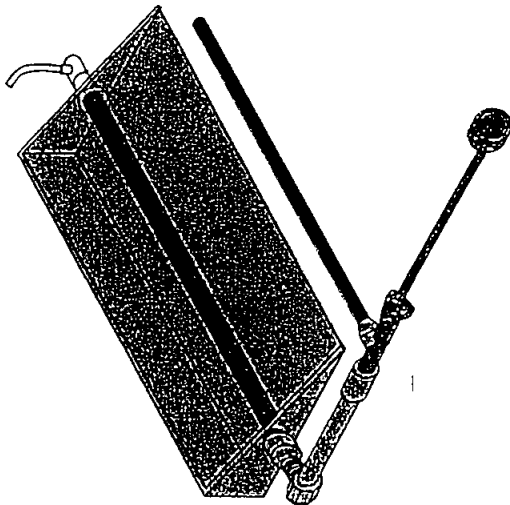
Plaintiff's Claimed Device

Claims/Elements

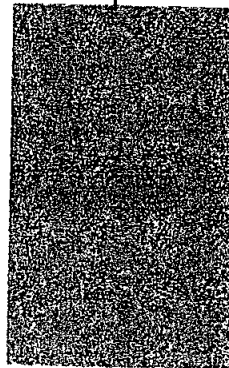
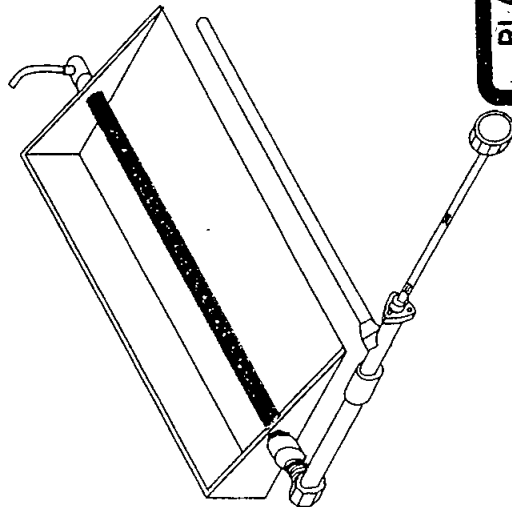
Defendant's Sold Device



1. A gas-fired artificial logs and coals-burner assembly for fireplace comprising:



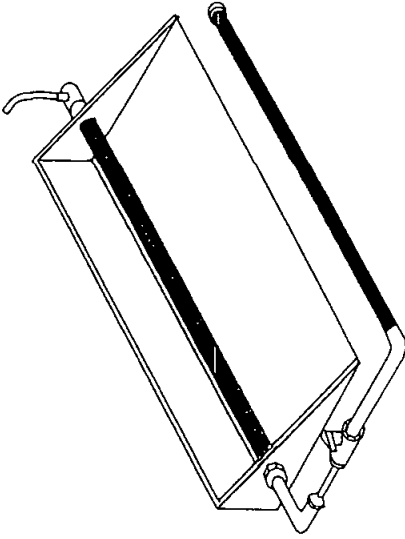
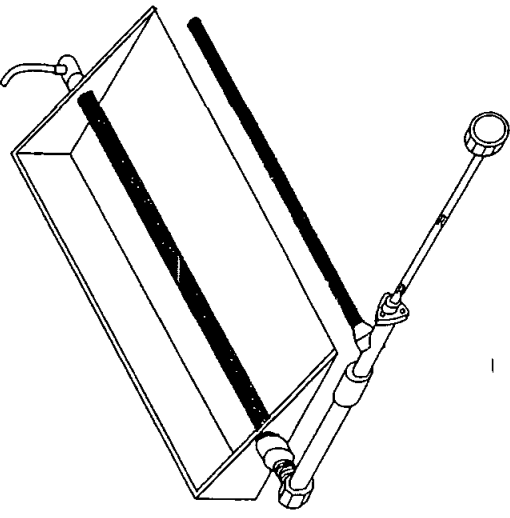
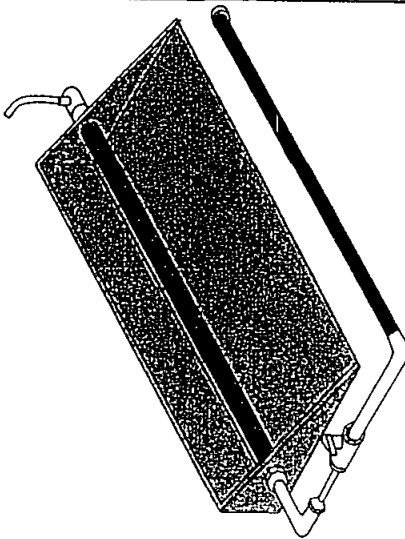
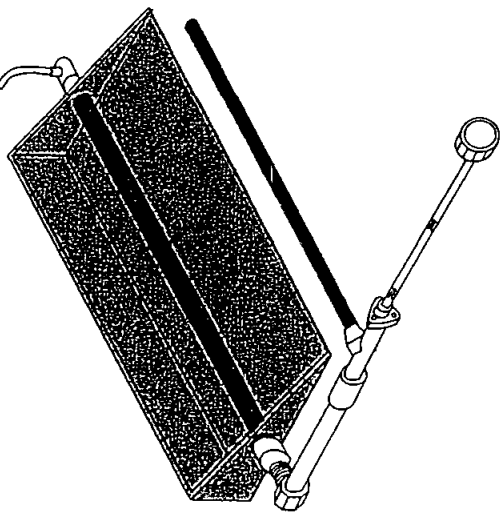
an elongated primary burner tube including a plurality of gas discharge ports;



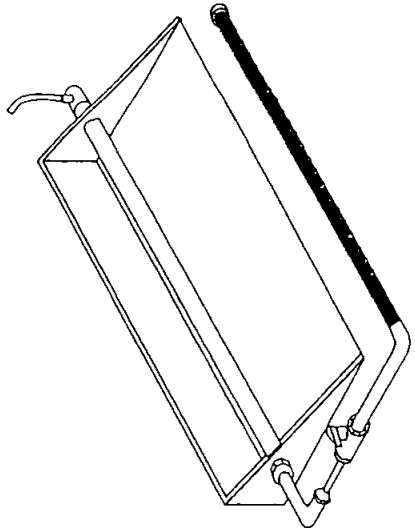
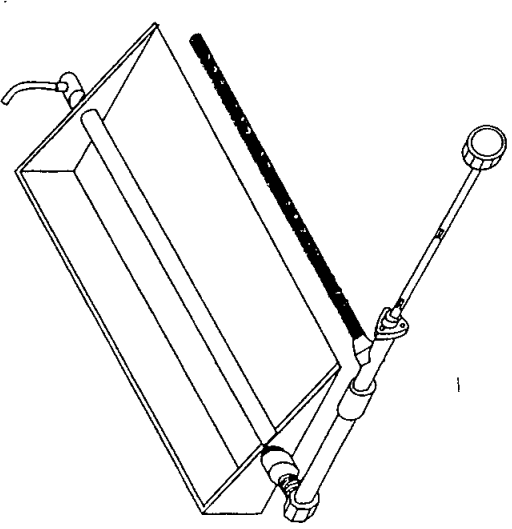
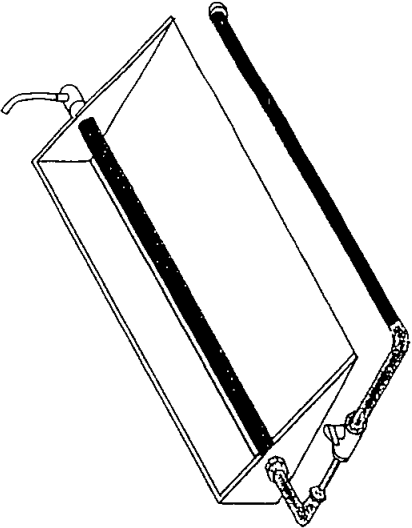
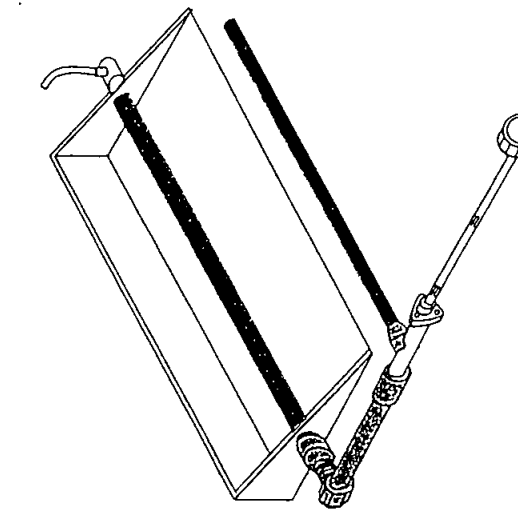
PLAINTIFF'S
EXHIBIT

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LITERAL INFRINGEMENT CHART

Plaintiff's Claimed Device	Claims/Elements	Defendant's Sold Device
	<p>a secondary coals burner elongated tube positioned forwardly of the primary burner tube;</p>	
	<p>a support means for holding the elongated primary burner tube in a raised level relative to the forwardly position secondary coals burner elongated tube;</p>	

LITERAL INFRINGEMENT CHART

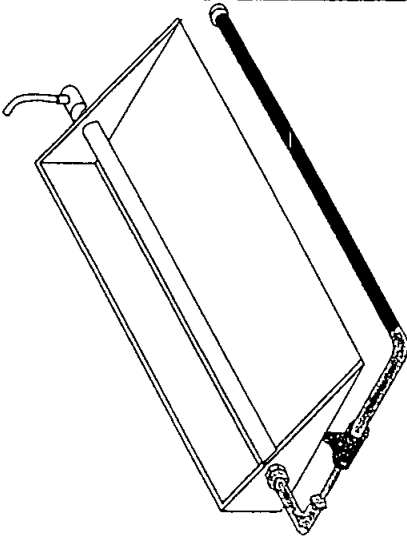
Plaintiff's Claimed Device	Claims/Elements	Defendant's Sold Device
	the secondary coals burner elongated tube including a plurality of gas discharge ports;	
	the elongated primary burner tube and the secondary coals burner elongated tube communicating through tubular connection means wherein the gas flow to the secondary elongated coals burner tube is fed through the primary burner tube and the tubular connection means;	

LITERAL INFRINGEMENT CHART

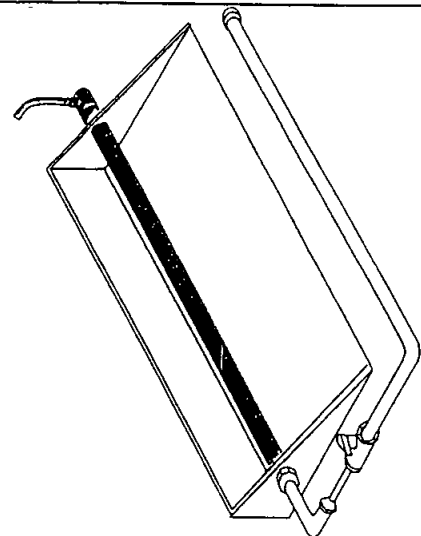
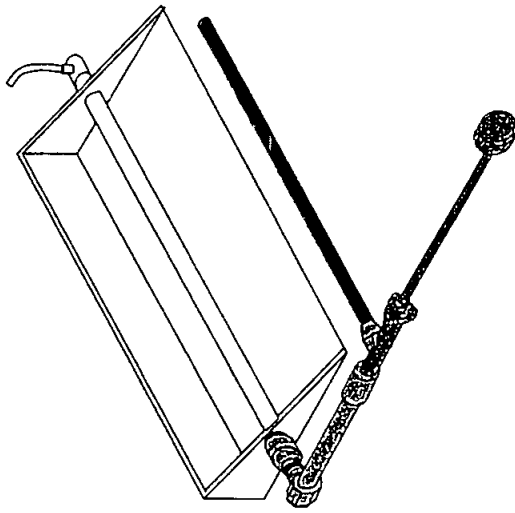
Plaintiff's Claimed Device

Claims/Elements

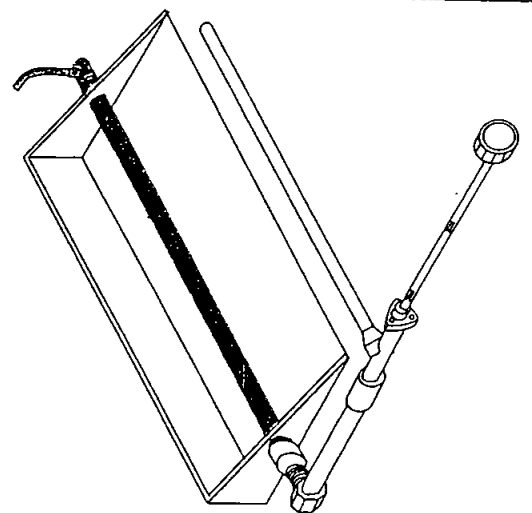
Defendant's Sold Device



a valve for adjusting gas flow to the secondary coals burner elongated tube positioned in the tubular gas connection means; and



the primary burner tube being in communication with a gas source with a gas flow control means therein for controlling gas flow into said primary burner tube.

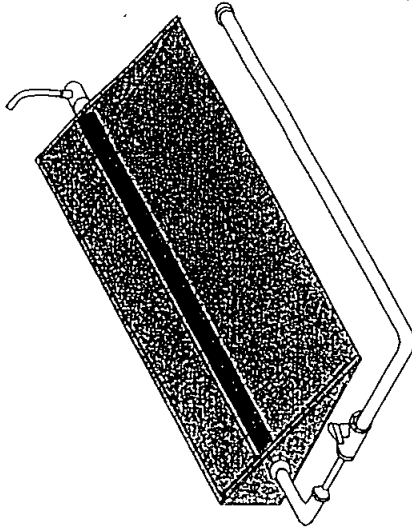


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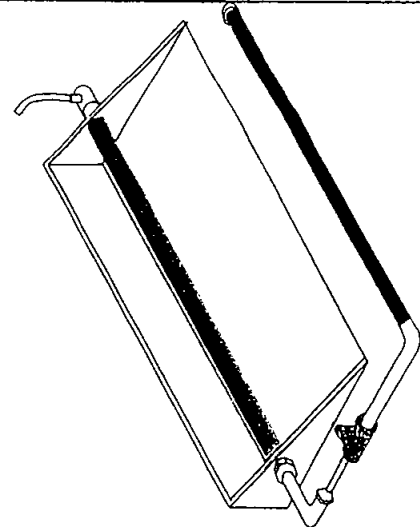
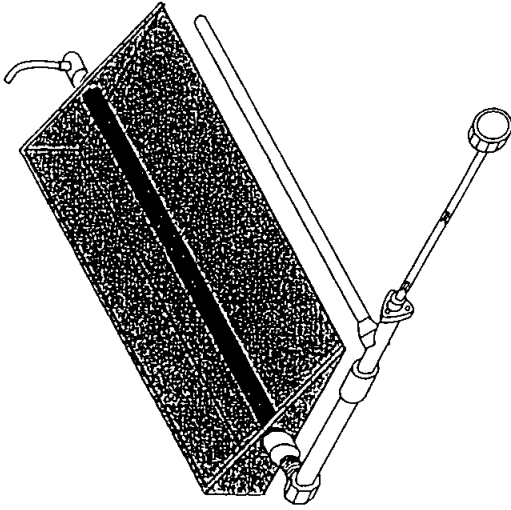
Plaintiff's Claimed Device

Claims/Elements

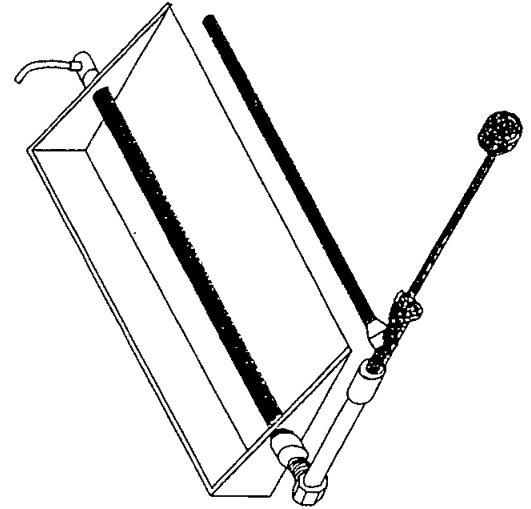
Defendant's Sold Device



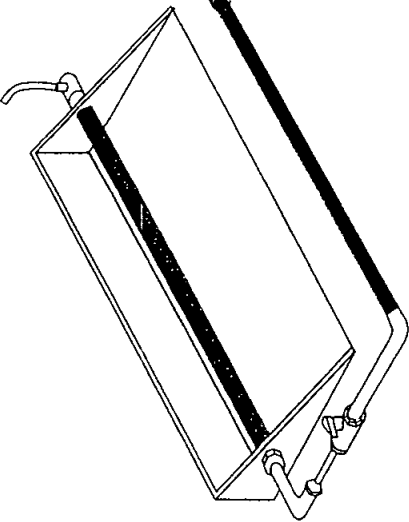
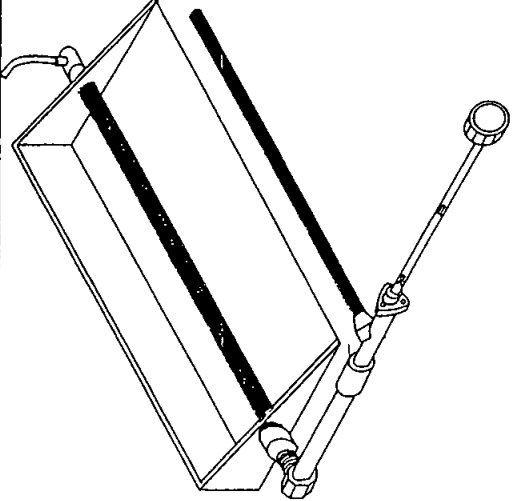
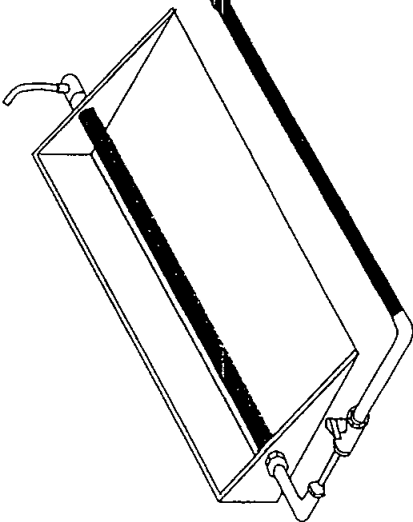
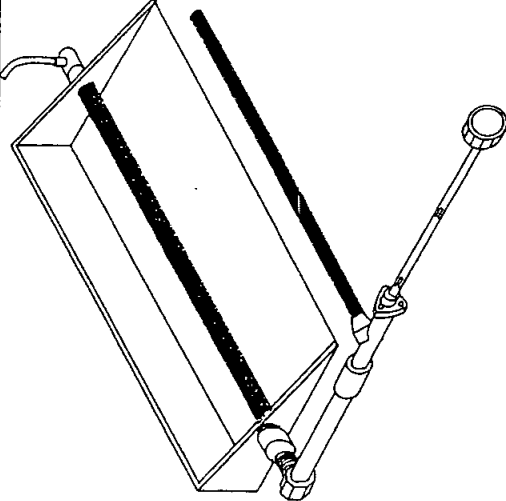
2. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the support means for the primary burner tube is comprised of an open frame pan for supporting the primary burner tube in an elevated position relative to the fireplace floor.



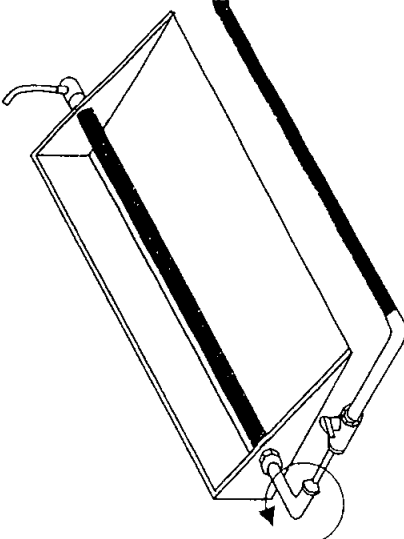
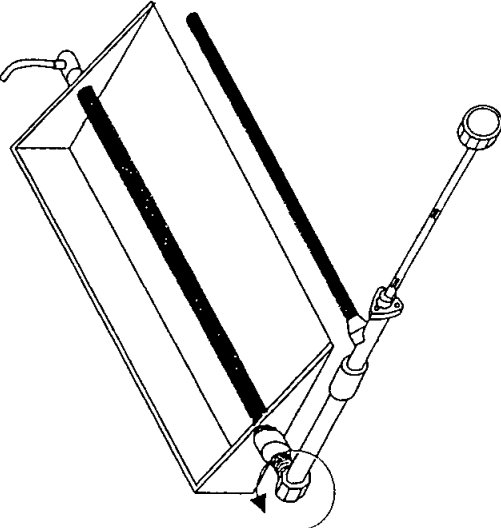
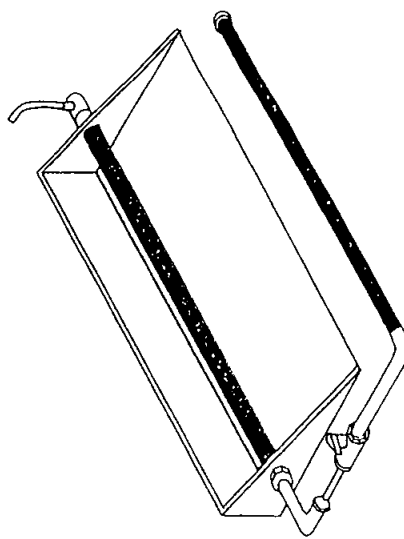
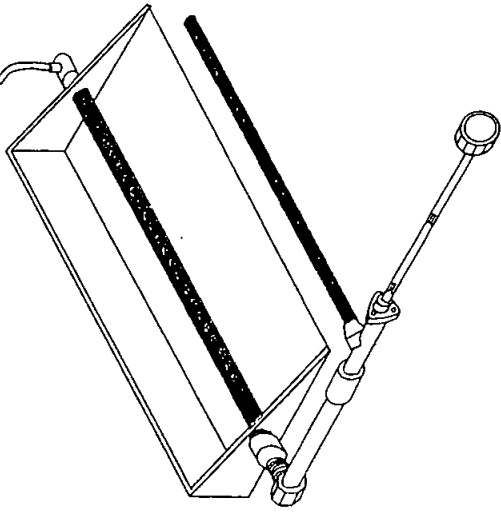
5. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the secondary coals burner elongated tube is substantially parallel to the primary burner tube and has a smaller inside diameter than the primary burner tube with the valve adjusting gas flow for coals burn and forwarding heat radiation from the fireplace.



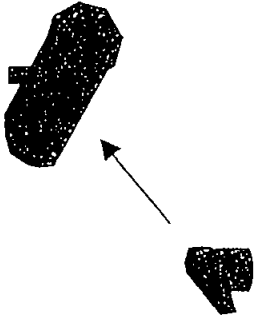
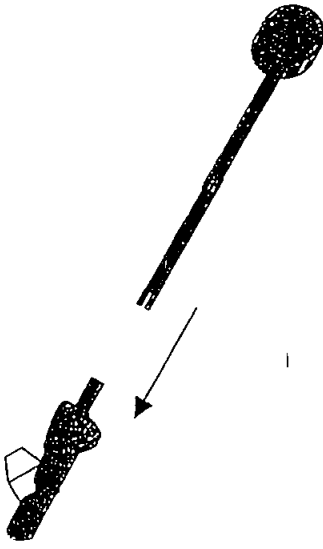
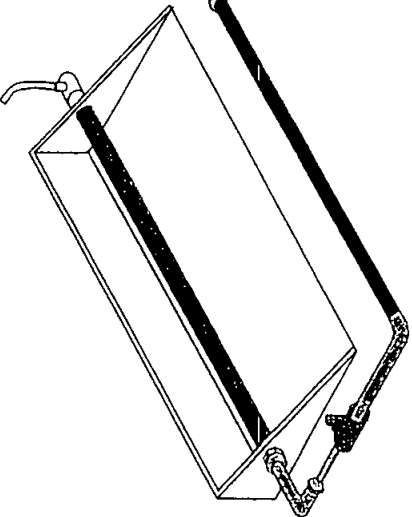
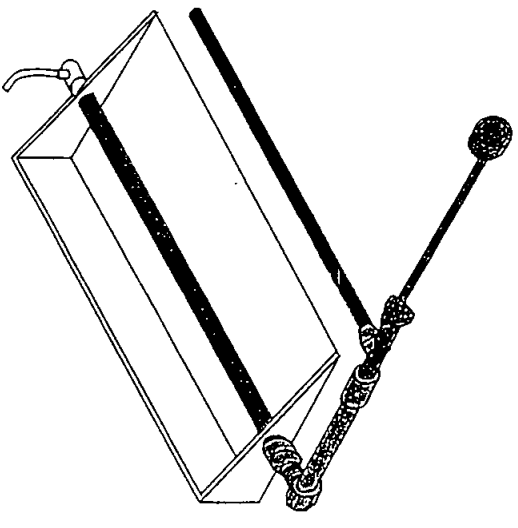
LITERAL INFRINGEMENT CHART

Plaintiff's Claimed Device	Claims/Elements	Defendant's Sold Device
	7. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the elongated primary burner tube and the secondary coals burner elongated tube are spaced apart on different planes at from about four to about eight inches.	
	8. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the secondary coals burner elongated tube is of a smaller diameter than the primary burner tube which allows for a lower profile of coals and sand coverage.	

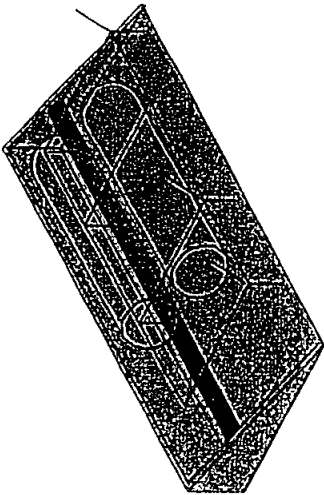
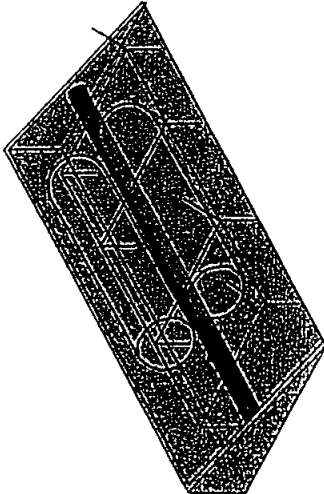
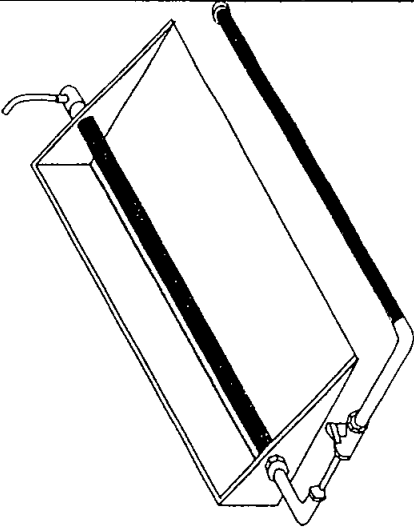
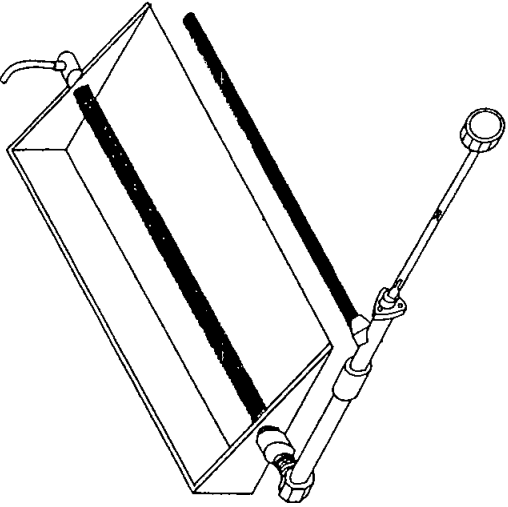
LITERAL INFRINGEMENT CHART

Plaintiff's Claimed Device	Claims/Elements	Defendant's Sold Device
	9. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the secondary coals burner elongated tube is adjustable in height relative to the floor of the fireplace and the elevated primary burner tube.	
	11. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the primary and secondary burner tubes have apertures of from about 1/32 inch to about 1/8 inch.	

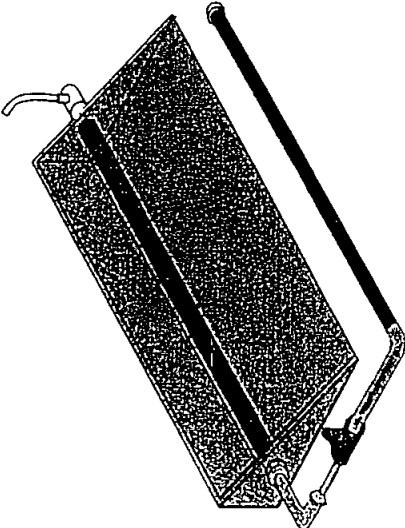
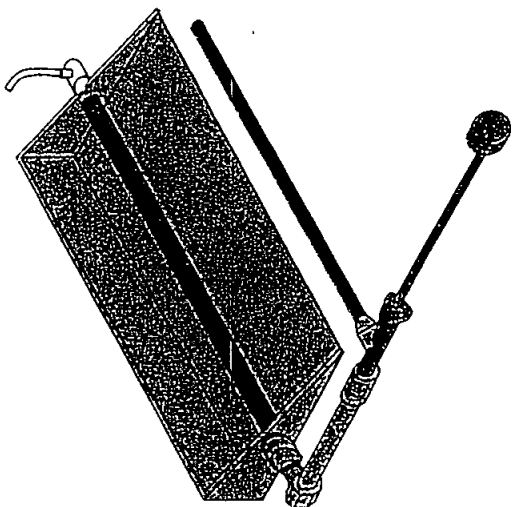
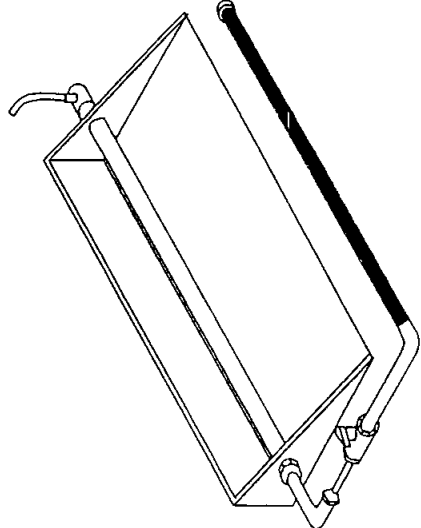
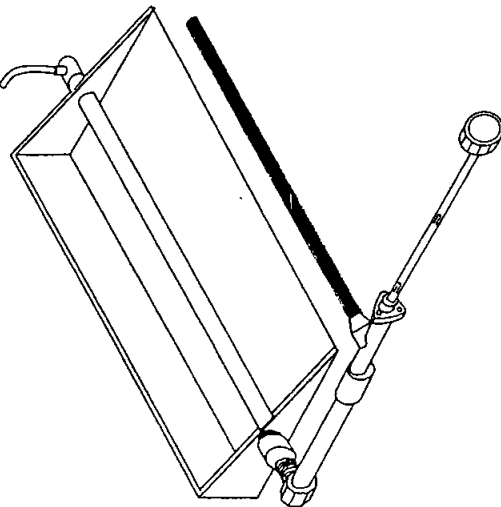
LITERAL INFRINGEMENT CHART

Plaintiff's Claimed Device	Claims/Elements	Defendant's Sold Device
	<p>12. The gas-fired artificial logs and coals burner assembly according to claim 1 wherein the gas flow adjustment valve has a removable handle, the gas flow adjustment allowing a variety of settings from full closed to full open.</p>	
	<p>13. The gas-fired artificial logs and coals burner assembly according to claim 1 wherein the connection means is comprised of a connector attached to the terminal end of the primary burner tube at a first end of a connector and attached to the secondary coals burner elongated tube to a connector second end with the valve interposed between the primary burner tube and the secondary burner tube.</p>	

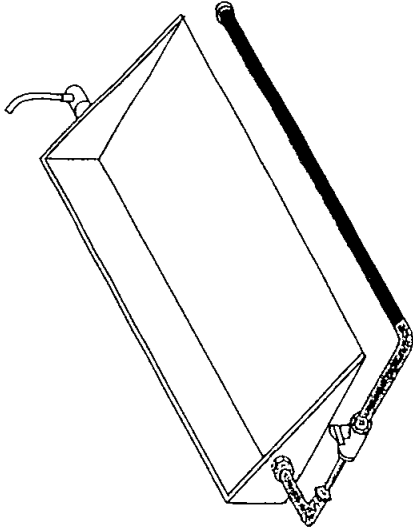
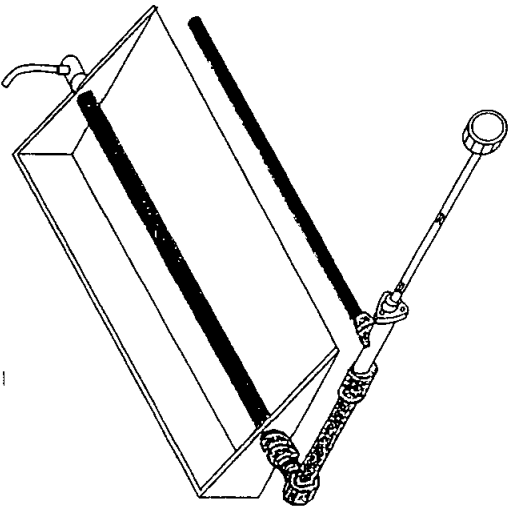
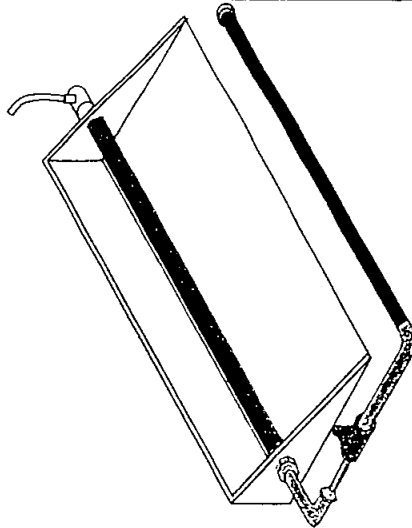
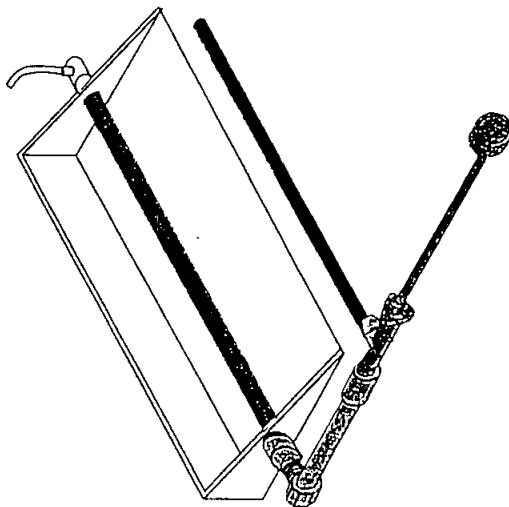
LITERAL INFRINGEMENT CHART

Plaintiff's Claimed Device	Claims/Elements	Defendant's Sold Device
	<p>15. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the open frame pan and primary elongated burner tube is positioned under an artificial logs and grate support means.</p>	
	<p>16. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the primary elongated burner tube is covered with sand and the secondary elongated burner tube is covered with sand, mica, and fibrous materials which simulate coals and ember burn.</p>	

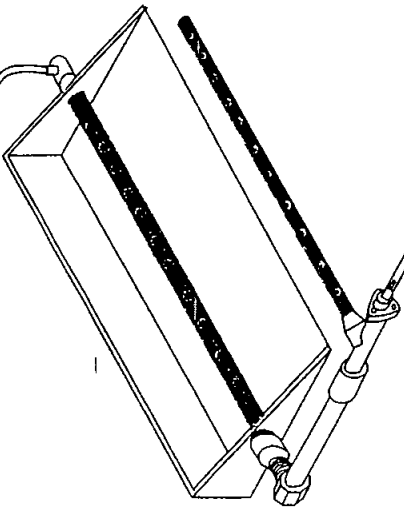
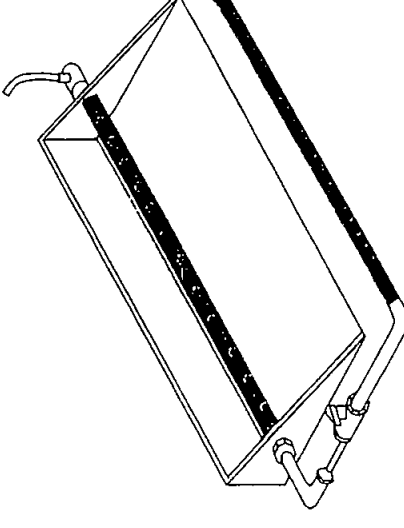
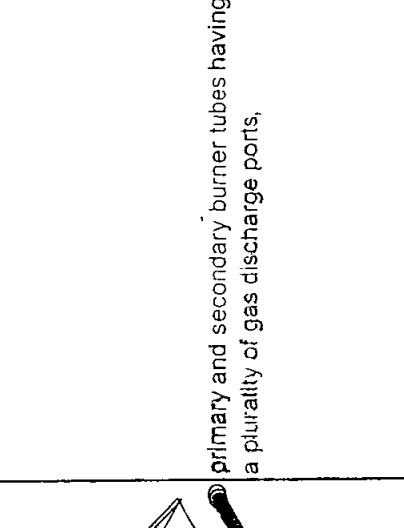
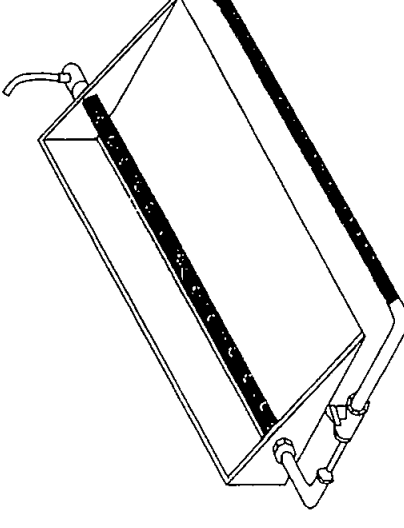
LITERAL INFRINGEMENT CHART

Plaintiff's Claimed Device	Claims/Elements	Defendant's Sold Device
	17. A gas-fired artificial coals- and embers- burner apparatus suitable for attaching to a gas-fired primary artificial log burner tube said primary artificial log burner tube having a terminal end comprising:	
	a secondary coals burning elongated tube;	

LITERAL INFRINGEMENT CHART

Plaintiff's Claimed Device	Claims/Elements	Defendant's Sold Device
	a connector means for connecting said terminal end in communication with the secondary burner tube, the secondary burner tube positioned substantially parallel, forward and below the primary burner tube	
	the connector means having interposed between the primary and secondary burner tubes a gas flow adjustment valve,	

LITERAL INFRINGEMENT CHART

Plaintiff's Claimed Device	Claims/Elements	Defendant's Sold Device
	<p>primary and secondary burner tubes having a plurality of gas discharge ports,</p>	
	<p>a gas distribution ports of the secondary burner tube directed away from the fireplace opening.</p>	

LOCKE LIDDELL & SAPP LLP

ATTORNEYS & COUNSELORS

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Writer's Direct Dial
214-740-8730
email: ldtucker@lockeliddell.com

December 10, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

President
Robert H. Peterson Company
14724 East Proctor Ave
City of Industry, CA 91746

Re.: United States Patent 5,988,159
Our File: 09842/60434

Dear Sir:

Our firm represents Golden Blount, Incorporated. On November 23, 1999, United States Patent 5,988,159 was issued by the United States Patent and Trademark Office. Golden Blount, Incorporated is the exclusive licensee of the patent. For your information, we are enclosing a copy of the patent.

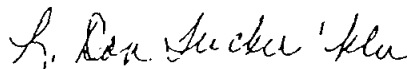
Our client has informed us that your company is marketing a device that is substantially similar to the burner assembly that is claimed in each of the claims of the subject patent.

The purpose of this letter is to place you on notice of the issuance of the patent and to inform you that our client has instructed us to take whatever steps are reasonable and necessary to prevent infringement of the patent.

Please let us know your intentions regarding the continued sale of your products vis-à-vis the subject patent. Since time is of the essence in protecting our client's rights, we expect to hear from you no later than January 14, 2000.

Very truly yours,

LOCKE LIDDELL & SAPP LLP

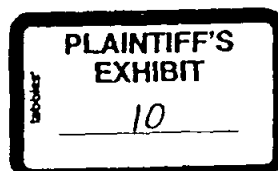


L. Dan Tucker

LDT/klu
Enclosure

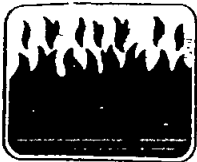
c: Golden Blount

09842:60434:DALLAS:662921.1



000050

JT-APP 1513



ROBERT H. PETERSON CO.

Established 1949

14724 East Proctor Avenue, City of Industry, CA 91746 • (626) 369-5085 • FAX (626) 369-5979

December 30, 1999

Mr. L. Dan Tucker
Locke Liddell & Sapp LLP
2200 Ross Avenue, #2200
Dallas, TX 75201-6776

Dear Mr. Tucker,

We acknowledge receipt of your letter of December 10, 1999. The letter has been forwarded to our attorneys for their review and consideration. We will try to get back to you as soon as possible. However, your expectation as to when we should respond is unreasonable.

Sincerely,

Tod M. Corrin
Vice President & General Manger

TC:lf



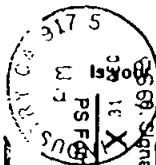
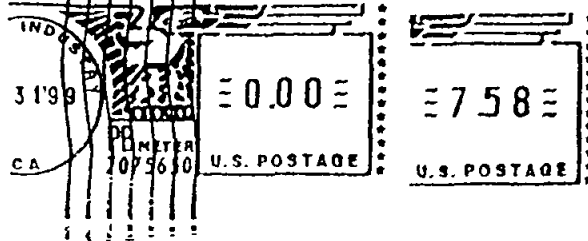
B1469

Manufacturers of "Fire Magic" Barbecues, "Real-Fyre" and "Hallmark" Hearth Products

JT-APP 1514

ROBERT H. PETERS N CO.

City of Industry, CA 91746



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B1470

JT-APP 1515

LOCKE LIDDELL & SAPP LLP

ATTORNEYS & COUNSELORS

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May 3, 2000

CERTIFIED - RETURN RECEIPT REQUESTED

Mr. Tod M. Corrin
Vice President and General Manager
Robert H. Peterson Co.
14724 East Proctor Ave
City of Industry, CA 91746

Re.: United States Patent 5,988,159
Our File: 09842/60434

Dear Mr. Corrin:

On December 10, 1999, I forwarded a letter to Robert H. Peterson Co. with an enclosed copy of U.S. Patent 5,988,159. On December 30, 1999, you indicated that we would be receiving some response from you regarding our earlier letter.

As of this date, we have not received the response you indicated would be forthcoming.

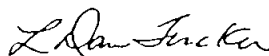
We have inspected your EMB Series Ember Flame Booster and find it to be clearly within the scope of at least some of the claims of the subject patent. Our client views any infringement of its patent with great concern and will take necessary steps to stop any such infringement.

Our client wishes to resolve the matter of infringement of the subject patent as soon as possible.

We look forward to your immediate response to our earlier letter.

Very truly yours,

LOCKE LIDDELL & SAPP LLP



L. Dan Tucker

LDT/klu

c: Golden Blount
09842-60434 DALLAS:735145.1



B1213

JT-APP 1516

**ROBERT H. PETERSON CO.**

Established 1949

14724 East Proctor Avenue, City of Industry, CA 91746 • (626) 369-5085 • FAX (626) 369-5979

May 16, 2000

Mr. L. Dan Tucker
Locke Liddell & Sapp, LLP
2200 Ross Avenue, Suite 2200
Dallas, TX 75201-6776

Dear Mr. Tucker:

We have received your letter of May 3, 2000 and you are correct in that we have not yet responded.

Our lack of response has been due to at least in part to our inability to understand what you want. Your December 10, 1999 letter states that your client has informed you that the Robert H. Peterson Company is "marketing a device that is substantially similar to the burner assembly that is claimed in each of the claims of the subject patent". We very much disagree with this statement.

Your letter of May 3, 2000 states, "We have inspected your EMB Series Ember Flame Booster and find it to be clearly within the scope of at least some of the claims of the subject patent"

Please explain to us, in detail, the basis upon which you believe that we are infringing on your client's patent.

Very truly yours,

Terrell A. Stone
Vice President

TS:sv

Mailed 5/17/00

Hd/peterson/tucker

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B1461

TOTAL P. 04
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JT-APP 1517

LOCKE LIDDELL & SAPP LLP

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DIRECT NUMBER: (214) 740-8556
email: rbardin@lockeliddell.com

January 19, 2001

Mr. Todd M. Corrin
Vice President and General Manager
Robert H. Peterson Company
14724 East Proctor Avenue
City of Industry, California 91746

Re: Infringement of United States Patent No. 5,988,159

Dear Mr. Corrin:

Our office contacted you by way of letter December 10, 1999, forwarding to you a copy of the above-identified United States Patent. We informed you at that time that Golden Blount, Inc. had informed us that your company is marketing a device that is substantially similar to the burner assembly that is claimed in each of the claims of the subject patent.

By return letter of December 30, 1999, you advised that our letter had been forwarded to your attorneys for their review and consideration and indicated you would try to get back to us as soon as possible.

In expectation of a reasonable response, our client has not taken any action until recently. In view of your company's failure to respond or indicate in any manner its intentions with respect to the infringing product, we have been instructed by our client to file a patent infringement action in the United States District Court for the Northern District of Texas, Dallas Division. A copy of the Complaint as filed, as well as a Notice of Lawsuit and Request for Waiver of Service for Summons is enclosed with this correspondence. Please review the Notice carefully and let us know within thirty (30) days whether or not you will waive service of summons as explained in those papers.

Golden Blount, Inc. demands that your company immediately cease and desist all further sales of your company's "Ember Flame Booster" and any similar infringing accessory kits. Since your company has been on notice for some time regarding the rights of Golden Blount, Inc. under the '159 patent, the company will be seeking treble damages, as well as attorneys fees in addition to injunctive relief.



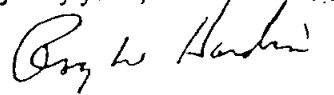
B1462

JT-APP 1518

Mr. Todd M. Corrin
January 19, 2001
Page 2

This action has become necessary due to the complete silence and lack of communication from your company regarding this matter. In the absence of an indication from your company that it is willing to acknowledge and respect the rights granted to Golden Blount, Inc. under the '159 patent, our firm has been instructed to vigorously pursue the litigation.

Very truly yours,



Roy W. Hardin

RWH:js

Enclosures

**The Appendix Material On
JT-APP 1520 through JT-APP 1595
Has Been Deleted Pursuant To A Protective Order
And Can Be Found In The Confidential Joint Appendix**

**The Appendix Material On This Page
JT-APP 1596
Has Been Deleted Pursuant To A Protective Order
And Can Be Found In The Confidential Joint Appendix**

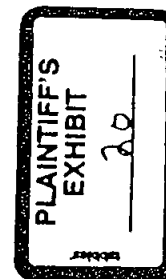
**The Appendix Material On This Page
JT-APP 1597
Has Been Deleted Pursuant To A Protective Order
And Can Be Found In The Confidential Joint Appendix**

**The Appendix Material On
JT-APP 1598 – JT-APP 1601
Has Been Deleted Pursuant To A Protective Order
And Can Be Found In The Confidential Joint Appendix**

**The Appendix Material On This Page
JT-APP 1602
Has Been Deleted Pursuant To A Protective Order
And Can Be Found In The Confidential Joint Appendix**

CLAIM INTERPRETATION CHART FOR U.S. PATENT NO. 5,988,159

Claims	Support in Specification	Terms	Interpretation
1. A gas-fired artificial logs and coals-burner assembly for fireplace comprising:	Generally in the ABSTRACT, TECHNICAL FIELD OF THE INVENTION, SUMMARY OF THE INVENTION, DETAILED DESCRIPTION OF THE DRAWINGS, as well as illustrated in FIGURES 2-4.	The term gas-fired artificial logs and coals-burner assembly is a collection of elements, including the artificial logs and coals, that work in conjunction with a gas source to enhance the aesthetic beauty of artificial burning logs, coals and embers (Abstract) The term burner assembly is defined in such a manner that it is capable of providing a flame under both the artificial logs as well as the artificial coals.	A burner assembly for providing a gas flame to both the artificial logs and artificial coals
an elongated primary burner tube including a plurality of gas discharge ports;	FIG. 2 shows a burner tube 14. The term burner tube 14, as used in the specification, is synonymous with the term elongated primary burner tube, as used in the claims. A corresponding written description of the burner tube 14 is provided at Column 5, line 10 to Column 6, line 63 of the '159 Patent. FIG. 2 further shows a plurality of apertures, as evidenced by the gas plumes 18. The term plurality of apertures 18, as used in the specification, is synonymous with the term plurality of gas discharge ports, as used in the claims. A corresponding written description of the plurality of apertures 18 is provided at Column 5, lines 5-25 of the '159 Patent.	*** The Terms Used Herein are Self-Explanatory ***	*** The Terms Used Herein are Self-Explanatory ***
a secondary coals burner elongated tube positioned forwardly of the primary burner tube,	FIG. 2 shows a secondary burner tube 104. The term secondary burner tube 104, as used in the specification, is synonymous with the term secondary coals burner elongated tube, as used in the claims. A corresponding written description of the secondary burner tube 104 is provided at Column 5, line 25 to Column 6, line 20 of the '159 Patent. FIGs. 2 and 3 further show the secondary burner tube 104 positioned forwardly of the burner tube 14.	It is expected for purposes of claim interpretation that the term secondary coals burner elongated tube is a tube that is configured to be coupled to a valve and provide a flame under artificial embers or coals located in front of the gas logs and toward the opening of the fireplace.	A secondary coals burner elongated tube located forward the elongated primary burner tube and under artificial embers or coals located in front of the gas logs.



a support means for holding the elongated primary burner tube in a raised level relative to the forwardly position secondary coals burner elongated tube;	FIGs. 2 and 3 of the '159 Patent show a pan 12 having side walls 12a and 12b that support the burner tube 14 in a raised level with respect to the secondary burner tube 104 at Column 5, lines 10-25.	The phrase raised level is not exactly defined in the specification and should, therefore, take on the meaning given to it by one of ordinary skill in the art having an understanding of the teachings disclosed in the specification. In such instances, one of ordinary skill in the art, based on the disclosure, would be expected to construe the phrase raised level to mean that the upper most portion of the primary burner tube is higher than the upper most portion of the secondary coals burner elongated tube; and moreover, as assistance to construction, it is noted that the phrase below would also be expected to be construed to mean that the center line of the primary burner tube taken along its longitudinal axis is higher than the center line of the secondary coals burner elongated tube taken along its longitudinal axis.	Includes the side walls of a pan holding the elongated primary burner tube at a raised level.
the secondary coals burner elongated tube including a plurality of gas discharge ports;	FIG 3 illustrates a plurality of apertures 108 along the length of the secondary burner tube 104. Various embodiments thereof are disclosed at Column 5, lines 45-55 in the 159' Patent.	*** The Terms Used Herein are Self-Explanatory ***	*** The Terms Used Herein are Self-Explanatory ***
the elongated primary burner tube and the secondary coals burner elongated tube communicating through tubular connection means wherein the gas flow to the secondary elongated coals burner tube is fed through the primary burner tube and the tubular connection means;	FIGs. 2 and 3 illustrate a connector 102 that is attached to an uncapped end of the burner tube 14 and that is fitted to the secondary burner tube 104 to create a fluid path for the gas from the burner tube 14 to the secondary burner tube 104, as discussed at Column 5, lines 25-44.	*** The Terms Used Herein are Self-Explanatory ***	*** The Terms Used Herein are Self-Explanatory ***
a valve for adjusting gas flow to the secondary coals burner elongated tube positioned in the tubular gas connection means; and	FIGs. 2 and 3 illustrate a valve 106 interposed in the fluid path that can be variably operated to give a user the ability to select the amount of gas entering the secondary burner tube 104 from the burner tube 14.	The phrase positioned in would be expected to be construed to mean that the valve is positioned in the fluid path such that the gas passes through the valve and ultimately to the secondary coals burner elongated tube.	A valve for adjusting gas flow to the secondary coals burner elongated tube and that is positioned in the fluid path such that the gas passes through the valve and ultimately to the secondary coals burner elongated tube.

the primary burner tube being in communication with a gas source with a gas flow control means therein for controlling gas flow into said primary burner tube.	FIGs 1 and 2 illustrate the burner tube 14 being connected to an inlet 16 that is connected to a gas source not shown. The gas flow into the burner tube 14 is controlled by a primary burner valve as discussed in Column 2, lines 5-10 and Column 5, lines 10-20.	The phrase gas flow control means is a gas valve, and as such, is well understood by one of ordinary skill in the art. These gas valves are typically present in many homes having gas fireplaces and are configured to control a flow of gas into the primary burner tube.	The primary burner tube is in communication with a gas source with a gas flow control valve that controls a gas flow into the primary burner tube. This is a universal expedient, for each fireplace must be so equipped with a control valve. The claim gives all of the structure necessary to attach to this valve; it is designed specifically for this purpose.
2. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the support means for the primary burner tube is comprised of an open frame pan for supporting the primary burner tube in an elevated position relative to the fireplace floor.	FIGs. 2 and 3 of the '159 Patent shows an open frame pan 12 having side walls 12a and 12b that support the burner tube 14 in a raised level with respect to the secondary burner tube 104, as discussed at Column 5, lines 10-25.	*** The Terms Used Herein are Self-Explanatory ***	*** The Terms Used Herein are Self-Explanatory ***
5. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the secondary coals burner elongated tube is substantially parallel to the primary burner tube and has a smaller inside diameter than the primary burner tube with the valve adjusting gas flow for coals burn and forwarding heat radiation from the fireplace.	FIG 2 shows a secondary burner tube 104. The term secondary burner tube 104, as used in the specification, is synonymous with the term secondary coals burner elongated tube, as used in the claims. A corresponding written description of the secondary burner tube 104 is provided at Column 5, line 25 to Column 6, line 20 of the '159 Patent FIGs. 2 and 3 further show the secondary burner tube 104 positioned substantially parallel to the burner tube 14. Additionally, FIG 3 shows the secondary burner tube 104 having a smaller inside diameter than the burner tube 14	*** The Terms Used Herein are Self-Explanatory ***	*** The Terms Used Herein are Self-Explanatory ***
7. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the elongated primary burner tube and the secondary coals burner elongated tube are spaced apart on different planes at from about four to about eight inches.	FIGs. 2 and 3 show the secondary burner tube 104 and the burner tube 14 spaced apart by a distance. A corresponding written description of the spaced apart distance is provided at Column 6, lines 20-40 of the '159 Patent.	*** The Terms Used Herein are Self-Explanatory ***	*** The Terms Used Herein are Self-Explanatory ***

8. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the secondary coals burner elongated tube is of a smaller diameter than the primary burner tube which allows for a lower profile of coals and sand coverage.	FIG. 3 shows the secondary burner tube 104 having a smaller outside diameter than the burner tube 14. FIG. 3 also shows the lower profile of coals and sand coverage over the secondary burner tube 104 than the burner tube 14.	*** The Terms Used Herein are Self-Explanatory ***	*** The Terms Used Herein are Self-Explanatory ***
9. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the secondary coals burner elongated tube is adjustable in height relative to the floor of the fireplace and the elevated primary burner tube.	FIGs. 2 and 3 show that the secondary burner tube 104 is adjustable in height to the floor of the fireplace and the burner tube 14, via the connector 102 coupled to the terminal end 14a.	The phrase adjustable in height relative to the floor of the fireplace and the elevated primary burner tube is well understood by one of ordinary skill in the art. The phrase, however, is subject to the requirement of claim 1 that the upper most portion of the primary burner tube is higher than the upper most portion of the secondary coals burner elongated tube, or if that construction is not given, that the center line of the primary burner tube taken along its longitudinal axis is higher than the center line of the secondary coals burner elongated tube taken along its longitudinal axis.	Generally self-evident. Shows the heights are adjustable in this configuration.
11. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the primary and secondary burner tubes have apertures of from about 1/32 inch to about 1/8 inch.	A written description for the apertures having of from about 1/32 inch to about 1/8 inch diameter is provided at Column 5, lines 45-55 of the '159 Patent.	*** The Terms Used Herein are Self-Explanatory ***	*** The Terms Used Herein are Self-Explanatory ***
12. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the gas flow adjustment valve has a removable handle, the gas flow adjustment allowing a variety of settings from full closed to full open.	A comparison of FIGs. 2 and 3 shows that the handle is removable.	*** The Terms Used Herein are Self-Explanatory ***	*** The Terms Used Herein are Self-Explanatory ***

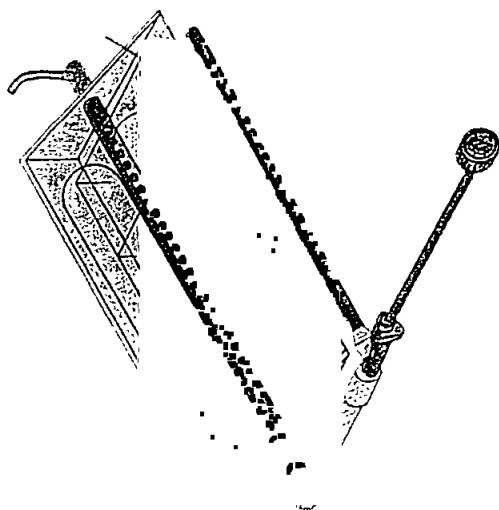
13. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the connection means is comprised of a connector attached to the terminal end of the primary burner tube at a first end of a connector and attached to the secondary coals burner elongated tube to a connector second end with the valve interposed between the primary burner tube and the secondary burner tube.	FIGs. 2 and 3 illustrate a connector 102 that is attached to an uncapped end of the burner tube 14 and that is fitted to the secondary burner tube 104 to create a fluid path for the gas from the burner tube 14 to the secondary burner tube 104 and is discussed in Column 5, lines 25-44 of the '159 Patent	*** The Terms Used Herein are Self-Explanatory ***	*** The Terms Used Herein are Self-Explanatory ***
15. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the open frame pan and primary elongated burner tube is positioned under an artificial logs and grate support means	FIGs. 3 and 4 illustrate an open frame pan and primary elongated burner tube located under artificial logs 24 and a grate 20. A written description for the artificial logs 24 and the grate 20 is provided at Column 6, lines 40-52 of the '159 Patent	The phrase artificial logs is well understood by one of ordinary skill in the art. The phrase grate support means should be construed as any grate configured to position artificial logs over a primary burner tube, and an equivalent structure thereof.	The open frame pan and the primary elongated burner tube are located under artificial logs and a grate support means.
16. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the primary elongated burner tube is covered with sand and the secondary elongated burner tube is covered with sand, mica, and fibrous materials which simulate coals and ember burn.	FIGs. 3 and 4 illustrate the burner tube 14 covered by sand 22, as well as the secondary burner tube 104 covered by sand 22 and artificial ember material 26. A written description for the coverage of the burner tube 14 and secondary burner tube 104 with the sand 22 and artificial ember material 26 is provided at Column 6, lines 40-52 of the '159 Patent	*** The Terms Used Herein are Self-Explanatory ***	*** The Terms Used Herein are Self-Explanatory ***
17. A gas-fired artificial coals- and embers-burner apparatus suitable for attaching to a gas-fired primary artificial log burner tube said primary artificial log burner tube having a terminal end comprising:	Generally in the ABSTRACT, TECHNICAL FIELD OF THE INVENTION, SUMMARY OF THE INVENTION, DETAILED DESCRIPTION OF THE DRAWINGS and well as illustrated in FIGURES 1-4.	The term gas-fired artificial logs and coals- and ember-burner apparatus is a collection of elements that work in conjunction with a gas source and artificial logs and coals to enhance the aesthetic beauty of artificial burning logs, coals and embers. (Abstract) The term burner apparatus is defined in such a manner that it is capable of providing a flame under both the artificial logs as well as the artificial coals.	A burner assembly for providing a gas flame to both the artificial logs and artificial coals and embers.

a secondary coals burning elongated tube;	FIG. 2 shows a secondary burner tube 104. The term secondary burner tube 104, as used in the specification, is synonymous with the term secondary coals burning elongated tube, as used in the claims. A corresponding written description of the secondary burner tube 104 is provided at Column 5, line 25 to Column 6, line 20 of the '159 Patent.	It is expected for purposes of claim interpretation that the term secondary coals burning elongated tube is a tube that is configured to be coupled to a valve and provide a flame under artificial embers or coals located in front of the gas logs and toward the opening of the fireplace	A secondary coals burning elongated tube positioned to provide a flame under artificial embers or coals.
a connector means for connecting said terminal end in communication with the secondary burner tube positioned substantially parallel, forward and below the primary burner tube	FIGs. 2 and 3 illustrate a connector 102 that is attached to an uncapped end of the burner tube 14 and that is fitted to the secondary burner tube 104 to create a fluid path for the gas from the burner tube 14 to the secondary burner tube 104 and is discussed in Column 5, lines 25-44. FIGs. 2 and 3 further show the secondary burner tube 104 positioned substantially parallel, forward and below the burner tube 14.	The phrase below is not exactly defined in the specification and should, therefore, take on the meaning given to it by one of ordinary skill in the art having an understanding of the teachings disclosed in the specification. In such instances, one of ordinary skill in the art, based on the disclosure, would be expected to construe the phrase below to mean that the upper most portion of the secondary coals burning elongated tube is lower than the upper most portion of the primary burner tube; and moreover, it is noted that the phrase would be expected to be construed to mean that the center line of the secondary coals burning elongated tube taken along its longitudinal axis is lower than the center line of the primary burner tube taken along its longitudinal axis.	Tubing and connectors connect to the elongated primary burner tube and the substantially parallel, forward and lower secondary coals burning elongated tube to provide a path for gas from the elongated primary burner tube to the secondary coals burner elongated tube.
the connector means having interposed between the primary and secondary burner tubes a gas flow adjustment valve.	FIGs. 2 and 3 illustrate a valve 106 interposed in the fluid path that can be variably operated to give a user the ability to select the amount of gas entering the secondary burner tube 104 from the burner tube 14.	*** The Terms Used Herein are Self-Explanatory ***	*** The Terms Used Herein are Self-Explanatory ***
primary and secondary burner tubes having a plurality of gas discharge ports.	FIGs. 2 and 3 illustrate a plurality of apertures 18 and 108 located along the length of the primary burner tube and secondary burner tube 104, respectively. A corresponding written description of the plurality of apertures 18 and 108 is provided at Column 5, lines 45-55 in the '159 Patent	*** The Terms Used Herein are Self-Explanatory ***	*** The Terms Used Herein are Self-Explanatory ***
a gas distribution ports of the secondary burner tube directed away from the fireplace opening.	FIG 3 illustrates the plurality of apertures 108 directed away from the fireplace opening. A corresponding written description of the plurality of apertures 108 is provided at Column 5, line 45 thru Column 6, line 20 in the '159 Patent.	The phrase away from the fireplace opening is not exactly defined in the specification and should, therefore, take on the meaning given to it by one of ordinary skill in the art having an understanding of the teachings disclosed in the specification. In such instances, one of ordinary skill in the art, based on the disclosure, would be expected to construe the phrase away from the fireplace opening to mean that the gas discharge ports of the secondary coals burning elongated tube may be directed from vertically down, to any position within 179 degrees in the clockwise direction. Accordingly, the gas discharge ports may not be located vertically upward.	The gas discharge ports of the secondary coals burning elongated tube may be located at any position from vertically down to 179 degrees in the clockwise direction.

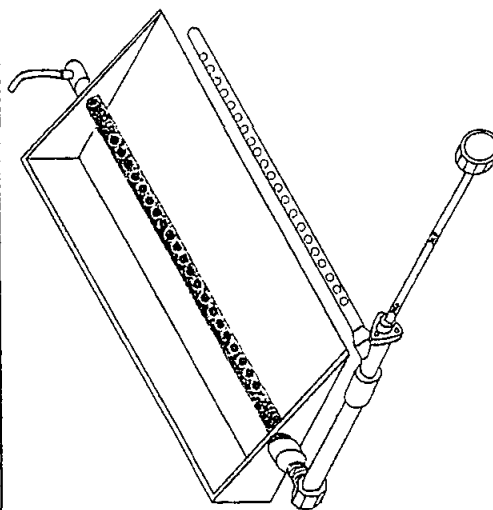
EQUIVALENCE CHART

Defendant's Sold Device

Claims/Elements

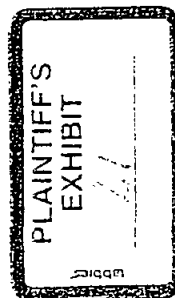


1. A gas-fired artificial logs and coals burner assembly for fireplace comprising:



an elongated primary burner tube including a plurality of gas discharge ports;

The primary burner tube shown includes a plurality of gas discharge ports that perform substantially the same function of allowing gas to pass therethrough, in substantially the same way by allowing gas to pass through the discharge ports, to achieve substantially the same result of providing a flow of gas to produce a flame in the center of the assembly.

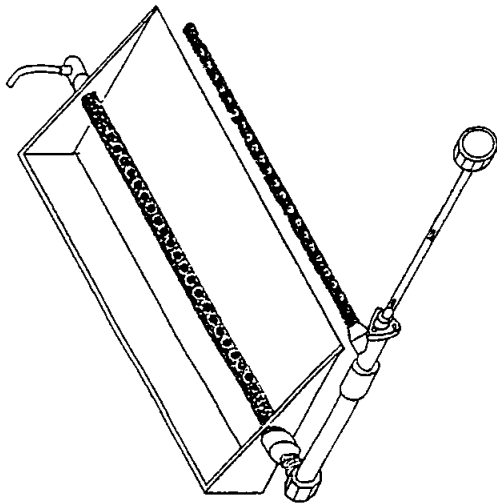


EQUIVALENCE CHART

Defendant's Sold Device

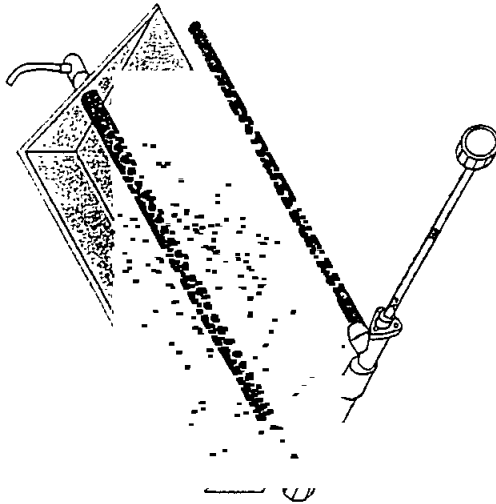
Claims/Elements

a secondary coals burner elongated tube positioned forwardly of the primary burner tube; the secondary coals burner elongated tube including a plurality of gas discharge ports;



The secondary burner tube shown performs substantially the same function of allowing gas to emanate therefrom via discharge ports, in substantially the same way by allowing the gas to pass through the discharge ports, to achieve substantially the same result of producing a flame in the ember bed in front of the primary burner tube.

a support means for holding the elongated primary burner tube in a raised level relative to the forwardly position secondary coals burner elongated tube;



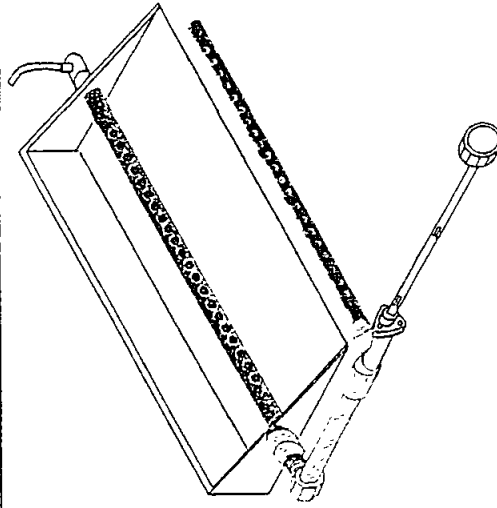
The burner pan shown performs substantially the same function of providing support for the primary burner tube, in substantially the same way by supporting the primary burner tube via the side flanges of the burner pan, to achieve substantially the same result of supporting the primary burner tube.

EQUIVALENCE CHART

Defendant's Sold Device

Claims/Elements

the elongated primary burner tube
and the secondary coals burner
elongated tube communicating
through wherein the gas flow to the
secondary elongated coals burner
tube is fed through the primary burner
tube and the

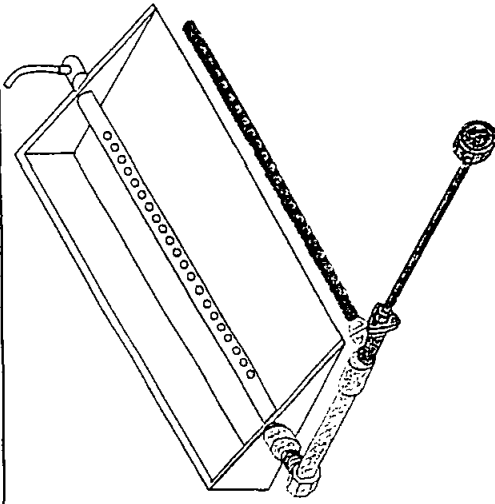


The tubular connection shown performs substantially the same function of providing a conduit for a flow of gas from the primary burner tube to the secondary burner tube, in substantially the same way in that the tubular connection is the conduit for the gas, to achieve substantially the same result of providing gas to the secondary burner tube.

EQUIVALENCE CHART

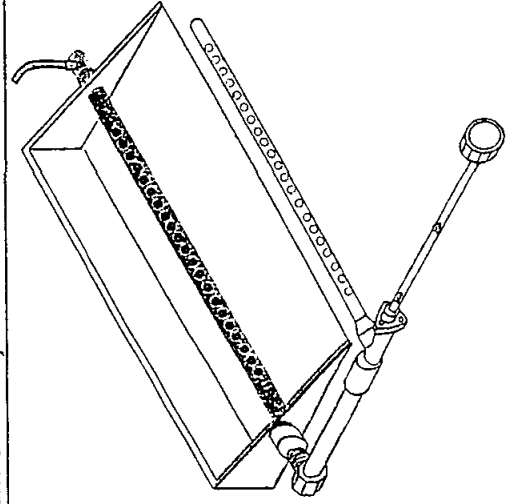
Defendant's Sold Device

Claims/Elements



The valve shown performs substantially the same function of providing a way to control the flow of gas from the primary burner tube to the secondary burner tube, in substantially the same way of using a gate within a manifold of the valve to reduce the passageway within the valve thereby controlling the amount of gas that can flow from the primary burner tube to the secondary burner tube, to achieve substantially the same result of controlling the flow of gas between the primary and secondary burner tubes.

a valve for adjusting gas flow to the secondary coils burner elongated tube positioned in the upper part of the burner tube; and



The gas source and gas flow control means shown perform substantially the same function of providing a way to supply a source of gas to the assembly, in substantially the same way by acting as a gas conduit, to achieve substantially the same result of providing a flow of gas to the assembly.

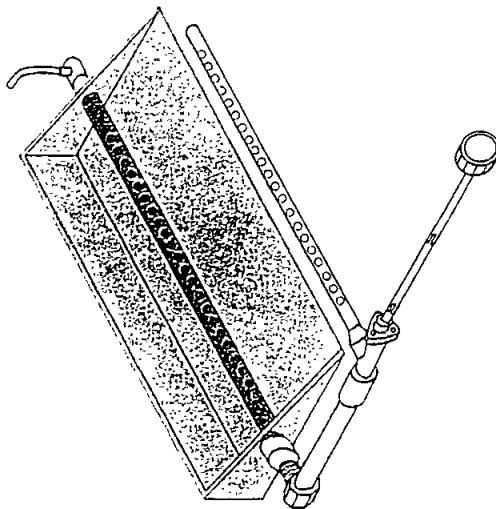
the primary burner tube being in communication with a gas source with a gas flow control means therein for controlling gas flow into said primary burner tube.

EQUIVALENCE CHART

Claims/Elements

2. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the support means for the primary burner tube is comprised of an open frame pan for supporting the primary burner tube in an elevated position relative to the fireplace floor.

Defendant's Sold Device



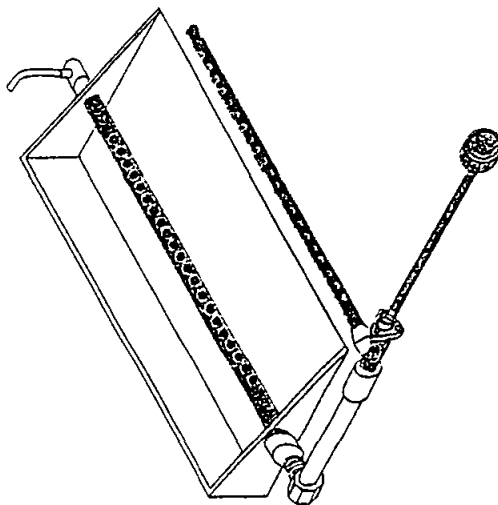
The burner pan shown performs substantially the same function of supporting the primary burner tube in an elevated position relative to the fireplace floor, in substantially the same way by supporting the primary burner tube in a raised position via the side flanges of the burner pan, to achieve substantially the same result of supporting the primary burner tube in the elevated position.

EQUIVALENCE CHART

Claims/Elements

5. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the secondary coals burner elongated tube is substantially parallel to the primary burner tube and has a smaller inside diameter than the primary burner tube with the valve adjusting gas flow for coals burn and forwarding heat radiation from the fireplace.

Defendant's Sold Device



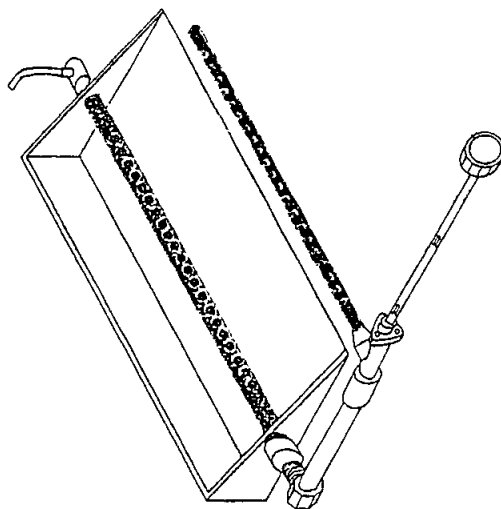
The valve shown performs substantially the same function of providing a way to control the flow of gas between a substantially parallel placed second burner tube and primary burner tube, in substantially the same way of using a gate within a manifold of the valve to reduce the passageway within the valve thereby controlling the amount of gas that can flow from the primary burner tube to the secondary burner tube, to achieve substantially the same result of controlling the flow of gas between the primary and secondary burner tubes.

EQUIVALENCE CHART

Claims/Elements

7. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the elongated primary burner tube and the secondary coals burner elongated tube are spaced apart on different planes at from about four to about eight inches.

Defendant's Sold Device



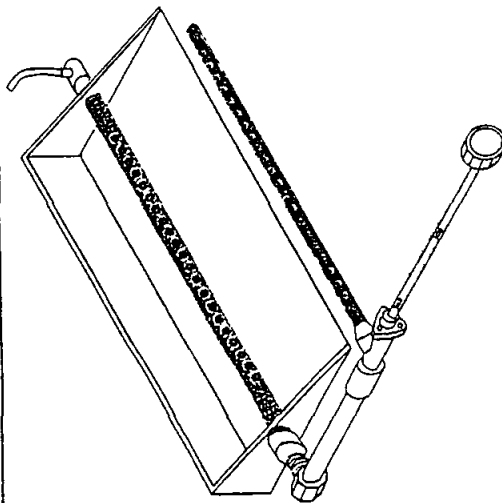
The primary and secondary burner tubes shown perform substantially the same function of allowing gas to emanate therefrom via discharge ports, in substantially the same way by being spaced apart on different planes at about four to about eight inches and by allowing the gas to pass through the discharge ports, to achieve substantially the same result of producing a flame in the ember bed in front of the primary burner tube.

EQUIVALENCE CHART

Claims/Elements

8. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the secondary coals burner elongated tube is of a smaller diameter than the primary burner tube which allows for a lower profile of coals and sand coverage.

Defendant's Sold Device



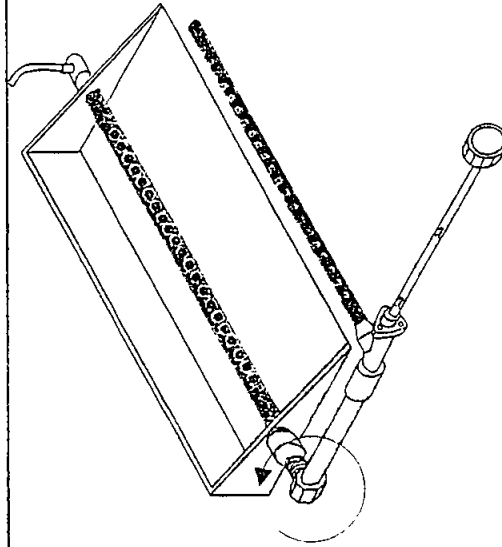
The primary and secondary burner tubes shown perform substantially the same function of allowing gas to emanate therefrom via discharge ports, in substantially the same way by the secondary burner tube having a smaller diameter than the primary burner tube, to achieve substantially the same result of allowing a lower profile of coals and sand coverage.

EQUIVALENCE CHART

Claims/Elements

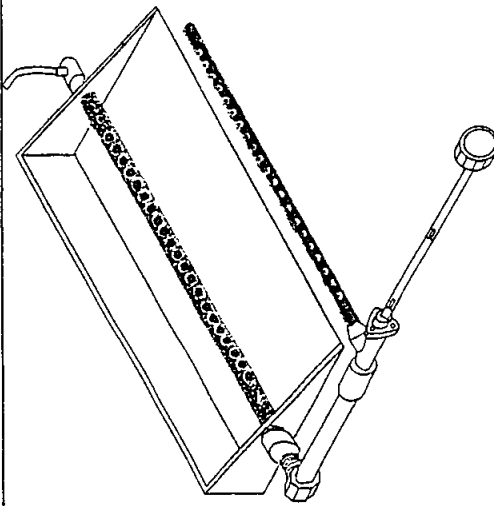
9. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the secondary coals burner elongated tube is adjustable in height relative to the floor of the fireplace and the elevated primary burner tube.

Defendant's Sold Device



The secondary burner tube shown performs substantially the same function of allowing gas to emanate therefrom via discharge ports, in substantially the same way by being adjustable in height relative to the floor of the fireplace and the elevated primary burner tube, to achieve substantially the same result of allowing a height of the secondary burner tube to be adjusted relative to the floor of the fireplace and the elevated primary burner tube.

EQUIVALENCE CHART

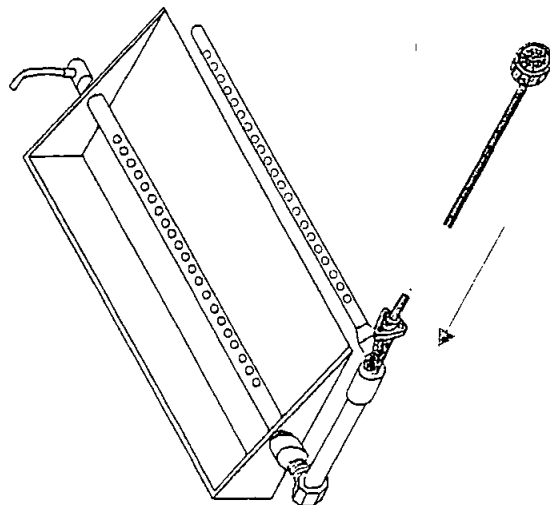
Claims/Elements	Defendant's Sold Device
<p>11. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the primary and secondary burner tubes have apertures of from about 1/32 inch to about 1/8 inch.</p>	
	<p>The primary and secondary burner tubes shown performs substantially the same function of allowing gas to emanate therefrom via discharge ports, in substantially the same way by allowing the gas to pass through apertures having a diameter from about 1/32 inch to about 1/8 inch, to achieve substantially the same result of producing an appropriate flame from both the primary and secondary burner tubes.</p>

EQUIVALENCE CHART

Claims/Elements

Defendant's Sold Device

12. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the gas flow adjustment valve has a removable handle, the gas flow adjustment allowing a variety of settings from full closed to full open.



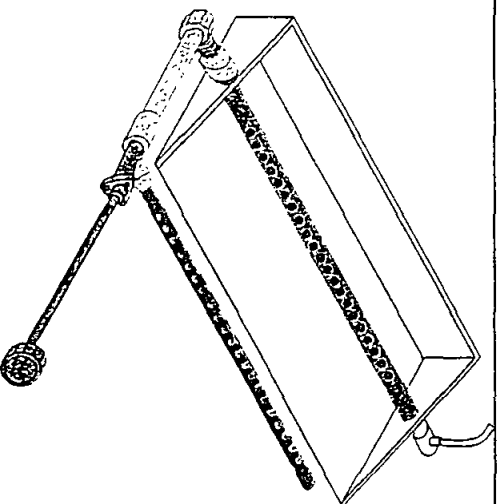
The valve shown performs substantially the same function of providing a way to control the flow of gas from the primary burner tube to the secondary burner tube, in substantially the same way of using a removable handle to adjust a gas flow from a setting of fully open to fully closed, to achieve substantially the same result of controlling the flow of gas between the primary and secondary burner tubes with ease.

EQUIVALENCE CHART

Claims/Elements

Defendant's Sold Device

13. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the burner assembly is comprised of a connector attached to the terminal end of the primary burner tube at a first end of a connector and attached to the secondary coals burner elongated tube to a connector second end with the valve interposed between the primary burner tube and the secondary burner tube.



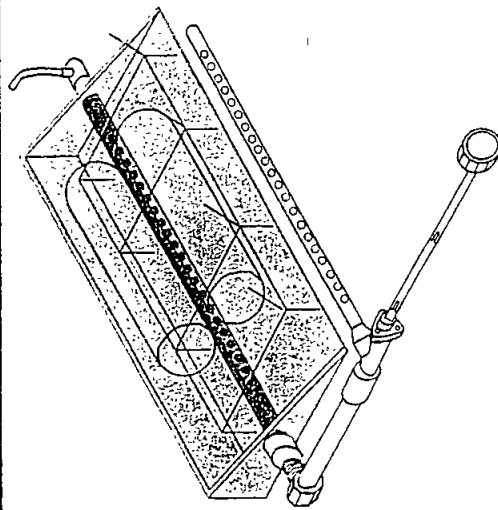
The connection means shown performs substantially the same function of providing a conduit for a flow of gas from the primary burner tube to the secondary burner tube, in substantially the same way in that it is attached to a terminal end of the primary burner tube as well as to the secondary burner tube with a valve interposed therebetween, to achieve substantially the same result of providing gas to the secondary burner tube.

EQUIVALENCE CHART

Claims/Elements

15. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the open frame pan and primary elongated burner tube is positioned under an artificial log.

Defendant's Sold Device



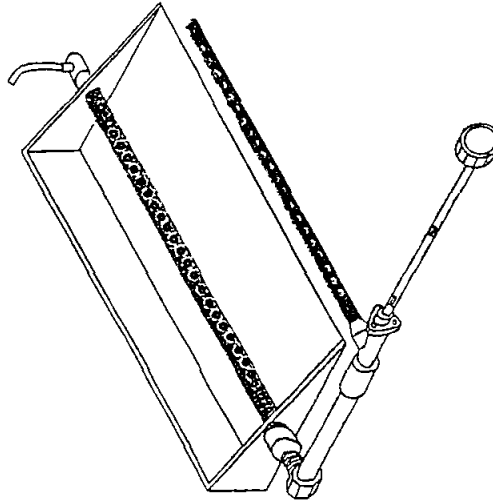
The open frame pan and primary burner tube shown perform substantially the same function of providing a support structure for burning artificial logs, in substantially the same way in that they are positioned under an artificial logs and grate support means, to achieve substantially the same result of providing a primary flame to the artificial logs.

EQUIVALENCE CHART

Claims/Elements

16. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the primary elongated burner tube is covered with sand and the secondary elongated burner tube is covered with sand, mica, and fibrous materials which simulate coals and ember burn.

Defendant's Sold Device



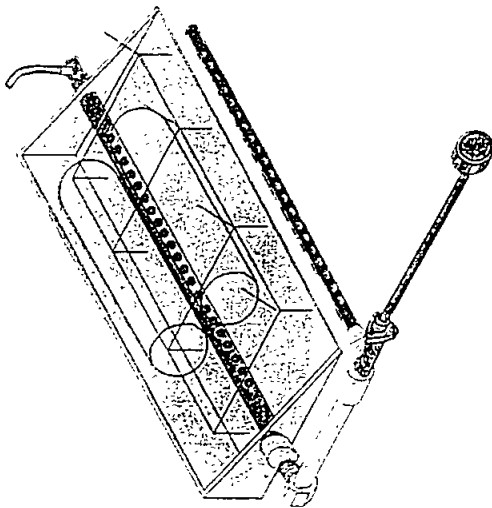
The open frame pan and primary burner tube shown perform substantially the same function of providing a support structure for burning artificial logs, in substantially the same way in that they are positioned under an artificial logs and grate support means, to achieve substantially the same result of providing a primary flame to the artificial logs.

EQUIVALENCE CHART

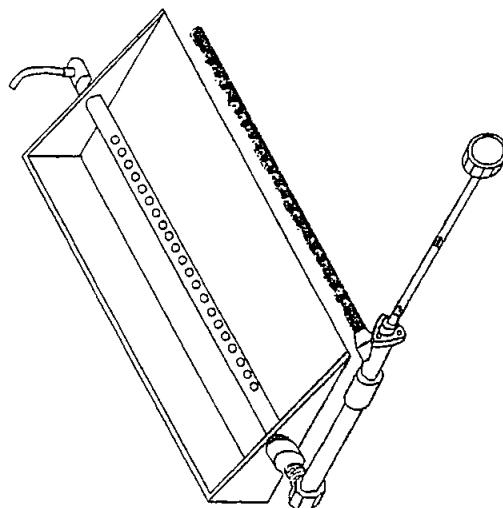
Defendant's Sold Device

Claims/Elements

17. A gas-fired artificial coals- and embers-burner apparatus suitable for attaching to a gas-fired primary artificial log burner tube said primary artificial log burner tube having a terminal end comprising:



a secondary coals burning elongated tube;



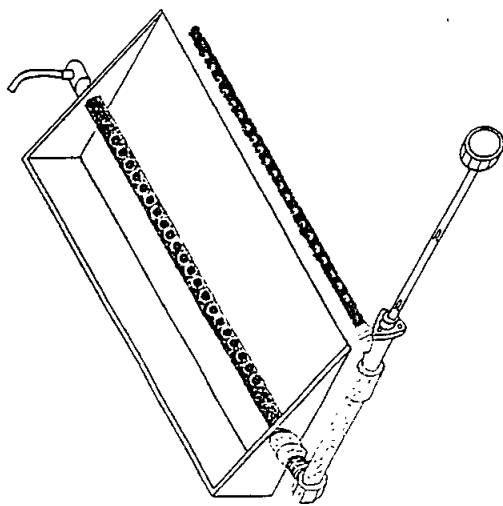
The secondary burner tube shown performs substantially the same function of allowing gas to emanate therefrom via discharge ports, in substantially the same way by allowing the gas to pass through the discharge ports, to achieve substantially the same result of producing a flame in the ember bed in front of the primary burner tube.

EQUIVALENCE CHART

Defendant's Sold Device

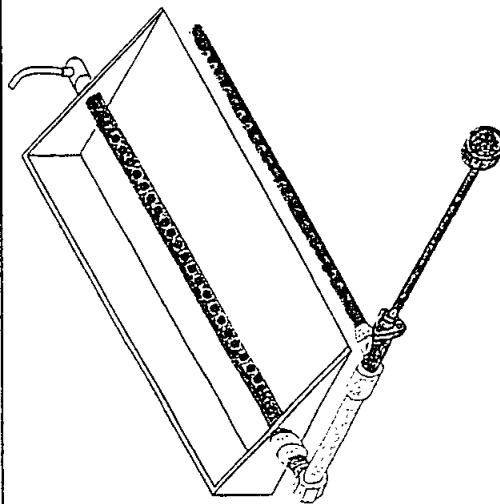
Claims/Elements

a ... for connecting said terminal end in communication with the secondary burner tube, the secondary burner tube positioned substantially parallel, forward and below the primary burner tube



The tubular connection shown performs substantially the same function of providing a conduit for a flow of gas from the primary burner tube to the secondary burner tube, in substantially the same way in that the tubular connection is the conduit for the gas to a secondary burner tube positioned substantially parallel, forward and below the primary burner tube, to achieve substantially the same result of providing gas to the secondary burner tube.

the ... having interposed between the primary and secondary burner tubes a gas flow adjustment valve,



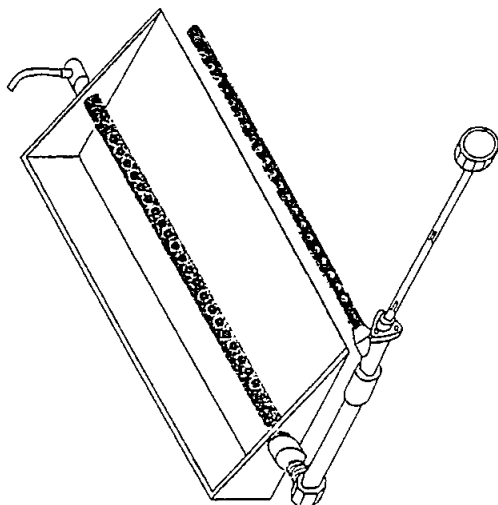
The valve shown performs substantially the same function of providing a way to control the flow of gas from the primary burner tube to the secondary burner tube, in substantially the same way of using a gate within a manifold of the valve to reduce the passageway within the valve thereby controlling the amount of gas that can flow from the primary burner tube to the secondary burner tube, to achieve substantially the same result of controlling the

EQUIVALENCE CHART

Defendant's Sold Device

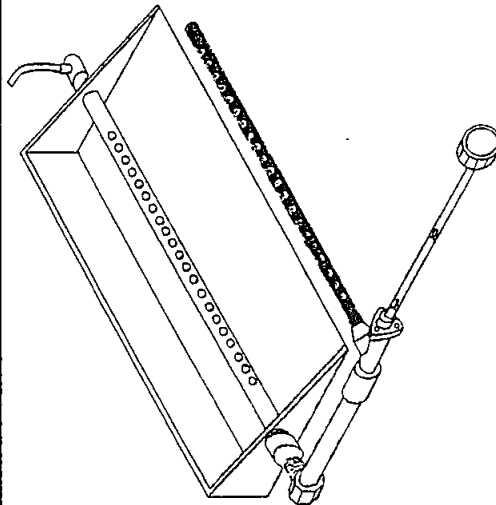
Claims/Elements

primary and secondary burner tubes having a plurality of gas discharge ports,

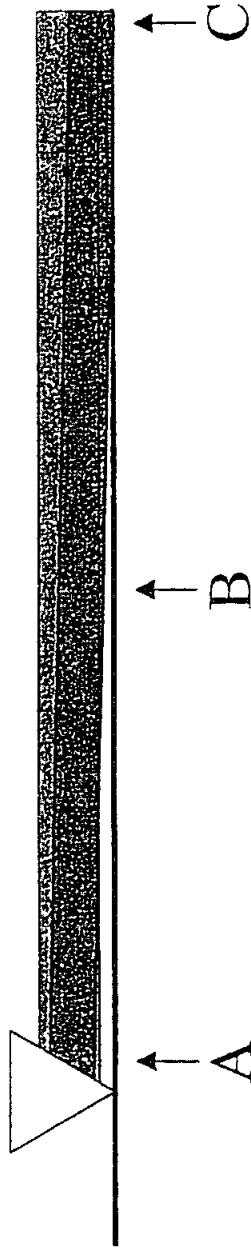


The plurality of gas discharge ports of the primary burner tube and secondary burner tube shown perform substantially the same function of allowing gas to emanate therefrom via discharge ports, in substantially the same way by allowing the gas to pass through the discharge ports, to achieve substantially the same result of producing a flame in the ember bed in front of the primary burner.

a gas distribution ports of the secondary burner tube directed away from the fireplace opening.



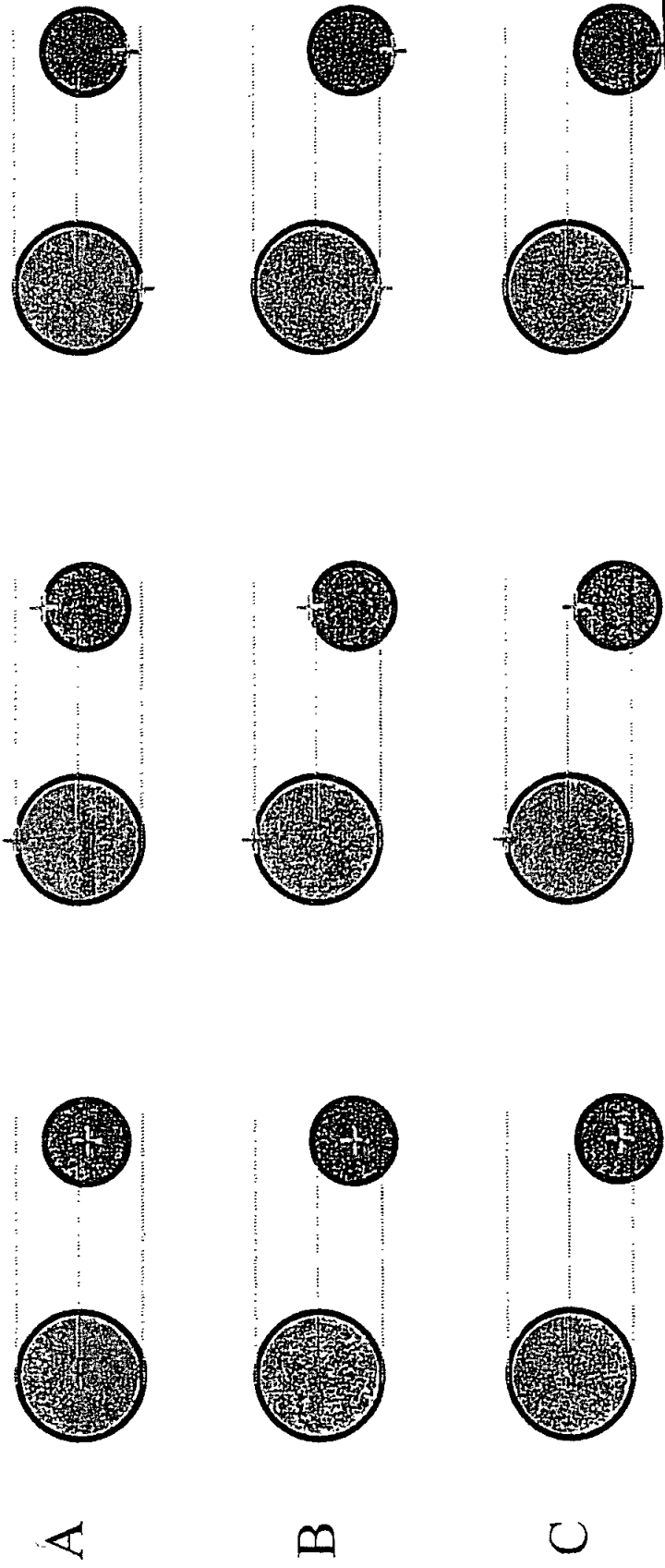
The plurality of gas discharge ports of the secondary burner tube shown perform substantially the same function of allowing gas to emanate therefrom via discharge ports, in substantially the same way by allowing the gas to pass therethrough and be directed away from the fireplace opening, to achieve substantially the same result of producing a flame in the ember bed in front of the primary burner.

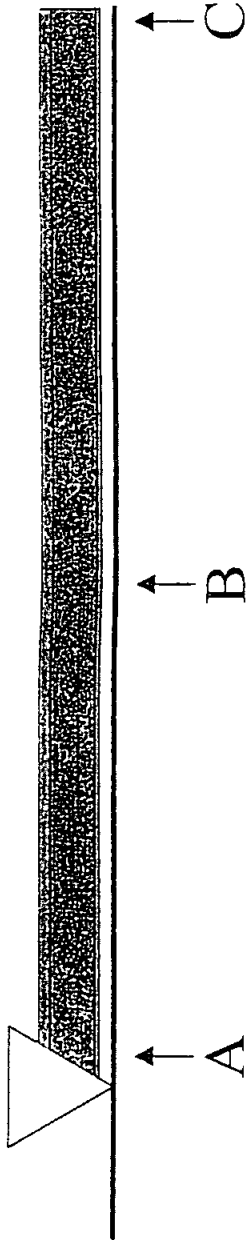


CENTERLINE

TOP

BOTTOM



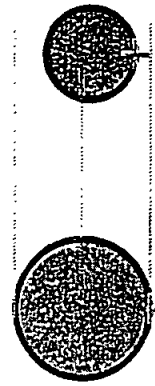
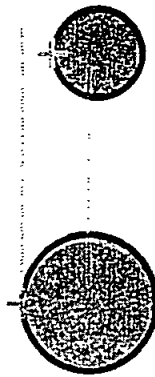
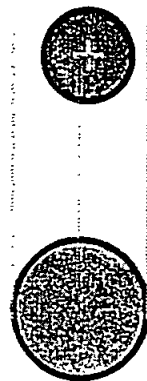


CENTERLINE

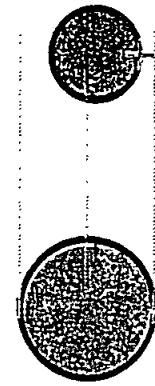
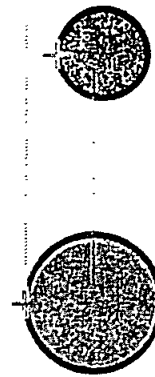
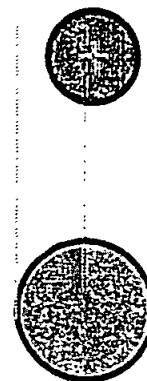
TOP

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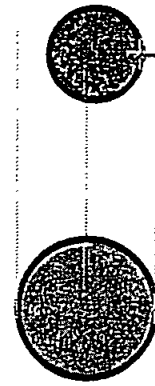
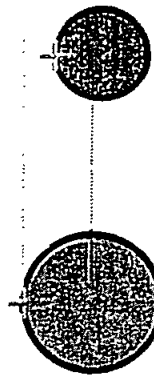
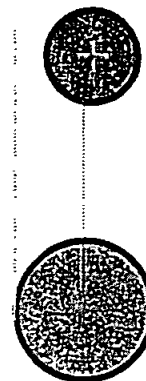
A



B



C



PETERSON REAL-FYRE®
GAS LOGS &
FIREPLACE ACCESSORIES

R.H. PETERSON CO.
 LIST PRICE SHEET
 MARCH 1, 1996



Shown: WOG4-24

TO USE THIS PRICE SHEET -1- Select Burner System. -2- Select Log Style Design. -3- Select Log Size.

CODES FOR BURNER STYLES

G4. Glowing Ember	F Front-Flame
GX4. Glowing Ember	P Flame Pan
(with Heavy Duty Grate)	2 See-Thru Fireplace
G5. AGA/CGA Glowing Ember	3 Circular Fireplaces
G6. Glowing Ember, Advantage 21/AGA	(F Series)

CODES FOR GAS LOG SETS

R. Golden Oak	H. Heritage Oak
S. Split Oak	HD. Heritage Oak Designer
PO Post Oak	W White Birch
WO Woodland Oak	K Mountain Oak
B Royal English Oak	D Driftwood
BD. Royal English Oak Designer	T Twisted Pine
E. Emberwood	V. Old English Coal
ED Emberwood Designer	RD. Golden Oak Designer(G6)
W/B See-Thru Logs with Bark	SS. Split Oak AGA

<u>SECTION</u>		<u>PAGE</u>	<u>SECTION</u>		<u>PAGE</u>
I	Glowing Embers G4 & Front Flame Log Sets	2, 3	VIII	Gas Log Burners (Only) Non-AGA	8
II	Flame Pan Log Sets	3	IX	Gas Logs (Only)	9,10
III	G6 Log Sets - AGA/CGA	4,5	X	Fireplace & Gas Log Accessories	10
IV	G6 Individual Logs & Branches	5	XI	Grates & Burner Parts	11
V	G5 Gas Logs (Only) - AGA/CGA	6	XII	Gas Log Lighters With Valves	11
VI	G5 Gas Log Burners (Only) - AGA/CGA	6	XIII	Gas Log Lighters Without Valves	11
VII	Safety Control Systems, Valves & Parts	7	XIV	Individual Logs & Branches -	11

SUPERSEDES ALL OTHER PRICE LISTS • PRICES SUBJECT TO CHANGE WITHOUT NOTICE • ALL PRICES FOB FACTORY









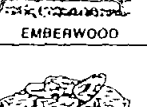




**PLAINTIFF'S
 EXHIBIT**

23





1 GLOWING EMBERS (G4 SERIES) OR FRONT FLAME (F SERIES) GAS LOG SET

"G4" SERIES RADIANT HEAT GAS LOG SETS WITH GLOWING EMBER BURNER - Add length to Model No. (i.e. RG4-24)
 Note: Shipped for use with Natural Gas - Specify if for L.P. Gas by adding a "P" to the product number (RG4-24P), and add \$122.00 for required SPK-20

"F" SERIES RADIANT HEAT GAS LOG SETS WITH FRONT FLAME BURNER (To order, substitute "F" for "G4" in Model No.)
 Note: Shipped for use with Natural Gas - Specify if for L.P. Gas - and add \$122.00 for required SPK-20
 Set includes 1. Logs 2. Burner 3. Grate (Log Rests RF-3) 4. Connector Kit

Style	Fireplace	No.		12"	16"	18"	20"	24"	30"	36"	42"	48"	54"	
 GOLDEN OAK	Standard	RG4	PRICE	193.00	212.00	234.00	239.00	249.00	297.00	405.00	624.00	737.00	786.00	
			weight	41#	45#	61#	68#	82#	107#	148#	294#	346#	371#	
			no. ctns.	1	1	2	2	2	2	3	4	4	5	
 SPLIT OAK**	See-thru	RG4-2	PRICE	244.00	273.00	307.00	312.00	337.00	395.00	596.00	747.00	885.00	939.00	1.0
			weight	52#	62#	78#	90#	110#	142#	186#	322#	388#	405#	
			no. ctns.	1	1	2	2	2	2	4	4	5	5	
 POST OAK	See-thru	RG4-2 W/B	PRICE			307.00	312.00	337.00	395.00					
			weight			84#	89#	107#	150#					
			no. ctns.			2	2	2	2					
 WOODLAND OAK	Standard	SG4	PRICE			276.00	286.00	307.00	379.00					
			weight			62#	70#	79#	102#					
			no. ctns.			2	2	2	2					
 SPLIT OAK**	See-thru	SG4-2	PRICE			354.00	366.00	403.00	487.00					
			weight			84#	84#	99#	145#					
			no. ctns.			2	2	2	2					
 POST OAK	Standard	POG4	PRICE			226.00	230.00	241.00	289.00					
			weight			63#	65#	82#	112#					
			no. ctns.			2	2	2	2					
 WOODLAND OAK	See-thru	POG4-2	PRICE			295.00	300.00	327.00	385.00					
			weight			85#	93#	104#	153#					
			no. ctns.			2	2	2	2					
 WOODLAND OAK	Standard	WOG4	PRICE			262.00	266.00	279.00	330.00					
			weight			63#	65#	82#	112#					
			no. ctns.			2	2	2	2					
 WOODLAND OAK	See-thru	WOG4-2	PRICE			338.00	344.00	373.00	436.00					
			weight			85#	93#	104#	153#					
			no. ctns.			2	2	2	2					
 WOODLAND OAK	Standard	WOGX4	PRICE			290.00	294.00	316.00	368.00					
			weight			71#	73#	90#	125#					
			no. ctns.			2	2	2	2					
 WOODLAND OAK	See-thru	WOGX4-2	PRICE			398.00	404.00	442.00	491.00					
			weight			91#	99#	117#	171#					
			no. ctns.			2	2	2	2					
 ROYAL ENGLISH OAK*	Standard	BGX4	PRICE					350.00	403.00	488.00				
			weight					118#	178#	219#				
			no. ctns.					3	3	4				
 ROYAL ENGLISH OAK*	See-thru	BGX4-2	PRICE					471.00	524.00	616.00				
			weight					145#	208#	255#				
			no. ctns.					3	3	4				
 ROYAL ENGLISH DESIGNER*	Standard	BDGX4	PRICE					400.00	457.00	547.00				
			weight					118#	178#	219#				
			no. ctns.					3	3	4				
 ROYAL ENGLISH DESIGNER*	See-thru	BDGX4-2	PRICE					527.00	589.00	686.00				
			weight					145#	208#	255#				
			no. ctns.					3	3	4				
 EMBERWOOD	Standard	EG4	PRICE			234.00		249.00	297.00					
			weight			61#		84#	101#					
			no. ctns.			2		2	2					
 EMBERWOOD	See-thru	EG4-2	PRICE			307.00		337.00	395.00					
			weight			82#		106#	131#					
			no. ctns.			2		2	2					
 EMBERWOOD DESIGNER	Standard	EDG4	PRICE					260.00	308.00					
			weight					88#	108#					
			no. ctns.					2	2					
 EMBERWOOD DESIGNER	See-thru	EDG4-2	PRICE					348.00	406.00					
			weight					110#	135#					
			no. ctns.					2	2					
 HERITAGE OAK*	Standard	HGX4	PRICE			276.00		316.00	360.00					
			weight			68#		98#	136#					
			no. ctns.			2		2	2					
 HERITAGE OAK*	See-thru	HGX4-2	PRICE			385.00		437.00	480.00					
			weight			86#		126#	172#					
			no. ctns.			2		2	2					
 HERITAGE DESIGNER*	Standard	HDGX4	PRICE			321.00		366.00	414.00					
			weight			68#		98#	136#					
			no. ctns.			2		2	2					
 HERITAGE DESIGNER*	See-thru	HDGX4-2	PRICE			437.00		493.00	546.00					
			weight			86#		126#	172#					
			no. ctns.			2		2	2					

GLOWING EMBERS (G4 SERIES) OR FRONT FLAME (F SERIES) CONT.

Style	Fireplace	No.		12"	16"	18"	20"	24"	30"	36"	42"	48"	54"	60"
 WHITE BIRCH	Standard	WG4	PRICE weight no ctns.			257.00 61# 2		274.00 83# 2	325.00 113# 2					
	See-thru	WG4-2	PRICE weight no ctns.			331.00 79# 2		364.00 109# 2	425.00 142# 2					
 MOUNTAIN OAK*	Standard	KG4	PRICE weight no ctns.			219.00 65# 2		233.00 81# 2	280.00 106# 2	377.00 152# 3				
	See-thru	KG4-2	PRICE weight no ctns.			288.00 86# 2		319.00 111# 2	372.00 147# 2	560.00 223# 4				
 DRIFTWOOD	Standard	DG4	PRICE weight no ctns.			238.00 70# 2		253.00 74# 2	299.00 92# 2					
	See-Thru	DG4-2	PRICE weight no ctns.			295.00 85# 2		324.00 97# 2	380.00 123# 2					
 TWISTED PINE	Standard	CG4	PRICE weight no ctns.			219.00 66# 2		233.00 73# 2	280.00 99# 2	377.00 134# 3				
	See-Thru	CG4-2	PRICE weight no ctns.			276.00 86# 2		319.00 97# 2	372.00 140# 2	560.00 203# 4				
OLD ENGLISH COAL GRATE	Coal Only	VG4-C	PRICE weight no ctns.			317.00 80# 1		330.00 95# 1	395.00 110# 1					

*Mountain Oak recommended for Natural Gas Only







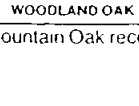
FLAME PAN (P SERIES) GAS LOG SETS

"P" SERIES RADIANT HEAT GAS LOG SETS WITH FLAME PAN BURNER & DETACHABLE LEGS

Note: Shipped for use w/Natural Gas.
Specify if for L.P. Gas and add
\$122.00 for required SPK-20

Set includes:

1. Logs
2. Burner
3. Pan with removable legs
4. Connector Kit
5. Embers
6. Vermiculite to cover burner
7. Log Supports

Style	Fireplace	No.		16"	18"	20"	24"	30"	36"	42"
 GOLDEN OAK	Standard	RP	PRICE weight no ctns.	212.00 33# 1	234.00 52# 2	241.00 61# 2	249.00 71# 2	297.00 91# 2	405.00 128# 3	624.00 230# 4
	See-thru	RP-2	PRICE weight no ctns.	225.00 36# 1	250.00 53# 2	257.00 65# 2	266.00 79# 2	314.00 97# 2	442.00 137# 4	653.00 244# 4
 SPLIT OAK	Standard	SP	PRICE weight no ctns.		276.00 53# 2	288.00 63# 2	307.00 68# 2	379.00 86# 2		
	See-thru	SP-2	PRICE weight no ctns.		297.00 57# 2	311.00 64# 2	332.00 68# 2	406.00 100# 2		
 DRIFTWOOD	Standard	DP	PRICE weight no ctns.		238.00 61# 2		253.00 63# 2	299.00 76# 2		
	See-thru	DP-2	PRICE weight no ctns.		238.00 58# 2		253.00 66# 2	299.00 78# 2		
 MOUNTAIN OAK*	Standard	KP	PRICE weight no ctns.		219.00 56# 2		233.00 70# 2	280.00 90# 2	377.00 132# 3	
	See-thru	KP-2	PRICE weight no ctns.		231.00 59# 2		248.00 80# 2	291.00 102# 2	406.00 174# 4	
 TWISTED PINE	Standard	CP	PRICE weight no ctns.		219.00 57# 2		233.00 62# 2	280.00 83# 2	377.00 114# 3	
	See-thru	CP-2	PRICE weight no ctns.		219.00 59# 2		248.00 66# 2	291.00 95# 2	406.00 154# 4	
 WHITE BIRCH	Standard	WP	PRICE weight no ctns.		257.00 52# 2		274.00 52# 2	325.00 96# 2		
	See-thru	WP-2	PRICE weight no ctns.		274.00 52# 2		293.00 72# 2	344.00 97# 2		
 WOODLAND OAK	Standard	WOP	PRICE weight no ctns.		266.00 54# 2	268.00 58# 2	279.00 71# 2	330.00 96# 2		
	See-thru	WOP-2	PRICE weight no ctns.		281.00 58# 2	289.00 68# 2	302.00 73# 2	355.00 108# 2		

*Mountain Oak recommended for Natural Gas Only

GAS LOGS (only) CONTINUED

Note: Logs only See Section VIII for burners

Style	Fireplace	No.	PRICE weight no. ctns.	12"	16"	18"	20"	24"	30"	36"	42"	48"	54"	60"
DRIFTWOOD	Standard	D	PRICE weight no. ctns.			117.00 44# 1		128.00 44# 1	153.00 70# 1					
DRIFTWOOD	See-thru	D-2	PRICE weight no. ctns.			117.00 44# 1		128.00 47# 1	153.00 82# 1					
TWISTED PINE	Standard	C	PRICE weight no. ctns.			98.00 40# 1		108.00 43# 1	134.00 56# 1	199.00 75# 2				
TWISTED PINE	See-thru	C-2	PRICE weight no. ctns.			98.00 42# 1		123.00 47# 1	145.00 75# 1	228.00 128# 3				

See Section X for individual branches

FIREPLACE & GAS LOG ACCESSORIES

EMBER GLOW

NO.	DESCRIPTION	PRICE
EM-1	Single Pack Wt. 6 oz	12.00
EM1-12	Case of 12 Wt. 5#	144.00

SELECT WHITE SAND

NO.	DESCRIPTION	PRICE
CS-10	Select White Sand Wt. 10#	13.50
CS10-6	Case of 6 - 66#	81.00

FIREPROOF CEMENT

NO.	DESCRIPTION	PRICE
FC-10	Single Pack 10#	14.00
FC10-6	Case of 6 Wt. 60#	84.00

LAVA-FYRE GRANULES

NO.	DESCRIPTION	PRICE
LF-5	Lava-Fyre Granules Wt. 5#	10.00
LF-10	Lava-Fyre Granules Wt. 10#	18.00
LF5-12	Case of 12 - 68#	120.00
LF10-6	Case of 6 63#	108.00

VERMICULITE GRANULES

NO.	DESCRIPTION	PRICE
LF-15	Vermiculite Granules	13.50
LF15-12	Case of 12 18#	162.00

BONUS LOGS/WOOD CHIPS

NO.	DESCRIPTION	PRICE
SD-BONUS	Special Designer Logs(2)	54.00
SS-BONUS	Special Split Logs (2)	57.00
WC-6	Wood Chips (Boxed) 6	25.50
WC-6-12	Case of 12 - Wood Chips	306.00

WARM AIR CIRCULATOR

NO.	DESCRIPTION	PRICE
AC-10	Air Circulator	230.00

CERAMIC PINE CONES

NO.	DESCRIPTION	PRICE
PC-4	Single Pack 4 assorted sizes Pine Cones in poly bag Wt. 4#	14.50
PC4-12	Case of 12 - 45#	174.00

VOLCANIC STONE

NO.	DESCRIPTION	PRICE
VS-3	Lava-Fyre Volcanic Stone in Poly Bag Wt. 3#	7.50
VS-3-12	12 Poly Bags of VS-3 in box Wt. 30#	90.00
VS-12	12 Lbs. Assorted Stones in box Wt. 12#	26.50
VS-25	25 Lbs. Assorted Stones in box Wt. 25#	50.50

DECOR PACK

NO.	DESCRIPTION	PRICE
DP-1	Includes PC-4, BR-2, EM-1 and GL-1	42.50

FIREPLACE GLUE

NO.	DESCRIPTION	PRICE
GL-1	Adhesive Wt. 4 oz.	8.00
GL1-12	Case of 12 Wt. 5#	96.00

LOG SUPPORTS

NO.	DESCRIPTION	PRICE
LS-0004	15" Log Support (18"/20" Sets) 3#	11.00
LS-0005	20" Log Support (24" Sets) 5#	13.00
LS-0006	24" Log Support (30" Sets) 6#	15.50

CONNECTOR KITS

NO.	DESCRIPTION	PRICE
C-4	12" Flared Connector	16.50
C-4-18	18" Flared Connector	21.00
C-5	12" Flex Connector (1/2" id)	23.00
A-1	See-thru Connector	20.00
C-5-24	24" Flex Connector	23.00

DECORATIVE OAK TREE BRANCHES

DESC.	NO.	LENGTH	WEIGHT	PACKAGING	PRICE
OAK	BR-2	Length 9" each	3#	2 in box	14.00
OAK	BR-4	Length 9" each	5#	4 in box	26.00
OAK	BR-24	Length 9" each	22#	24 in carton	136.50
OAK	BR-17	Length 17"	4#	Packed in individual carton	20.00
OAK	BR-21	Length 21"	10-1/2#	Packed in individual carton	37.50

XI GRATES & BURNER PARTS

FIREPLACE GRATES

Style No.	Fireplace	No.	PRICE	12"	16"	18"	24"	30"	36"	42"	48"	54"	60"
Steel Square 1/2"	Standard	SD	weight		21.00 5#	24.00 9#	28.00 11#	33.00 13#	40.00 15#				
	See-thru	SD-2	weight		24.00 5#	28.00 10#	33.00 12#	40.00 15#					
Heavy-Duty Steel	Standard	SX	weight			42.00 19#	46.00 22#	58.00 25#	66.00 27#	96.00 34#	110.00 42#	124.00 45#	140.00 48#
	See-thru	SX-2	weight			45.00 22#	50.00 25#	62.50 27#	70.00 30#	101.00 38#	116.00 44#	130.00 50#	145.00 53#
Forged Steel Grate	Standard	VV	weight			198.00 20#	211.00 35#	259.00 40#					
Pan Burners	Fingers Only	V	weight	35.00 5#		53.00 7#	70.00 10#	88.00 13#					

BURNER PARTS

NO.	DESCRIPTION	PRICE	NO.	DESCRIPTION	PRICE
AB-2	Fuel injector, use with CK-4 connector kit shipped blank or specify drill size	5.50	HE-2	Large brass hearth elbow	4.50
AM-2	Air Mixer, use with CK-4 connector kit shipped blank or specify drill size	10.00	CE-1	Small brass connector elbow	4.00
			TA-3	Aluminum tubing 3/8" or flare 12" long with flare nuts	12.00

XII GAS LOG LIGHTERS (with Valves)

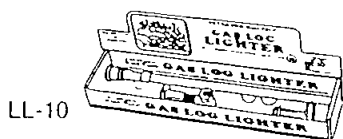
GAS LOG LIGHTER KIT

The Peterson REAL-FYRE Gas Log Lighter Kit

includes:

Log lighter tubes, 190.00 BTU

Order Brass Trim Plate separately - BCP-1



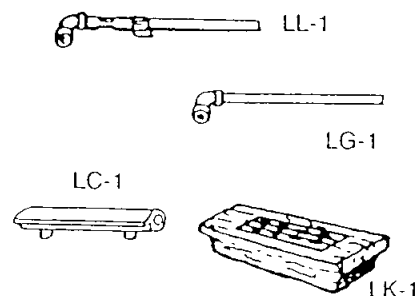
LOG LIGHTERS WITH VALVES

NO.	DESCRIPTION	PRICE
LG-10	Standard Log Lighter w/AV-30 (Straight) In-Line Valve	51.00
LG-11	Standard Log Lighter w/AV-31 (Angle) In-Line Valve	51.00
LL-10	Gas Saver Log Lighter w/AV-30 (Straight) In-Line Valve	55.00
LL-11	Gas Saver Log Lighter w/AV-31 (Angle) In-Line Valve	55.00
LC-10	14" Cast Iron Log Lighter w/AV-30 (Straight) In-Line Valve	61.00
LC-11	14" Cast Iron Log Lighter w/AV-31 (Angle) In-Line Valve	61.00
LC-20	18" Cast Iron Log Lighter w/AV-30 (Straight) In-Line Valve	63.00
LC-21	18" Cast Iron Log Lighter w/AV-31 (Angle) In-Line Valve	63.00
BCP-1	Brass Cover Plate for AV-30/AV-31 Valve	8.00

XIII GAS LOG LIGHTERS (without Valves)

LOG LIGHTERS WITHOUT VALVES

NO.	DESCRIPTION	PRICE
LG-1	Rigid Single Gas log lighter	19.50
LG1-12	Case of 12 Gas log lighters	234.00
LL-1	Gasaver Single Gas log lighter	24.00
LL-1-12	Case of 12 Gas log lighters	288.00
LC-1	14" Cast Iron Gas log lighter	26.00
LC-1-12	Case of 12 LC-1 Gas log lighters	312.00
LC-2	18" Cast Iron Log Lighter Gas log lighter	32.00
LC2-12	Case of 12 LC-2 Gas log lighters	384.00
LK-1	Natural Wood Ceramic refractory log lighter	27.00
LK1-12	Case of 12 LK-1 Ceramic refractory log lighters	324.00
CW-1	Ceramic-wik single for Ceramic refractor log lighter	5.00



XIV

INDIVIDUAL LOGS & BRANCHES G4, G5, "F" and "P" SETS

INDIVIDUAL TOP LOGS FOR GAS LOG SETS (for all burner systems except G6)

To Order: Specify Log Style and then Size (i.e. RL-24t)

Style	No.		8"t	9"t	10"t	12"t	13"t	14"t	15"t	16"t	18"t	20"t	24"t	30"t
GOLDEN OAK	RL	PRICE	10.50	11.50		19.50			22.50		26.00	31.50	37.00	43.00
		weight	2#	2#		6#			7#		9#	11#	15#	16#
SPLIT OAK	SL	PRICE		14.00		22.50			26.50					
		weight		3#		5#			7#					
SPLIT OAK (AGA)	SL-5	PRICE				23.50			27.50					
		weight				5#			7#					
POST OAK	POL	PRICE		11.50		19.50			22.50		26.00			
		weight		2#		6#			7#		9#			
WOODLAND OAK	WOL	PRICE		14.00		22.50			26.50		30.50			
		weight		2#		6#			7#		9#			
ROYAL ENGLISH OAK	BL	PRICE		11.50			22.50	25.00		27.00	31.50			
		weight		2#			6#	7#		8#	14#			
ROYAL ENGLISH OAK DESIGNER	BDL	PRICE		14.00			26.00	28.00		30.50	36.00			
		weight		2#			6#	7#		8#	14#			
EMBERWOOD	EL	PRICE	10.50	11.50		19.00			22.50		26.00			
		weight	2#	2#		6#			7#		9#			
EMBERWOOD DESIGNER	EDL	PRICE	10.50	11.50	17.00	19.50			23.50		26.00			
		weight	2#	2#	4#	6#			7#		9#			
HERITAGE OAK	HL	PRICE	(7") 11.50	15.00	(11") 16.00	17.00	21.50		22.50					
		weight	2#	3#	3#	4#	5#		8#					
HERITAGE OAK DESIGNER	HDL	PRICE	(7") 14.00	17.00	(11") 18.00	20.00	24.00		26.00					
		weight	2#	3#	3#	4#	5#		8#					
WHITE BIRCH	WL	PRICE		12.50		21.50			23.50		27.00			
		weight		2#		5#			6#		8#			
MOUNTAIN OAK	KL	PRICE								33.50		41.00	45.00	50.50
		weight								16#		22#	29#	30#
DRIFTWOOD	DL	PRICE			16.00	19.50	23.50	23.50						
		weight			2#	2#	4#	4#						
TWISTED PINE	CL	PRICE		11.50		19.50			22.50		26.00			
		weight		2#		4#			5#		7#			

INDIVIDUAL BOTTOM LOGS FOR GAS LOG SETS (for all burner systems except G6)

To Order: Specify Log Style and then Size (i.e. RL-36bF) Note: Please add "R" (Rear) or "F" (Front) to model number to specify log

Style	No.		12"b	15"b	16"b	18"b	20"b	24"b	30"b	36"b	42"b	48"b	54"b	60"b
GOLDEN OAK	RL	PRICE	30.50	36.00	37.00	39.50	43.00	48.50	67.00	102.50	132.00	153.00	164.00	191.50
		weight	6#	7#	8#	13#	16#	22#	25#	44#	86#	104#	122#	140#
SPLIT OAK	SL	PRICE		48.50		54.00	59.50	67.00	96.00					
		weight		8#		13#	16#	22#	25#					
POST OAK	POL	PRICE		36.50		39.50	43.00	48.50	67.00					
		weight		7#		13#	16#	22#	25#					
WOODLAND OAK	WOL	PRICE		48.50		54.00	59.50	67.00	96.00					
		weight		7#		13#	16#	22#	25#					
ROYAL ENGLISH OAK	BL	PRICE					45.00	56.00	67.00	90.00				
		weight					24#	29#	38#	52#				
ROYAL ENGLISH OAK DESIGNER	BDL	PRICE					56.00	67.00	79.00	101.00				
		weight					24#	29#	38#	52#				
EMBERWOOD	EL	PRICE		36.00		39.50	43.00	48.50	67.00					
		weight		7#		12#	16#	19#	23#					
EMBERWOOD DESIGNER	EDL	PRICE		36.00		39.50	43.00	48.50	67.00					
		weight		7#		14#	16#	23#	27#					
HERITAGE OAK	HL	PRICE		37.50		42.00	45.00	56.00	67.00					
		weight		8#		17#	19#	23#	30#					
HERITAGE OAK DESIGNER	HDL	PRICE		44.00		50.50	56.00	67.00	79.00					
		weight		8#		17#	19#	23#	30#					
WHITE BIRCH	WL	PRICE		38.00		41.00	44.00	54.00	72.50					
		weight		7#		10#	13#	18#	19#					
MOUNTAIN OAK	KL	PRICE		36.00		39.50	43.00	48.50	67.00	102.50				
		weight		7#		13#	16#	21#	25#	44#				
DRIFTWOOD	DL	PRICE		36.00		39.50	43.00	48.50	67.00					
		weight		7#		10#	9#	13#	19#					
TWISTED PINE	CL	PRICE				39.50	43.00	48.50	67.00	102.50				
		weight				10#	12#	16#	21#	35#				

JT-APP 1633

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION
4 GOLDEN BLOUNT, INC.,)
5 Plaintiff,) Civil Action
6 vs.) No. 3-01CV0127-R
7 ROBERT H. PETERSON CO.,)
8 Defendant.)

9 PORTIONS OF THIS DEPOSITION HAVE BEEN DESIGNATED
10 CONFIDENTIAL - ATTORNEYS' EYES ONLY
11 AND ARE BOUND UNDER SEPARATE COVER
12

13 The 30(b)(6) deposition of ROBERT H.
14 PETERSON CO. by LESLIE BORTZ,
15 called by the Plaintiff for
16 examination, taken pursuant to the Federal Rules
17 of Civil Procedure for the United States District
18 Courts pertaining to the taking of depositions,
19 taken before BERNICE E. RADAVIDICH, a Notary Public
20 within and for the County of Cook, State of
21 Illinois, and a Certified Shorthand Reporter,
22 C.S.R. No. 84-1461, of said state, at Suite 3800,
23 500 West Madison Street, Chicago, Illinois, on the
24 5th day of October, A.D. 2001, at 10:45 a.m.

1 PRESENT:

2

3 HITT GAINES & BOISBRUN, P.C.,

4 (225 University Plaza,

5 275 West Campbell Road,

6 Richardson, Texas 75080), by:

7 MR. WILLIAM D. HARRIS, JR.,

8 appeared on behalf of the Plaintiff;

9

10 WOOD, PHILLIPS, VansANTEN, CLARK & MORTIMER,

11 (500 West Madison Street, Suite 3800,

12 Chicago, Illinois 60661), by:

13 MR. DEAN A. MONCO,

14 appeared on behalf of the Defendant.

15

16

17 REPORTED BY:

18 BERNICE E. RADAVIDICH, C.S.R. No. 84-1461.

19

20

21

22

23

24

1 MR. HARRIS: Would you swear the witness,
2 please?

3 (WHEREUPON, the witness was sworn.)

4 LESLIE BORTZ,
5 called as a witness herein, having been first duly
6 sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MR. HARRIS:

9 Q. Sir, would you put your name on the
10 record, please, and where you reside?

11 A. My name is Leslie, L-e-s-l-i-e, Bortz,
12 B-o-r-t-z, and I reside in Glencoe, G-l-e-n-c-o-e,
13 Illinois.

14 Q. How are you employed and where, sir?

15 A. I'm employed by the Robert H. Peterson
16 Company.

17 Q. Position?

18 A. I'm a vice president and a principal.

19 Q. What does that mean? You're a
20 stockholder?

21 A. Yes.

22 Q. Is it a closely held company?

23 A. Yes, it is.

24 Q. And where is it incorporated?

1 A. California.

2 Q. Does it do manufacturing of the
3 products it sells?

4 I know it sells products, right?

5 A. Yes, sir.

6 Q. Does it do the manufacturing of those
7 products?

8 A. Yes, sir.

9 Q. Is that done in California?

10 A. Yes, sir.

11 MR. HARRIS: At the outset, just so we're
12 sure we're all happy with the status of
13 information that comes out here, I will note for
14 the record that there is a protective order
15 entered in the case.

16 It has a couple of categories in it
17 besides open. One of them is for counsel's eyes
18 only, and the other one is just confidential, I
19 believe. And for counsel's eyes only is really
20 quite limited in distribution.

21 And as I understand it -- and you can
22 verify it perhaps for me. As I understand it,
23 that really doesn't even go to the principals in
24 the case. It's for the lawyers and, if we had

1 experts, experts, and so on.

2 MR. MONCO: That's my understanding.

3 MR. HARRIS: And I say that so you can relax
4 somewhat about what happens to information that
5 you give in the deposition. The lawyers, of
6 course, are then bound not to let that information
7 out except in the case, and then they can't -- I'm
8 talking about the attorneys' eyes only -- and then
9 they can't tell that information to their
10 principal.

11 I think we all use in a very general
12 sense sometimes the information in giving advice,
13 but we don't mention the information at all. So
14 numbers you have, like sales and things like that,
15 provided that you have indicated they are
16 confidential -- or for attorneys' eyes only,
17 rather, well, they won't go to your competitor.

18 Are you with me?

19 THE WITNESS: I understand what you've just
20 said.

21 MR. HARRIS: And additionally -- I don't
22 remember, but isn't this set up that you have a
23 given number of days to designate things
24 confidential?

1 MR. MONCO: I believe that's contained in the
2 protective order, yes.

3 MR. HARRIS: So you probably don't have to
4 make a confidential claim right on the record
5 unless you just want to --

6 MR. MONCO: Right.

7 MR. HARRIS: -- or make a counsel claim right
8 on the record.

9 I don't know whether I have the order
10 with me or not, but that's my belief.

11 MR. MONCO: Okay. Let me just add to
12 counsel's statement, Mr. Bortz, that if there's a
13 question from counsel that you think would require
14 the disclosure of what you consider to be
15 confidential information, what we can do is
16 request that this be separately bound in your
17 transcript, anything which you have designated as
18 confidential information, proprietary information,
19 to Robert H. Peterson Company.

20 So if there is a question that requires
21 an answer, the disclosure of information which you
22 regard as confidential, please advise me, and we
23 will on the record request that the information be
24 separately bound and designated as confidential

1 for attorneys' eyes only.

2 Do you understand what I have just
3 said?

4 MR. HARRIS: As I understand it, if you miss
5 something, you get another shot at it.

6 MR. MONCO: Right, I think that's correct.

7 But do you understand what is being
8 said here?

9 THE WITNESS: I understand --

10 MR. MONCO: Okay.

11 THE WITNESS: -- what you have said so far.

12 MR. MONCO: Okay. Good.

13 MR. HARRIS: Okay. And I want to add one
14 other thing. I don't want you to misunderstand.
15 Your lawyer will take care of you on this anyway.
16 But that does not entitle us in any way to any
17 information that involves the attorney-client
18 relationship --

19 THE WITNESS: I appreciate that.

20 MR. HARRIS: -- or so-called work product.

21 THE WITNESS: I appreciate that.

22 MR. HARRIS: We don't get it because of
23 that --

24 MR. MONCO: Right.

1 MR. HARRIS: -- any more than you do. That's
2 the way the game is played.

3 THE WITNESS: I just would like to again --
4 you have given two categories, I believe:
5 Confidential --

6 MR. HARRIS: Confidential.

7 THE WITNESS: -- and for your eyes only.

8 MR. MONCO: For attorneys' eyes only.

9 MR. HARRIS: For attorneys' eyes only.

10 THE WITNESS: Okay. What's the difference?

11 MR. HARRIS: And the attorneys are people who
12 are in the case.

13 THE WITNESS: Okay. What's the difference
14 between them?

15 MR. MONCO: Confidential information would be
16 information that you would be willing to permit to
17 be disclosed to the principals of the Robert
18 Blount Company, but they would be restricted from
19 using it in any manner other than in this case.

20 For attorneys' eyes only means that
21 anything that we talk about or any documents that
22 are shown here that are marked for attorneys' eyes
23 only are only shown to counsel and that they will
24 not be shown to the Robert -- anyone at the --

1 THE WITNESS: Golden.

2 MR. MONCO: Golden. I'm sorry. Golden
3 Blount.

4 THE WITNESS: We're Robert.

5 MR. MONCO: You're Robert. Right. Golden
6 Blount Company. So that's the distinction.

7 And then, of course, if there's any
8 publicly available documents, that would not be
9 considered either confidential or for attorneys'
10 eyes only, but what they are, publicly available
11 documents. Okay?

12 THE WITNESS: Okay.

13 MR. MONCO: Okay.

14 BY MR. HARRIS:

15 Q. Okay?

16 A. I believe so.

17 Q. Good. Have you had your deposition
18 taken before, sir?

19 A. Yes, I have, one time.

20 Q. What kind of a case was it?

21 A. (No audible response.)

22 Q. I didn't mean to ask such a hard
23 question.

24 A. Well, it was a long time ago.

1 I believe it was a bankruptcy case.

2 Q. Okay.

3 A. And we were not bankrupt.

4 Q. Have you testified in court previously?

5 A. I don't believe I have testified. In
6 that case, I was there at the court, and --

7 MR. MONCO: Wait. Now, listen to the
8 question.

9 Okay. The question was: Have you
10 testified in court? It does not restrict it to
11 that case where you were deposed.

12 THE WITNESS: Right.

13 MR. MONCO: It can be in another case --

14 THE WITNESS: Right.

15 MR. MONCO: -- where you were not deposed and
16 it went to court. So the question is: Have you
17 testified in court?

18 BY THE WITNESS:

19 A. I have not testified in any other case,
20 and I don't believe -- I think the judge asked a
21 question possibly of my attorney in the bankruptcy
22 situation, but I don't think I was -- I don't
23 think I testified.

24 BY MR. HARRIS:

1 Q. I think that's a satisfactory answer.

2 Have you ever spoken for the company on
3 a so-called 30(b)(6) or a company deposition?

4 I think the answer is no from what you
5 just said, but -- let me strike that --

6 A. I don't believe so.

7 Q. -- and stop and explain.

8 Do you know what a 30(b)(6) deposition
9 is?

10 A. I think it's what we're doing now.

11 Q. It is. And would you give me your
12 understanding, since you seem to have one, of what
13 the 30(b)(6) deposition is?

14 A. I'm being deposed.

15 Q. That is correct. Would you understand
16 that you're being deposed in the sense that you
17 are the company; you are speaking for the company?

18 A. I am representing the company.

19 Q. You are not speaking for yourself as
20 such except on these background questions.
21 Ultimately you speak for the company and, in this
22 type of thing, normally can bind the company to
23 the extent if the company could talk, it were
24 saying the same thing. Okay.

1 A. Yes, sir.

2 Q. Have you reviewed the list of items in
3 so-called Exhibit A that was attached to the
4 notice of deposition?

5 A. Yes, I have.

6 MR. HARRIS: I'm busy looking for my copy
7 of it.

8 Isn't it funny how you can remember
9 loading something up but you can't find it?

10 MR. MONCO: Off the record for just a second.

11 (WHEREUPON, discussion was had
12 off the record.)

13 MR. HARRIS: Will you mark this as Exhibit 1
14 to the Bortz deposition?

15 (WHEREUPON, said document was marked
16 Bortz Deposition Exhibit No. 1, for
17 identification, as of 10/5/01.)

18 BY MR. HARRIS:

19 Q. I don't want to belabor this too long,
20 but you understand that the way it's laid out, it
21 indicates that there will be examination on the
22 various topics -- or may be examination on the
23 various topics in Exhibit A?

24 A. Uh-huh.

1 MR. MONCO: You have to answer --

2 BY THE WITNESS:

3 A. Yes.

4 THE WITNESS: I'm sorry.

5 MR. MONCO: That's okay. Answer "yes" or
6 "no."

7 BY MR. HARRIS:

8 Q. Do you have some reasonable knowledge
9 where you feel you can speak for the company in
10 the items in Exhibit A?

11 A. I believe so.

12 Q. I'd like to get just a little
13 background on you. You don't look like you're
14 from Marietta, Oklahoma, so you must be from
15 somewhere else.

16 Would you give me some idea of such
17 educational background as you may have and work
18 background? And you can generalize it.

19 A. I was born in Chicago in 1943 and
20 raised in Chicago and stayed in Chicago until I
21 went to college at the University of Wisconsin.
22 I graduated from the University of Wisconsin in
23 1965, I believe. Then I attended the University
24 of Chicago Business School, received an M.B.A.

1 from the University of Chicago in 1967.

2 My first job was at The First National
3 Bank of Chicago in 1967, and I stayed there until
4 1977. In 1977, I became involved with the
5 Robert H. Peterson Company.

6 Q. That was '77?

7 A. Yes, sir.

8 Q. And have you been with Peterson ever
9 since?

10 A. Yes, sir.

11 Q. What various jobs or responsibilities
12 have you had with Peterson? And, again, you can
13 generalize somewhat.

14 A. I suppose general management
15 responsibilities --

16 Q. And you know their --

17 A. -- of all sorts.

18 Q. I'm sorry. Go ahead.

19 A. Of all sorts.

20 Q. Well, you know their product lines
21 pretty thoroughly, do you not?

22 A. Yes, I believe I do.

23 Q. Do you know how their equipment --
24 their materials they sell, how it works?

1 A. I think I do.

2 Q. I know that they're in the business of
3 these -- I call them artificial logs. I don't
4 know what you would call them.

5 A. Gas logs.

6 Q. Gas logs.

7 I don't know what other businesses
8 Peterson might have. Are there others?

9 A. Yes.

10 Q. Peterson is over a hundred million in
11 sales, is it not, a year?

12 MR. MONCO: You can answer the question if
13 you want to put it on the --

14 MR. HARRIS: Do you want to make that
15 confidential --

16 MR. MONCO: If you want to make that
17 confidential, you can.

18 MR. HARRIS: -- or, rather, attorneys' eyes
19 only?

20 THE WITNESS: I've never shared that kind of
21 information with anybody.

22 MR. MONCO: May I inquire the purpose of the
23 inquiry?

24 MR. HARRIS: I don't know. Let me think

1 about it, and I'll withdraw it for now.

2 MR. MONCO: Okay.

3 MR. HARRIS: And then I'll assert it later if
4 I decide it's real important to me.

5 MR. MONCO: Okay.

6 BY MR. HARRIS:

7 Q. It is a privately held company, I'm
8 aware?

9 A. Yes, sir.

10 (WHEREUPON, proceedings were had
11 which are designated Confidential -
12 Attorneys' Eyes Only and are bound
13 under separate cover.)
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**The Appendix Material On
JT-APP 1650 – JT-APP 1653
Has Been Deleted Pursuant To A Protective Order
And Can Be Found In The Confidential Joint Appendix**

1 (WHEREUPON, the following
2 proceedings were had not designated
3 Confidential - Attorneys' Eyes
4 Only:)

5 BY MR. HARRIS:

6 Q. What other product lines does the
7 company have that it sells?

8 A. Barbecues. We sell barbecues. We make
9 and sell barbecues.

10 Q. Barbecues?

11 A. Yes.

12 Q. I didn't know that.

13 A. And we have a division of the company
14 that sells both retail and commercially fitness
15 equipment.

16 Q. Any others?

17 A. No, sir.

18 MR. HARRIS: Would you mark this as
19 Exhibit 2?

20 (WHEREUPON, said document was marked
21 Bortz Deposition Exhibit No. 2, for
22 identification, as of 10/5/01.)

23 MR. HARRIS: Please present the witness with
24 it.

1 (WHEREUPON, there was a short
2 interruption.)

3 BY MR. HARRIS:

4 Q. Would you tell me what is illustrated
5 in Exhibit 2?

6 A. A Peterson gas log set with an ember
7 booster.

8 Q. That's the EMB; is that right?

9 A. Yes.

10 Q. And I see a reference to the G4 series.
11 Could you tell me what that is for the record?

12 A. That's a burner system. That's our
13 nomenclature for one of our burner systems.

14 Q. Is that your most prominent or largest
15 system as far as sales and distribution is
16 concerned?

17 A. Yes.

18 Q. And what part --

19 A. By the way, this also shows a G5
20 series.

21 Q. Okay. Is the difference between the
22 G4 and the G5 merely that the G5 has the EMB
23 attached?

24 A. No.

1 Q. What is the difference?

2 A. The G5 is what is called -- was called
3 at this time an AGA-certified gas log set.

4 Q. What physical difference was there
5 between -- or structural difference was there
6 between it and the G4?

7 A. The G5 would have a preassembled safety
8 pilot kit on the set, a regulator to regulate gas,
9 and some methodology to keep the bottom logs
10 separate, some special warning tags unique to
11 AGA-certified products that are pieces of metal
12 with warning labels on them and a chain to connect
13 them to the product.

14 Q. Is the G5 more expensive than the G4?

15 A. Yes.

16 Q. What are the relative sales prices
17 of -- I realize sales prices vary from time to
18 time, but generalized sales prices of the two?

19 A. That's --

20 (WHEREUPON, there was a short
21 interruption.)

22 MR. MONCO: Do you want to take a break?

23 MR. HARRIS: Sure.

24 (WHEREUPON, a recess was had.)

1 MR. HARRIS: Would you read the last
2 question?

3 (WHEREUPON, the record was read by
4 the reporter as requested.)

5 BY THE WITNESS:

6 A. An explanation is in order.

7 BY MR. HARRIS:

8 Q. Okay.

9 A. There are certain parts of the country
10 that require AGA certification for gas log sets
11 like ours, and in those places, we have sets that
12 are AGA certified. The biggest cost differential
13 is the safety pilot kit, and on G4 burners we
14 often sell those burners and sell safety pilot
15 kits with them as well.

16 Q. So they're not a G5 as such?

17 A. No, because it is not totally
18 preassembled --

19 Q. I see.

20 A. -- with a regulator. It's not done to
21 the specific code requirements. But people
22 still -- in many areas, there are other codes or
23 requirements which require safety pilot kits, but
24 do not require AGA certification.

1 For instance, all units that are made
2 for use with liquid -- LP gas, propane gas, all
3 the codes that we are aware of require that you
4 have a pilot kit.

5 Q. Well, I'm glad to get the information
6 about the product differentiation and the
7 geography. On the other hand, what can you say
8 about the sales price? That's what I asked, and
9 I'm not -- I understand --

10 A. I appreciate -- the sales price -- the
11 sales price would be more than twice as much for
12 the G5. I can give you retail, what we call
13 retail sales prices. We then sell to our
14 customers at various -- at discounts from those.
15 In today's world, a G4 would be about \$120, and a
16 G5 would be about \$270. And --

17 Q. Oh, it is a great deal more, isn't it?

18 A. And I'm talking about a 24-inch set,
19 which is -- there are also different sizes of sets
20 and, of course, different --

21 Q. I remember three, it seems like.

22 A. Well, there are three that we have this
23 product for.

24 Q. Yes.

1 A. But there are 15 different -- well,
2 there are many different sizes of sets. I'm
3 talking about the 24 because the 24 is the most
4 popular.

5 Q. Most popular.

6 A. It is the standard, and it's probably
7 what is displayed in shops 90 percent of the time.

8 Q. Looking at Exhibit 1 -- I'm sorry -- 2
9 that we put in front of you a minute ago, is it
10 usually true that the G5 is sold with a
11 preassembled EMB?

12 A. No, sir.

13 Q. It can be, but it not necessarily is;
14 is that it?

15 A. The G5 is very seldom sold with a
16 preassembled EMB.

17 Q. You do see the statement I'm talking
18 about, don't you, at the bottom of the page?

19 A. Uh-huh.

20 Q. I'm not quarreling --

21 A. I'm sorry. Yes, I do. It is --

22 Q. I'm not quarreling about your answer.
23 I'm just trying to get to the bottom of what that
24 means.

1 A. Extremely seldom.

2 Q. But sometimes it is sold with a G5.

3 Is it ever sold with a G4? Now I'm
4 talking about the EMB.

5 A. We do not -- we do not sell the unit
6 with a G4. However, we sell the unit and the G4,
7 and they are meant to be put together by the
8 installer.

9 Q. I see. Sometimes they're sold at the
10 same time together to the same person or the same
11 installer; is that right?

12 A. Well, we sell through distribution.
13 The distribution orders quantities of product.
14 They do not necessarily order quantities -- they
15 wouldn't order a product like this within a G4
16 burner. They would order some of these products,
17 and they would order G4 burners.

18 Q. I believe you told me that the G4 was
19 the largest seller; is that correct?

20 A. Yes, I did.

21 (WHEREUPON, proceedings were had
22 which are designated Confidential -
23 Attorneys' Eyes Only and are bound
24 under separate cover.)

**The Appendix Material On
JT-APP 1661 – JT-APP 1670
Has Been Deleted Pursuant To A Protective Order
And Can Be Found In The Confidential Joint Appendix**

1 (WHEREUPON, the following
2 proceedings were had not designated
3 Confidential - Attorneys' Eyes
4 Only:)

5 BY MR. HARRIS:

6 Q. Let me ask you what is done insofar as
7 the distribution of Exhibit 2. That's right there
8 (indicating).

9 A. Would you repeat the question?

10 Q. Yes. How do you distribute, if at all,
11 Exhibit 2?

12 A. We sell products to distributors
13 throughout the country.

14 Q. So what you do is send brochures or
15 catalogs or single sheets, or what, that would
16 include Exhibit 2?

17 A. Right. We would send these out to show
18 the product to our customers.

19 Q. Before I mark it or anything, I'm just
20 going to ask you: Is this a different thing
21 (indicating)?

22 It's not part of a catalog that has
23 that other sheet, is it, or a part of a brochure?

24 A. It is not part of a catalog. That

1 is --

2 Q. Or a sheet -- it doesn't include with
3 it the Exhibit 2 we've been talking about?

4 A. Right. This is -- Exhibit 2 is more of
5 a -- is a piece of literature.

6 Q. How many of these do you feel you have
7 distributed, these Exhibit 2 sheets?

8 A. I -- that would be a true guess on my
9 part.

10 MR. MONCO: Well, I wouldn't want you to
11 guess. If you can give a range or an estimate, a
12 reasonable estimate, I think --

13 BY MR. HARRIS:

14 Q. Bigger than a breadbasket and smaller
15 than an elephant?

16 A. Yes.

17 Q. So if you were going to play bigger
18 than a breadbasket and smaller than an elephant,
19 what would the kind of numbers be?

20 A. A few thousand -- I mean, I would
21 imagine 2000, 3000, maybe 5000.

22 Q. I think that suits my purposes. Thank
23 you.

24 A. You're welcome.

1 Q. That's reasonable.

2 On Exhibit 2, there's the statement up
3 in the top that "the Ember Flame Booster has an
4 independent control allowing for adjustable front
5 flame and glowing ember settings."

6 You see that, don't you?

7 A. Yes.

8 Q. Now, that independent control is a
9 valve really, isn't it?

10 A. Yes.

11 Q. And by "independent control," it means
12 that it's independent of the -- what would you
13 call the main pipe that comes across?

14 A. Main burner.

15 Q. Main burner. Okay. Independent of the
16 main burner, is that what is intended by that?

17 A. It's not independent of the main
18 burner. It is dependent on the main burner.

19 Q. In what way?

20 A. We've got to get the flame to it.

21 Q. Well, to begin with, you have to have
22 some gas flowing in a pipe, don't you?

23 A. Correct.

24 Q. And some of that gas goes into the main

1 burner, doesn't it?

2 A. Yes, sir.

3 Q. And after that, there is a line or a
4 little pipe of some kind that leads to the
5 auxiliary burner, is there not?

6 A. In this product --

7 Q. Yes.

8 A. -- you're talking?

9 Yes, that is correct.

10 Q. And so the valve is in the pipe, so to
11 speak, below the entrance to the main burner, is
12 it not?

13 A. The valve is --

14 Q. I'll put it this way to you if you like
15 it better. Where is the valve located?

16 A. Yes. It's -- the valve comes after the
17 primary burner. "Independent," I think, is
18 probably an incorrect word engineering. Not being
19 an engineer, I can't promise you that, but --

20 Q. Well, would you agree with me that the
21 extent of the dependence would be that if you
22 increase the gas in the auxiliary burner, that
23 might cause the total gas flow to decrease just a
24 little bit?

1 A. No, I wouldn't agree with that at all.

2 Q. I mean the total gas flow into the
3 primary burner.

4 A. No, I wouldn't agree with that.

5 Q. Okay. Well, then, what happens to the
6 primary burner? Is it affected at all by what you
7 do with the auxiliary burner?

8 A. Yes.

9 Q. In what way?

10 A. Well, if you -- if you are turning the
11 auxiliary burner on, you will get flame in the
12 front.

13 Q. Right, I understand that. But you also
14 get flame -- you continue to have flame in the
15 main burner, right?

16 A. Yes.

17 Q. Okay. Is that amount of flame changed
18 by the fact that you turn the valve on to allow
19 gas down to the auxiliary burner?

20 A. The amount of flame going into the
21 primary burner remains the same at all times. The
22 amount of the height -- the amount of flame coming
23 out of the primary burner changes if you put the
24 flame into the secondary burner.

1 Q. You better do that for me again.

2 You say it stays the same at all times?

3 A. Uh-huh.

4 MR. MONCO: Answer "yes" or "no."

5 BY THE WITNESS:

6 A. Yes.

7 BY MR. HARRIS:

8 Q. No matter what you do to the valve for
9 the auxiliary burner?

10 A. Yes.

11 Q. Were you making a distinction of some
12 kind in the height of the flame?

13 A. No. What I said, again, is the amount
14 of flame coming into the primary -- the amount of
15 gas coming into the primary burner may change, but
16 that -- but doesn't have to change. It most
17 likely won't change. The amount of gas coming
18 into the unit doesn't change.

19 Q. That's the overall unit?

20 A. That is correct.

21 Q. Okay. I understand that. And, of
22 course, the amount of gas going into the auxiliary
23 burner changes to the extent that you turn the
24 valve?

1 A. That is correct.

2 Q. Is the auxiliary burner -- on
3 installation, is it recommended that the auxiliary
4 burner be in front of the main burner?

5 A. Yes.

6 Q. As you're sitting -- as you're looking
7 at --

8 A. Yes.

9 Q. As you're looking at the fireplace,
10 okay? The auxiliary burner is closer to you?

11 A. Yes, sir.

12 Q. Okay. As you're looking.

13 And is it recommended that the
14 auxiliary burner be so oriented that it's down in
15 the so-called embers, the artificial embers?

16 A. It's not recommended that it be lower
17 than the primary burner.

18 Q. Let's forget the primary burner for a
19 minute and talk about the question I asked.

20 A. Okay. Would you repeat --

21 MR. HARRIS: Would you repeat the question?

22 It may be a poor question, and I'll
23 redo it if it is.

24 (WHEREUPON, the record was read by

1 the reporter as requested.)

2 BY THE WITNESS:

3 A. Would you repeat it?

4 BY MR. HARRIS:

5 Q. Yes. I'm trying to find out where this
6 auxiliary burner is disposed.

7 A. It's in -- it goes in front of the
8 burner, the primary burner pan.

9 Q. Is it recommended that it stick up and
10 be visible?

11 A. We recommend that it be at the same
12 level.

13 Q. Is it recommended that it be visible to
14 the person that's looking at the fireplace?

15 A. (No audible response.)

16 Q. Let me try it another way. I'll
17 withdraw it and try again.

18 MR. MONCO: Let me just caution the
19 witness --

20 MR. HARRIS: I'll withdraw it and try it
21 again.

22 MR. MONCO: -- Listen to the question, and
23 answer: Is there a recommendation as to the
24 position?

1 BY MR. HARRIS:

2 Q. Maybe you don't recommend anything. I
3 understand that.

4 A. I don't know, but we do have
5 instructions.

6 Q. Would you show me where the
7 instructions are that it remain at the same level
8 as the primary burner, the main burner?

9 A. They're right there, I believe
10 (indicating).

11 Q. What do you need?

12 A. That instruction sheet there
13 (indicating).

14 Q. This sheet (indicating)?

15 A. Yes.

16 MR. HARRIS: All right. We won't mark it
17 right now. We'll see where we're going.

18 MR. MONCO: Let the record reflect that
19 counsel has handed the witness Defendant
20 Production Document 000016.

21 BY THE WITNESS:

22 A. (Indicating.)

23 BY MR. HARRIS:

24 Q. Can you help me a little bit? You've

1 pointed me to something. There's a whole page.

2 A. I'm sorry.

3 Q. Where does it say that?

4 A. It doesn't say it.

5 Q. Are you telling me, sir -- and this is

6 going to sound a little argumentative, but I want

7 to know. Are you telling me, sir, that from that

8 picture, you can tell that they're at the same

9 level?

10 A. Yes, I can tell that they're at the

11 same level, and I know they're at the same level.

12 Q. How do you know that?

13 A. Because I know where our burner pipe

14 is.

15 Q. Your main burner is carried by the

16 sides of a pan, is it not?

17 A. Yes.

18 Q. And as such, it's elevated a bit above

19 the bottom floor of the pan, is it not?

20 A. Very slightly, yes.

21 Q. And in that diagram, doesn't it appear

22 to you that what it's level with really is the

23 pan? And by the "it," I'm talking about the

24 auxiliary burner.

1 A. Absolutely not.

2 Q. Not to you, but it sure is to me.

3 A. Well, not only does it not appear to
4 me. I know it isn't.

5 Q. Well, we're talking about a picture
6 now, sir.

7 A. Well, you may talk about it. I know it
8 isn't.

9 Q. Let me see it again.

10 A. You can take a look at all of these
11 documents, and you can see that they are very
12 clearly -- maybe not clearly to you, but they are
13 very clearly all at the same level.

14 Q. Do you have anything in writing that
15 says that?

16 A. No. However, if you go get our burner,
17 you will see that's the only way it can be done.

18 Q. And why is that, sir? It doesn't have
19 any give in it?

20 A. Uh-uh.

21 MR. MONCO: Answer "yes" or "no."

22 THE WITNESS: I'm sorry.

23 BY THE WITNESS:

24 A. The pieces that make up this set are

1 all even (indicating).

2 MR. MONCO: Let the record note the witness
3 is referring to Exhibit 2.

4 THE WITNESS: And where is the instruction
5 sheet?

6 MR. MONCO: The instruction sheet --

7 THE WITNESS: He just took it.

8 MR. HARRIS: The one I just had here?

9 THE WITNESS: Yes.

10 MR. HARRIS: Sure. Let me give it back to
11 you.

12 BY THE WITNESS:

13 A. These pieces are all even. Here is --
14 this fits onto the burner here. This goes this
15 way. They are all exactly even with each other
16 (indicating).

17 MR. MONCO: The witness is pointing to
18 Figure 2 on the document bearing Production
19 No. 000016.

20 BY MR. HARRIS:

21 Q. At the point of connection where the
22 line runs down to the auxiliary burner, at its
23 point of connection where it forks off with the
24 main burner, in other words, at this point right

1 here (indicating) -- and by "this point," I'm on
2 the second page of Exhibit 2, and I'm pointing to
3 the Figure 2, and I'm pointing where the arrow --
4 the bent and flared arrow points.

5 Is there no pivot at that point? Can't
6 one pivot the joint at that point?

7 A. I suspect you can put the piece on.

8 Q. You can what?

9 A. You can take the connection piece and
10 put it onto the burner.

11 Q. I don't understand.

12 A. This piece goes onto the burner
13 (indicating).

14 MR. MONCO: Now, we're looking at -- I want
15 to identify it for the record.

16 THE WITNESS: Yes.

17 MR. MONCO: Has this got a --

18 THE WITNESS: This is Page 2, our parts list.

19 MR. HARRIS: Is that Figure 1 or what?

20 THE WITNESS: No. It's just our parts list.

21 MR. MONCO: It's a parts list. Okay.

22 THE WITNESS: All right It's just a larger
23 picture of the same thing.

24 BY MR. HARRIS:

1 Q. I see. Okay.

2 A. This piece goes onto here (indicating).

3 Q. Okay.

4 A. Okay?

5 Q. Okay.

6 A. And then the piece is put onto here.

7 There may be a sixteenth of an inch, eighth of an

8 inch, not more than that, and the pipe then goes

9 absolutely straight (indicating).

10 Q. I understand the pipe is straight from

11 what you've told me, but I see that there could be

12 a pivot there, and I know there could be a pivot

13 there.

14 A. Well, you might know it, but there just

15 basically cannot be in this set. This has to be

16 straight.

17 Q. What about that sixteenth of an inch --

18 A. Well, that --

19 Q. -- or eighth of an inch? That's going

20 to provide for some --

21 A. That --

22 Q. Let me finish the question.

23 A. I don't think so.

24 Q. That's going to provide for some pivot,

1 isn't it?

2 A. No.

3 Q. If --

4 A. May I tell you why?

5 Q. Sure.

6 A. Okay. Because this valve doesn't allow

7 it (indicating).

8 Q. I don't understand why the valve

9 wouldn't allow it.

10 A. Because the valve is about that far off

11 the ground (indicating).

12 Q. You're saying that the valve would hit

13 the bottom of the fireplace or the grate or

14 whatever it is?

15 A. The fireplace.

16 Q. Is that what you're saying?

17 A. Yes.

18 Q. But it doesn't exactly hit it. There

19 is a little give, isn't there?

20 A. (Shaking head.)

21 Q. Oh, there's not any at all?

22 A. I don't believe so.

23 Q. What does "I don't believe so" mean?

24 I guess it means "I don't believe so" --

1 A. It means --

2 Q. -- or "I don't know so"?

3 A. Well, it means that if you want to go
4 take a look at one and see, you may, if you
5 believe I'm not telling you the truth. I don't
6 believe there is.

7 Q. Well, wait a minute now.

8 A. Excuse me.

9 Q. We're not talking about whether you're
10 telling the truth or not. Of course, you're
11 telling the truth.

12 A. I believe there is no --

13 Q. You believe what you're telling me.
14 I'm not questioning that.

15 A. Okay. Then I don't believe so.

16 Q. Okay. And that's a fair way to put it,
17 isn't it? You don't give me a hundred percent,
18 but you give me a big percent apparently. "I
19 don't believe so."

20 A. I believe I'm giving you a hundred
21 percent.

22 Q. Well, then, say so.

23 A. I did. That's what I just said to you.

24 Q. Okay. I'd like to get back to that

1 front member, the auxiliary burner again, in
2 another connection.

3 Is it visible and meant to be visible
4 to the people that own the fireplace, that inhabit
5 the room and look at the fireplace?

6 MR. MONCO: Counsel, if I could ask for a
7 clarification, when you say, "Is it visible to the
8 people that own the fireplace," from what distance
9 are they looking at it?

10 MR. HARRIS: How about eight feet?

11 MR. MONCO: Okay.

12 BY THE WITNESS:

13 A. It is -- it may be visible. The intent
14 for the most part would be for it to not be
15 visible.

16 BY MR. HARRIS:

17 Q. What keeps it from being visible?

18 A. The embers, the rock wool or sand or
19 whatever.

20 Q. And they're at the same level as the
21 main burner, the rock wool or the sand or the
22 embers?

23 A. The pipe is at the same level as
24 the main burner.

1 Q. They're at the same level?

2 A. Sand is all over, as are the embers.

3 Q. What?

4 A. The sand and the embers are all over.

5 Q. Are they at the same level as the main

6 burner, the sand and the embers?

7 A. Not necessarily.

8 Q. Well, are they usually?

9 A. No. The sand and the embers are -- go

10 throughout the set.

11 Q. Well, I'm talking about the elevation.

12 A. No.

13 Q. "No" what?

14 A. The sand and the embers are not at the

15 same level as the main burner.

16 Q. Well, are they at a higher level or a

17 lower level or what?

18 A. Much of the time -- much of the group

19 of ten pounds or so of sand is above the burner;

20 some of it's below; and some of it's at the same

21 level.

22 MR. MONCO: If I may just ask a question,

23 counsel, we're at five after 12:00. Do you want

24 to take a lunch break, or how far do you want to

1 go?

2 MR. HARRIS: I'll do it however you want to.

3 It doesn't make a great deal of difference.

4 MR. MONCO: Why don't we just go off the

5 record for a second?

6 (WHEREUPON, discussion was had

7 off the record.)

8 (WHEREUPON, a recess was had.)

9 MR. HARRIS: Why don't we number this?

10 (WHEREUPON, said document was marked

11 Bortz Deposition Exhibit No. 4, for

12 identification, as of 10/5/01.)

13 BY MR. HARRIS:

14 Q. Would you tell me what this document is

15 that we have now marked as Exhibit 4 and which

16 we've been discussing together?

17 A. Yes. This is the installation and

18 operating instructions for the Ember Flame

19 Booster.

20 Q. And these instructions, I take it, are

21 circulated to all of your distributors?

22 A. No. I believe what -- they go in the

23 box with the product.

24 Q. I see. You do agree with me -- apart

1 from elevation of the auxiliary member or
2 auxiliary burner, you do agree with me that you
3 want to be sure -- the customer wants to be sure
4 to completely cover the Ember Flame Booster burner
5 pipe when the sand and the ember glow is placed in
6 the burner pan?

7 A. I agree that that's what we tell them
8 to do.

9 Q. Okay. Now, you're not standing over
10 them when they install it, are you?

11 A. They may choose to not do it.

12 Q. Yes, sure.

13 Looking at Exhibit 4 again, could you
14 point out to me where the item called the pan is
15 located?

16 You find it on the third page, don't
17 you, and also the fourth page?

18 MR. MONCO: When you say where it's located,
19 are you referring to where it's shown in the
20 drawing, for instance, or in the description?

21 MR. HARRIS: No. I meant in the brochure.

22 MR. MONCO: Oh, in the brochure.

23 MR. HARRIS: Yes.

24 MR. MONCO: Okay. Where it's described in

1 the brochure.

2 MR. HARRIS: That was kind of vague. I'm
3 sorry.

4 BY THE WITNESS:

5 A. I believe you are talking about in
6 Figure 1 and in Figure 2 and Figure 3, the pan.

7 BY MR. HARRIS:

8 Q. And one picture on the back page?

9 A. Yes, sir.

10 Q. And the pan is an item that actually
11 supports the main burner, does it not --

12 A. The pan --

13 Q. -- the sides of the pan?

14 A. -- is a part of the main burner.

15 Q. Right. It's a part of the main burner.
16 And as far as the tube is concerned which
17 comprises the main burner, it is supported by the
18 sides of the pan, is it not?

19 A. Yes.

20 Q. And in turn, the auxiliary burner
21 assembly is supported off of the main burner at
22 its point of support on one of the sides of the
23 pan?

24 MR. MONCO: Excuse me. Could I have that

1 read back, please?

2 (WHEREUPON, the record was read by
3 the reporter as requested.)

4 BY THE WITNESS:

5 A. No.

6 BY MR. HARRIS:

7 Q. Could you tell me how and where it's
8 supported then?

9 A. Yes. I think it's supported by the
10 valve.

11 MR. MONCO: And please identify if you're
12 referring to any figures.

13 BY MR. HARRIS:

14 Q. Look at Figure 2.

15 A. Figure 2, yes.

16 Q. And in Figure 2, where is the valve?

17 A. This piece right here is a valve
18 (indicating).

19 Q. I don't believe I'm seeing you.

20 A. I'm sorry.

21 Q. Could you show me better on the one
22 here?

23 A. That's a valve (indicating).

24 Q. You're showing me the piece that the

1 tube itself extends from, right?

2 The tube itself which comprises the --
3 or consists of the auxiliary burner comes out of
4 the valve?

5 A. Yes.

6 Q. We're in agreement on that.

7 But in turn, the valve extends from
8 another little piece of pipe where the gas flows
9 toward it, doesn't it?

10 A. Yes.

11 Q. And in turn, there is a connection, is
12 there not, between -- the end of that piece that
13 the gas flows through, there is a connection with
14 the auxiliary burner?

15 A. Yes, there's absolutely a connection.

16 Q. And that connection indeed supports the
17 piece that extends and carries gas to the valve,
18 right?

19 A. I don't believe -- I would need to know
20 what you mean by "supports."

21 Q. It holds it up.

22 A. No, I don't think so.

23 Q. What do you think happens?

24 A. I think the valve holds it up.

1 Q. I see. You think the valve is mashed
2 down against something, whatever it be, and that
3 that something holds it up?

4 A. I think -- yes.

5 Q. What is that something?

6 A. The fireplace floor.

7 Q. What is the purpose of the pan?

8 A. (Indicating.)

9 Q. Yes, the pan. Isn't that what you call
10 it?

11 A. That's a burner pan, yes. That's a
12 burner pan.

13 Q. Yes, the burner pan. What's the
14 purpose of it?

15 A. To provide flame.

16 Q. To provide what?

17 A. Flame.

18 Q. Would you not have flame if you didn't
19 have the pan?

20 I'm not talking about the tube now.

21 MR. MONCO: Okay. You're separating out the
22 pan from the tube?

23 MR. HARRIS: Oh, absolutely.

24 MR. MONCO: Okay. So it's just looking at

1 the pan by itself.

2 BY THE WITNESS:

3 A. You mean could we make a burner system
4 without a pan?

5 BY MR. HARRIS:

6 Q. Yes, that's one way to put it.

7 A. Yes.

8 Q. So what is the purpose of the pan?
9 What does it add?

10 A. It holds the sand and the embers.

11 Q. Do some of your competitors provide
12 systems that don't have a pan at all?

13 A. I don't think so. They all have some
14 sort of a pan.

15 Q. Okay.

16 A. Maybe not on every single one of their
17 burner systems.

18 MR. HARRIS: Off the record a minute.

19 (WHEREUPON, discussion was had
20 off the record.)

21 BY MR. HARRIS:

22 Q. But it is true that all of your systems
23 involve the use of a pan, isn't it?

24 A. No.

1 Q. Do some of them not?

2 A. Yes.

3 Q. Explain.

4 A. We have -- first, I have to ask you:

5 Do you mean right now or over the years that --

6 Q. I guess I mean since the patent issued.

7 A. We have quite a few different burner
8 systems, and most of them involve a pan, but not
9 all of them involve a pan.

10 Q. And you're the only one in the country
11 that does it that way?

12 I'm puzzled. You don't have any
13 competitors that do that, but you do.

14 A. I didn't say that.

15 Q. I misunderstood you. I asked you if
16 there were some people that provided these things
17 without a pan. "Some competitors" is what I said.

18 MR. MONCO: Do you understand the question?

19 THE WITNESS: I don't think that's what he
20 asked me.

21 MR. MONCO: Okay. Well, it --

22 MR. HARRIS: I may not --

23 MR. MONCO: It may need some clarification.

24 MR. HARRIS: I may not --

1 MR. MONCO: So maybe if you just repeat the
2 question again, we will --

3 MR. HARRIS: There's two ways we can do it.
4 I can repeat the question again, or I can have her
5 read it back. And I'm not interested in playing
6 the game of who said the right thing.

7 THE WITNESS: That's fine with me.

8 MR. HARRIS: So why don't I say it again?

9 THE WITNESS: Okay. Sure.

10 MR. MONCO: Why don't you just go ahead?

11 BY MR. HARRIS:

12 Q. I merely asked you if some of your
13 competitors provided log sets without pans.

14 A. They may have. I think that most of
15 the sets that are made have pans similar to the
16 one that we're talking about. We ourselves have
17 systems that don't have pans, and others may have
18 systems like that.

19 Q. Do any of those systems that don't have
20 pans employ the auxiliary booster burner?

21 MR. MONCO: Now, you're talking about their
22 sales?

23 MR. HARRIS: Yes.

24 BY THE WITNESS:

1 A. For us?

2 BY MR. HARRIS:

3 Q. Yes.

4 MR. MONCO: Right.

5 BY THE WITNESS:

6 A. This specific item?

7 BY MR. HARRIS:

8 Q. Well, I don't know. I don't know
9 myself.

10 A. Okay. I don't think that we have --
11 I believe that this item is for G4 or G5 burners.

12 Q. So the EMB doesn't go with the systems
13 you were talking about that are panless?

14 A. Correct. Yes.

15 Q. That's all right.

16 It's true, is it not, that the gas
17 source is connected to the primary tube or main
18 burner and that it flows from the primary tube or
19 main burner to the secondary or EMB tube, Ember
20 Flame Booster tube?

21 MR. MONCO: I'm going to object on the
22 grounds that the question is vague. And the
23 reason I'll ask -- the reason -- I'll just let you
24 know what my objection is.

1 When you say that it flows from the
2 main -- from the gas source, flows to the main
3 burner and then to the auxiliary burner, are you
4 implying that it's -- are these connected in
5 parallel or in series, or are they linear so it
6 flows through one to the other and so on and so
7 forth? So I just need a clarification.

8 MR. HARRIS: Yes, I am implying that it's in
9 series --

10 MR. MONCO: Okay.

11 MR. HARRIS: -- going from the main burner
12 through a tubular member --

13 MR. MONCO: Okay.

14 MR. HARRIS: -- to the valve and then into
15 the EMB.

16 MR. MONCO: Do you understand the question?

17 THE WITNESS: Yes.

18 BY MR. HARRIS:

19 Q. Is that the way it does?

20 A. Yes.

21 Q. The manner in which you instruct
22 ultimate buyers or customers on how to put the
23 E- -- I'm sorry. I got myself mixed up -- the
24 EFB -- I'll start over.

1 The way you instruct the ultimate
2 customers on installation and use is through these
3 materials we've talked about, the brochure we
4 talked about, Exhibit 4, or do you have other
5 materials?

6 A. No. Exhibit -- through Exhibit 4 is
7 our -- these are our operating instructions.

8 Q. Do you know if there are distributors
9 that have an example or exemplary set of the log
10 and the EMB set up to show customers?

11 Again, that was probably poorly worded.
12 Let me see if I can try it again.

13 Do some of your distributors have
14 demonstrations or demonstrators showing how the
15 system is supposed to be and what it consists of?

16 A. I do not know.

17 Q. Could be; could not be. Have you ever
18 seen one that did?

19 A. No.

20 Q. And do you provide any kind of
21 instructions to your distributors?

22 A. No.

23 Q. None at all?

24 A. Well, if we do our job correctly, we

1 try to. We would try to make sure that all of our
2 distributors get a copy of these instructions. We
3 don't always do it that well.

4 Q. I see.

5 A. But we've been trying to do that.
6 Unless they open a box -- unless they get
7 instructions or open a box, they won't see these
8 (indicating).

9 MR. MONCO: The witness is referring to
10 Exhibit 4.

11 THE WITNESS: Exhibit 4.

12 BY MR. HARRIS:

13 Q. Do you use any direct salesmen, outside
14 salesmen, that go around and sell to distributors
15 or acquire distributors?

16 A. We use manufacturer's representatives.

17 Q. And do the manufacturer's
18 representatives get an opportunity to see a
19 demonstration model?

20 A. They may.

21 Q. Where would they see it?

22 A. I don't think they did in this case,
23 but we have meetings where our reps come to the
24 factory, see our products.

1 Q. Well, do you set your product up just
2 like it would be in a home?

3 A. Sometimes, yes.

4 Q. And do you sometimes, when you do that,
5 have the auxiliary burner installed along with the
6 main burner?

7 A. We may in one place in our showroom.

8 Q. In one place in your showroom?

9 A. Right.

10 Q. And the distributors would have -- not
11 distributors.

12 The manufacturer's reps would have a
13 chance to see that?

14 A. Yes. They would have a chance to see
15 it, yes.

16 Q. And is it set up in a functional
17 manner, where it will work?

18 A. Yes, I think so.

19 We often use our showroom to test a
20 product or -- so --

21 Q. So you might be using it to show, but
22 you also might be using it to test; is that right?

23 A. It may be there now, and it may not.

24 Q. But it has been?

1 A. I'm pretty sure that we've had one. We
2 probably show 50 different gas log sets.

3 Q. The main burner has a -- or is a tube
4 that has holes or ports in it, is it not?

5 A. It's a pipe with holes or ports -- with
6 portholes, yes.

7 Q. And I think we've agreed that the
8 secondary burner is positioned in front of the
9 primary burner or the main burner?

10 A. When you look at the fireplace?

11 Q. Yes.

12 A. Yes.

13 Q. And we've gone back and forth to some
14 extent on the support means, but certainly the
15 support means do support the main burner; the
16 support means that I'm referring to being the
17 sides of the pan?

18 A. Yes.

19 Q. And the difference that we've had in
20 discussion as to where -- as to how it does the
21 support for the Ember Flame Booster or the
22 secondary member is that you believe that the
23 valve serves as a support, that it sets on the
24 fireplace floor and serves as a support; is that

1 true?

2 A. I believe that the valve serves as the
3 support, but I don't know what the difference is.

4 Q. What do you mean, "what the difference
5 is"?

6 A. You said "the difference is."

7 Q. The difference of opinion. I'm not
8 necessarily of that opinion. But I'm not --

9 A. What's your opinion?

10 Q. -- here to testify.

11 A. What's your opinion?

12 Q. I'm not here to testify.

13 MR. MONCO: He asks the questions.

14 MR. HARRIS: If it's real important to you,
15 I'll tell you, but --

16 BY THE WITNESS:

17 A. Well, I mean, that's what I think. I
18 think that it's -- that the unit is supported by
19 the valve.

20 BY MR. HARRIS:

21 Q. Well, I think it's supported at least
22 indirectly by the pan, so I'll tell you.

23 A. Thank you.

24 Q. Okay. Maybe that's fair enough.

1 A. Okay.

2 Q. And there is a connection that connects
3 the primary tube, the main burner, with the
4 secondary tube and through which the gas flows
5 from the primary tube, and I think I've already
6 asked that.

7 MR. MONCO: I think so.

8 BY MR. HARRIS:

9 Q. That's that series-type flow. Okay.

10 And the valve is positioned in between
11 where the connection is for the main burner, where
12 it connects with -- where the EMB connects with
13 the main burner, and where the secondary tube is
14 located --

15 MR. MONCO: I'm sorry. Can I have that
16 question --

17 BY MR. HARRIS:

18 Q. -- or the EMB tube is located?

19 MR. MONCO: Can you just read that question
20 back, please?

21 MR. HARRIS: It's kind of rough, but maybe it
22 will do. Let's see.

23 (WHEREUPON, the record was read by
24 the reporter as requested.)

1 MR. MONCO: Is that clear?

2 THE WITNESS: No.

3 MR. MONCO: All right. Then I'll object to
4 the form of the question.

5 Maybe you might want to reask it or
6 maybe just ask him where the valve is.

7 BY MR. HARRIS:

8 Q. If it seems vague to you, I better ask
9 it again.

10 A. Would you?

11 Q. Yes.

12 There is a flow of gas that takes
13 place. It goes through the main burner in a
14 series way, and then it has a turn that it makes
15 with a relatively short piece of tubing that goes
16 down to the second tube or the auxiliary burner
17 tube, if you want to call it that. Okay?

18 A. No.

19 Q. And there's a valve that is located
20 between where the connection takes place with the
21 main burner and where the connection takes place
22 with the EMB burner?

23 A. The valve is the connection piece to
24 the EMB.

1 Q. Well, it's a part of the connection
2 piece. It's in the connection piece, isn't it?
3 It's in the connector?

4 A. The primary burner goes to the valve,
5 and the valve is connected to the secondary
6 burner.

7 Q. Okay. I believe we're talking about
8 the same thing.

9 MR. MONCO: Okay.

10 BY MR. HARRIS:

11 Q. And the valve adjusts the gas flow that
12 comes from the main burner to the secondary?

13 A. Yes.

14 Q. Do the installations invariably, as far
15 as you know, involve a gas valve that controls the
16 flow of gas to the main burner, the primary
17 burner?

18 A. I don't know if invariably. There's
19 oftentimes a shutoff valve.

20 Q. What would you do if there weren't?

21 A. You'd have to shut off somewhere
22 further down the line.

23 Q. Have to what?

24 A. You'd have to shut off somewhere

1 further down the line.

2 Q. So somewhere there would be a valve,
3 wouldn't there?

4 A. I would think most of the time there
5 would be a shutoff valve somewhere in the system.

6 Q. Before the main burner?

7 A. Before the main burner.

8 (WHEREUPON, there was a short
9 interruption.)

10 MR. HARRIS: I'm not sure these are all
11 marked. One of them may be unmarked. But what I
12 have here is Document Nos. 24 at least through 28,
13 and it may be that one of them is just plumb
14 illegible or something.

15 MR. MONCO: Let me see here.

16 (WHEREUPON, the document was
17 tendered to Mr. Monco.)

18 MR. MONCO: Yes, that certainly looks --

19 MR. HARRIS: I don't think it makes a lot of
20 difference.

21 MR. MONCO: Yes, I would say that that's
22 probably -- that looks a little illegible.

23 MR. HARRIS: What do you think it is?

24 MR. MONCO: Well, if it follows in sequence,

1 which it apparently does, it's the page number, I
2 would say it's probably 000025, is what it's
3 supposed to be. Yes, because it's the next
4 document in sequence.

5 MR. HARRIS: I'll make that assumption.

6 MR. MONCO: Okay. Is this for me?

7 MR. HARRIS: Yes.

8 And would you mark this one?

9 (WHEREUPON, said document was marked.
10 Bortz Deposition Exhibit No. 5, for
11 identification, as of 10/5/01.)

12 BY MR. HARRIS:

13 Q. I will in a broad sense have two
14 questions about this.

15 The first one is: What is it, this
16 exhibit that has the four sheets --

17 MR. MONCO: Five sheets.

18 BY MR. HARRIS:

19 Q. -- five sheets, that has the five
20 sheets, 24 through 28? What is it?

21 And the second one will be: What does
22 it show?

23 A. What it is, is information from a
24 company called Burner Systems International, which

1 represents themselves as the largest manufacturer
2 of gas burners, manifolds, et cetera, in
3 North America and through a subsidiary or sister
4 company in Europe.

5 And it shows many different styles of
6 burners that -- I'm sorry. It shows a few
7 different styles of burners that they
8 manufactured. The letter is dated April 26, 1988.

9 Q. Is it in your mind related some way to
10 what the patent shows or to something that is at
11 issue between us?

12 A. It may be.

13 Q. Do you want some time to look it over?

14 A. Well, I don't believe that I am
15 sufficiently adept in an engineering sense to tell
16 you whether it is or is not.

17 Q. Do you know why the -- well, put it
18 this way. What was the purpose of the letter?

19 A. The purpose was to see -- the letter
20 was sent from Burner Systems to our vice president
21 and director of marketing, Mr. Maurice Boekeloo.
22 Bill Salem is noted as the sales engineering
23 representative. Bill has been well known in the
24 industry as a gas burner designer for many, many

1 years. And --

2 Q. So maybe they were trying to sell
3 services, was that it?

4 A. They were trying to sell us burner
5 systems. They were discussing -- the letter
6 states that they specialize in designing gas
7 burners and burner systems with their customers
8 for each application, "and it would be a pleasure
9 to work with you on your gas products."

10 I think they were trying to become a
11 supplier of ours.

12 Q. Do you see anything in that exhibit,
13 with the extent of your knowledge, apart from
14 whether or not you have great technical skill --
15 do you see anything in that exhibit that you think
16 has anything to do with the EMB or with what's
17 shown in the patent?

18 A. I think so.

19 Q. What?

20 A. Well, again, it's hard for me to say
21 what, but it looks to me like they have things
22 here that are talking about secondary burners.

23 Q. Where do you see that?

24 A. Again, I am not an engineering expert,

1 but for a quick look, it says the stainless steel
2 carryover tube --

3 Q. Where are you?

4 A. I'm on Page --

5 MR. MONCO: Would you refer to the production
6 number?

7 BY THE WITNESS:

8 A. I'm sorry. Production No. 000027.

9 BY MR. HARRIS:

10 Q. All right.

11 A. In Engineering Notes, second paragraph,
12 it talks about a steel carryover tube must burn
13 continuously while the main burners are on.

14 Q. It even shows some kind of a picture,
15 doesn't it?

16 A. Yes.

17 Q. Do you see a valve?

18 A. I don't see a valve in the picture.

19 Q. I don't either.

20 A. Right. But I see --

21 Q. And it says that it burns continuously,
22 you say, while the main burner is on?

23 A. But I see a valve in the picture on the
24 page before.

1 Q. Let's look at it.

2 Yes. But it doesn't say what that
3 valve goes to, does it?

4 A. That's correct. I don't think it does.
5 It has several valves on the left side.

6 Q. Yes.

7 A. So we are talking about valves,
8 right-hand valves, left-hand valves, inlet valves,
9 et cetera, et cetera.

10 Q. Have we pretty well exhausted the topic
11 of similarities that you might mention under the
12 circumstances that you disclaim being a technical
13 person?

14 A. Well, I just noticed that it does -- I
15 need to read this, but there is a part on Page or
16 Exhibit 000026 --

17 Q. Okay.

18 A. -- which says, "Many combinations of
19 the above components are possible. Special
20 applications are numerous, such as employing the
21 lighter tube as a slide or track for easy removal
22 of the safety pilot for inspection or for multiple
23 lighting of large units from a single valve and
24 other uses."

1 Q. But we're not doing any of those
2 things, are we, that are specifically mentioned,
3 and you aren't, are you?

4 A. Well, we have a main burner and another
5 burner.

6 Q. Yes, but it doesn't say that, does it?

7 MR. MONCO: Well, I'm going to --

8 BY THE WITNESS:

9 A. I think it does.

10 MR. MONCO: I'm going to object to the
11 question as being somewhat argumentative. The
12 document says what it says, and the witness has
13 identified the items which he has noticed in his
14 cursory review of the document here at his
15 deposition as to what items might be relevant to
16 the issues.

17 MR. HARRIS: Well, he's entitled to review it
18 as long as he wants to.

19 MR. MONCO: Well, we can take that time if we
20 want to, but this witness is not appearing as an
21 expert here today as far as prior art goes, if
22 that's the thrust of the question.

23 MR. HARRIS: Well, I understand he apparently
24 isn't, but I thought we had asked for some help in

1 that field in our 30(b)(6) notice.

2 MR. MONCO: What specifically?

3 MR. HARRIS: Let's see if we can -- off the
4 record.

5 (WHEREUPON, discussion was had
6 off the record.)

7 MR. MONCO: Do you want to go back on the
8 record?

9 MR. HARRIS: Either off or on. I really
10 don't care.

11 MR. MONCO: Okay. The witness is here. He's
12 identified the document as a principal in the
13 Robert H. Peterson Company.

14 If No. 12 is intended to have the
15 witness act as an expert, he's not appearing here
16 as an expert and, to that extent, will not be
17 doing so.

18 MR. HARRIS: Do you see the word "expert" in
19 12?

20 MR. MONCO: Well, you're asking about prior
21 art. "Prior art" is a term of art in the legal
22 community and particularly intellectual property.
23 If you have fact questions, you can ask him fact
24 questions.

1 BY MR. HARRIS:

2 Q. All right. Would you agree with me,
3 sir, that you are not qualified to discuss prior
4 art?

5 MR. MONCO: He's not an attorney, if there is
6 that qualification.

7 BY THE WITNESS:

8 A. I must, I guess, because I don't know
9 what -- when you say "prior art," what you mean.

10 BY MR. HARRIS:

11 Q. All right. Are you, sir, making the
12 representation to us that you are not sufficiently
13 technically qualified to interpret this document?

14 A. In total, I am not sufficiently
15 technically qualified to interpret this document.
16 I have pointed out things to you.

17 Q. You understand and can explain those
18 things that you pointed out in reasonable detail?

19 A. I'm not sure that I can point them --
20 that I can point them out in reasonable detail to
21 your satisfaction.

22 Q. Not to my satisfaction. You put the
23 period after "reasonable detail." That's the
24 question.

1 A. Well, I don't know.

2 MR. MONCO: If you have a specific question
3 you want to ask him about --

4 MR. HARRIS: I just asked him.

5 MR. MONCO: Well, if you have a question
6 about the document, if you have a --

7 MR. HARRIS: He's already said some things
8 about the document.

9 MR. MONCO: Right. Okay.

10 MR. HARRIS: And I'm asking him if he has the
11 technical ability in reasonable detail to explain
12 those things.

13 BY THE WITNESS:

14 A. I don't think I have an ability
15 significantly more than -- engineering ability
16 well enough to explain, but I can read.

17 BY MR. HARRIS:

18 Q. I'm sure you can read.

19 A. And I do have some knowledge of the
20 products, and I know who these people are, and I
21 know what they do.

22 Q. And you have never seen a product from
23 them that looks like your EMB, have you?

24 A. Well, please excuse me. I do not mean

1 to be argumentative either. I am sorry right now.

2 To me, there's stuff -- this right here
3 looks like my EMB (indicating).

4 MR. MONCO: The witness is referring to
5 the --

6 THE WITNESS: The front page.

7 MR. MONCO: -- the page marked 000025.

8 MR. HARRIS: Okay.

9 BY THE WITNESS:

10 A. Now, I might be -- it's a burner tube.

11 BY MR. HARRIS:

12 Q. There's a burner tube, yes.

13 And you see it hooked all up like
14 yours?

15 A. Not on that page. I see what looks
16 like a valve going to a burner tube in the middle
17 of the page there.

18 Q. They're all separated, aren't they?

19 A. Yes, I think they're -- because it is a
20 copy, and it doesn't come in -- but it looks like
21 the first long one is a valve with a burner tube,
22 but it may not be because it's not that well --
23 not that visible to me. But it looks like it
24 could be a valve or some sort of a valve and a

1 burner tube.

2 Q. And there's nothing to show that
3 anything is hooked together there, is there?

4 There are various -- there are three
5 items that are quite prominent and --

6 A. I believe you are correct. They are --

7 Q. They're not hooked together?

8 A. I believe they are not meant to be
9 hooked together. It doesn't seem as if they are
10 meant to be hooked together.

11 (WHEREUPON, there was a short
12 interruption.)

13 BY MR. HARRIS:

14 Q. There is one thing I wanted to ask you.
15 Have you talked with anyone in the
16 company that's given you an explanation of the
17 system or systems that might be illustrated in
18 this exhibit?

19 A. No. No.

20 (WHEREUPON, discussion was had
21 off the record between the witness
22 and Mr. Monco.)

23 MR. MONCO: I tell you what. Before we start
24 on this, I'd like to have a little lunch myself.

1 MR. HARRIS: Okay.

2 MR. MONCO: Why don't we just adjourn, and
3 how about we resume in about 45 minutes?

4 MR. HARRIS: That would be fine with me.

5 (WHEREUPON, the deposition was
6 recessed until 2:00 p.m., this date,
7 October 5, 2001.)

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1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION
4
5 GOLDEN BLOUNT, INC.,)
6 Plaintiff,) Civil Action
7 vs.) No. 3-01CV0127-R
8 ROBERT H. PETERSON CO.,)
9 Defendant.)

10

11 PORTIONS OF THIS DEPOSITION HAVE BEEN DESIGNATED
12 CONFIDENTIAL - ATTORNEYS' EYES ONLY
13 AND ARE BOUND UNDER SEPARATE COVER

14

15 October 5, 2001

16 2:15 p.m.

17

18

19 The 30(b)(6) deposition of ROBERT H.
20 PETERSON CO. by LESLIE BORTZ resumed pursuant to
21 recess at Suite 3800, 500 West Madison Street,
22 Chicago, Illinois.

23

24

1 PRESENT:

2

3 HITT GAINES & BOISBRUN, P.C.,

4 (225 University Plaza,

5 275 West Campbell Road,

6 Richardson, Texas 75080), by:

7 MR. WILLIAM D. HARRIS, JR.,

8 appeared on behalf of the Plaintiff;

9

10 WOOD, PHILLIPS, VanSANTEN, CLARK & MORTIMER,

11 (500 West Madison Street, Suite 3800,

12 Chicago, Illinois 60661), by:

13 MR. DEAN A. MONCO,

14 appeared on behalf of the Defendant.

15

16

17 REPORTED BY:

18 BERNICE E. RADAVIDICH, C.S.R. No. 84-1461.

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1 (WHEREUPON, a document was marked
2 Bortz Deposition Exhibit No. 6, for
3 identification, as of 10/5/01.)

4 LESLIE BORTZ,
5 called as a witness herein, having been previously
6 duly sworn and having testified, was examined and
7 testified further as follows:

8 EXAMINATION (Resumed)

9 BY MR. HARRIS:

10 Q. My question is: What is it?

11 A. This (indicating)?

12 Q. Yes.

13 A. This is what we call a circular --

14 MR. MONCO: Wait. Hold on a second.

15 So the question is clear, are you
16 asking what Page 1 of Exhibit 6 is?

17 MR. HARRIS: Yes, yes.

18 MR. MONCO: Marked with Document Production
19 No. 29.

20 Okay. So that's clear. Go ahead.

21 BY THE WITNESS:

22 A. This is what we call a circular burner
23 that looks to me, although it doesn't have to be,
24 like it's for outdoor use.

1 BY MR. HARRIS:

2 Q. Like it's what?

3 A. Outdoor.

4 Q. Outdoor?

5 A. Doesn't have to be. In fact, I
6 apologize to you. I just see something that
7 indicates to me that it may not be for outdoor
8 use.

9 Q. Is that because there's a floor there?

10 A. Yes.

11 Q. I see.

12 A. There's a floor and a gas line to a
13 fireplace. So --

14 Q. Is that --

15 A. It's a circular -- it's a log set to
16 fit a circular fireplace or a four-sided
17 fireplace.

18 Q. What similarities do you see between
19 that and your G4 when hooked up with an auxiliary
20 burner?

21 A. Well, it looks to me again like this is
22 a bunch of auxiliary burners.

23 Q. Kind of lead me through it, would you,
24 if you can?

1 A. Yes.

2 Q. Because I really am having a problem
3 understanding it.

4 A. Well, as I see this one, it says, "Gas
5 Line" --

6 Q. We're talking about 29 now?

7 A. Yes.

8 Q. A bunch of zeroes 29?

9 A. Yes. There's a gas line that goes up
10 to this main pipe here (indicating).

11 MR. MONCO: If you want to refer to the
12 letters on the document --

13 THE WITNESS: I'm sorry.

14 MR. MONCO: -- that might help identify
15 things.

16 BY THE WITNESS:

17 A. "A," which has -- which goes from the
18 valve and the key in the floor, is a pipe --
19 probably an under-the-floor pipe. That's probably
20 why it's got dashes, up to this pipe, which may be
21 a burner. And then from that burner, there are
22 three auxiliary burners.

23 BY MR. HARRIS:

24 Q. Can you identify them for me? I see

1 two that I by stretching might call auxiliary
2 burners.

3 Are you referring to the one that's
4 located over the grates too?

5 A. Yes.

6 Q. That's an auxiliary burner?

7 A. It's under -- it actually would be
8 under the grate, but --

9 Q. Oh, I see.

10 A. I mean, that's the --

11 Q. So there are three different ones that
12 are being fed out of that configuration; is that
13 right?

14 A. Yes.

15 Q. Being fed gas?

16 A. Yes, that's this --

17 Q. Where is the gas coming from?

18 A. From the valve. It's coming from
19 outside the fireplace.

20 Q. I can't see the valve.

21 A. I'm sorry. Where it says "Valve and
22 Key in Floor."

23 Q. All right. All right.

24 A. It says, "Gas Line to Fireplace."

1 Q. Can you regulate the varied amounts of
2 gas to the three?

3 A. Yes. All three --

4 Q. How?

5 A. All three of them have what's lettered
6 as "D." They're adjustable hearth elbows.

7 Q. Not to be quarrelsome, because it
8 certainly may be the case as you say, but I notice
9 on "B" down here, it just says, "1/2 inch,
10 45 degree elbow."

11 A. "D."

12 MR. MONCO: "D," as in David.

13 BY MR. HARRIS:

14 Q. All right. Adjustable hearth elbow?

15 A. Yes, sir.

16 Q. Yes. That's -- well, maybe I got --
17 help me again.

18 Is it -- which one is the valve that
19 you're talking about?

20 A. The "D." The adjustable hearth elbow
21 is a valve. You might be able to see it easier
22 on --

23 Q. Okay. I'm looking at "D" now, but you
24 can only regulate from "D" into the one tube or

1 burner that's by the grates?

2 A. There are three "Ds."

3 MR. MONCO: Bill, there --

4 MR. HARRIS: Yes, I do see them now.

5 MR. MONCO: You see them? Okay.

6 MR. HARRIS: Yes, I see them.

7 THE WITNESS: They look to me like sideways

8 "As," but they are "Ds."

9 MR. HARRIS: Right.

10 BY MR. HARRIS:

11 Q. Is that a product that is sold now?

12 A. Yes, not too many, but it is sold.

13 Yes, circulars. In fact, circular -- well, that

14 catalog may have it, a picture of it (indicating).

15 Q. This one (indicating)?

16 A. Maybe I'm going out of turn.

17 Q. Whatever you say.

18 A. Yes, if you give me --

19 Q. Do you want to see it? I'll loan it to
20 you.

21 (WHEREUPON, the document was

22 tendered to the witness.)

23 BY THE WITNESS:

24 A. Boy, this is real hard to see.

1 MR. MONCO: Identify it on the page number --

2 THE WITNESS: Page --

3 MR. MONCO: -- production number.

4 THE WITNESS: 000041.

5 BY MR. HARRIS:

6 Q. Okay. Let me have a look at it.

7 A. This is an outdoor version of it.

8 That's why I thought this was outdoors. I thought

9 this was a similar --

10 (WHEREUPON, the document was

11 tendered to Mr. Harris.)

12 BY MR. HARRIS:

13 Q. Has your G4 with its auxiliary burner

14 that we've been discussing ever been used in any

15 way in conjunction with this circular burner?

16 MR. MONCO: I'm sorry. Can I have that

17 question read back, please?

18 (WHEREUPON, the record was read by

19 the reporter as requested.)

20 MR. MONCO: I'm going to object to the

21 question as being vague. Are you saying that --

22 when you say "used in conjunction with" what's

23 shown on Page 29 of Exhibit 6 --

24 MR. HARRIS: Yes, yes, with that --

1 MR. MONCO: -- are you saying used together?

2 MR. HARRIS: As a part of.

3 MR. MONCO: As a part of.

4 MR. HARRIS: It, and I believe I threw the
5 auxiliary burner in too.

6 MR. MONCO: Right, right.

7 Do you understand the question?

8 THE WITNESS: I think so.

9 BY THE WITNESS:

10 A. And it very well may have been.

11 BY MR. HARRIS:

12 Q. Do you know that?

13 A. I do not. I do not honestly know.

14 These are not big units, big amount sellers, and I
15 really do not know. But it certainly could have
16 been, and I might be able to find out.

17 Q. Mine are separated here.

18 How many pages are on this circular
19 burner thing? One or more?

20 A. Well, there's different types of --

21 Q. There are other things here, right?

22 A. Well, the -- yes. There's only one
23 page that has to do with this type of product.

24 By the way, the catalog --

1 Q. With the circular burner?

2 A. With that type of circular burner.

3 Q. Okay.

4 A. That catalog is from 1974 (indicating).

5 Q. Okay. The catalog that shows on

6 Page 41 --

7 A. Yes.

8 Q. -- the item you were talking about?

9 A. I think it's '74, maybe '76. It was --
10 it was certainly done before I got involved with
11 the company, which was July of '77.

12 Q. My pages are separated here, so I'm not
13 sure what's in that sheet.

14 MR. MONCO: Here, why don't you hand it back
15 to him for a second?

16 Do you want to take a look at that?

17 MR. HARRIS: Yes, it would help me.

18 (WHEREUPON, there was a short
19 interruption.)

20 MR. HARRIS: When we get to the end of it,
21 you can tell me. I think I can remember it, but
22 you can tell me that's the end of it.

23 MR. MONCO: Bill, if you need to know, it's
24 got Production Pages 000029 through 37.

1 THE WITNESS: Okay. Can I write on this?

2 MR. MONCO: No.

3 THE WITNESS: Can I write here?

4 MR. MONCO: Wait, wait, wait. Don't write
5 anything.

6 THE WITNESS: Okay.

7 MR. MONCO: Do you want to talk with me?

8 THE WITNESS: Yes.

9 MR. MONCO: Okay. Can we take a break for a
10 second?

11 MR. HARRIS: Sure.

12 MR. MONCO: Let's take two seconds. We'll
13 step outside.

14 THE WITNESS: No. It's all right. I'll
15 remember it. It's not meaningful.

16 BY THE WITNESS:

17 A. Are you on the second page --

18 BY MR. HARRIS:

19 Q. Yes, I was on the one that --

20 A. -- 000030?

21 Q. 30.

22 A. That's just to show what a hearth elbow
23 is.

24 Q. In other words, that page is limited to

1 the hearth elbow?

2 A. Yes.

3 Q. Okay.

4 A. And it is dated -- again, I cannot tell
5 you the exact date, but it was when Beatrice
6 Foods -- International Products was a subsidiary
7 of Beatrice Foods, and they were the company that
8 owned it before we got involved. So it was before
9 I got involved, again before July 1st, 1977.

10 Q. So that's been around awhile?

11 A. Yes. And we -- yes. And we sold
12 thousands of these types of hearth elbows.

13 Q. But I understand that it can have a
14 function -- from reading this sheet terminating
15 with 30, I understand that it stops hissing if you
16 use it in conjunction with a partially open gas
17 valve, that you can make an adjustment with the
18 valve, the main valve wide open, and use this and
19 avoid a hissing effect?

20 A. Well, similar, yes.

21 Q. Do you understand that?

22 A. I think I understand that what you're
23 saying is that this valve has a use that is not
24 only for going in series. And you're absolutely

1 right. Probably most of the valves were used on a
2 single burner, without the double -- without a
3 secondary burner.

4 Q. Like is described at the top --

5 A. Right.

6 Q. -- of this sheet?

7 A. Yes. This is really just to give you
8 an idea of the valve that is on the sheet before
9 (indicating).

10 MR. MONCO: Refer to the number.

11 THE WITNESS: I'm sorry.

12 BY THE WITNESS:

13 A. 000030 is to give you an idea that it
14 is a valve and also so that we could tell you that
15 we did sell thousands of them.

16 BY MR. HARRIS:

17 Q. Well, do you use that valve on the
18 auxiliary unit to the main burner that we have in
19 this lawsuit?

20 A. No.

21 Q. So it's just to top off --

22 A. It's the same type -- it's the same
23 usage.

24 Q. Okay.

1 A. It's just a different valve.

2 Q. Let's look at the next page, 31,
3 multiple zero 31.

4 A. Yes.

5 Q. Can you tell me what this is?

6 A. This is what we would call an
7 instruction sheet for see-through or circular
8 sets, which in our model numbers would be called
9 F2s or F3s. And we've had these -- actually I
10 don't know if we have them now, but we had them
11 probably from the early '70s, maybe even from the
12 mid '60s. These are routine burners that we have
13 sold. These were on our price lists. I think
14 we've given you documentation of that.

15 Q. Well, to what extent do you see what
16 you could call auxiliary burners here?

17 A. Well, again, in my mind, I think that
18 if you look at Figure 3, circular set burners, you
19 see a valve there, Valve F, and the other burners
20 are auxiliary, come up through the -- come up
21 through underneath "C," and you've got three
22 burners there, and --

23 Q. Well, you've got -- you may have three
24 burners, but are any of them auxiliary burners?

1 A. I think they're all auxiliary burners.

2 Q. And no main burner?

3 A. Well, there is a main burner. Again,
4 "auxiliary" is a word. We actually use that word
5 a few times in the body of this instruction sheet
6 again that is dated sometime in the early '70s, I
7 would think. In the case of -- we say, "Auxiliary
8 valves, E or F" --

9 Q. "Are used only when fireplace has no
10 built-in valve --"

11 A. Yes.

12 Q. -- "and must be ordered separately"?

13 A. Uh-huh.

14 MR. MONCO: You have to say "yes." You
15 can't --

16 THE WITNESS: I'm sorry.

17 BY MR. HARRIS:

18 Q. Is that true?

19 A. Well, that's what it says, yes.

20 Q. Okay. Well, kind of lead me through
21 this thing.

22 There's two of these that look like
23 they're just the same, two of the burner
24 configurations that look like they're just the

1 same on that outside, the top and the bottom in
2 this picture. And then in the center, there is a
3 single tubular member.

4 Can you lead me through and tell me
5 what these things are?

6 A. I'm going to try to.

7 MR. MONCO: And I would ask the witness just
8 to refer to each figure that you're referring to.
9 And if you're looking at a component, refer to the
10 letter.

11 We're on Page 31 of Exhibit 6.

12 BY THE WITNESS:

13 A. Figure 1, I believe, is a see-through
14 burner, but it's a single burner. It's not --
15 there is no auxiliary burner there. It's
16 see-through because it can go out of both sides.
17 Okay? Are you --

18 BY MR. HARRIS:

19 Q. Okay.

20 A. Okay. Figure 2 looks like a dual
21 burner for a large set.

22 Q. Where are the burners?

23 A. The burners are wherever you see --
24 let's call these flame shoots.

1 Q. Like "K"?

2 A. Let me see here.

3 No. Those are log rests. Right above
4 that -- those are rests that are similar maybe to
5 a -- they don't sit logs, but they sit burners,
6 similar to a grate. It's a way to rest -- what
7 was the word we used this morning? Support.
8 Support the burner.

9 And Figure 3 is a circular --

10 Q. Let's go back to Figure 2 again.

11 A. Yes. Okay.

12 Q. What is the top item that goes all the
13 way across --

14 A. And comes back down?

15 Q. -- the diagram and comes down?

16 I don't see any holes in it. I don't
17 see any kind of indication that it's a burner.

18 A. That's another system to feed the
19 burner.

20 Q. Well, where is the other burner? You
21 say it's multiple burners, and they talk about
22 dual mixer burners.

23 But they don't say "dual burners."
24 They say "dual mixer burners." What does that

1 mean?

2 A. This picture may -- I've got to look at
3 this. This picture may show a long single burner.
4 However, as it says below it, you could double
5 this to make a long see-through burner.

6 Q. How would you do that?

7 A. By putting another one on the other
8 side.

9 Q. Oh, like down in Figure 3?

10 A. Well, Figure 3 is a little different.
11 That's -- that was an even older way to do a
12 circular that just had three burners.

13 That one has three burners on it. It
14 brings the width out for a fireplace -- for
15 instance, you know, if you don't build a
16 see-through-type fireplace when you build your
17 house, you may break through two rooms or
18 something and have a -- and then you have a wider
19 fireplace.

20 And this is -- so this has actually
21 three -- the bottom one is -- we called it
22 circular, but it's really three burners, one
23 higher than the other two, as you can barely see
24 on the bottom picture of 31.

1 Q. Which bottom picture?

2 A. The very bottom picture of 31. You can
3 barely see that the middle burner is slightly
4 higher.

5 Q. Is there anything in this 31 on the
6 exhibit that specifically seems to you to be like
7 the system that is in this lawsuit?

8 A. Yes.

9 Q. What is it that's like it?

10 A. Well, the circular set burner seems
11 like it is to me.

12 Q. Well, why do you -- never mind.
13 What circular set?

14 A. That's Figure 3.

15 Q. Figure 3. You think it's most like it?

16 A. Well, no --

17 MR. MONCO: Objection.

18 BY THE WITNESS:

19 A. -- I didn't say that.

20 BY MR. HARRIS:

21 Q. You what?

22 A. I didn't say that.

23 Q. No, you didn't. You said it was like
24 it, though?

1 A. Correct.

2 Q. Okay. Well, was there something else
3 that was like it?

4 A. Well, I think that -- I believe that
5 even though this picture doesn't show it, that
6 there were dual burners similar to Figure 2 that
7 were see-throughs that would also be like it. And
8 although -- excuse me just for a minute.

9 Figure 1 is a little harder for me to
10 see how that would be similar to the -- to what
11 we're talking about in the case. I only see
12 one -- I do not see a downstream burner on
13 Figure -- in Figure 1.

14 Q. Well, do you see a downstream burner in
15 Figure 2?

16 A. Well, as I said, I don't see it on
17 Figure 2, but it's referred to on Figure 2, and
18 I --

19 Q. Where does it say that?

20 A. When it says "Dual Mixer Burners - 42
21 inches or Longer, Conventional or See Thru."

22 I do see valves --

23 Q. Where does it make that statement you
24 just made? Find it for me. I'm looking. I'm

1 sure it's there.

2 A. Right under Figure 2, under --

3 Q. Under --

4 A. Under the figure itself (indicating).

5 Q. Okay. "Dual Mixer Burners"?

6 A. "42 inches or Longer, Conventional or
7 See Thru."

8 Q. You mean it says that that's what it
9 is, but doesn't show it?

10 A. I think that that's correct, although I
11 think it actually can show it because all you --
12 well --

13 Q. How would you put them together?

14 A. Right off of the hearth elbow that is
15 labeled, I believe, "C" or "F." I mean, it could
16 go either way, but in this picture, I think it
17 would be "C."

18 Q. While it says "Dual Mixer Burner,"
19 you'll agree with me it doesn't show any dual
20 mixer burner, actually show it, does it?

21 A. Well, it may show a dual mixer burner.
22 It doesn't show a downstream burner. Since I
23 don't know what a dual mixer burner is, it may
24 show it. It doesn't show a downstream burner, but

1 it shows the ability to have a downstream burner,
2 I believe, and it says that you can have it, and
3 it --

4 Q. Where does it say you can have it?

5 A. It says, "Conventional or See Thru."

6 Q. To you, that means that?

7 A. Yes, that's to me, and very well may
8 not mean it to you. But I'm looking in --

9 Q. I'm ready to give up on that one --

10 A. Well, you know, I mean --

11 Q. -- for the time being as far as
12 testimony is concerned.

13 A. Yes, it does -- if you read the
14 document, it gives information. And, you know, I
15 think it's -- it would need to show you -- I mean,
16 it shows over and over again how you can adjust
17 flame characteristics of different burners.
18 That's what it's talking about here, adjusting
19 flame size, adjusting flame characteristics.

20 Q. That's the principal feature of it?

21 A. Well, that's -- the principal feature
22 of it is to be a see-through or circular
23 fireplace. With --

24 Q. Let's go on to --

1 A. Yes.

2 Q. Let's go on to the next one --

3 A. Right.

4 Q. -- part of Exhibit 7, multiple zero 32.

5 MR. MONCO: I'm sorry. It's Exhibit 6.

6 Exhibit 6 we're on.

7 MR. HARRIS: Are you sure it's 6?

8 THE COURT REPORTER: Yes.

9 THE WITNESS: Yes.

10 MR. HARRIS: You're right. Exhibit 6 starts

11 off with the circular one, doesn't it?

12 MR. MONCO: Yes.

13 MR. HARRIS: Okay. And I may have said

14 "Exhibit 7" a little earlier.

15 MR. MONCO: I don't believe so. I think this

16 is the first time I heard you say it.

17 Am I correct?

18 THE COURT REPORTER: To my knowledge.

19 MR. MONCO: I think it's the first time you

20 said "Exhibit 7."

21 MR. HARRIS: Well, wash my mouth out with

22 soap.

23 BY MR. HARRIS:

24 Q. Well, let's talk about multiple zero 32

1 on Exhibit 6, then.

2 A. All right.

3 Q. My primary question again is: What is
4 it?

5 And then in trying to get to that
6 first, I'm going to ask you if it isn't just a
7 pair of burners in parallel.

8 A. Well, I don't know what "just a pair of
9 burners in parallel" exactly means. We do have
10 adjustment capability on each of these.

11 Q. Where does it say that they can be
12 adjusted independently?

13 A. Adjusting flame size, No. 3 of the
14 instructions.

15 Q. "Open gas valve," it starts?

16 A. Yes. And I don't know what -- "or your
17 built-in gas shutoff valve wide and light burner.
18 Using a screwdriver remove plug in top of hearth
19 elbow 'C.'"

20 Q. And it only shows one Hearth Elbow C?

21 A. Yes. However, I believe -- let me
22 see -- that obviously there is another -- there's
23 another what you would just call the parallel
24 system here.

1 And, again, I have to -- I think that
2 both of these -- there are two Hearth Elbow Cs
3 here, although it is only documented that there is
4 one.

5 Q. And indeed there appears to be a little
6 bit of difference in the fitting on the other side
7 opposite the Hearth Elbow C that's identified,
8 doesn't there?

9 A. There does appear to be a slight
10 difference.

11 Q. Yes.

12 A. But if you look at the -- above No. 3,
13 it does say, "Separate connections are made to
14 each using hearth elbows 'C' and tubing with
15 compression fittings 'D'. Auxiliary valves are
16 used," such and such, whatever.

17 So it --

18 Q. Let me read it again.

19 A. Yes.

20 Q. Where are you reading at?

21 A. No. 2.

22 Q. No. 2. Let me read it.

23 Let me ask you how the gas flows --

24 A. Well --

1 Q. -- through that device.

2 A. I think, in this case, the gas comes up
3 from what would be the middle arrow of the three
4 arrows.

5 Q. On the left?

6 A. Yes.

7 MR. MONCO: Why don't you identify it? Are
8 you referring to this in parentheses (indicating)?

9 THE WITNESS: Yes.

10 MR. MONCO: Okay. Why don't you just say
11 where it is you are referring to in parentheses --

12 BY THE WITNESS:

13 A. Underneath it says "(1/2 inch 'T.')" "
14 That looks like what it is. And "2 (1/2 inch
15 close nipples.)"

16 BY MR. HARRIS:

17 Q. What does it mean when it says that
18 "Auxiliary valves" -- and there's a big
19 blanked-out part -- "are used only when fireplace
20 has no built-in valve, and must be ordered
21 separately"?

22 A. I don't know. This is such a long --

23 Q. You don't understand -- you don't
24 understand what that means?

1 A. Well, I think I understand what it
2 means, but I can't be certain. This is from
3 probably the late '60s.

4 Q. Do you sell it now?

5 A. No.

6 Q. Have you sold it during your tenure?

7 A. Oh, yes.

8 Q. When did you quit selling it?

9 A. You know, I think that the -- if it
10 includes RF2s and RF3s, I think that it we quit
11 selling in the early '90s.

12 Q. Why did you quit selling it?

13 A. I don't know. I -- I don't know. I'm
14 just stating to you that they went off -- by the
15 way, we may not have stopped selling them
16 altogether, but they went off our price list.

17 Q. You don't know?

18 A. I would think that if somebody needed
19 something like this right now, that we would be
20 able to make it.

21 Q. Well, not being iffy about it and
22 agreeing with you that you might make it, do you
23 know that you have since the early '90s? Tell me
24 about what you know rather than what you guess.

1 A. The only thing I can tell you is I
2 think we've given you some price lists, and if
3 they were on the price list, then they were
4 certainly sold. And I think it's about '92 or '93
5 that they -- the RF3s. It may be later than that.

6 Q. Where is my price list? I didn't know
7 I had one. Maybe I do.

8 A. Well, I know you have one back from
9 quite significantly before that to show you how --
10 how long we've had them.

11 Q. Yes? That doesn't --

12 A. Yes, '74 or '77 or something.

13 Q. That doesn't help me a bit on the
14 question I've asked you.

15 A. Right. That's right. But I can
16 certainly provide you with a price list.

17 Q. It's not a significant item in your
18 inventory for sale, is it?

19 A. As of now?

20 Q. Yes.

21 A. No, it is not.

22 Q. And it hasn't been for several years,
23 has it?

24 A. That is correct.

1 Q. And the most common reason to drop down
2 on your sales effort on an item is that the item
3 isn't quite as successful as you had hoped; isn't
4 that true?

5 A. That's the most common.

6 Q. Let's look at 34 --

7 A. Okay.

8 Q. -- and get on through these, multiple
9 zero 34 as a part of Exhibit 6.

10 MR. MONCO: Are you skipping 33?

11 MR. HARRIS: I thought we had done 33.

12 MR. MONCO: No. You had just done 32.

13 THE WITNESS: We've done 32.

14 MR. HARRIS: I don't have 33.

15 MR. MONCO: It was on the document.

16 MR. HARRIS: I don't have 33.

17 THE WITNESS: You sure you don't have it
18 after 34?

19 MR. MONCO: Do you want me to make you a
20 copy? Because we have -- we both have 33 here.

21 MR. HARRIS: Well, for goodness sake.

22 Yes, that's one way to do it, I guess,
23 sure.

24 MR. MONCO: Okay.

1 (WHEREUPON, there was a short
2 interruption.)

3 BY MR. HARRIS:

4 Q. Let's take a look then at 33, which I
5 appreciate a copy of. I did not have it in my
6 notebook.

7 What kind of a system do we have here
8 in 33, multiple zero 33?

9 A. Yes, this is a burner system.

10 Q. It has two parallel burners, does it
11 not?

12 A. It has two burners, yes. It would
13 likely be used as a see-through. It doesn't have
14 to be used as a see-through.

15 Q. Now, is a see-through, to go back to
16 it, one of these situations where on both sides
17 you can get a view of the fireplace?

18 A. Yes.

19 Q. Where does the gas come in, and just
20 how does the flow take place in this particular
21 item?

22 A. Well, it looks to me like the gas comes
23 in from the bottom, if you have the picture turned
24 so that you see the writing "Burner Assembly" is

1 on the bottom --

2 Q. Let me get my glasses on.

3 A. -- so the writing that says "Burner
4 Assembly" is on the bottom left.

5 There you go.

6 Q. All right.

7 A. Okay. It looks to me as if the gas is
8 coming in from the right bottom side.

9 Q. Well, I can't find -- I can't find
10 anything that looks like a tube or indication of
11 it.

12 A. Well, there's an air mixer there
13 that -- a wire spring.

14 Q. Are you talking about the top of the --

15 A. No, the bottom.

16 MR. MONCO: He's over here. He's over on
17 this side (indicating).

18 MR. HARRIS: He's here (indicating)?

19 MR. MONCO: The gas is coming in here
20 (indicating).

21 THE WITNESS: The bottom.

22 BY MR. HARRIS:

23 Q. Okay. But you said a burner assembly,
24 and --

1 A. I'm sorry. I was just trying to orient
2 you.

3 Q. That's way down at the other end.

4 A. Yes. I'm sorry. I was trying to
5 orient you --

6 Q. Okay.

7 A. -- on the page, and then I said to go
8 to the bottom right.

9 Q. Okay. Another way to do it is, it says
10 "air shutter" there --

11 A. "Air shutter," "air mixer," and then
12 "wire spring."

13 Q. "Wire spring."

14 A. Before "air mixer," an "HC-5 adapter,"
15 which goes off the page.

16 Q. And you think that the gas comes in
17 there, right?

18 A. Yes.

19 Q. And then flows obviously downward
20 through -- looking at the page going downward,
21 through the tube that it's entered.

22 And then where does it go?

23 A. Well, if -- I'm going to look at it
24 like this, just to -- and (indicating) --

1 Q. All right.

2 A. So you can -- if you can, then we'll be
3 talking about the same -- it flows from right to
4 left (indicating).

5 Q. From right to left?

6 A. There you go. And then goes --

7 Q. I have to put something on the record
8 so we can tell what we're talking about.

9 It flows through the pipe-like member
10 that is on the right side of this 33, 000033.
11 It's on the right side of it. It flows down
12 through it, right?

13 A. Well, you say "down." I think "down"
14 would be the way that you would talk about it.
15 It's going downstream; the gas is. It's going to
16 the left on the drawing.

17 Q. Okay.

18 MR. MONCO: Bill, if you want me to, I can
19 get a red pen, and we can have the witness mark
20 the exhibit with the direction of the air flow.

21 MR. HARRIS: I think that would be easier if
22 we did something like that.

23 MR. MONCO: Yes. Hold on. Yes, I think it
24 would be clear on the record also.

1 MR. HARRIS: I think he'd be doing us a
2 favor.

3 (WHEREUPON, there was a short
4 interruption.)

5 MR. MONCO: We're back on the record.

6 We have provided the witness with a red
7 pen, and I believe the question is now --

8 MR. HARRIS: Okay.

9 MR. MONCO: -- trace the gas flow.

10 BY MR. HARRIS:

11 Q. You could do that just by a series of
12 arrows --

13 MR. MONCO: Correct.

14 BY MR. HARRIS:

15 Q. -- coming around.

16 A. Yes. And I can again only tell you,
17 although -- I can only tell you that this is what
18 I would expect.

19 Q. Okay.

20 A. I cannot --

21 Q. You say there's some degree of
22 uncertainty?

23 A. Not very -- well, some, yes, some small
24 degree of uncertainty. It seems to me quite clear

1 that the gas is coming in from here (indicating).

2 Q. Pretty -- bear down fairly hard so it
3 will make good arrows.

4 A. (Indicating.)

5 MR. MONCO: Let the record reflect that the
6 witness is now placing red arrows --

7 THE WITNESS: Over the words.

8 MR. MONCO: -- in the direction of the flow
9 of the gas to the system shown on 000033.

10 BY MR. HARRIS:

11 Q. Now, you're drawing an arrow -- or just
12 drew one through an elbow, did you not?

13 A. That is correct.

14 Q. That's not a valve, though, is it?
15 That's an elbow?

16 A. That is a street -- you call it a
17 street elbow. It's just an elbow. And then
18 there's a nipple, two nipples and an extension
19 piece, and then we come to a hearth elbow
20 (indicating).

21 Q. Okay.

22 A. And that's a valve (indicating).

23 Q. Okay.

24 A. And then we go (indicating) --

1 Q. Well, let's go on with the flow.

2 A. (Indicating.)

3 Q. Okay. And I would suggest --

4 A. Would you like me to --

5 Q. -- at the point where you have the
6 valve, that you put a "V" over it in red.

7 A. I'll put "Valve."

8 Q. Right, whatever you like. Just the "V"
9 will do. The record will show it.

10 A. (Indicating.)

11 MR. MONCO: And the witness has marked the
12 document as such.

13 BY MR. HARRIS:

14 Q. And then your flow comes right on
15 around, correct?

16 A. Yes, sir.

17 Q. It seems to me from looking at them
18 that the two burner units here -- and we can agree
19 there are two of them, can't we, two burner units?

20 A. Looks it -- yes.

21 Q. They look to be identical, don't they?

22 A. In this drawing, they do look to be
23 identical in size.

24 Q. Now, without trying to argue the point,

1 I just will ask you: What is it that makes you
2 think that the valve that you have located is
3 indeed a valve?

4 A. Oh, I know it's a valve.

5 Q. How?

6 A. It's an HE-1. It's a hearth elbow. It
7 says it.

8 Q. Help me.

9 A. Over on the left there, it's dark
10 (indicating).

11 Q. Oh, it runs into the darkness, doesn't
12 it?

13 A. Yes, yes.

14 Q. Yes. Okay. I see what you're pointing
15 out.

16 Now, let's take a look at the very next
17 number in this series, which is 000034.

18 A. Yes, sir.

19 Q. And off the record I think we both
20 noticed that they were relatively similar, it and
21 33?

22 A. Yes, sir.

23 Q. Would you comment as to whether there
24 is any difference --

1 A. Looks --

2 Q. -- or not and what it is?

3 A. There seems to be a difference where
4 the hearth elbow is, at that point, which is on
5 the upper left of the drawing.

6 MR. MONCO: Give the number of the drawing.

7 THE WITNESS: Drawing 34.

8 BY MR. HARRIS:

9 Q. Can you locate it by putting where the
10 valve is or the hearth elbow?

11 A. (Indicating.)

12 Q. You used the pen, the red pen again?

13 MR. MONCO: Right. He's marking it in the
14 red pen, as done previously on Page 33.

15 BY THE WITNESS:

16 A. "X" -- should I put "HE" or --

17 BY MR. HARRIS:

18 Q. It doesn't matter as long as you let
19 the record know what you put.

20 MR. MONCO: Right. So mark it in red as
21 you -- and what it is.

22 BY THE WITNESS:

23 A. (Indicating.)

24 MR. MONCO: Let the record note that the

1 witness has circled the hearth elbow markings on
2 000034 in red.

3 BY MR. HARRIS:

4 Q. And do you believe that the flow goes
5 in the same direction as in the prior drawing --

6 A. Yes, I do.

7 Q. -- that is, the Drawing 33?

8 A. Yes, I do.

9 Q. And do you agree that the burners
10 themselves are substantially the same?

11 A. They're a little bit different, but
12 they're reasonably the same. It looks to me like
13 the bottom burner is a little longer on this one.

14 Q. What do you think this one was made
15 for?

16 A. I think that this -- I don't -- I think
17 that this one was specifically -- this one is a
18 specific case where there was a need to regulate
19 the second burner.

20 MR. MONCO: When you say "this one," you're
21 referring to the --

22 THE WITNESS: I'm sorry.

23 MR. MONCO: -- Drawing 34.

24 BY THE WITNESS:

1 A. 34 was specifically because -- again,
2 it looks like it's easier to do on 34 from the
3 drawing because the screw that -- the regulating
4 screw is right up on top there. It doesn't seem
5 as easy to do, although it's doable, on 33. So I
6 think 34 is a clearer -- it's clearer to me that
7 it's meant for that purpose.

8 BY MR. HARRIS:

9 Q. Do you have any idea of what purpose
10 that it was sold for or advertised for apart from
11 what it might do?

12 A. Yes, I have an idea. I think that what
13 we sold them for was so that a person could
14 utilize a single burner and not a second burner or
15 could utilize a single burner and use a second
16 burner --

17 Q. I see.

18 A. -- on see-through installations, or
19 maybe utilize the second burner at a lower level
20 than the primary burner because they may have
21 spent more time in the bedroom or whichever room.

22 Q. I understand.

23 MR. HARRIS: I hope 37 is the next number
24 that you have.

1 MR. MONCO: Well, actually I have 35 and 36,
2 if you're missing those.

3 MR. HARRIS: I'm missing those. And let's
4 somehow share so we don't have to go punch some
5 more. I can always get a copy out of here if
6 necessary. I don't want for you to have to take
7 your time.

8 MR. MONCO: Just use mine then. You can use
9 mine because the witness has that --

10 THE WITNESS: Okay.

11 MR. HARRIS: I'm trying to see what happened
12 here. It's obvious that what happened was
13 something was left out, right?

14 BY MR. HARRIS:

15 Q. We just finished 34.

16 A. Yes.

17 Q. And my next one here is 37, and you
18 have here --

19 MR. MONCO: 35.

20 BY MR. HARRIS:

21 Q. -- 35 and 36. Okay.

22 Can you give me some general
23 explanation first on 35, 000035?

24 A. Yes, sir. This is a price list.

1 Q. And what kind of a date are we looking
2 at?

3 A. March 1st, 1977.

4 Q. "Glowing Ember." It says, "See
5 Block I" at the top?

6 A. Yes.

7 Q. What is it talking about?

8 A. That's the first block right underneath
9 it.

10 Q. "'G4' Series"?

11 A. Yes.

12 Q. "Log Sets with Glowing Ember Burner"?

13 A. Yes. G4 has been called "Glowing Ember
14 Burner." We've used that terminology.

15 Q. That's with a single main burner set,
16 correct? You don't have an auxiliary burner with
17 this?

18 A. Not on this price sheet, no.

19 Q. Do any of the items on this price sheet
20 involve an auxiliary burner?

21 A. I believe all the "F" -- the Block II,
22 lower down, the second --

23 Q. Okay. Let's look at it, then.

24 Are these the ones we've looked at --

1 A. I believe so.

2 Q. -- before, the see-throughs and the --

3 A. Yes.

4 Q. -- circular and see-through and more
5 see-through?

6 A. Yes.

7 Q. What's "standard"?

8 A. "Standard" means a single sided --
9 single burner rather than a see-through.

10 Q. And the "Circular" under "Golden Oak"
11 has a "3" on it.

12 Is that a way to refer to three units?

13 A. That's a way to refer to three burners.

14 Q. And you say this was 1970-what?

15 A. '77.

16 Q. Mine is -- or yours -- your copy is a
17 little cut off.

18 MR. HARRIS: You may have a better copy.

19 THE WITNESS: It's right there (indicating).
20 I remember the prices.

21 MR. MONCO: Okay.

22 BY MR. HARRIS:

23 Q. I accept that as a '77.

24 A. I think we have the actual here

1 somewhere. It was pink.

2 MR. MONCO: Okay.

3 THE WITNESS: Can we go off the record for a
4 second? I just wanted to make a comment.

5 MR. MONCO: Let's wait.

6 THE WITNESS: Okay.

7 BY MR. HARRIS:

8 Q. I am now going on to triple --
9 quadruple, that is, 36, in the same exhibit.

10 What does it show? This is a series of
11 different valves that could be used?

12 A. Yes, valves. It just shows various
13 valves, valves all of which can regulate flow.
14 This picture -- this was a -- probably a black and
15 white literature sheet. This is dated 1971.

16 MR. HARRIS: I think I'm caught back up now
17 with 37.

18 MR. MONCO: Yes.

19 MR. HARRIS: Do you have any after 37?

20 MR. MONCO: The only thing that I have after
21 37 is -- somebody attached to our document a Joint
22 Motion for Extension of Discovery Cutoff.

23 MR. HARRIS: I don't know why.

24 MR. MONCO: I'll tell you what. If you want

1 to do it by agreement --

2 THE WITNESS: The first date was October 3rd.

3 MR. MONCO: If you do it -- wait a second.

4 Don't talk over.

5 THE WITNESS: Oh, I'm sorry.

6 MR. HARRIS: I would extract that.

7 MR. MONCO: I was going to say, by agreement,
8 can I just take this off?

9 MR. HARRIS: Certainly.

10 MR. MONCO: And we'll take it off the
11 witness's copy also.

12 MR. HARRIS: Certainly. It has nothing to do
13 with what we're doing here.

14 MR. MONCO: Right. Okay.

15 Let the record reflect that I am
16 removing the document marked "Order Granting Joint
17 Motion to Extend Discovery Cutoff" from the
18 witness's exhibit by agreement of counsel.

19 Okay. So this document will now
20 read -- Exhibit 6 will now go from 000029 through
21 37, and that will be the end of it. Okay.

22 BY MR. HARRIS:

23 Q. What is 37?

24 A. 37 is a picture of a circular burner,

1 what we call an F3.

2 Q. Why do you refer to them as circular
3 burners?

4 A. I think because they were used in
5 circular uses. There were quite a bit -- there
6 used to be a lot more uses of circular-type --
7 there used to be more circular uses.

8 Q. Meaning circular fireplaces, or what?

9 A. Yes.

10 THE WITNESS: Do you mind (indicating)?

11 MR. MONCO: You can, but we'll just mark it
12 as an exhibit.

13 THE WITNESS: Okay.

14 MR. MONCO: If you want to --

15 BY THE WITNESS:

16 A. Okay. It was -- I'm trying to get the
17 words -- the thought right.

18 Free-standing fireplaces used to be a
19 big thing. This is an example. It's not -- you
20 used to see -- you're certainly old enough; I'm
21 old enough; you may be old enough.

22 MR. MONCO: Believe me, we're all old enough.

23 BY THE WITNESS:

24 A. Okay. To see free-standing fireplaces,

1 in other words, fireplaces in the middle of a
2 room.

3 BY MR. HARRIS:

4 Q. Yes, I have seen that.

5 A. Yes. And they were -- a company such
6 as Malm, which was the largest, which is in
7 California, and Fire Drum, which was another
8 company, which is also in California, made
9 free-standing fireplaces. It was a business. And
10 it was a business of thousands of units that sort
11 of dried up, mid '80s, I would guess.

12 So when the built-in fireplaces became
13 the more popular way, when they started to make
14 fireplaces in a factory rather than have a mason
15 come in, these things got to be too expensive. So
16 there were quite a few of these free-standing
17 fireplaces, and almost all of them were open --
18 let me withdraw that. Not almost all of them.
19 Many, if not most of them, were open on all sides
20 or on many sides. So there would be a use for a
21 circular fireplace that is not as prevalent today.

22 Outdoor fireplaces did not have
23 products like gas logs that were made specifically
24 for them. We had to make products that way, and

1 they would build again a masonry-type outdoor
2 fireplace. Now there are 20 or 30 people building
3 total outdoor fireplace units --

4 Q. I see.

5 A. -- including us, with a circular
6 burner, but it's --

7 Q. It's different?

8 A. It's different, yes.

9 Q. Would you -- I wonder if you would take
10 that red pen and show me how the gas flow is in
11 the Unit 37.

12 A. I wish I could. I can't see that too
13 well.

14 THE WITNESS: But I believe I actually have
15 given you this picture.

16 MR. MONCO: Do you want to take a short
17 break? I'll see if we can find the original if
18 it's here.

19 MR. HARRIS: Okay.

20 MR. MONCO: Why don't we take a five-minute
21 break?

22 (WHEREUPON, a recess was had.)

23 MR. MONCO: Back on the record.

24 Just so it's clear, you're asking the

1 witness to trace the flow of gas in No. 37?

2 MR. HARRIS: That's correct.

3 MR. MONCO: Okay.

4 MR. HARRIS: Using the red pen.

5 MR. MONCO: Using the red pen.

6 BY THE WITNESS:

7 A. It looks to me as if the gas is coming
8 from here (indicating).

9 BY MR. HARRIS:

10 Q. Okay.

11 A. I don't want to draw on it. I think --

12 MR. MONCO: Well, here, if you want to draw
13 lines to trace the flow of gas, you can do it off
14 here in the margin, however you want to do it.

15 THE WITNESS: Well, what I'm saying is --

16 MR. MONCO: Don't draw on the exhibit
17 otherwise, though.

18 THE WITNESS: Okay. Well, then --

19 MR. MONCO: Don't change the exhibit.

20 BY THE WITNESS:

21 A. Okay. Then here is a hearth elbow.
22 There are three hearth elbows. It looks to me
23 like there are (indicating) --

24 BY MR. HARRIS:

1 Q. Well, you need to identify each of
2 them.

3 A. (Indicating.)

4 Q. It is a little dim over there, isn't
5 it?

6 A. Yes. That's the one that I believe --
7 I believe there are three hearth elbows
8 (indicating).

9 Q. So then would the flow of gas go direct
10 through those little tubes to each burner?

11 A. Yes.

12 Q. You might then put an arrow showing
13 that on these; not right on the thing, but just,
14 as he says, by it.

15 A. (Indicating.)

16 Q. You've got it done?

17 A. Yes.

18 Q. Could I see it just a minute?

19 (WHEREUPON, the document was
20 tendered to Mr. Harris.)

21 MR. HARRIS: The ones we have drawn on, I
22 wish you would get a copy pretty quick to send on
23 to me so I'd have a copy of them. There will just
24 be three or four of them.

1 BY MR. HARRIS:

2 Q. Okay?

3 A. Uh-huh.

4 MR. MONCO: "Yes."

5 THE WITNESS: I'm sorry.

6 BY THE WITNESS:

7 A. Yes.

8 BY MR. HARRIS:

9 Q. And so there is no flow in that
10 particular item from one burner to another; is
11 that correct? The item illustrated in 37.

12 A. It looks as if there is no flow from
13 one burner to another.

14 Q. It looks that way to you?

15 A. Yes.

16 Q. And it looks that way to me?

17 A. Yes.

18 Q. All right.

19 A. It looks that way to me.

20 Q. What was the purpose of making it
21 variable in those circular fireplace arrangements?
22 And by "variable," I mean the variance between
23 burner units.

24 A. I would -- I think that people wanted

1 different size flames, flame presentation at
2 different places.

3 Q. In the room?

4 A. In or out.

5 Q. Yes.

6 A. Yes.

7 MR. HARRIS: Now we get a No. 7.

8 (WHEREUPON, a document was marked
9 Bortz Deposition Exhibit No. 7, for
10 identification, as of 10/5/01.)

11 BY MR. HARRIS:

12 Q. My question on this item is pretty
13 direct and short.

14 Do you recall having seen this letter
15 at or about the date on the letter? And I'm
16 talking about 000050, Exhibit 7.

17 A. Yes, I do.

18 Q. It's true, is it not, that the letter
19 did not in any way cause you to quit making your
20 auxiliary burner?

21 A. Yes, that is correct.

22 Q. And by "your auxiliary burner," I'm
23 talking about the one in issue in this case.

24 A. That is correct.

1 Q. Had you known about this patent
2 previously to the letter?

3 A. No.

4 MR. HARRIS: Do you have some kind of a clip
5 you can put on this?

6 (WHEREUPON, there was a short
7 interruption.)

8 (WHEREUPON, a document was marked
9 Bortz Deposition Exhibit No. 8, for
10 identification, as of 10/5/01.)

11 BY MR. HARRIS:

12 Q. We have multiple pages here. I'd like
13 for you to flip through these pages and see if you
14 know what they are and can give me some idea as to
15 what each or each group is so I can figure why
16 I've got them.

17 A. Okay.

18 Q. They were produced to me, and I'm happy
19 to have them, but I don't know what to do with
20 them right now.

21 A. Okay. May we do them --

22 Q. You can do them any way you want to.

23 A. -- a group at a time?

24 MR. MONCO: Sure.

1 BY MR. HARRIS:

2 Q. And identify them by the --

3 MR. MONCO: Just refer to the page numbers.

4 BY MR. HARRIS:

5 Q. -- the document numbers.

6 A. 00 --

7 Q. And you don't have to put all those
8 zeroes.

9 A. -- 54 --

10 Q. You can just say "54:"

11 A. 54 through 58 are various testing that
12 we've done. I think it may be mislabeled, but
13 this is testing that we were doing. I believe
14 this was to see if we could get an AGA
15 certification. This is very -- this looks very
16 much to me to be what -- the kind of testing you
17 would do to receive AGA certification on Page 1.

18 Again, I believe that Page 55 again may
19 be mislabeled, but I think it's a part of the same
20 thing.

21 Page 3 would be --

22 MR. MONCO: Don't refer to "Page 3."

23 BY THE WITNESS:

24 A. I'm sorry. Page 56 would be similar

1 except it would be -- instead of natural gas,
2 which was -- Page 54 and 55 had to do with testing
3 natural gas; Page 56 has to do with testing
4 propane.

5 Page 57 has to do with testing a
6 different log set with that burner system or
7 burner combination.

8 BY MR. HARRIS:

9 Q. Can you tell what the burner
10 combination is?

11 A. It looks like the -- what we would want
12 to have as AGA certified, so it would be a G5 with
13 the ember booster.

14 They all would -- even though they say
15 "G4," these are -- once they become AGA certified,
16 they then become called G5s. I just think there
17 may be -- this is certainly -- this is the
18 specific piece of paper that has to do with AGA
19 testing, the first document.

20 So these are to test to see if we can
21 receive AGA certification on this combination.

22 As I said, Page 56 is propane. Page 57
23 is natural gas on a different kind of log set.

24 And I can't tell you what 58 is.

1 Q. Okay.

2 A. Pages 59 through 61 are also testing
3 for -- I'm quite sure, for certification by AGA.
4 And it looks like we're getting results of
5 temperatures at various places.

6 Q. Now, is that on 60 you're talking
7 about?

8 A. It looks like -- 60 and 61 look like
9 they're temperatures.

10 Q. Do all of these involve the EMB in some
11 way?

12 A. Yes, I believe so. I'm quite certain.
13 Pages 62 through 66 also involve this
14 burner combination. They are also for AGA
15 certification.

16 Q. Does that stand for American Gas
17 Association?

18 A. Yes, sir, which, by the way, is now
19 called CSA, Canadian Standards Association.

20 Q. Really?

21 A. Yes. You can't even use "AGA" because
22 AGA is also a -- the group of the local
23 distribution gas companies, the association. It
24 goes to Washington. And so they separated a

1 lab --

2 Q. I understand.

3 A. -- and Canadian bought it. But it's
4 the same test -- it's under the same testing
5 standards. I can -- it says the test standard.

6 And I believe --

7 Q. You better believe the law is involved
8 somewhere in that.

9 A. I can tell you in a minute if you want
10 to go off.

11 MR. MONCO: No. Why don't you just go ahead?

12 THE WITNESS: Okay. It doesn't really have
13 to do with this.

14 BY THE WITNESS:

15 A. I believe that we are testing the unit
16 with various different valves, different types
17 of -- when I say "valves," now I'm talking about
18 safety pilot valves, not valves -- different --

19 BY MR. HARRIS:

20 Q. Not valves for the auxiliary burner?

21 A. Yes, not having to do with the ember
22 boosters, different safety valves.

23 Q. Okay.

24 A. I can see that Page 64 and 63 have a

1 different valve than the earlier ones. These from
2 62 on look like we're testing with a different
3 valve, a different safety valve --

4 Q. Okay.

5 A. -- not a different ember valve.

6 And 66 looks that way. And I've got 65
7 after 66 myself. I don't guess it matters. And,
8 again, we are doing -- it's the same thing again.
9 These are tests that we're running for AGA
10 certification, and this one is we're testing a
11 different type of log set.

12 Q. Yes.

13 A. And --

14 Q. What page are you to now?

15 A. Well, I started on 65. I then went to
16 67. And there we are testing a different size log
17 set on 67.

18 You have to do all this. We have an
19 AGA-certified laboratory in our facility. So us
20 doing it means that they don't have to do it and
21 means that we save some money --

22 Q. I see.

23 A. -- although this we would have to do --
24 I think most or all of this we would have to do

1 anyway to provide the information.

2 Again, this is just a different size
3 log set. I'm sorry. 68 is a different size log
4 set.

5 And 69 is a different size log set on
6 propane.

7 70 is a different size log set, a
8 larger one. The other ones were smaller than --

9 Q. Okay.

10 A. -- than the 24 that I've been sort of
11 giving you as the standard set.

12 And 77 -- and 71 looks to me to be for
13 the different size -- for the larger log set.

14 And then 72, it's also the larger size
15 log set with probably a different safety valve.
16 72 and 73 are the larger, 30-inch log set with a
17 different safety valve. I'm sorry.

18 And then 74 is -- looks like a -- back
19 to a 24-inch set. Some temperature testing; I do
20 not know why.

21 74, 75, 76, 77, 78, and 79 are
22 obviously temperature tests, but -- again, for
23 AGA.

24 And then 80 through 85 -- let me see if

1 this is right -- are also tests. And there are
2 several different, again, safety valves involved
3 in the tests, including remote -- remote valves.

4 And then 80, 81, 82, 83, 84, and 85
5 look pretty similar because they are. I have two
6 copies of them. Lucky I caught that. They look
7 the same.

8 So these were tests to obtain
9 certification.

10 Q. What do these have to do with the EMB?

11 A. Well, they were to obtain certification
12 on the EMB; on the EMB --

13 Q. In conjunction with --

14 A. -- with the AGA -- the G5 (indicating).

15 Q. Okay.

16 MR. MONCO: Refer to the document number.

17 BY MR. HARRIS:

18 Q. What document are you referring to?

19 A. Document 2.

20 MR. MONCO: Exhibit No. 2.

21 BY THE WITNESS:

22 A. I'm sorry. Exhibit No. 2.

23 BY MR. HARRIS:

24 Q. They really don't have anything to do

1 with telling us anything about the structure as
2 such or the directions of flow or the valves as
3 such? They just give us some values of
4 performance, isn't that correct, performance
5 values?

6 A. Yes, I think that's a fair statement.

7 Q. I'm trying to find out if there's
8 anything in these documents that really has much
9 relation to the controversy, to be frank with you.

10 A. Yes, I understand. And I -- if you
11 said they don't have much, I might tend to agree.

12 Q. Well, let me ask you --

13 A. I don't --

14 Q. Let me ask you this --

15 A. I don't want to --

16 Q. None of these are tests of the
17 plaintiff's equipment, are they?

18 A. No.

19 Q. It's all Peterson equipment?

20 A. Yes.

21 MR. HARRIS: I'd like to have about five to
22 ten minutes to get reorganized a little bit so I
23 can see where I'm really going.

24 MR. MONCO: Sure, that would be fine. It's

1 4:00 o'clock. Do you want to reconvene at 10
2 after 4:00?

3 MR. HARRIS: That would be fine.

4 MR. MONCO: Okay.

5 (WHEREUPON, a recess was had.)

6 MR. HARRIS: I would just like to get
7 something identified here, 000038 through 000049.
8 We can mark it as an exhibit.

9 (WHEREUPON, said document was marked
10 Bortz Deposition Exhibit No. 9, for
11 identification, as of 10/5/01.)

12 BY MR. HARRIS:

13 Q. Is there a relationship between the
14 different pages in that exhibit?

15 A. I believe that -- yes, I believe that
16 this is a 12-page catalog that was put out by
17 Peterson.

18 Q. What date?

19 A. I might be able to find it. I think it
20 was 1974. It was before I became involved with
21 the company, which was 1977, and I think it was
22 '74.

23 Q. So you can identify it as an early
24 catalog of the company's, correct?

1 A. Yes. Yes. On Page -- the last page,
2 it does say, "Robert H. Peterson Company, a
3 Division of Beatrice Foods."

4 Q. Okay. Really all I wanted was an ID.
5 That's fine.

6 A. Okay.

7 Q. Now, we have an Exhibit 3 that might be
8 of some help in the questions I'm going to ask you
9 next.

10 MR. MONCO: Exhibit 3. Okay.

11 MR. HARRIS: Counsel, I have a question to
12 ask you too.

13 In our notice, we had asked that if you
14 would, to bring along some additional documents,
15 and I don't know whether you did or not. Those
16 documents for the most part had been asked for in
17 the earlier document request.

18 MR. MONCO: I think we produced --

19 MR. HARRIS: You brought me two.

20 MR. MONCO: Right.

21 MR. HARRIS: I haven't really looked at them
22 yet.

23 MR. MONCO: I believe -- I believe one of the
24 sheets, 000087, is a cost sheet which I believe is

1 responsive to your request. And 000088 is, I
2 believe, another advertisement, although I
3 certainly would like the witness to identify that
4 if he can.

5 THE WITNESS: It is a sales or marketing
6 sheet which shows our various -- or some of our
7 various accessories and includes the Ember Flame
8 Booster.

9 MR. HARRIS: Let me look at it just a minute.

10 I just want to be sure that we get
11 enough to pretty much fulfill the request --

12 MR. MONCO: Okay.

13 MR. HARRIS: -- if you have such things.

14 MR. MONCO: If I may suggest, you may want to
15 inquire of the witness on this document, and he
16 may be able to flush this out for you and explain
17 to you the cost factors.

18 MR. HARRIS: All right. That's good. Well,
19 I certainly will try that.

20 (WHEREUPON, proceedings were had
21 which are designated Confidential -
22 Attorneys' Eyes Only and are bound
23 under separate cover.)

24

**The Appendix Material On
JT-APP 1786 – JT-APP 1795
Has Been Deleted Pursuant To A Protective Order
And Can Be Found In The Confidential Joint Appendix**

1 (WHEREUPON, the following
2 proceedings were had not designated
3 Confidential - Attorneys' Eyes
4 Only:)

5 MR. HARRIS: We had also asked about
6 customers. This came in our -- first of all, in
7 our document request of you some time ago, our
8 Request No. 13, and I believe we repeated that as
9 a request along with the 30(b)(6).

10 MR. MONCO: I think we had an objection to
11 the document request with regard to specific
12 customers, and I will further state an objection.

13 Let's see.

14 MR. HARRIS: You read it and tell me what the
15 objection is.

16 MR. MONCO: Okay. Can I step out and speak
17 with my client for a second, please?

18 MR. HARRIS: Sure.

19 MR. MONCO: Thank you.

20 MR. HARRIS: And you can try to withdraw that
21 thing if you want to. It's a little late.

22 (WHEREUPON, a recess was had.)

23 MR. MONCO: Okay. We can go back on the
24 record.

1 We're going to object to producing any
2 customer lists for the reasons that the parties in
3 this case are direct competitors, and there has
4 really been no need demonstrated for a customer
5 list at this time.

6 This is extremely sensitive information
7 in the mind of our client, and absent some
8 demonstration of a requirement or a need,
9 particularly since whatever recovery here would
10 be obtained, if any, by your client, would exempt
11 any customers out of the case in any event from
12 any further damage claim by your client, at this
13 time we're going to decline to produce any
14 customer list.

15 MR. HARRIS: We may have a little bit of a
16 problem with that because of our view of
17 inducement of infringement and contributory
18 infringement, along with regular infringement.

19 MR. MONCO: I understand your position, but
20 as a practical matter, if there's any recovery had
21 by Golden Blount against the defendant in this
22 case, it would in any event cover any damages that
23 might be recoverable. I mean, you can only get
24 one recovery from -- per infringement, and if

1 you --

2 MR. HARRIS: Well, we don't want anything
3 from the customers. We don't want that. But you
4 know there's a rule that says that you can't have
5 contributory infringement without there being a
6 direct infringement.

7 MR. MONCO: Correct.

8 MR. HARRIS: And we view some of the client
9 list as carrying the log set itself as well as the
10 accessory to -- as well as the EMB.

11 Now, by stipulation or something, I'm
12 sure we can work out a way to avoid --

13 MR. MONCO: I think I see what you --

14 MR. HARRIS: -- fiddling around in that area
15 because we all know that most at least, if not
16 all, of those kits went to someone with a G4 --

17 MR. MONCO: Okay.

18 MR. HARRIS: -- unless they ordered a G5 that
19 already had it. So we know that. And so the --
20 that may not take care of everything I have in the
21 way of a need for knowing something about the
22 customer list, but it will take care of a big part
23 of it.

24 And let me think about our needs too --

1 MR. MONCO: Sure.

2 MR. HARRIS: -- on the other part.

3 Now, I want to point out to you: You
4 have been previously asked for that on a document
5 request.

6 MR. MONCO: I understand.

7 MR. HARRIS: And you said you'd give it to
8 us.

9 MR. MONCO: I understand.

10 MR. HARRIS: And it's clear as it can be.

11 MR. MONCO: I understand.

12 MR. HARRIS: And I -- I don't know. Just
13 because of that is not reason enough to have a
14 multi-thousand dollar fight about the thing.

15 MR. MONCO: I understand. What I would
16 propose is if you could put a proposed stipulation
17 in writing to us, we could consider that and see
18 if we can't alleviate the need for an exchange of
19 actual customers.

20 MR. HARRIS: Okay. That's a possibility.

21 MR. MONCO: But I think there's a way that
22 you can get what you need, which you may very well
23 be entitled to, without getting into the customer
24 list.

1 MR. HARRIS: Well, we do not have a pan, and
2 this does not enable us to take the entire
3 assembly and see on an orientation basis just how
4 we think it works.

5 MR. MONCO: Well, let me just say that --

6 MR. HARRIS: And so I need to --

7 MR. MONCO: -- if you need a physical
8 exhibit --

9 MR. HARRIS: I do.

10 MR. MONCO: -- of the accused product, we
11 would -- we would certainly sell you one, make one
12 available to you for a price. You can just
13 purchase one, and we will go ahead and make
14 arrangements to get that to you.

15 MR. HARRIS: It may be only the pan that we
16 need, because I know that Golden Blount has the
17 tube itself. He has the -- what you consider EMB,
18 and we've been told that the pan is not part of a
19 kit, and I wouldn't argue with that at all.

20 MR. MONCO: Okay.

21 MR. HARRIS: But I have my needs apart from
22 that argument.

23 MR. MONCO: No, I understand.

24 MR. HARRIS: And rather than go out and

1 fiddle around looking at different customers to
2 see what their pans look like and where they put
3 the front part and just how high or low the thing
4 sits, all of those things --

5 MR. MONCO: Sure, sure.

6 MR. HARRIS: Well, I can see you understand
7 my problem and --

8 MR. MONCO: I do, and I think that providing
9 you with a physical exhibit --

10 MR. HARRIS: Good.

11 MR. MONCO: -- of the accused product, if
12 that's what you're looking for, I think that that
13 can be arranged.

14 MR. HARRIS: I would like that.

15 MR. MONCO: I think that could be arranged.

16 MR. HARRIS: Those were the two major things
17 that I would want.

18 MR. MONCO: Okay. And then we can work on --
19 I think I know what you're looking for with a
20 stipulation, and I think with that we can work on
21 it and arrive at an agreeable response to that.

22 MR. HARRIS: As of this moment, I won't agree
23 that we will accept anything like that, but I'll
24 certainly agree with you that we will try --

1 MR. MONCO: Okay.

2 MR. HARRIS: -- and see if we can't get
3 together on it. And I think you already know me
4 well enough to know that I will try.

5 MR. MONCO: And so will we.

6 MR. HARRIS: I believe that too.

7 MR. MONCO: I'm sorry. Go ahead.

8 MR. HARRIS: We're getting close to being
9 through. I had some random thoughts, I believe,
10 I wanted to ask about.

11 BY MR. HARRIS:

12 Q. The letter from Tucker, Exhibit
13 No. 50 -- no, not Exhibit No. 50 -- Bates No. or
14 Document No. 50, I believe it was.

15 MR. MONCO: Is that -- okay. That's
16 Exhibit 7.

17 MR. HARRIS: Yes.

18 BY MR. HARRIS:

19 Q. You said that's the first, I believe,
20 that you knew --

21 A. That is correct.

22 Q. -- about the patent, didn't you?

23 A. Yes.

24 Q. Do you know if anybody else in the

1 company knew about it before that?

2 A. I don't know for certain, but I
3 would -- I believe sincerely that nobody knew
4 about it.

5 Q. Now, you understand that counsel has
6 elected not to claim an opinion relating to
7 infringement or noninfringement in connection with
8 the litigation, to avoid time and the expense, the
9 difficulties and whatever else associated with
10 going into the question of legally what happened,
11 what happened in the law firm, and so on.

12 Do you understand that?

13 A. No.

14 MR. HARRIS: Well, I imagine counsel knew
15 what counsel was doing.

16 MR. MONCO: I think so.

17 MR. HARRIS: And if you want to confer about
18 that, fine, but I wanted you to know about it too.

19 THE WITNESS: Would you repeat what you --

20 MR. HARRIS: So you won't be able at trial --
21 you won't be able at trial to rely on an opinion
22 of counsel to avoid what we call willful
23 infringement.

24 That doesn't mean you would necessarily

1 be a willful infringer just because you didn't
2 have an opinion of counsel, but an opinion of
3 counsel is one of the main ways that people often
4 defend against the notion that they have so-called
5 willfully infringed.

6 Now, pardon the law that I'm talking
7 here, but I think I have a reason to. I want you
8 to -- I want you to understand too. So if you're
9 questioned or some of your people are questioned
10 at trial, that you'll understand that we'll be
11 very much adamant against the notion of anything
12 about an opinion of counsel.

13 MR. MONCO: Why don't we take a -- wait
14 just -- why don't we take a break for a couple
15 minutes?

16 MR. HARRIS: Sure, I understand

17 (WHEREUPON, a recess was had.)

18 BY MR. HARRIS:

19 Q. The documents that have -- you have
20 been shown today and that have been made into
21 exhibits, is it your belief that they are out of
22 the company's files and records?

23 A. From the company?

24 Q. Yes.

1 A. Yes.

2 Q. And that they're authentic documents?

3 A. Absolutely.

4 Q. And that as far as you know and
5 believe, that whatever they purport to say is
6 true, as far as you know?

7 A. Yes, sir.

8 Q. To the extent that any of them are
9 actually records of what's been done, would you
10 agree that they were business records made in the
11 ordinary course of business?

12 A. I'm not sure what you mean by that.

13 Q. I'm not too sure either in this
14 particular set because most of everything we have
15 is not a daily-record-type thing. We've got a
16 number of advertisements and things of that
17 nature.

18 But on the other hand, you have got a
19 document that's been compiled to show sales, and
20 you've got a document compiled like Figure 3.

21 MR. MONCO: I think it's Exhibit 3 you're
22 referring to.

23 BY MR. HARRIS:

24 Q. Exhibit 3, I mean.

1 A. Yes.

2 Q. And then the last one that we have --

3 what is that? Is it Exhibit 10?

4 A. Yes.

5 MR. MONCO: Exhibit 10, right.

6 BY MR. HARRIS:

7 Q. Exhibit 10.

8 You think those two were made in the
9 ordinary course of business and for the business?

10 A. (No audible response.)

11 Q. They're authentic?

12 A. Yes, absolutely.

13 Q. And they were made in the course of
14 business?

15 A. I wish I --

16 MR. MONCO: Well, let me just add --

17 THE WITNESS: What does that mean?

18 MR. MONCO: Are they maintained in the
19 ordinary course of business, or were they created
20 for the purposes of this lawsuit? In other words,
21 were they created in response to requests of
22 opposing party for information?

23 THE WITNESS: This was created

24 (indicating) --

1 MR. MONCO: When you say "this," "this" is
2 Exhibit 3? Exhibit 3.

3 MR. HARRIS: Yes.

4 THE WITNESS: -- because it was requested.

5 BY MR. HARRIS:

6 Q. The one that you don't know what the
7 last column is on it?

8 A. That's correct.

9 Q. I don't -- I didn't request that last
10 column, so I can't --

11 A. I just -- I couldn't -- well,
12 unfortunately --

13 MR. MONCO: I'm not sure, but I believe that
14 Exhibit 3 was created in response to a request
15 from you with regard to sales information, revenue
16 information for the company.

17 BY MR. HARRIS:

18 Q. I'll put it another way, then. Do you
19 adopt those two as being correct subject matter of
20 the company and being authentic and being
21 reliable?

22 The two I'm talking about are 3 --

23 MR. MONCO: Exhibit 3 and Exhibit 10.

24 BY MR. HARRIS:

1 Q. Exhibit 3 and Exhibit 10.

2 A. This is authentic and reliable. This
3 is information provided -- somebody in our company
4 went through and --

5 Q. Okay.

6 A. -- got every -- he may have missed one.

7 Q. Sure, I understand.

8 A. You know, it may not be perfect, but it
9 is --

10 Q. But you adopt it. I just want it to
11 where if we want to use it --

12 A. I guess that's correct.

13 Q. -- if we want to use it as an exhibit,
14 we can. Okay?

15 A. Yes. I mean, it's our best -- the best
16 we could do to do this.

17 Q. Okay. Now, what about -- what about
18 No. 10?

19 A. The only thing I can say is that we
20 spent a lot of money to get this new system in,
21 and I think it's right, but this is reasonably
22 new.

23 Q. And it wasn't put in because of the
24 lawsuit, was it?

1 A. No.

2 Q. It didn't have anything to do with the
3 request we made, did it?

4 A. It did not have anything --

5 Q. It was done in the ordinary course of
6 business, wasn't it?

7 MR. MONCO: Wait, wait, wait, wait. Hold on.

8 What was done? Are you talking about
9 the system, or are you talking about the document?

10 MR. HARRIS: The document.

11 MR. MONCO: Okay.

12 BY THE WITNESS:

13 A. Yes, the document -- this document
14 had -- did not have to do -- we -- in order to run
15 our business per this new system we have, we are
16 developing bills of materials -- bills of material
17 on our products.

18 This is the bill of material on an EMB.
19 This is being done on other things. It was --
20 that was not done -- this specific one was done
21 because you asked for it (indicating).

22 BY MR. HARRIS:

23 Q. Okay.

24 MR. MONCO: Exhibit 10.

1 THE WITNESS: Yes.

2 MR. MONCO: The witness is holding up
3 Exhibit 10.

4 BY MR. HARRIS:

5 Q. But the data bank that you took it
6 from, the data bank was something done in your
7 business generally rather than because of the
8 lawsuit?

9 A. Generally, yes.

10 Q. Okay.

11 A. Yes.

12 Q. And that was something that was done as
13 a part of the business and very recently, was it
14 not?

15 A. Yes.

16 Q. I believe you just said that you just
17 started the system?

18 A. We began the new system on August 1st,
19 and that should have meant that most of these
20 would have been done by August 1st, but you and I
21 both know that that isn't done, and I do not know
22 when this was done. I only know that this was
23 sent to me yesterday (indicating).

24 Q. "This" being --

1 A. This Exhibit --

2 Q. 10?

3 A. -- 10, yes.

4 Q. And let's get down to where we got on
5 the other one. I think that's satisfactory to
6 both of us. That is, you accept that as authentic
7 for purposes of this lawsuit?

8 A. I do.

9 Q. Okay. That satisfies me if it
10 satisfies you.

11 A. Okay.

12 Q. Did I understand you to say that the
13 company started making or maybe it was selling the
14 EMB coincidentally on the day that the patent
15 issued?

16 A. No.

17 Q. What did I understand you to say
18 happened on the day the patent issued?

19 A. We made a sale.

20 Q. Sale of what?

21 A. Of the EMBs on the day that the patent
22 issued.

23 Q. Oh, it was just one of the sales out of
24 the list, then?

1 A. Yes.

2 Q. You had been selling it earlier?

3 A. Yes.

4 Q. Okay. Do you know if your company was
5 aware of Golden Blount's auxiliary burner device
6 at the time that yours was made?

7 A. Aware -- were we aware --

8 Q. Yes.

9 A. -- at the time the EMB --

10 Q. At the time --

11 A. -- was designed?

12 Q. I didn't say designed.

13 A. Oh, I'm sorry.

14 Q. But that would be fine if you want to
15 put it that way. If you can tell me when it was
16 designed --

17 A. Yes. Well, that's -- that's a very --
18 that's a difficult question, and I changed your
19 question because I --

20 Q. I like your question as well as mine.

21 A. Okay. But I really -- I think probably
22 not.

23 Again, your question was: Were we
24 aware that a product -- that Golden Blount had a

1 product --

2 Q. Yes.

3 A. -- before this date?

4 Q. Before what date?

5 A. I'm sorry. Before November 23rd, 1999.

6 Q. What date was that? The date the

7 patent issued?

8 A. Yes.

9 Q. Okay. Thank you.

10 A. Yes. I'm sorry.

11 Q. Yes. That was the question.

12 A. Yes. Yes, we would have been aware.

13 Q. Okay. Do you know when you first

14 became aware?

15 A. First became aware that Golden Blount

16 had a product?

17 Q. Yes.

18 A. I don't know exactly. A year or two.

19 Q. A year or two what?

20 A. A year or two before the date of the

21 patent.

22 Q. Did you sell an EMB before that

23 awareness, the awareness that Golden Blount had

24 the product?

1 A. I would have to check. I --

2 MR. MONCO: If I may suggest a
3 question, maybe the question simply might be:
4 When did you first begin to sell the EMB product?

5 MR. HARRIS: I've already asked that once,
6 and he said he doesn't know. I'll try. Maybe he
7 does know. Maybe I didn't ask it.

8 THE WITNESS: I think I might be able to find
9 out for you.

10 It was before this day. I don't think
11 it was -- I don't know exactly, but, you know, I
12 know it wasn't many years before this date that we
13 started to sell that specific product.

14 BY MR. HARRIS:

15 Q. And "this date" being the November date
16 you're talking about?

17 A. Yes.

18 Q. I haven't been asking you about that
19 date.

20 A. I'm sorry.

21 Q. You know, I've been asking you about
22 when you became aware that he sold a product,
23 okay, namely an auxiliary product --

24 A. Right.

1 Q. -- auxiliary burner product.

2 A. Okay. And I can't tell you when
3 exactly we became aware.

4 Q. And you can't tell me when you designed
5 the product?

6 A. Not that specific product. I can tell
7 you absolutely that we were in the lab with
8 various products for years before that that were
9 similar.

10 Q. That's not what I asked you, sir.

11 A. That's what I answered you, sir.

12 Q. You haven't been evasive today with me.

13 A. Well, I don't know how to -- I don't
14 believe I'm trying to be evasive.

15 Q. Well, let me try again.

16 MR. MONCO: Okay. Wait. Let's pose a
17 question and --

18 BY THE WITNESS:

19 A. Okay. You can try again.

20 MR. MONCO: Let's pose a question, and then
21 we'll ask the witness to answer.

22 MR. HARRIS: Okay. Do you want me to try
23 again?

24 MR. MONCO: Yes, let's try again.

1 BY MR. HARRIS:

2 Q. When was the product designed? That's
3 the EMB, not any other product or earlier product.
4 When was the EMB designed?

5 A. I suspect it was designed within a few
6 years, two or three years prior to November 23rd,
7 1999.

8 Q. What do you have in the way of any
9 proof of the date of the design?

10 A. I don't know. I'd have to take a look
11 and see.

12 Q. Do you have any documents that would
13 show that?

14 A. We may. I don't know. I really don't
15 know.

16 Q. I don't think I'm intruding on you
17 because one of these things you were to be
18 questioned about was the history of Robert H.
19 Peterson's development of the Ember Flame Booster.
20 And that's what we're talking about.

21 A. Yes. I thought I gave a written answer
22 to that. I guess I didn't.

23 MR. MONCO: I don't know. Were there
24 responses to interrogatories that described the

1 history of this? I don't recall right now.

2 If he has that -- if you have an
3 interrogatory that we responded to that traces the
4 history of the EMB, it might make this a lot
5 easier.

6 MR. HARRIS: Why didn't you check that out
7 when you looked at this list, if you were going to
8 take that position? Come on.

9 THE WITNESS: Well, I thought I did.

10 MR. HARRIS: Well, I've got the
11 interrogatories. You told me a minute ago about
12 one of my interrogatories -- no. It was a
13 document request, saying one thing, and it said
14 what I thought it did.

15 And I'm not sure about these
16 interrogatories, but I'll look at them if you want
17 me to. I have a right to ask the question anyway
18 even if it were answered in an interrogatory.

19 MR. MONCO: I understand that. I'm not
20 telling you that you don't. I'm not objecting to
21 the question. I'm just saying that it might speed
22 things up if the witness could take a look at a
23 written response.

24 MR. HARRIS: Well, he can have the

1 interrogatories, if I can find them.

2 (WHEREUPON, there was a short
3 interruption.)

4 MR. HARRIS: Interrogatory No. 2 in a rather
5 lengthy fashion --

6 MR. MONCO: Correct.

7 MR. HARRIS: -- chronicles some development
8 and winds up with 1997 as a date that it was put
9 in the catalog after having been given -- after
10 something similar having been given to some
11 customers by request. That's what I digest out of
12 it. It starts off with Adam and Eve.

13 THE WITNESS: Right.

14 MR. MONCO: Well, it starts off with the
15 development of the design of the product.

16 MR. HARRIS: Okay.

17 THE WITNESS: Yes.

18 MR. HARRIS: Yes. That's where that
19 starts --

20 MR. MONCO: I don't think we're talking about
21 the light bulb here either, so --

22 MR. HARRIS: Okay.

23 BY THE WITNESS:

24 A. I was asked --

1 MR. MONCO: There's not a question pending
2 now.

3 BY MR. HARRIS:

4 Q. The same question.

5 MR. MONCO: Okay.

6 BY MR. HARRIS:

7 Q. The same question.

8 MR. MONCO: When did we -- the question
9 being: When did we begin development of the EMB?

10 BY MR. HARRIS:

11 Q. When was it developed, was the
12 question. I'm not trying to find out about all
13 the efforts over the years that made little steps
14 forward and so on. I want to know when it was
15 developed.

16 MR. MONCO: Well, I'm going to object to that
17 characterization. The development may have been
18 ongoing, and indeed was ongoing, as reflected in
19 the Answer to Interrogatory No. 2.

20 BY THE WITNESS:

21 A. It looks like it was developed in the
22 mid '90s.

23 BY MR. HARRIS:

24 Q. Can you relate that development to when

1 the company first became aware that Golden Blount
2 had an auxiliary burner product?

3 A. No. I don't -- I can't.

4 Q. You just plain don't know; is that it?

5 MR. MONCO: Wait. Can I have the question
6 read back, please, for my sake?

7 (WHEREUPON, the record was read by
8 the reporter as requested.)

9 BY THE WITNESS:

10 A. That's it.

11 BY MR. HARRIS:

12 Q. That's it. Okay. I'll accept that.

13 If you don't know, you don't know.

14 A. I'm searching my memory.

15 Q. Is there anyone in the company that
16 would be likely to know?

17 A. Of the specifics of this product,
18 that's the question?

19 Q. No. Would just be able to answer the
20 question that you couldn't answer just now.

21 A. Which had to do with the --

22 Q. Whether the company or he knew that
23 Golden Blount had an auxiliary burner product that
24 he had on the market.

1 A. Before we developed --

2 Q. I didn't say before you developed it.

3 Knew when.

4 A. Oh, knew when?

5 Q. When -- when the company knew.

6 A. Very specifically I don't know, but I

7 could again find out. My expectation is that,

8 again, we knew about a similar point in time.

9 I don't -- I just don't know when we --

10 Q. I was asking about him, not you now.

11 You're back to you.

12 A. Yes. Okay.

13 Q. And you're speaking for the company;

14 it's true. But the company doesn't seem to know

15 as speaking from you, and I can understand that.

16 A. I would have to check to see if -- do I

17 write the question?

18 Q. When you boil the two or three

19 questions down, it is: Did the company know of

20 Golden Blount's product --

21 A. Okay.

22 Q. -- at the time that it made its product

23 a catalog item in 1997?

24 A. "Did the company know of Golden

1 Blount's" --

2 Q. I made a specific question like that.

3 A. -- "product," the --

4 MR. HARRIS: Do you want to read it back?

5 (WHEREUPON, the record was read by

6 the reporter as requested.)

7 BY THE WITNESS:

8 A. "At the time that it made its product a

9 catalog item in 1997."

10 MR. MONCO: Would you like a specific answer

11 if we can locate that information for you?

12 MR. HARRIS: If I could.

13 MR. MONCO: Okay.

14 MR. HARRIS: And if I could have a

15 specific -- well, that would be good. If I could

16 know what the date really was, that would even be

17 better.

18 MR. MONCO: Okay.

19 THE WITNESS: The date --

20 MR. HARRIS: That is the date that the

21 company knew.

22 MR. MONCO: The date that Peterson Company

23 first learned of Golden Blount's --

24 MR. HARRIS: That's right; his, quote, "EFB."

1 And I put that in quote.

2 THE WITNESS: Just having --

3 MR. MONCO: Okay. Then we'll make inquiry
4 for that.

5 MR. HARRIS: What?

6 MR. MONCO: We'll make an inquiry for that.

7 THE WITNESS: That's a very specific
8 question.

9 MR. MONCO: Right.

10 THE WITNESS: Did the company know of Golden
11 Blount's product at the time that it made its
12 product, its EMB product, a catalog item in 1997?

13 MR. HARRIS: Yes.

14 THE WITNESS: That's your question.

15 MR. HARRIS: Yes. And I rely on the fact
16 that it says "became a catalog item" --

17 MR. MONCO: Correct.

18 MR. HARRIS: -- "in 1997."

19 MR. MONCO: Okay.

20 MR. HARRIS: So that part -- that part has
21 been answered.

22 THE WITNESS: I think -- well, we'll get an
23 answer.

24 MR. MONCO: We'll inquire. Okay.

1 MR. HARRIS: I don't know how long you want
2 to wait, but --

3 MR. MONCO: He should be home right now. Let
4 me just make a phone call.

5 (WHEREUPON, a recess was had.)

6 MR. MONCO: I guess this is the final matter
7 that we're going to talk about on this.

8 Do you have any further questions of
9 the witness?

10 MR. HARRIS: I don't know. It looks like I'm
11 going to miss my plane, so --

12 THE WITNESS: Is he going to miss his plane?

13 MR. MONCO: I don't know.

14 MR. HARRIS: It's an 8:30 plane. That's not
15 going too good.

16 MR. MONCO: Traffic is moving. You're
17 moving. You should be able to make that in 45
18 minutes. It's not that bad to get out there. All
19 right.

20 MR. HARRIS: Maybe we ought to handle this
21 just by writing or something.

22 MR. MONCO: Well, here, let me just -- I
23 don't want you to miss your plane, but I'll put
24 this on the record: That Robert Peterson Company

1 will be relying on opinion of counsel, and it was
2 a miscommunication on our part, and we will have
3 and make Mr. McLaughlin available for deposition,
4 and that --

5 MR. HARRIS: I will be asking for the
6 deposition, and I may in this instance be asking
7 for more deposition from the company because
8 there's two sides to looking into opinion of
9 counsel: There's what the client heard, saw, and
10 received, and then there's what counsel heard,
11 saw, and received.

12 MR. MONCO: Understood.

13 MR. HARRIS: And so what I will do is to move
14 the Court to have you guys come to Dallas. That
15 is what I will do.

16 MR. MONCO: When you say "you guys," who do
17 you mean?

18 MR. HARRIS: Well, not you, unless you want
19 to. They would probably need you. But Bill and
20 whoever would speak for the company in the matter.

21 MR. MONCO: Well, I believe --

22 MR. HARRIS: I didn't know I was going to
23 have this to deal with.

24 MR. MONCO: Yes.

1 MR. HARRIS: You know that you've written a
2 letter where you have theoretically waived this.

3 MR. MONCO: I understand.

4 MR. HARRIS: Then I have withdrawn a notice.

5 MR. MONCO: I understand.

6 MR. HARRIS: And the judge is going to know
7 about all this.

8 MR. MONCO: I understand.

9 MR. HARRIS: I'm going to tell him about it.

10 MR. MONCO: I understand.

11 Let me just say this: That the
12 opinion, I believe, was tendered to Leslie, and
13 Leslie will be here to answer the questions for --
14 that you want to pose to the company, and he's
15 here now to answer the questions that you want to
16 pose to the company.

17 As for Bill McLaughlin, we will make
18 Bill McLaughlin available for deposition.

19 MR. HARRIS: In Dallas.

20 MR. MONCO: Now, my understanding is that you
21 had spoken with him about taking the deposition by
22 telephone.

23 MR. HARRIS: I did, but that was when we
24 thought he didn't have anything to testify to. He

1 said he was going to take the privilege, and so I
2 was going to get it over with real easy. And then
3 we talked about, "Well, gosh, the easy way to do
4 this then is just I'll withdraw the notice. You
5 know, you, if you want to, will indicate that
6 you're not going to rely on opinion of counsel."

7 And I believe you're the one that wrote
8 the letter.

9 MR. MONCO: Correct. My understanding was
10 that --

11 MR. HARRIS: You're the very man who wrote
12 the letter.

13 MR. MONCO: Correct.

14 MR. HARRIS: So, you know, I don't much want
15 to stay in Chicago over the weekend, and I don't
16 know how I'll get back otherwise if I don't catch
17 that 8:30 plane.

18 MR. MONCO: Well, I believe there are
19 probably planes. I mean, you have --

20 MR. HARRIS: You're going to find out
21 different. There are not any later ones.

22 MR. MONCO: I don't know if there is anything
23 later. But I mean, is there a plane tomorrow
24 morning that you can take?

1 MR. HARRIS: Well, probably. I don't really
2 know. I don't really know.

3 MR. MONCO: Well, I'd be happy to check with
4 regard -- why don't we just go off the record for
5 a second?

6 (WHEREUPON, discussion was had
7 off the record.)

8 MR. MONCO: If we may, why don't we go on the
9 record and just simply say that the deposition is
10 adjourned pending further communication on the
11 subject.

12 MR. HARRIS: Yes, and it may -- as I said,
13 maybe with this witness, who has been very open in
14 all ways and been the one who is irritated to find
15 out what's happened, I really might be able -- I
16 have a rapport of sorts with him now, and I might
17 be able to handle him satisfactorily over the
18 telephone.

19 MR. MONCO: Okay.

20 MR. HARRIS: And I'm not mad at Bill about
21 anything, but I'm still going to try to get him to
22 come to Dallas. I think we ought to do it. I
23 think I ought to have an opportunity to look him
24 right in the eyeballs and go over the thing.

1 MR. MONCO: That would be no problem. And as
2 I said, if you wanted to stay, Mr. McLaughlin
3 would be available for deposition tomorrow morning
4 if you wanted to have him at that time.

5 MR. HARRIS: Well, that's awful fine, but I
6 really can't --

7 MR. MONCO: All right.

8 MR. HARRIS: -- because of my schedule.

9 MR. MONCO: I understand. I appreciate that..
10 I appreciate that.

11 THE WITNESS: Can I get my briefcase? I just
12 want to get a card.

13 MR. MONCO: Sure.

14 MR. HARRIS: I'm glad he would be available,
15 but neither one of us thought we were going to
16 come to this, did we?

17 MR. MONCO: We'll adjourn this deposition at
18 this time subject to further examination on the
19 issue of attorney-client -- I'm sorry -- of
20 opinion of counsel regarding the patent in suit.

21 MR. HARRIS: And at this time, we'll
22 reinstate the notice for the deposition of
23 Mr. McLaughlin, and I notice that deposition for
24 Dallas at our offices or any place you like at the

1 earliest possible time.

2 (WHEREUPON, the deposition was
3 adjourned sine die.)

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1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4 I, BERNICE E. RADAVIDICH, a Notary Public
5 within and for the County of Cook, State of
6 Illinois, and a Certified Shorthand Reporter,
7 C.S.R. No. 84-1461, of said state, do hereby
8 certify:

9 That previous to the commencement of
10 the examination of the witness, the witness was
11 duly sworn to testify the whole truth concerning
12 the matters herein;

13 That the foregoing deposition
14 transcript was reported stenographically by me,
15 was thereafter reduced to typewriting under my
16 personal direction and constitutes a true record
17 of the testimony given and the proceedings had;

18 That the said deposition was taken
19 before me at the time and place specified;

20 That the said deposition was adjourned
21 as stated herein;

22 That I am not a relative or employee or
23 attorney or counsel, nor a relative or employee of
24 such attorney or counsel for any of the parties

1 hereto, nor interested directly or indirectly in
2 the outcome of this action.

3 IN WITNESS WHEREOF, I do hereunto set
4 my hand and affix my seal of office at Chicago,
5 Illinois, this 12th day of October, 2001.

6

7

8 Notary Public, Cook County, Illinois.

9 My commission expires June 13, 2003.

10

11

12 C.S.R. Certificate No. 84-1461.

13

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1 I N D E X

2 WITNESS EXAMINATION

3 LESLIE BORTZ

4 By Mr. Harris (a.m. session) 3

5 By Mr. Harris (p.m. session) 90

6 E X H I B I T S

7 NUMBER MARKED FOR ID

8 Bortz Deposition Exhibit

9 No. 1 12

10 No. 2 21

11 No. 3 (Withdrawn) 29

12 No. 3 (Re-marked) 157

13 No. 4 56

14 No. 5 76

15 No. 6 90

16 No. 7 140

17 No. 8 141

18 No. 9 150

19 No. 10 159

20

21 DESIGNATED CONFIDENTIAL - ATTORNEYS' EYES ONLY

22 Pages 17 to 20

23 Pages 28 to 37

24 Pages 153 to 162

**The Appendix Material On
JT-APP 1834 – JT-APP 1903
Has Been Deleted Pursuant To A Protective Order
And Can Be Found In The Confidential Joint Appendix**

**The Appendix Material On
JT-APP 1904 – JT-APP 1985
Has Been Deleted Pursuant To A Protective Order
And Can Be Found In The Confidential Joint Appendix**

US005988159A

United States Patent [19]

Blount

(11) Patent Number: 5,988,159

[45] Date of Patent: Nov. 23, 1999

[54] GAS-FIRED ARTIFICIAL LOGS AND COALS-BURNER ASSEMBLY

5.033.455	7/1991	Eklor et al	126/512
5.052.370	10/1991	Karabin	126/512
5.081.981	1/1992	Beal	126/92 R
5.263.852	11/1993	Beck	431/125

[76] Inventor **Golden Blount**, 5310 Harbor Town,
Dallas, Tex. 75287

[21] Appl. No.: 08/626,498

{22} Filed. Apr. 2, 1996

Related U.S. Application Data

[63] Continuation-in-part of application No 08/276,894, Jul 19, 1994, abandoned, which is a continuation-in-part of application No 08/061,727, May 17, 1993, abandoned.

(51) Int. Cl.^o F23C 1/18
(52) U.S. Cl. 126/512; 126/500; 126/540;
431/125

{58} Field of Search 431/125; 126/512.
126/500, 524, 540, 503

[56] References Cited

U.S. PATENT DOCUMENTS

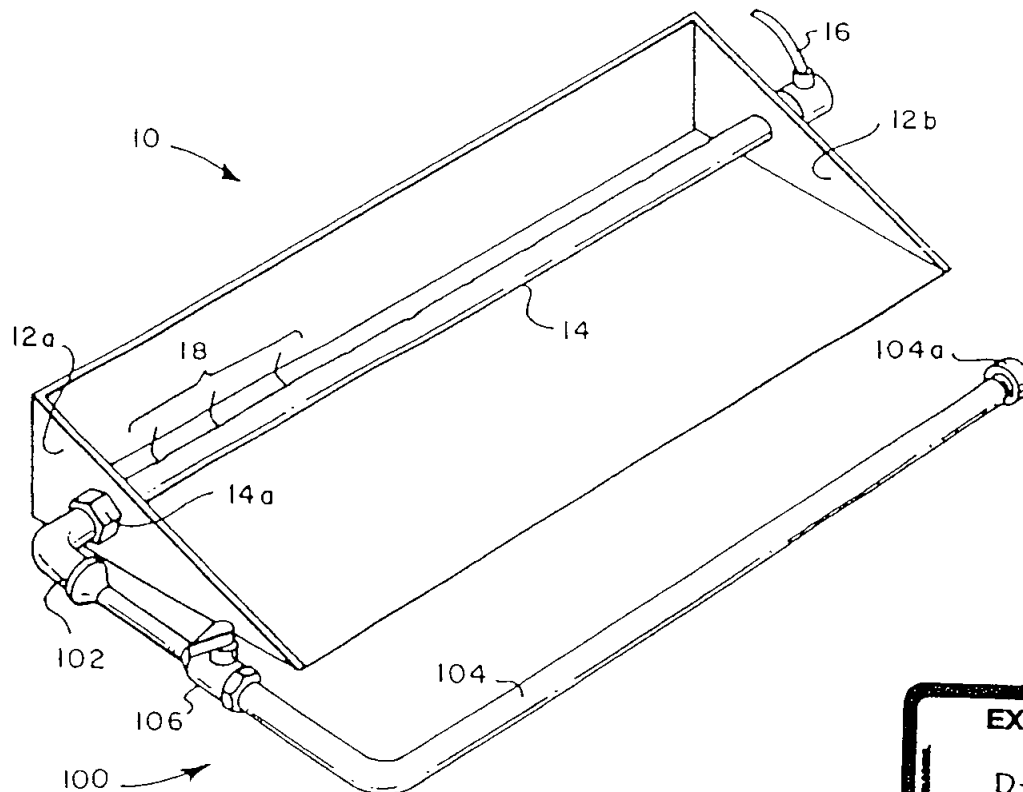
3.042.109	7/1962	Peterson	126/512
3.871.355	3/1975	Henry	431/125 X
5.000.162	3/1991	Sturmeck et al.	126/512

Primary Examiner—Larry Jones
Attorney, Agent, or Firm—L. Dan Tucker

(57) ABSTRACT

A gas-fired artificial logs and coals-burner assembly is provided for fireplace use in cooperation with decorative gas logs, and artificial coals and embers decorative items by placement forward of the gas logs in the fireplace arrangement, a secondary elongated coals- and embers-burner tube apparatus. The assembly provides gas-fired artificial logs, coals- and embers-burner apparatus for fireplaces wherein gas flow through primary burner tube is the source of gas flow to a secondary coals- and embers-burner tube positioned forward and below the primary burner tube with multiple discharge ports in the secondary tube directed away from the front of the fireplace, thus enhancing the natural burn in cooperation of the fireplace draft as well as the aesthetic beauty of the imitation burning logs, coals and embers.

19 Claims, 3 Drawing Sheets

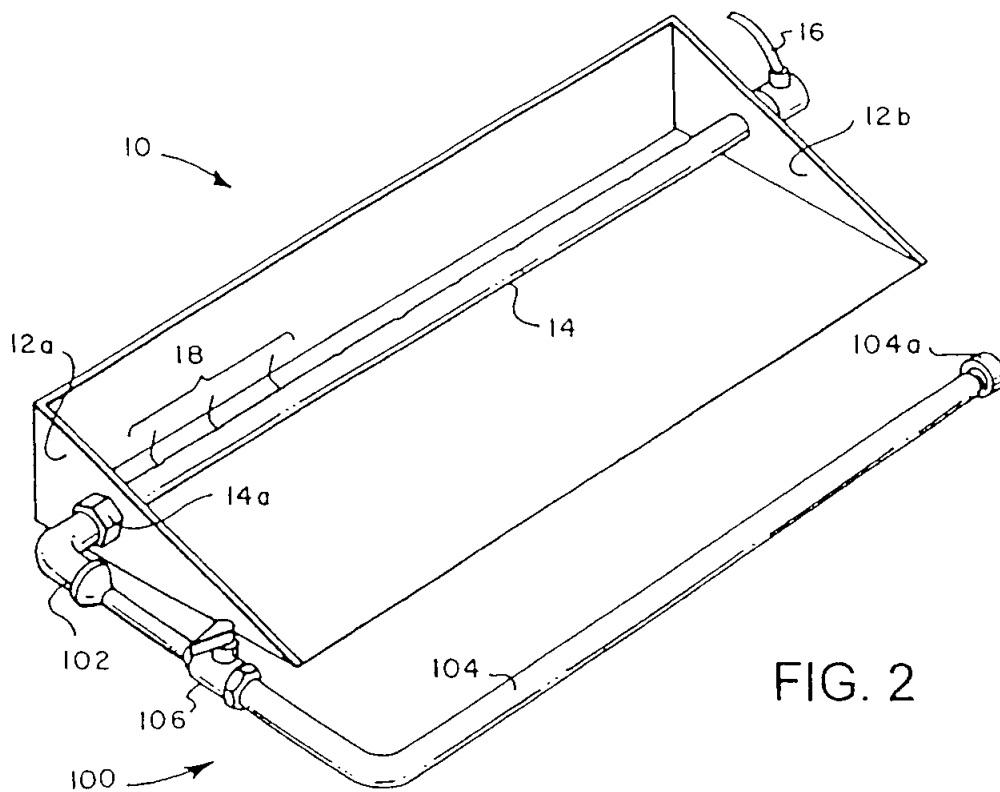
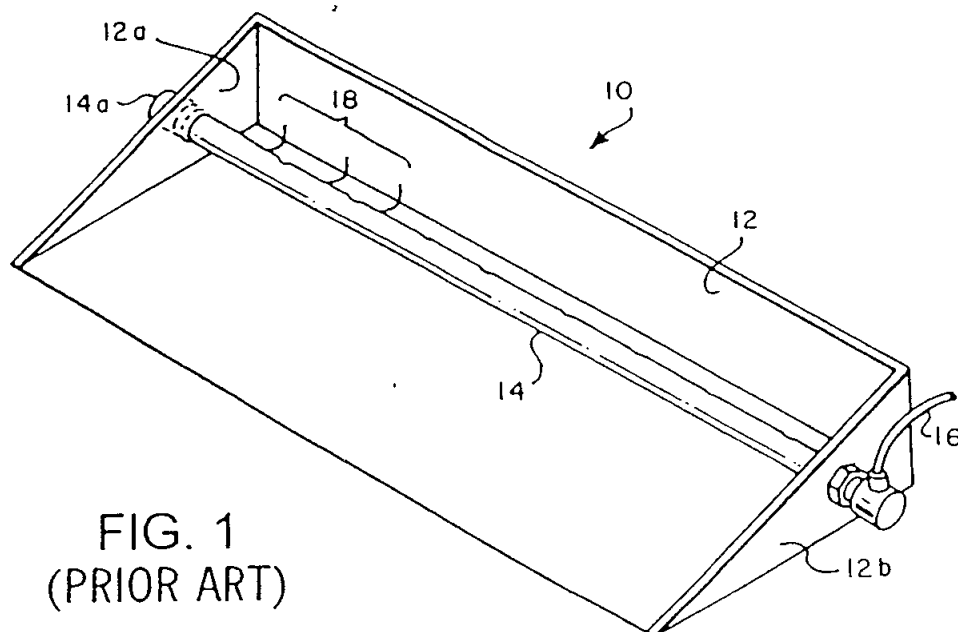


EXHIBIT

D-1

B1219

JT-APP 1986



B1221

JT-APP 1987

FIG. 3

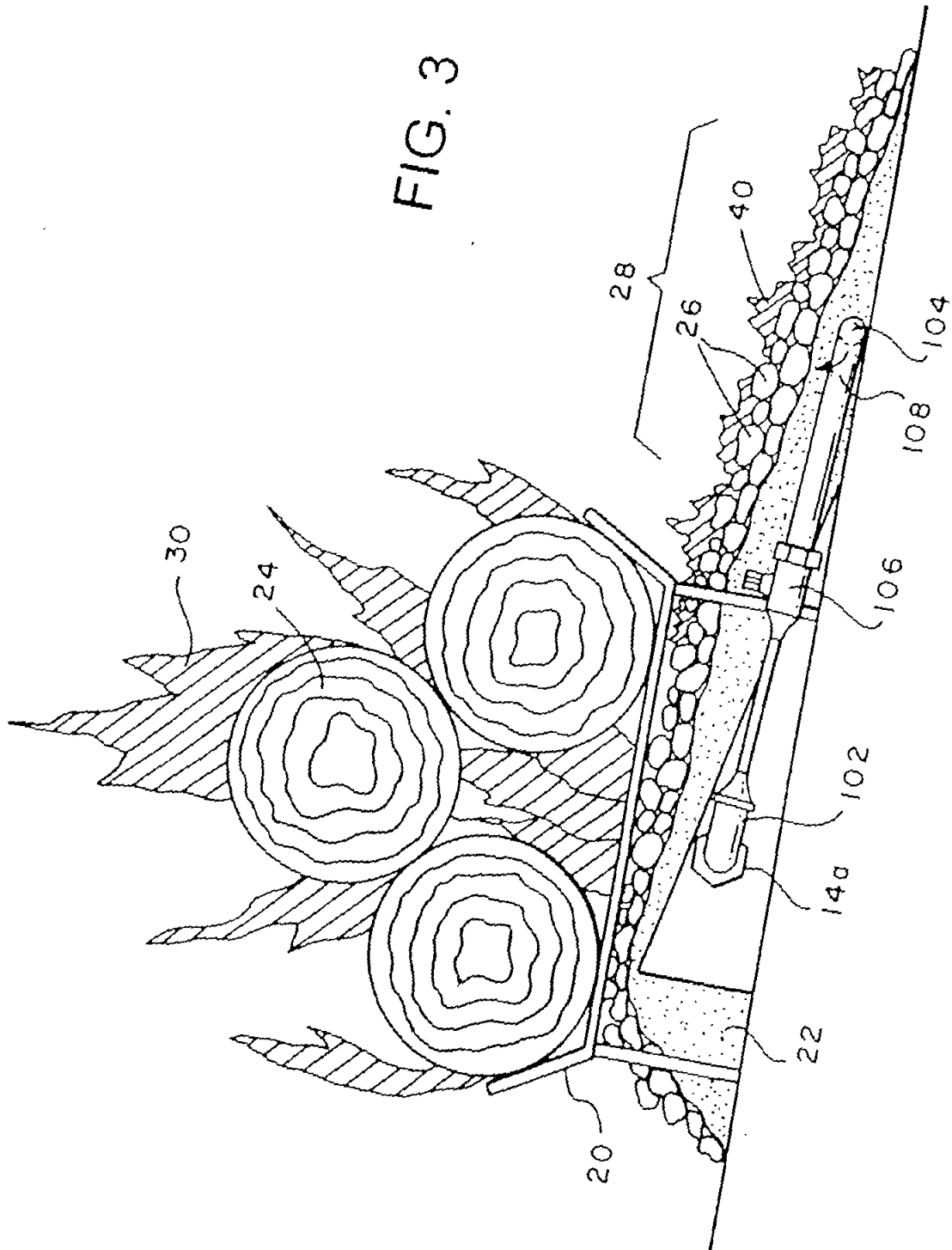
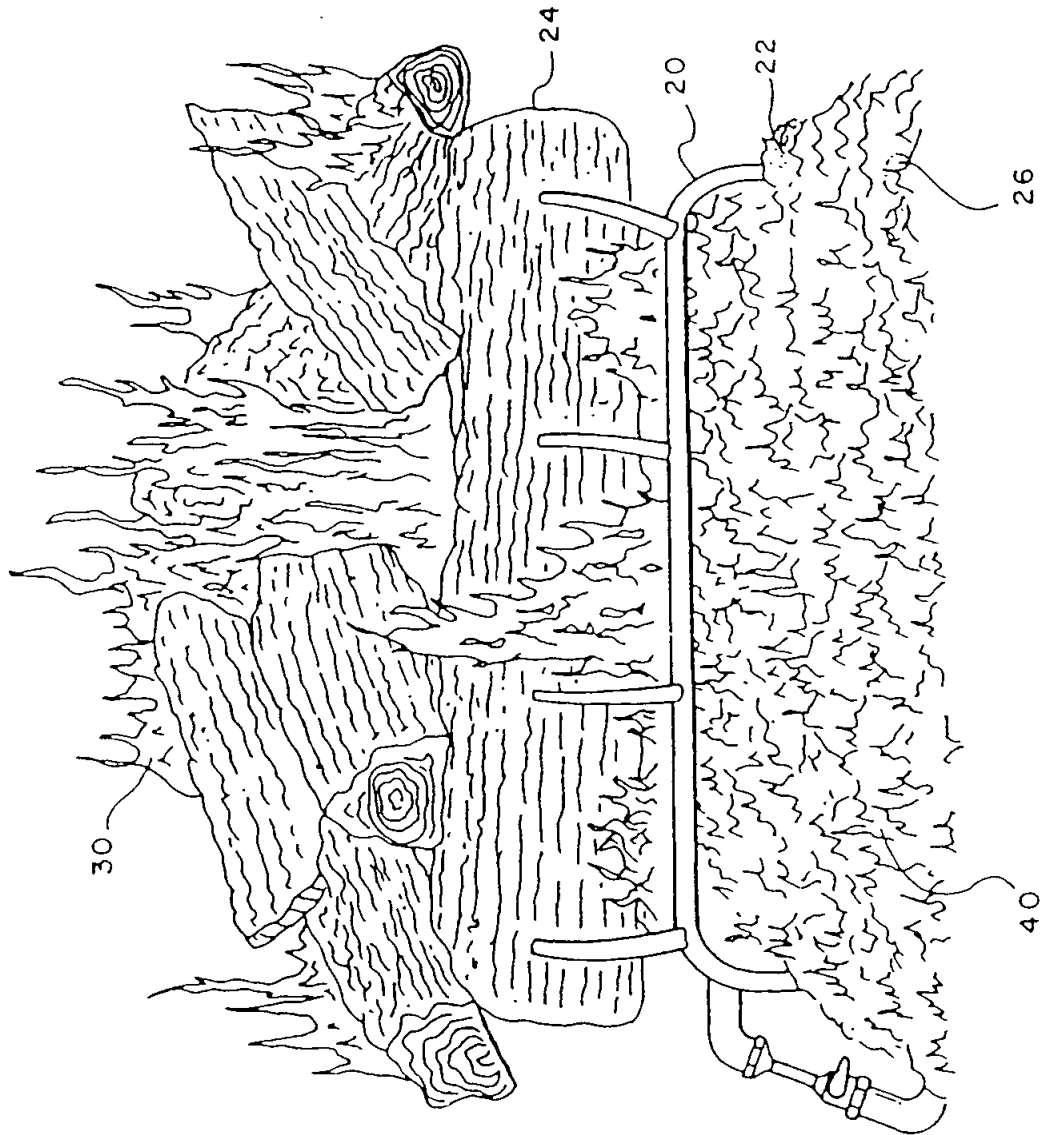


FIG. 4



B1220

JT-APP 1989

GAS-FIRED ARTIFICIAL LOGS AND COALS-BURNER ASSEMBLY

The present application is a continuation-in-part application of U.S. patent application Ser. No. 08/276,894, filed Jul. 19, 1994, now abandoned, entitled "A Supplemental Burner for Retrofitting to an Existing Gas Log Burner Assembly" which is a continuation-in-part application of U.S. patent application Ser. No. 08/061,727, filed May 17, 1993, entitled "Controlled Ember Bed Burner" which is now abandoned.

TECHNICAL FIELD OF THE INVENTION

The present invention relates to a gas-fired artificial logs and coals-burner assembly for a fireplace to be used with decorative gas logs and coals or embers decorative items placed forward of the gas logs in the fireplace arrangement. In another aspect, the invention relates to coals- and embers-burner apparatus suitable for attaching to a terminal end of a gas-fired primary artificial burner, the coals- and embers-burner assembly utilizing a valve between the primary artificial logs burner and the coals- and embers-burner.

In yet another aspect, the invention relates to a gas-fired artificial logs, coals- and embers-burner assembly for fireplace wherein gas flow through a primary burner tube is the source for gas flow to a secondary coals burner tube positioned forward and below the primary burner tube with the multiple discharge ports in the secondary tube directed away from the front of the fireplace.

The present further relates to efficient gas burners for burning natural gas, manufactured gas and propane gaseous fuels within a fireplace environment. In addition, the invention provides an efficient burner system for burning gaseous fuels in a manner which provides decorative flames and decorative coals and embers which simulate wood burning.

Gas logs are usually made of a fire resistant ceramic material; however, when gas flames are directed against such ceramic materials, the gas flame is cooled by the artificial logs and many times produces a highly inefficient and dirty yellow flame. Such a flame further indicates incomplete burn of the gaseous materials due to a lack of sufficient burn temperature and oxygen supply thus creating excessive soot and carbon monoxide. Various attempts have been made in correcting these decorative fireplace gas log deficiencies.

Further it is known that gas burners or gas nozzles can be buried below a level of sand and vermiculite. These burner systems are referred to as sand pan burners which disburse the gasses through the fireproof material and permit the gas permeating through the porous material to ignite upon entering the atmosphere. Such systems allow disbursement of the flames over a large area or bed of material. Such disbursement of flames creates a more efficient burn which further simulates the action of burning wood, ashes and embers in a fireplace.

Prior art burner systems for artificial decorative logs and sand pan type burners are incorporated in various prefabricated fireplaces or existing masonry fireplaces; however, such systems are required to meet the ANSI emission standards which have been adapted by the American Gas Institute. Accordingly, it is very desirable to provide a clean burning gas-fired artificial logs and coals-burner assembly which meet the present ANSI emission standards.

Gas logs are increasingly popular in homes. Decorative artificial logs are placed on a grate which is located over a gas burner. The burner is typically a tube with spaced

apertures. Sand is poured over the gas burner to hide it from sight. Artificial embers are then spread across the sand. In use, gas flows through the burner and escapes through the spaced apertures. The gas filters up through the sand underneath the artificial logs. The gas is ignited and creates flames between the logs. The height of the flame is controlled by a primary valve which can be manipulated by the user.

Gas logs can, under these conditions, provide a great deal of heat to a room. Also, gas logs require virtually no effort to light. Natural logs, on the other hand, must be properly cured before burning. Even then, kindling is usually needed. And once lit, it is difficult to control the rate of burning. Beyond convenience, gas logs are also aesthetically pleasing. However, the standard gas logs burner only creates flames around the artificial logs. Natural logs, when burned will break apart to produce beautiful burning embers in front of the main log stack. A need exists to produce a more realistic aesthetic burn with gas logs.

Due to the popularity of gas logs, a number of advances have been patented. For example, U.S. Pat. No. 5,000,162 to Shimek et al. discloses a "Clean Burning, Glowing Ember and Gas Log Burner System." This unit is marketed under the trademark Heat-N-Glow as the Model 5000GDVMH as a self-contained fireplace and wall heater for mobile homes. The system is a low-BTU system whose main objective is to minimize carbon monoxide creation and soot deposit on the logs. A burner system is provided with a first branch and a second branch. The first branch is supported on a prefabricated grate between a first and second decorative log. The second branch is forward of the logs and is protected under a metal mesh. A very light layer of special ember material is spread on top of the mesh. Shimek et al. '162 is only sold as a complete system of logs, burner and special ember material. It cannot be fitted to existing pan burners which are by far the most common burner in use, the combination resulting in the assembly of the invention. Thus, the Shimek burner system is an expensive option.

The Shimek burner system provides a metal trim piece or refractory material in front of the second burner pipe branch so that it is not easily viewed by a person standing in front of the fireplace. The second branch only illuminates a thin line of ember material. Neither the first or second branch can be covered by sand as is common in other units. The gas apertures in the branches are located on the upper surface of both branches. Thus, sand could easily clog the apertures. Moreover, the flow of gas into the second branch cannot be regulated.

U.S. Pat. No. 5,052,370 to Karabin discloses a "Gas Burner Assembly Including Emberizing Material." The gas burner comprises a first and second gas-burner assembly. The first gas-burner assembly is formed by a pair of parallel burner tubes connected by a third burner tube. The second gas-burner assembly is located forward of the first assembly and is generally T-shaped. The second burner only illuminates a thin line of ember material. A single gas source supplies both burner assemblies. An igniter is provided to ignite the gas from the main burner assembly. The flame from that burning gas ignites the gas from the second burner assembly. As with the Shimek et al. burner assembly, the flow of gas to the second burner assembly cannot be controlled.

Finally, U.S. Pat. No. 5,081,981 to Beal discloses yet another burner and is entitled "Yellow Flame Gas Fireplace Burner Assembly." The Beal reference is primarily concerned with producing a clean yellow flame. The burner assembly includes a U-shaped burner tube. The front portion

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of the burner tube is forward of the artificial logs and provides flame for ember material. However, as with the Shimek reference above, the forward portion of the burner tube is hidden from view by a portion of the grate. The Beal system does not contemplate the present assembly. Furthermore, as with both the Shimek and Karabin references, there is no means provided to control separately the flow of gas into the front burner tube.

A need exists for an inexpensive assembly for improving the performance and aesthetic appeal of pan-type gas burners. The assembly should distribute gas under artificial coals or embers in front of the gas-fired logs. The assembly should also provide a method of controlling the flow of gas to a secondary burner, thus controlling the height of the coals and embers bed flames and the amount of heat radiated into a room. A need further exists for an assembly which can safely operate even if completely covered by sand and enhances gas burn of both primary log burner and secondary coals and embers burner by gas flow control and burn direction.

These present and long-felt needs for gas logs and glowing coals- and embers-burner systems will burn clean and closely simulate the natural flames produced by burning wood logs have not yet been met by the art. Therefore, it is desirable to produce a reliable and efficient gas logs and glowing coals- and embers-burner assembly which produces the desired efficiency of burn while providing decorative flames that closely simulate burning wood logs while at the same time providing useable heat and still meet EPA regulations and the ANSI emissions and safety standards.

SUMMARY OF THE INVENTION

It is a primary object of the present invention to provide a highly efficient gas-burner assembly for use with artificial, decorative logs and glowing coals and embers wherein the assembly provides control for the glowing coals and embers independently of the gas logs burn.

It is another primary object of the present invention to provide a novel burner assembly which closely simulates the flames, embers and coals of natural wood logs burn.

It is another principle object of the present invention to provide a novel burner assembly which has low carbon monoxide emission characteristics.

It is yet another object of the present invention to provide an efficient low carbon monoxide emission burner assembly that combines long decorative gas flames with short or low smoldering glowing embers and coals in the same assembly.

It is another object of the present invention to provide a gas flow communicating primary and secondary burner tubes with the gas distribution ports of the secondary burner tube directed away from the opening of the fireplace and utilizing the natural draft of the fireplace to enhance the overall efficiency of the burn of the two burners.

The present burner assembly is the combination of an inexpensive primary gas logs burner assembly in gas flow communication with a secondary coals- and embers-burner tube positioned forward and below the primary burner which operates to enhance the natural draft of the fireplace to improve efficiency of burn and aesthetic appeal of the gas-fired artificial logs, coals- and embers-burner assembly. The secondary burner can distribute gas under artificial coals and embers in front of the gas logs with control of the gas flow to the secondary burner being readily adjustable by a valve in the connection means between the primary and secondary burners. The secondary burner receives gas through the primary burner, the connection means, and the gas flow is regulated selectively by the valve which is

interposed between the primary and secondary burners in the connection means. The control of gas flow thus controls the height of the coals and embers bed flames and the amount of radiant heat which is produced in the front of the fireplace and is distributed into the room. The amount of radiant heat can be enhanced by utilizing the control valve for increasing the amount of gas being burned in the secondary burner or the utilization of even a tertiary burner along with the secondary burner which are provided forward of the gas logs arrangement in the fireplace. The secondary burner can operate efficiently when completely covered with sand and artificial coals and embers materials, there being no need for a new grate to hide the secondary burner.

The ability to regulate the flow of gas to the secondary burner is an especially important feature. In addition, the gas flow from the secondary burner away from the opening of the fireplace and, in effect, toward the primary burner is also of special importance because of the utilization of the fireplace natural draft and direction of flames to more completely burn the gas, avoid any pockets of gas in front of the gas logs. The direction of the gas dispersion from the secondary burner ensures that through the action of the natural draft of the fireplace and the burning logs from the primary burner that complete and total combustion in an efficient manner will be achieved of the gas flowing from the secondary burner which is positioned somewhat forward of the primary burner.

People buy gas logs primarily for convenience, but this does not mean that they want to give up on the beauty of burning real logs. Standard pan burners only provide part of that beauty. Having roaring flames throughout the logs is greatly complemented by lower flames in front of the gas logs throughout a coals and embers bed. None of the prior art references above feature or even suggest a variable control means for accomplishing lower flames in the coals and embers bed. Moreover, every fireplace drafts differently. Such differences in fireplace construction and drafting, i.e., fireplace draft, as well as sizing and manufacture of present artificial fireplace burner apparatus dictates that variable control of the secondary burner, the coals and embers burner which operates independently of the primary logs burner is necessary. Volume and velocity of air entering the firebox varies according to the size of the room, height of the ceilings, and size of the firebox. None of the prior art references compensate for the varying drafts of fireplaces and therefore fail to accommodate all fireplaces while attempting to provide the maximum aesthetic beauty desired and efficiency of burn.

Most importantly, the gas-fired artificial logs, coals- and embers-burner assembly through the secondary burner control afforded by the valve, allows the user to selectively increase the amount of gas being burned forward of the artificial logs. This control also affords a greater introduction of radiant heat to the room as desired on colder days. As previously discussed, artificial gas logs can act as a heat sink and absorb heat produced by the flames. The heat generated by the secondary burner is largely radiant and is projected into the room, which affords quick heating of the room while also providing the aesthetic beauties of a gas-fired artificial logs, coals- and embers-burner assembly operation.

BRIEF DESCRIPTION OF THE DRAWINGS

For a more complete understanding of the present invention, and for further details and advantages thereof, reference is now made to the following Detailed Description taken in conjunction with the accompanying drawings, in which.

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FIG. 1 provides a perspective view of a prior art pan burner used with artificial gas logs:

FIG. 2 provides a gas-fired artificial logs primary pan tube burner and secondary coals and embers tube burner;

FIG. 3 illustrates the effect of the present assembly in providing logs, coals and embers flames; and

FIG. 4 is a front view of the assembly illuminating the coals and embers bed and gas logs flames.

DETAILED DESCRIPTION OF THE DRAWINGS

The present assembly provides a number of advantages over the burner assemblies disclosed in the prior art. FIG. 1 illustrates a standard pan burner 10 which is used in the vast majority of artificial log sets. The pan burner 10 has an open frame 12 which supports a burner tube 14. An inlet 16 is connected to a gas source (not shown). A plurality of apertures, as evidenced by gas plumes 18, are spaced along the length of the burner tube 14. Gas escapes through the apertures and filters through sand (not shown). Gas which escapes from the sand is initially ignited to create flames. These flames are continually fed by the escaping gas. The burner tube 14 is supported by the side walls 12a, 12b of the frame 12. The burner tube 14 extends beyond the side wall 12a and is capped.

FIG. 2 illustrates a secondary burner apparatus 100 which embodies the present invention in combination with primary burner tube 14. The secondary burner apparatus 100 can be retrofitted to the terminal end 14a of the burner tube 14 in the pan burner 10. The cap must be removed from the terminal end 14a. A connector 102 is then attached to the uncapped end of burner tube 14. The connector 102 is fitted to the secondary burner tube 104 creating an enclosed fluid path for the gas. The connections between the connector 102 and the terminal end 14a should be adequately sealed to prevent leakage. Likewise, the connection between the connector 102 and the secondary burner tube 104 should also be properly sealed. A valve 106 is interposed in this fluid path. The valve 106 can be variably positioned to give the user the ability select the amount of gas entering the secondary burner. The secondary burner tube 104 is generally parallel to the primary burner tube 14. The terminal portion of the secondary burner tube 104a is closed. The primary and secondary burner tubes are typically made of steel.

A plurality of apertures 108 are along the length of the secondary burner tube 104. The apertures 108 can be evenly spaced or clustered. The apertures 108 are typically between $\frac{1}{32}$ and $\frac{1}{8}$ inch in diameter, but are preferably $\frac{1}{16}$ of an inch in diameter. More importantly, the apertures are located along the radial edge of the secondary burner tube 104, below the upper ridge of the tube. By avoiding the upper ridge, the apertures are less likely to be clogged by sand. Gas passing through the valve 106 enters the secondary burner tube 104 and escapes through the spaced apertures. The apertures can be evenly spaced or clustered.

These various spaced apertures or gas discharge ports are most important in their position in regard to both the primary and secondary tube burners. In the secondary burner tube 104, the gas is discharged in a direction away from the opening of the fireplace or in another aspect is directed somewhat toward or directly toward the primary burner tube 14. The effects of such gas burn direction enhances the aesthetic beauty of the overall logs, coals, and embers burn, but, more importantly, provide several safety features of the gas-fired artificial logs, coals- and embers-burner assembly. First, the natural draft of the fireplace provides a more efficient burn of the gas and avoids high or intolerable levels

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of carbon monoxide. Even more importantly is that the backward direction of gas flow direction toward the primary burner from the secondary burner avoids creation of pockets of gas in the sand and other coverage material of these burners which could possibly create a flash explosion due to accumulated gas. For example, if the gas is directed from the secondary burner 104 toward the opening of the fireplace, then two independent sources of gas pocketing occurs—one on the gas logs primary burner which may or may not be covered by granular materials as well as that generated by the secondary burner which is removed from about four to eight or ten inches in front of the primary burner. Lighting of such gas distribution pockets would be hazardous and uniformity of coordinated burn utilizing natural draft of the fireplace would be lost. If the secondary burner 104 discharges gas in a vertical direction, apertures in the sand or coverage granular material will occur and one would lose the aesthetic beauty of the applications of distribution of gas for burning and creating flame coals' and embers' appearance.

In the gas-fired artificial logs, coals- and embers-burner assembly of the invention, the primary elongated burner tube can be comprised of a one-half inch pipe while the secondary coals- and embers-burner elongated tube can be of a one-quarter inch pipe. These dimensional relationships can be varied depending on the needs for gas volume and the size of the fireplace. The spacing between the primary and secondary burner tubes can also be varied within reasonable lengths of from about four to eight or ten inches depending on the size and depth of the coals and embers bed one requires. The secondary elongated burner tube can also have adjustments for height, meaning distance elevated from the floor of the fireplace, again depending on the depth and size of the coals and embers fire bed. In all of these dimensional relationships, the present invention provides an adjustable burn facility for the secondary elongated burner tube which controls the amount of coals and embers flame and glow, again depending on the individual's desires, size of the room, size of the fireplace and the amount of natural draft through the fireplace.

FIGS. 3 and 4 illustrate the effect of the secondary burner apparatus 100 once connected to the pan burner 10. As discussed, a grate 20 is located above the pan burner which is covered with sand 22. The grate 20 can hold at least one artificial log 24. Artificial ember material 26 which glows when heated can be strewn under and around the artificial logs and on top of the sand. Flames 30 fed by gas from the primary burner tube 14 rise through the artificial logs 24. Flames 40 fed by gas from the secondary burner tube 104 can rise through the artificial ember bed 28. As illustrated, the flames 40 can be lower than the flames 30, thus providing an aesthetically pleasing sight.

Although preferred embodiments of the invention have been described in the foregoing Detailed Description and illustrated in the accompanying drawings, it will be understood that the invention is not limited to the embodiments disclosed, but is capable of numerous rearrangements, modifications, and substitutions of parts and elements without departing from the spirit of the invention. Accordingly, the present invention is intended to encompass such rearrangements, modifications, and substitutions of parts and elements as fall within the scope of the invention.

What is claimed is:

1. A gas-fired artificial logs and coals-burner assembly for fireplace comprising:
an elongated primary burner tube including a plurality of gas discharge ports;

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- a secondary coals burner elongated tube positioned forwardly of the primary burner tube;
- a support means for holding the elongated primary burner tube in a raised level relative to the forwardly position secondary coals burner elongated tube;
- the secondary coals burner elongated tube including a plurality of gas discharge ports;
- the elongated primary burner tube and the secondary coals burner elongated tube communicating through tubular connection means wherein the gas flow to the secondary elongated coals burner tube is fed through the primary burner tube and the tubular connection means;
- a valve for adjusting gas flow to the secondary coals burner elongated tube positioned in the tubular gas connection means; and
- the primary burner tube being in communication with a gas source with a gas flow control means therein for controlling gas flow into said primary burner tube.
2. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the support means for the primary burner tube is comprised of an open frame pan for supporting the primary burner tube in an elevated position relative to the fireplace floor.
3. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the secondary coals burner elongated tube discharge ports are directed toward the primary burner elongated tube at an angle of from about 5 to about 75 degrees based on the plane of the fireplace floor.
4. The gas-fired artificial logs and coals-burner assembly according to claim 3 wherein the secondary coals burner elongated tube discharge ports directed toward the primary burner tube utilizes the fireplace natural draft in achieving combustion of both gas sources in sufficient air to maintain satisfactory levels of CO.
5. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the secondary coals burner elongated tube is substantially parallel to the primary burner tube and has a smaller inside diameter than the primary burner tube with the valve adjusting gas flow for coals burn and forwarding heat radiation from the fireplace.
6. The gas-fired artificial logs and coals-burner assembly according to claim 4 wherein the primary burner tube is comprised of a standard half-inch pipe and the secondary burner tube is comprised of a standard quarter-inch pipe.
7. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the elongated primary burner tube and the secondary coals burner elongated tube are spaced apart on different planes at from about four to about eight inches.
8. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the secondary coals burner elongated tube is of a smaller diameter than the primary burner tube which allows for a lower profile of coals and sand coverage.
9. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the secondary coals burner elongated tube is adjustable in height relative to the floor of the fireplace and the elevated primary burner tube.
10. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein at least two secondary coal burner elongated tubes are utilized for artificial coal burn and radiant heat generation.
11. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the primary and secondary burner tubes have apertures of from about 1/32 inch to about 1/2 inch.

12. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the gas flow adjustment valve has a removable handle, the gas flow adjustment allowing a variety of settings from full closed to full open.
13. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the connection means is comprised of a connector attached to the terminal end of the primary burner tube at a first end of a connector and attached to the secondary coals burner elongated tube to a connector second end with the valve interposed between the primary burner tube and the secondary burner tube.
14. The gas-fired artificial logs and coals-burner assembly according to claim 13 wherein the connector generally is shaped outward from the first end connected to the primary burner tube, directed generally perpendicular to the burner tubes alignment and inward to the second end connected to the secondary burner tube, the valve and connector being positioned generally exterior of the primary and secondary burner tube fire zones.
15. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the open frame pan and primary elongated burner tube is positioned under an artificial logs and grate support means.
16. The gas-fired artificial logs and coals-burner assembly according to claim 1 wherein the primary elongated burner tube is covered with sand and the secondary elongated burner tube is covered with sand, mica, and fibrous materials which simulate coals and ember burn.
17. A gas-fired artificial coals- and embers-burner apparatus suitable for attaching to a gas-fired primary artificial log burner tube said primary artificial log burner tube having a terminal end comprising:
 - a secondary coals burning elongated tube;
 - a connector means for connecting said terminal end in communication with the secondary burner tube, the secondary burner tube positioned substantially parallel forward and below the primary burner tube, the connector means having interposed between the primary and secondary burner tubes a gas flow adjustment valve, the primary and secondary burner tubes having a plurality of gas discharge ports, the secondary burner tube being in gas flow communication with the primary burner tube being the connection means, a gas distribution ports of the secondary burner tube directed away from the fireplace opening.
18. The gas-fired artificial coals- and embers-burner apparatus according to claim 1, wherein the gas distribution ports of the secondary burner tube are directed toward the primary burner tube at from about 5 degrees to about 75 degrees elevation from the fireplace floor.
19. A gas burner assembly for use in a fireplace comprising:
 - a primary burner tube having a first end and a second end, said first end adapted to be connected to a gas source with a gas flow control means for controlling the amount of gas flowing into said primary burner tube;
 - a second burner tube;
 - a connector tube attached to said second end of said primary burner tube and to said second burner tube to provide fluid communication between said primary burner tube and said second burner tube; and
 - a valve disposed in said connector tube for selectively controlling the flow of gas from said primary burner tube into said second burner tube.

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UTILITY SERIAL NUMBER	08 061727	PATENT DATE	PATENT NUMBER
SERIAL NUMBER	08/061727	FILING DATE	05/17/93
CLASS	431	SUBCLASS	1-5
GROUP	3104	PART	3406
UNIT		EXAMINER	1-1779

GOLDEN BLOUNT, DALLAS, TX.

CONTINUING DATA
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VERIFIED

FOREIGN FILING LICENSE GRANTED 08/13/93

Foreign priority claimed 35 USC 119 conditions met	<input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> yes <input type="checkbox"/> no	AS FILED	STATE OR COUNTRY	SHEETS DRWGS.	TOTAL CLAIMS	INDEP. CLAIMS	FILING FEE RECEIVED	ATTORNEY'S DOCKET NO.
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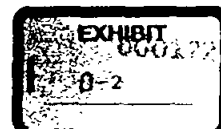
ADDRESS
GOLDEN BLOUNT
4200 WESTGROVE
DALLAS, TX 75248

TITLE
CONTROLLED EMBER BED BURNER

U.S. DEPT. of COMM. Pat. & TM Office — PTO-436L (rev. 10-78)

PARTS OF APPLICATION FILED SEPARATELY		Applications Examiner	
NOTICE OF ALLOWANCE MAILED		CLAIMS ALLOWED	
		Total Claims	Print Claim
ISSUE FEE		DRAWING	
Amount Due	Date Paid	Sheets Drwg.	Figs. Drwg. Print Fig
Label Area		ISSUE BATCH NUMBER	
PREPARED FOR ISSUE		Primary Examiner	
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Form PTO-436A
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1. Application 2 Prints papers.

2. LYRE: S. WATRE

3. Declaration surcharge

4. Exemption (smos)

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5. Allegation

6. 12-5-00

7. Request for check

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POSITION	ID NO.	DATE
CLASSIFIER	5	6-4-93
EXAMINER	340	6-17-93
TYPIST	18	8-12
VERIFIER	4/42	8-16
CORPS CORR.		
SPEC. HAND	43	8-3-93
FILE MAINT.	431	6/88
DRAFTING		

INDEX OF CLAIMS

Claim	Date
Final Original	
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SYMBOLS
✓ ----- Rejected
- ----- Allowed
(Through number) Cancelled
+ ----- Restricted
N ----- Non-accepted
I ----- Interference
A ----- Appeal
O ----- Obsolete

Claim	Date
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Class	Sub.	Date	Exmr.
431	125	4-14-98	MD
126	512		

INTERFERENCE SEARCHED

Class	Sub.	Date	Exmr.

SEARCH NOTES

	Date	Exmr.

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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
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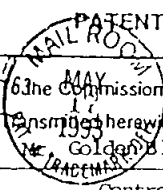
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JT-APP 1998

BAR CODE LABEL 		U.S. PATENT APPLICATION			
SERIAL NUMBER 08/061,727		FILING DATE 05/17/93	CLASS 239	GROUP ART UNIT 3104	
APPLICANT	GOLDEN BLOUNT, DALLAS, TX.				
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STATE OR COUNTRY TX	SHEETS DRAWING 2	TOTAL CLAIMS 2	INDEPENDENT CLAIMS 2	FILING FEE RECEIVED \$840.00	ATTORNEY DOCKET NO.
ADDRESS	GOLDEN BLOUNT 4200 WESTGROVE DALLAS, TX 75248				
	TITLE CONTROLLED EMBER BED BURNER				
This is to certify that annexed hereto is a true copy from the records of the United States Patent and Trademark Office of the application which is identified above. By authority of the COMMISSIONER OF PATENTS AND TRADEMARKS					
Date		Certifying Officer		000127	

PATENT APPLICATION TRANSMITTAL LETTER				Docket Number (Optional) 00-061727
<div style="float: left; width: 15%; text-align: center;">  </div> <div style="float: right; width: 85%;"> <p>The Commissioner of Patents and Trademarks:</p> <p>Transmits herewith for filing under 35 U.S.C. 111 and 37 CFR 1.53 is the patent application of <u>Golden Blount</u></p> <p>entitled <u>Controlled Ember Bed Burner</u></p> </div>				
<p>Enclosed are:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> <u>4</u> pages of written description, claims and abstract. <input checked="" type="checkbox"/> <u>2</u> sheets of drawings <input type="checkbox"/> an assignment of the invention to _____ <input checked="" type="checkbox"/> executed declaration of the inventors <input type="checkbox"/> a certified copy of a _____ application. <input type="checkbox"/> associate power of attorney <input type="checkbox"/> a verified statement to establish small entity status under 37 CFR 1.9 and 1.27. <input type="checkbox"/> information disclosure statement <input type="checkbox"/> preliminary amendment <input type="checkbox"/> other: _____ 				
CLAIMS AS FILED				
	NUMBER FILED	NUMBER EXTRA	RATE	FEE
BASIC FEE				\$ 710.00
TOTAL CLAIMS	2 - 20 =	0	x	N/A
INDEPENDENT CLAIMS	2 - 3 =	0	x	N/A
MULTIPLE DEPENDENT CLAIM PRESENT				N/A
* NUMBER EXTRA MUST BE ZERO OR LARGER			TOTAL	\$710.00
<input type="checkbox"/> If applicant has small entity status under 37 CFR 1.9 and 1.27, then divide total fee by 2 and enter amount here			SMALL ENTITY TOTAL	\$
<p><input checked="" type="checkbox"/> A check in the amount of \$ <u>710.00</u> to cover the filing fee is enclosed.</p> <p><input type="checkbox"/> The Commissioner is hereby authorized to charge and credit Deposit Account No. _____ as described below. I have enclosed a duplicate copy of this sheet.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Charge the amount of \$ _____ as filing fee. <input type="checkbox"/> Credit any overpayment. <input type="checkbox"/> Charge any additional filing fees required under 37 CFR 1.16 and 1.17. <input type="checkbox"/> Charge the issue fee set in 37 CFR 1.18 at the mailing of the Notice of Allowance, pursuant to 37 CFR 1.311(b). 				
<p>May 14, 1993</p> <p style="text-align: center;">Date</p>		<p style="text-align: center;"><i>Golden Blount</i></p> <p style="text-align: center;">Signature</p> <p>1-000 Mr. Golden Blount <u>AC</u></p> <p style="text-align: center;">Typed or printed name</p> <p>4200 Westgrove</p> <p style="text-align: center;">Address</p> <p>Dallas, Texas 75248 TX</p>		

000128

Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

ABSTRACT

The Controlled Ember Bed Burner ("CEBB") is a secondary gas burner for optional use with artificial fireplace log systems in residential fireplaces. The CEBB feeds natural gas into artificial ember-bed material placed below and in front of the artificial log set-up. As the gas conveyed by the CEBB burns among the artificial ember bed materials, they take on the appearance of real burning embers, thus enhancing the fireplace's appearance. Gas-flow into the CEBB -- and, hence, fire in the artificial ember bed materials -- is controlled by a valve that is part of the CEBB.

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JT-APP 2001

#2 7'0.-101

A



DESCRIPTION

08 061727
A-1
9/13/72

TITLE

The title of the invention is the "Controlled Ember Bed Burner" (It is sometimes referred to herein by its acronym: "CEBB").

2. CROSS REFERENCE TO RELATED APPLICATIONS, IF ANY

The inventor is unaware of any cross references to related applications.

3. BRIEF SUMMARY OF THE INVENTION

The controlled Ember-Bed Burner ("CEBB") is a secondary gas burner for optional use with artificial fireplace log systems in woodburning fireplaces. The CEBB feed natural or LP gas into artificial Ember-Bed materials placed below and in front of an artificial log assembly. As the gas conveyed through the CEBB burns under the artificial ember-bed materials they take on the appearance of real burning embers, thus enhancing the appearance of the artificial fireplace logs. The amount of fire in the ember materials is controlled by a valve attached to the CEBB.

4. DESCRIPTION OF DRAWINGS

Exhibit "A" is a drawing of the CEBB (marked part "A-1"), and its connector pipe piece (part A-3) and valve (part A-2). Exhibit "A" shows the general shape and configuration of the CEBB which allows it to feed gas from the main fireplace gas burner into an area below and in front of the artificial log assembly. Exhibit "A" also shows gas jets or the sort and general location on the CEBB, through which gas is fed into the burn area.

Exhibit "B" is a drawing of the CEBB, as attached to the main fireplace gas burner, which is the CEBB's source of gas.

Exhibit "C" is a drawing of the CEBB, showing the CEBB in operation, igniting a controlled fire in an artificial ember bed assembly, and in supplement to the main fire in the artificial log assembly provided by the main fireplace burner.

5. DETAILED DESCRIPTION

The CEBB has three parts: (1) the CEBB burner pipe (Part A-1, Exhibit "A"); (2) a CEBB connector pipe for attaching the CEBB burner to a fireplace gas source (part A-3, Exhibit "A"); and (3) a CEBB valve, for

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controlling gas flow into the CEGB (part A-2, Exhibit "A").

The CEGB functions in the following manner:

- a. The CEGB is designed and structured to be used in artificial fireplace assemblies, with artificial ember materials, to simulate the appearance of burning embers.
- b. The main part of the CEGB is its burner. The CEGB burner is equipped with gas jets. It is capable of feeding gas from the burner into an area just below and in front of the artificial log assembly. This is the area where fireplace embers would normally collect and burn in a natural fireplace fire.
- c. The CEGB burner is placed below an assembly of artificial ember materials. As the CEGB provides gas into that assembly, and as the gas burns, the materials appear to be naturally burning fireplace embers. Gas is fed into the CEGB burner, from the main fireplace burner, through a CEGB connecting pipe piece, which joins the main and CEGB burners. The CEGB in turn feeds gas into the artificial ember assembly through the numerous gas jets built into the CEGB burner.
- d. The CEGB valve controls the amount of gas fed into the CEGB burner from the main fireplace burner.
- e. The overall effect of the CEGB is to provide a secondary fireplace burner, which can be used in conjunction with artificial ember bed materials, to enhance the appearance of artificial fireplace log assemblies by adding a simulated ember bed fire, thus enhancing the fireplace's overall appearance and realism.

6. CLAIMS (See Page B-1)
7. ABSTRACT (See Page C-1)
8. DRAWINGS (See Pages D-1 and 2)

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B-

CLAIMS

Applicant makes two claims for patenting in connection with the Controlled Ember-Bed Burner ("CEBB"):

1. The design, structure and/or configuration of a secondary gas burner capable of supplying controlled amounts of gas into an area adjacent to an artificial fireplace log assembly; and
2. Any application or use of the CEBB, or similar secondary gas burner structure, in conjunction with artificial embers or artificial ember-bed materials.

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JT-APP 2004

EXHIBIT "A" - CEBB PARTS

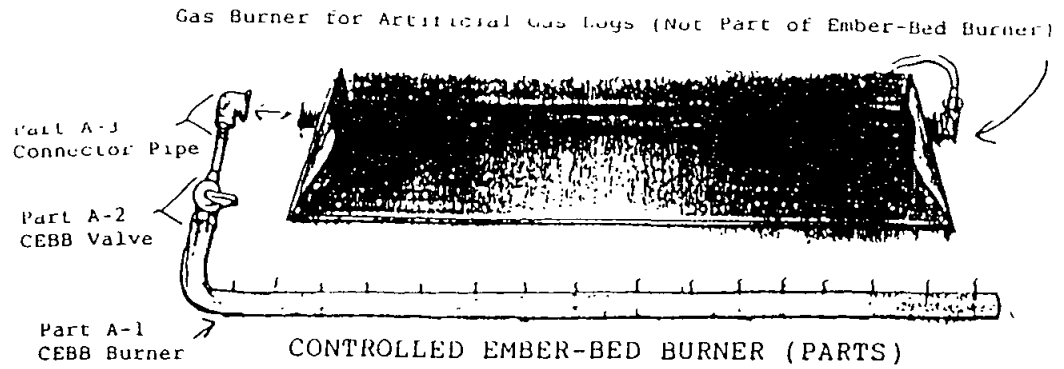
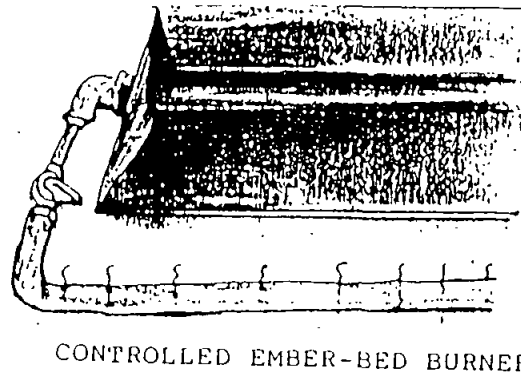


EXHIBIT "B"

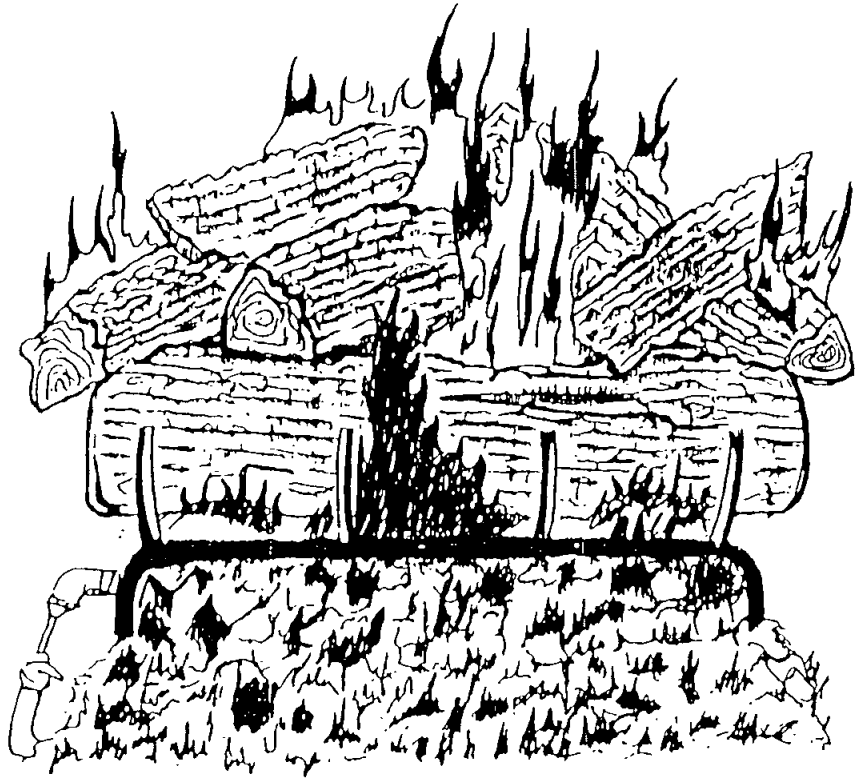


The CEBB installs in front of a main gas burner which is used to "burn" artificial "logs" for the fireplace.

000133

JT-APP 2005

EXHIBIT "C"



The Controlled Ember-Bed Burner illuminates artificial Ember-Bed material in front of the artificial gas log assembly, in order to simulate the appearance of burning embers, thereby enhancing the attractiveness and realism of the fireplace.

000134

JT-APP 2006

EXHIBIT "A" - CEBB PARTS

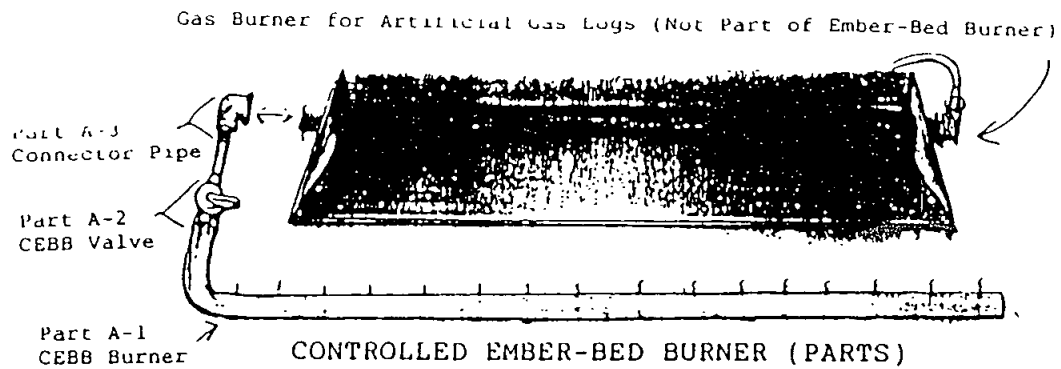
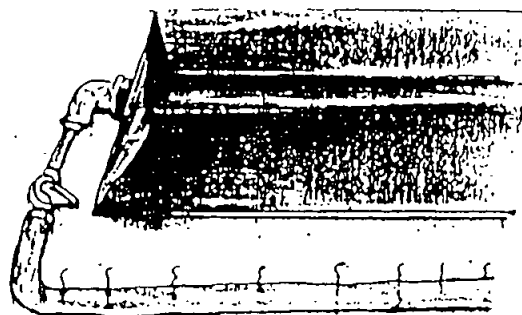


EXHIBIT "B"



CONTROLLED EMBER-BED BURNER

The CEBB installs in front of a main gas burner which is used to "burn" artificial "logs" for the fireplace.

000135

JT-APP 2007

EXHIBIT "C"



The Controlled Ember-Bed Burner illuminates artificial Ember-Bed material in front of the artificial gas log assembly, in order to simulate the appearance of burning embers, thereby enhancing the attractiveness and realism of the fireplace.

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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
--------------------	-------------	-----------------------	------------------------

**NOTICE TO FILE MISSING PARTS OF APPLICATION
FILING DATE GRANTED**

An Application Number and Filing Date have been assigned to this application. However, the items indicated below are missing. The required items and fees identified below must be timely submitted **ALONG WITH THE PAYMENT OF A SURCHARGE** for items 1 and 3-6 only of \$ 130.00 for large entities or \$ 65.00 for small entities who have filed a verified statement claiming such status. The surcharge is set forth in 37 CFR 1.16(e).

If all required items on this form are filed within the period set below, the total amount owed by applicant as a ☒ large entity, ☐ small entity (verified statement filed), is \$ 130.00.

Applicant is given **ONE MONTH FROM THE DATE OF THIS LETTER, OR TWO MONTHS FROM THE FILING DATE** of this application, **WHICHEVER IS LATER**, within which to file all required items and pay any fees required above to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

1. ☐ The statutory basic filing fee is: ☐ missing ☐ insufficient. Applicant as a ☐ large entity ☐ small entity, must submit \$_____ to complete the basic filing fee.
2. ☐ Additional claim fees of \$_____ as a ☐ large entity, ☐ small entity, including any required multiple dependent claim fee, are required. Applicant must submit the additional claim fees or cancel the additional claims for which fees are due.
3. ☐ The oath or declaration:
 - ☐ is missing.
 - ☐ does not cover items omitted at time of execution.

An oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date is required.
4. ☐ The oath or declaration does not identify the application to which it applies. An oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.
5. ☒ The signature to the oath or declaration is: ☒ missing; ☐ a reproduction; ☐ by a person other than the inventor or a person qualified under 37 CFR 1.42, 1.43, or 1.47. A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.
6. ☐ The signature of the following joint inventor(s) is missing from the oath or declaration: _____ An oath or declaration listing the names of all inventors and signed by the omitted inventor(s), identifying this application by the above Application Number and Filing Date, is required.
7. ☐ The application was filed in a language other than English. Applicant must file a verified English translation of the application and a fee of \$_____ under 37 CFR 1.17(k), unless this fee has already been paid.
8. ☐ A \$_____ processing fee is required for returned checks (37 CFR 1.21(m)).
9. ☐ Your filing receipt was mailed in error because check was returned without payment.
10. ☐ The application does not comply with the Sequence Rules. See attached Notice to Comply with Sequence Rules 37 CFR 1.821-1.825.
11. ☐ Other.

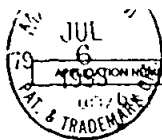
Direct the response and any questions about this notice to Deborah L. Hickey Application Processing Division, Special Processing and Correspondence Branch (703) 308-1202.

A copy of this notice MUST be returned with the response. 000137

FORM PTO-1633 (REV. 1-93)

OFFICE COPY

JT-APP 2009



APPLICATION NUMBER
FILING DATE
FIRST NAMED APPLICANT

0001 0001

RECEIVED
JUL 30 1993

ADDITIONAL INFORMATION

0000

DATE MAILED: 06/24/93

NOTICE TO FILE MISSING PARTS OF APPLICATION FILING DATE GRANTED

An Application Number and Filing Date have been assigned to this application. However, the items indicated below are missing. The required items and fees identified below must be timely submitted **ALONG WITH THE PAYMENT OF A SURCHARGE** for items 1 and 3-6 only of \$ 1.00 for large entities or \$.25 for small entities who have filed a verified statement claiming such status. The surcharge is set forth in 37 CFR 1.16(e).

If all required items on this form are filed within the period set below, the total amount owed by applicant as a ☒ large entity, ☐ small entity (verified statement filed), is \$ 1.25.

Applicant is given **ONE MONTH FROM THE DATE OF THIS LETTER, OR TWO MONTHS FROM THE FILING DATE** of this application, **WHICHEVER IS LATER**, within which to file all required items and pay any fees required above to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

1. ☐ The statutory basic filing fee is: ☐ missing ☐ insufficient. Applicant as a ☐ large entity ☐ small entity, must submit \$ _____ to complete the basic filing fee.

2. ☐ Additional claim fees of \$ _____ as a ☐ large entity, ☐ small entity, including any required multiple dependent claim fee, are required. Applicant must submit the additional claim fees or cancel the additional claims for which fees are due.

3. ☐ The oath or declaration:
☐ is missing.
☐ does not cover items omitted at time of execution.

An oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date is required.

4. ☐ The oath or declaration does not identify the application to which it applies. An oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.

5. ☒ The signature to the oath or declaration is: ☒ missing; ☐ a reproduction; ☐ by a person other than the inventor or a person qualified under 37 CFR 1.42, 1.43, or 1.47. A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.

6. ☐ The signature of the following joint inventor(s) is missing from the oath or declaration.

_____ An oath or declaration listing the names of all inventors and signed by the omitted inventor(s), identifying this application by the above Application Number and Filing Date, is required.

7. ☐ The application was filed in a language other than English. Applicant must file a verified English translation of the application and a fee of \$ _____ under 37 CFR 1.17(k), unless this fee has already been paid.

8. ☐ A \$ _____ processing fee is required for returned checks. (37 CFR 1.21(m))

9. ☐ Your filing receipt was mailed in error because check was returned without payment.

10. ☐ The application does not comply with the Sequence Rules. See attached Notice to Comply with Sequence Rules 37 CFR 1.821-1.825.

11. ☐ Other.

1 105 130.00 CN

Direct the response and any questions about this notice to Regulatory Application Processing Division, Special Processing and Correspondence Branch (703) 308-1202.

MPB

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A copy of this notice *MUST* be returned with the response.

FORM PTO-1013 (REV. 1-93)

COPY TO BE RETURNED WITH RESPONSE

JT-APP 2010

FORM PTO-892 (REV 2-92)		U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE		SERIAL NO. 08/061 727	GROUP/ART UNIT 340-6	ATTACHMENT TO PAPER NUMBER	
NOTICE OF REFERENCES CITED				APPLICANT(S) Blount			

U.S. PATENT DOCUMENTS								
*	DOCUMENT NO	DATE	NAME	CLASS	SUB CLASS	FILING DATE IF APPROPRIATE		
A	5081981	1-1992	Beal	431	125			
B	5000162	3-1991	Shimok et al	431	125			
C	5052376	10-1991	Karabin	126	512			
D								
E								
F								
G								
H								
I								
J								
K								

FOREIGN PATENT DOCUMENTS									
*	DOCUMENT NO	DATE	COUNTRY	NAME	CLASS	SUB CLASS	PERTINENT SHTS DWG	PP SPEC	
L									
M									
N									
O									
P									
Q									

OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)	
R	
S	
T	
U	

EXAMINER DORITY	DATE 4-14-94	000139
---------------------------	------------------------	---------------

* A copy of this reference is not being furnished with this office action.
(See Manual of Patent Examining Procedure, section 707.05 (a).)



DESCRIPTION

A-1

1. TITLE

The title of the invention is the "Controlled Ember Bed Burner" (It is sometimes referred to herein by its acronym: "CEBB").

2. CROSS REFERENCE TO RELATED APPLICATIONS, IF ANY

The inventor is unaware of any cross references to related applications.

3. BRIEF SUMMARY OF THE INVENTION

The controlled Ember-Bed Burner ("CEBB") is a secondary gas burner for optional use with artificial fireplace log systems in woodburning fireplaces. The CEBB feed natural or LP gas into artificial Ember-Bed materials placed below and in front of an artificial log assembly. As the gas conveyed through the CEBB burns under the artificial ember-bed materials they take on the appearance of real burning embers, thus enhancing the appearance of the artificial fireplace logs. The amount of fire in the ember materials is controlled by a valve attached to the CEBB.

4. DESCRIPTION OF DRAWINGS

Exhibit "A" is a drawing of the CEBB (marked part "A-1"), and its connector pipe piece (part A-3) and valve (part A-2). Exhibit "A" shows the general shape and configuration of the CEBB which allows it to feed gas from the main fireplace gas burner into an area below and in front of the artificial log assembly. Exhibit "A" also shows gas jets or the sort and general location on the CEBB, through which gas is fed into the burn area.

Exhibit "B" is a drawing of the CEBB, as attached to the main fireplace gas burner, which is the CEBB's source of gas.

Exhibit "C" is a drawing of the CEBB, showing the CEBB in operation, igniting a controlled fire in an artificial ember bed assembly, and in supplement to the main fire in the artificial log assembly provided by the main fireplace burner.

5. DETAILED DESCRIPTION

The CEBB has three parts: (1) the CEBB burner pipe (Part A-1, Exhibit "A"); (2) a CEBB connector pipe for attaching the CEBB burner to a fireplace gas source (part A-3, Exhibit "A"); and (3) a CEBB valve, for

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JT-APP 2012

controlling gas flow into the CEBB (part A-2, Exhibit "A").

The CEBB functions in the following manner:

- a. The CEBB is designed and structured to be used in artificial fireplace assemblies, with artificial ember materials, to simulate the appearance of burning embers.
 - b. The main part of the CEBB is its burner. The CEBB burner is equipped with gas jets. It is capable of feeding gas from the burner into an area just below and in front of the artificial log assembly. This is the area where fireplace embers would normally collect and burn in a natural fireplace fire.
 - c. The CEBB burner is placed below an assembly of artificial ember materials. As the CEBB provides gas into that assembly, and as the gas burns, the materials appear to be naturally burning fireplace embers. Gas is fed into the CEBB burner, from the main fireplace burner, through a CEBB connecting pipe piece, which joins the main and CEBB burners. The CEBB in turn feeds gas into the artificial ember assembly through the numerous gas jets built into the CEBB burner.
 - d. The CEBB valve controls the amount of gas fed into the CEBB burner from the main fireplace burner.
 - e. The overall effect of the CEBB is to provide a secondary fireplace burner, which can be used in conjunction with artificial ember bed materials, to enhance the appearance of artificial fireplace log assemblies by adding a simulated ember bed fire, thus enhancing the fireplace's overall appearance and realism.
6. CLAIMS (See Page B-1)
 7. ABSTRACT (See Page C-1)
 8. DRAWINGS (See Pages D-1 and 2)

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JT-APP 2013

CLAIMS

Applicant makes two claims for patenting in connection with the Controlled Ember-Bed Burner ("CEBB"):

1. The design, structure and/or configuration of a secondary gas burner capable of supplying controlled amounts of gas into an area adjacent to an artificial fireplace log assembly; and
2. Any application or use of the CEBB, or similar secondary gas burner structure, in conjunction with artificial embers or artificial ember-bed materials.

000142

JT-APP 2014

ABSTRACT

The Controlled Ember Bed Burner ("CEBB") is a secondary gas burner for optional use with artificial fireplace log systems in residential fireplaces. The CEBB feeds natural gas into artificial ember-bed material placed below and in front of the artificial log set-up. As the gas conveyed by the CEBB burns among the artificial ember bed materials, they take on the appearance of real burning embers, thus enhancing the fireplace's appearance. Gas-flow into the CEBB -- and, hence, fire in the artificial ember bed materials -- is controlled by a valve that is part of the CEBB.

000143

JT-APP 2015

DECLARATION FOR PATENT APPLICATION

Docket Number (Option)

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled Controlled Ember Bed Burner, the specification of which

is attached hereto unless the following box is checked:

☐ was filed on _____ as United States Application Number or PCT International Application Number _____ and was amended on _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed.

Prior Foreign Application(s)
N/A

Priority Claimed

☐ Yes ☐ No☐ Yes ☐ No☐ Yes ☐ No

(Number) (Country) (Day/Month/Year Filed)

(Number) (Country) (Day/Month/Year Filed)

(Number) (Country) (Day/Month/Year Filed)

I hereby claim the benefit under Title 35, United States Code, § 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

N/A

(Application Number) (Filing Date) (Status - patented, pending, abandoned)

(Application Number) (Filing Date) (Status - patented, pending, abandoned)

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.

N/A

Address all telephone calls to Mr. Golden Blount at telephone number (214) 230-3113Address all correspondence to Mr. Golden Blount
4200 Westgrove
Dallas, TX 75248

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and those made so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first inventor (given name, family name) Golden BlountInventor's signature _____ Date May 14, 1993Residence 4244 Bobbitt, Dallas, TX 75229 Citizenship United States

Post Office Address _____

Full name of second joint inventor, if any (given name, family name) N/A

Second inventor's signature _____ Date _____

Residence _____ Citizenship _____

Post Office Address _____

☐ Additional inventors are being named on separately numbered sheets attached hereto

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Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

JT-APP 2016

EXHIBIT "A" - CEBB PARTS

Gas Burner for Artificial Gas Logs (Not Part of Ember-Bed Burner)

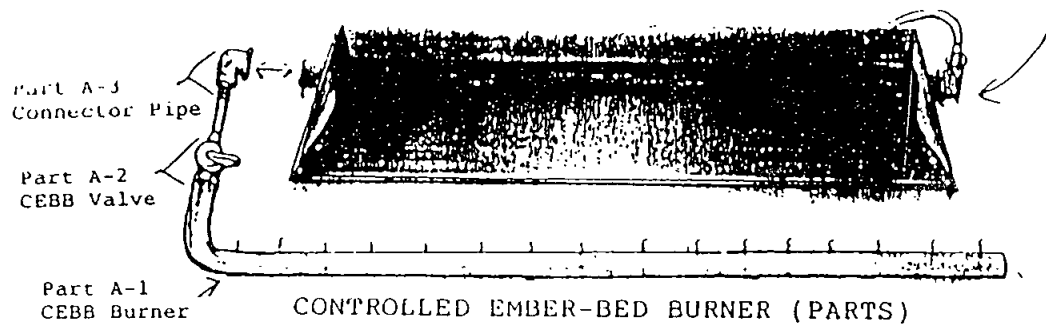
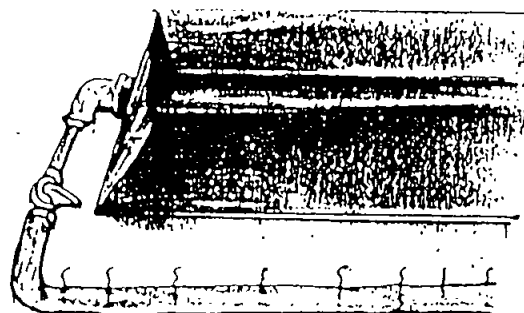


EXHIBIT "B"

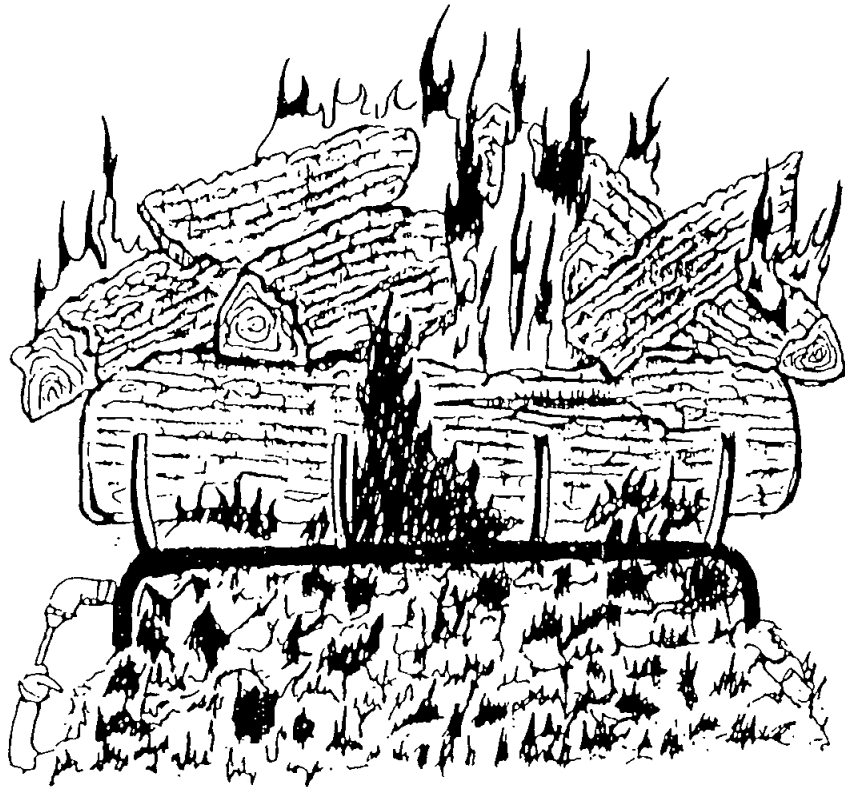


The CEBB installs in front of a main gas burner which is used to "burn" artificial "logs" for the fireplace.

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JT-APP 2017

EXHIBIT "C"

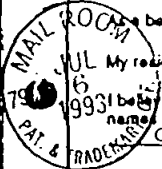


The Controlled Ember-Bed Burner illuminates artificial Ember-Bed material in front of the artificial gas log assembly, in order to simulate the appearance of burning embers, thereby enhancing the attractiveness and realism of the fireplace.

000146

DECLARATION FOR PATENT APPLICATION

Docket Number (Option)



below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled Controlled Ember Bed Burner, the specification of which

is attached hereto unless the following box is checked:

☐ was filed on _____ as United States Application Number or PCT International Application Number _____ and was amended on _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed.

Prior Foreign Application(s)

N/A

(Number)

(Country)

(Day/Month/Year Filed)

(Number)

(Country)

(Day/Month/Year Filed)

(Number)

(Country)

(Day/Month/Year Filed)

Priority Claimed

☐ Yes ☐ No

☐ Yes ☐ No

☐ Yes ☐ No

I hereby claim the benefits under Title 35, United States Code, § 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

N/A

(Application Number)

(Filing Date)

(Status - patented, pending, abandoned)

(Application Number)

(Filing Date)

(Status - patented, pending, abandoned)

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

N/A

Address all telephone calls to Mr. Golden Blount at telephone number (214) 250-3113

Address all correspondence to Mr. Golden Blount
4200 Westgrove
Dallas, TX 75248

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first inventor (given name, family name) Golden Blount

Inventor's signature Golden Blount

Date May 14, 1993

Residence 4244 Bobbitt, Dallas, TX 75229

Citizenship United States

Post Office Address _____

Full name of second joint inventor, if any (given name, family name) N/A

Second inventor's signature _____

Date _____

Residence _____

Citizenship _____

Post Office Address _____

☐ Additional inventors are being named on separately numbered sheets attached hereto.

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Patent and Trademark Office - 115 DEPARTMENT OF COMMERCE

JT-APP 2019

SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
---------------	-------------	----------------------	---------------------

06/061,727 05/17/93 BLOUNT

G EXAMINER DORITY, C	
ART UNIT	PAPER NUMBER

GOLDEN BLOUNT
4200 WESTGROVE
DALLAS, TX 75248

34M2/0420

3406
DATE MAILED:

04/20/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO 892. | 2. <input checked="" type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474 | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1 and 2 are pending in the application
Of the above, claims _____ are withdrawn from consideration
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1 and 2 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement
7. ☐ This application has been filed with Informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner, ☐ disapproved by the examiner (see explanation)
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved, ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.
14. ☐ Other

000148

EXAMINER'S ACTION

PTOL-320 (Rev. 2/93)

JT-APP 2020

Serial Number: 061,727

-2-

Art Unit: 3406

An examination of this application reveals that applicant is unfamiliar with patent prosecuting procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skillful preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Claims 1 and 2 are rejected as failing to define the invention in the manner required by 35 U.S.C. § 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent cited.

000149

JT-APP 2021

Serial Number: 061,727

-3-

Art Unit: 3406

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1 and 2 are rejected under 35 U.S.C. § 103 as being unpatentable over Beal, Shimek et al and Karabin.

So far as the language of these claims is understood, they are considered unpatentable over any one of the above references, all of which show a separate burner section for directing flame into artificial embers. Such begin the obvious structural equivalent of that recited.

C. DORITY:lm
APRIL 15, 1994
703-308-1437

CD
CARROLL B. DORITY
PRIMARY EXAMINER
ART UNIT 346

000150

JT-APP 2022

GROUP

APPLICATION NUMBER

061 727

NOTICE OF DRAFTSPERSON'S PATENT DRAWING REVIEW

THE PTO DRAFTSMEN REVIEW ALL ORIGINALLY FILED DRAWINGS REGARDLESS OF WHETHER THEY WERE DESIGNATED AS INFORMAL OR FORMAL. ADDITIONALLY, THE PATENT EXAMINER WILL ALSO REVIEW THE DRAWINGS FOR COMPLIANCE WITH THE REGULATIONS.

The drawings filed

5/17/93

A. ☐ are approved by the draftsman.

B. ☒ are objected to by the draftsman under 37 CFR 1.84 for the reason(s) checked below. The examiner will require submission of new, corrected drawings at the appropriate time. Corrected drawings must be submitted according to the instructions listed on the back of this Notice.

1. Paper and ink. 37 CFR 1.84(a)

☐ Sheet(s) _____ Poor

2. Size of Sheet and Margins. 37 CFR 1.84(b)

Acceptable Paper Sizes and Margins

Margin	Paper Size		
	8 1/2 by 14 inches	8 1/2 by 18 inches	DIN size A4 21 by 29.7 cm.
Top	2 inches	1 inch	2.5 cm.
Left	1/4 inch	1/4 inch	2.5 cm.
Right	1/4 inch	1/4 inch	1.5 cm.
Bottom	1/4 inch	1/4 inch	1.0 cm.

☐ Proper Size Paper Required.
All Sheets Must be Same Size.
Sheet(s) _____

☐ Proper Margins Required.
Sheet(s) _____

☐ TOP ☐ RIGHT
☐ LEFT ☐ BOTTOM

3. Character of Lines. 37 CFR 1.84(c)

☒ Lines Pale or Rough and Blurred
Fig(s) _____

☐ Solid Black Shading Not Allowed.
Fig(s) _____

☒ Photographs Not Approved

☒ Comments:

*Must be pen and black
INK Right
Remove descriptive matter*

5. Hatching and Shading. 37 CFR 1.84(d)

☐ Shade Lines are Required.

Fig(s) _____

☐ Criss-Cross Hatching Not Allowed.

Fig(s) _____

☐ Double Line Hatching Not Allowed.

Fig(s) _____

☐ Parts in Section Must be Hatched.

Fig(s) _____

6. Reference Characters. 37 CFR 1.84(f)

☐ Reference Characters Poor or Incorrectly Sized
Fig(s) _____

☐ Reference Characters Placed Incorrectly.
Fig(s) _____

7. Views. 37 CFR 1.84(h) & (i)

☒ Figures Must be Numbered Properly

☐ Figures Must Not be Connected.
Fig(s) _____

8. ☐ Identification of Drawings 37 CFR 1.84(1)
Extraneous Matter or Copy Machine
Marks Not Allowed. Fig(s) _____

9. ☐ Changes Not Completed from Prior
PTO-948 dated _____

000153

Telephone inquiries concerning this review should be directed to the Chief Draftsman at telephone number (703) 305-840

Reviewing Draftsman

Date

Note: Any objection to the drawings made by the examiner will be communicated separately in an office action

PTO Copy

JT-APP 2023



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
087061 727	05/17/90	BLOUNT	G

GOLDEN BLOUNT
4200 WESTGROVE
DALLAS, TX 75248

34M1/1201

DORITY, EXAMINER	
ART UNIT	PAPER NUMBER
3406	


DATE MAILED

12/01/94

NOTICE OF ABANDONMENT

This application is abandoned in view of:

1. ☒ Applicant's failure to respond to the Office letter, mailed 4-20-94.
 2. ☐ Applicant's letter of express abandonment which is in compliance with 37 C.F.R. 1.138.
 3. ☐ Applicant's failure to timely file the response received _____ within the period set in the Office letter.
 4. ☐ Applicant's failure to pay the required issue fee within the statutory period of 3 months from the mailing date of _____ of the Notice of Allowance.
 - ☐ The issue fee was received on _____.
 - ☐ The issue fee has not been received in Allowed Files Branch as of _____.
- In accordance with 35 U.S.C. 151, and under the provisions of 37 C.F.R. 1.316(b), applicant(s) may petition the Commissioner to accept the delayed payment of the issue fee if the delay in payment was unavoidable. The petition must be accompanied by the issue fee, unless it has been previously submitted, in the amount specified by 37 C.F.R. 1.17 (l), and a verified showing as to the causes of the delay.
- If applicant(s) never received the Notice of Allowance, a petition for a new Notice of Allowance and withdrawal of the holding of abandonment may be appropriate in view of *Delgar Inc. v. Schuyler*, 172 U.S.P.Q. 513.
5. ☐ Applicant's failure to timely correct the drawings and/or submit new or substitute formal drawings by _____ as required in the last Office action.
 - ☐ The corrected and/or substitute drawings were received on _____.
 6. ☐ The reason(s) below.


CARROLL B. DORITY
PRIMARY EXAMINER
ART UNIT 346

000152

REQUEST FOR ACCESS OF ABANDONED APPLICATION UNDER 37 CFR 1.14(a)

RECEIVED
 DEC 06 2000
 File Information Unit

In re Application of	
Application Number 08/061,727	Filed 5-17-93
Group Art Unit	Examiner JG

Paper No. 6

Assistant Commissioner for Patents
 Washington, DC 20231

I hereby request access under 37 CFR 1.14(a)(3)(iv) to the application file record of the above-identified ABANDONED application, which is: (CHECK ONE)

- ☒ (A) referred to in United States Patent Number 598159, column _____
- ____ (B) referred to in an application that is open to public inspection as set forth in 37 CFR 1.11, i.e., Application No. _____, filed _____, on page _____ of paper number _____
- ____ (C) an application that claims the benefit of the filing date of an application that is open to public inspection, i.e., Application No. _____, filed _____, or
- ____ (D) an application in which the applicant has filed an authorization to lay open the complete application to the public.

Please direct any correspondence concerning this request to the following address:

Paul Benjamin
 Signature
Paul Benjamin
 Typed or printed name

Date

FOR PTO USE ONLY

Approved by: _____
 (Initials)

Unit: _____

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231

000153

JT-APP 2025

REQUEST FOR ACCESS OF ABANDONED APPLICATION UNDER 37 CFR 1.14(a)

RECEIVED
FEB 27 2001
File Information Unit

In re Application of	
Application Number 081061727	Filed 5-17-93
Group Art Unit	Examiner

Paper No. #7

Assistant Commissioner for Patents
Washington, DC 20231

I hereby request access under 37 CFR 1.14(a)(3)(iv) to the application file record of the above-identified ABANDONED application, which is: (CHECK ONE)

- ☒ (A) referred to in United States Patent Number 5988159, column _____
- ☐ (B) referred to in an application that is open to public inspection as set forth in 37 CFR 1.11, i.e., Application No. _____, filed _____, on page _____ of paper number _____.
- ☐ (C) an application that claims the benefit of the filing date of an application that is open to public inspection, i.e., Application No. _____, filed _____, or
- ☐ (D) an application in which the applicant has filed an authorization to lay open the complete application to the public.

Please direct any correspondence concerning this request to the following address:

Henry Duong
Signature
HENRY DUONG
Typed or printed name

2-27-01
Date

FOR PTO USE ONLY

Approved by: [Signature]
(Initials)

File No. 081061727

Burden Hour Statement: This form is assumed to take 0.2 hours to complete. The time may vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

000154



US. 5,988,159A

United States Patent [19]

Blount

[11] Patent Number: 5,988,159

[45] Date of Patent: Nov. 23, 1999

[54] GAS-FIRED ARTIFICIAL LOGS AND
COALS-BURNER ASSEMBLY[76] Inventor: Golden Blount, 5310 Harbor Town,
Dallas, Tex. 75287

[21] Appl. No.: 08/626,498

[22] Filed: Apr. 2, 1996

Related U.S. Application Data

[63] Continuation-in-part of application No. 08/276,894, Jul. 19,
1994, abandoned, which is a continuation-in-part of appli-
cation No. 08/061,727, May 17, 1993, abandoned

[51] Int. Cl. F23C 1/18

[52] U.S. Cl. 126/512; 126/500; 126/540,
431/125[58] Field of Search 431/125; 126/512,
126/500, 524, 540, 503

[56] References Cited

U.S. PATENT DOCUMENTS

3,042,109 7/1962 Peterson 126/512
3,871,355 3/1975 Henry 431/125 X
5,000,162 3/1991 Shinek et al. 126/512

5,033,455 7/1991 Eklor et al. 126/512

5,052,370 10/1991 Karabin 126/512

5,081,981 1/1992 Beal 126/92 R

5,263,852 11/1993 Beck 431/125

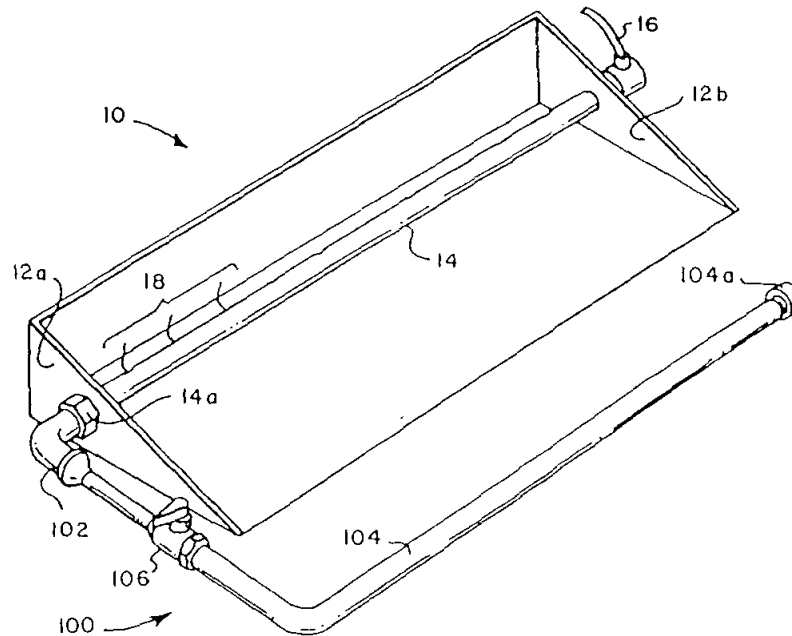
Primary Examiner—Larry Jones

Attorney, Agent, or Firm—L. Dan Tucker

[57] ABSTRACT

A gas-fired artificial logs and coals-burner assembly is provided for fireplace use in cooperation with decorative gas logs, and artificial coals and embers decorative items by placement forward of the gas logs in the fireplace arrangement, a secondary elongated coals- and embers-burner tube apparatus. The assembly provides gas-fired artificial logs, coals- and embers-burner apparatus for fireplaces wherein gas flow through primary burner tube is the source of gas flow to a secondary coals- and embers-burner tube positioned forward and below the primary burner tube with multiple discharge ports in the secondary tube directed away from the front of the fireplace, thus enhancing the natural burn in cooperation of the fireplace draft as well as the aesthetic beauty of the imitation burning logs, coals and embers.

19 Claims, 3 Drawing Sheets



000155

JT-APP 2027

PATENT APPLICATION FEE DETERMINATION RECORD						Application or Docket Number 061727	
Effective October 1, 1992							
CLAIMS AS FILED - PART I						SMALL ENTITY OR OTHER THAN SMALL ENTITY	
(Column 1)		(Column 2)					
FOR	NUMBER FILED	NUMBER EXTRA		RATE	FEE	RATE	FEE
BASIC FEE					\$355.00		\$710.00
TOTAL CLAIMS	2	minus 20 =	*	x\$11=		x\$22=	
INDEPENDENT CLAIMS	2	minus 3 =	*	x 37=		x 74=	
MULTIPLE DEPENDENT CLAIM PRESENT				+115=		+230=	
				TOTAL		OR TOTAL	710
* If the difference in column 1 is less than zero, enter "0" in column 2							
CLAIMS AS AMENDED - PART II						SMALL ENTITY OR OTHER THAN SMALL ENTITY	
(Column 1)		(Column 2)		(Column 3)			
AMENDMENT A	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE	ADDITIONAL FEE	RATE	ADDITIONAL FEE
	Total	Minus	**	=	x\$11=		x\$22=
	Independent	Minus	***	=	x 37=		x 74=
	FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM			+ 115=		+230=	
				TOTAL		OR TOTAL	
(Column 1)		(Column 2)		(Column 3)			
AMENDMENT B	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE	ADDITIONAL FEE	RATE	ADDITIONAL FEE
	Total	Minus	**	=	x\$11=		x\$22=
	Independent	Minus	***	=	x 37=		x 74=
	FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM			+ 115=		+ 230=	
				TOTAL		OR TOTAL	
(Column 1)		(Column 2)		(Column 3)			
AMENDMENT C	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE	ADDITIONAL FEE	RATE	ADDITIONAL FEE
	Total	Minus	**	=	x\$11=		x\$22=
	Independent	Minus	***	=	x 37=		x 74=
	FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM			+115=		+230=	
				TOTAL		OR TOTAL	
(Column 1)		(Column 2)		(Column 3)			
* If the entry in column 1 is less than the entry in column 2, write "0" in column 3							
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20"							
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3"							
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.							

FORM PTO 875
(Rev 10 92)

Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

0001: 6

JT-APP 2028

